

*PETROL MANWARI*

(PETROL IS RUBBISH FOR YOU):

A RIGHTS-BASED APPROACH TO THE ISSUE OF PETROL SNIFFING  
AMONGST INDIGENOUS YOUNG PEOPLE IN AUSTRALIA

ADRIANA ABATE

## SUMMARY

### A SUBMISSION FOR CHANGE

This submission is specifically directed to the Committee's request for reports on the following matters:

- (a) the effectiveness of existing laws and policing with respect to petrol sniffing in affected Indigenous communities;
- (b) the effectiveness of diversionary initiatives and community level activities
- (c) lessons that can be learned from the success some communities have had in reducing petrol sniffing, including the impact of non-sniffable Opal petrol.<sup>1</sup>

It will exclusively consider the needs and rights of the group of Indigenous Australians who most commonly sniff petrol and who are most at risk as a result of this practice: Aboriginal children and young people in remote communities. It will argue that a rights-based approach to the issue of petrol sniffing provides an effective framework to address the aforementioned matters, and grapple with the underlying health, social and community issues underlying this difficult problem.

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<sup>1</sup> Full terms of reference available at:

[http://www.aph.gov.au/Senate/committee/clac\\_ctte/petrol\\_sniffing/tor.htm](http://www.aph.gov.au/Senate/committee/clac_ctte/petrol_sniffing/tor.htm)

## 1 INTRODUCTION

“All three deceased died as a result of inhalation of petrol fumes.... Each led lives characterised by illness, hopelessness, violence and alienation from their families and community. Each had parents and family who did their best to stop them sniffing, and who have endured much suffering and grief as a result of their inability to do so...”<sup>2</sup>

CORONER CHIVELL, 2002

This summation, from a Coronial Inquiry into the deaths of three young Indigenous people reflects the devastating and widespread effects of petrol sniffing on young people, their families and their communities. In remote communities in Western Australia, South Australia and Northern Territory, petrol sniffing continues to be practised, predominantly by male,<sup>3</sup> Aboriginal children and young people.<sup>4</sup> Although the population of petrol abusers in most areas is relatively small, the effect of the practice extends beyond users to have a potentially ruinous impact on whole communities: whilst young people involved in petrol sniffing risk suffering side-effects including “sudden sniffing death”, permanent brain injury, anorexia, memory impairment and suicide idealisation,<sup>5</sup> petrol sniffing can also have wide ranging social repercussions including deterioration in school attendance, aggressive behaviour, increased family separation, loss of culture, disenfranchisement of young people and increased criminality.<sup>6</sup> Indeed, in her seminal study of petrol sniffing, *Heavy Metal: The Social Meaning of Petrol Sniffing in Australia*, Maggie Brady summarises the effect of petrol sniffing by young people as, “a threat both physically and

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<sup>2</sup> Chivell, W, *Findings of the South Australian State Coronial Inquest into the Deaths of Kunmanara Ken, Kunmanara Hunt and Kunmanara Thompson*, 6 September 2002, 1.

[http://www.courts.sa.gov.au/courts/coroner/findings/findings\\_2002/kunmanara\\_ken.finding.htm](http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_ken.finding.htm).

<sup>3</sup> Maggie Brady, *Heavy Metal: The Social Meaning of Petrol Sniffing In Australia* (1992) 5.

<sup>4</sup> Sarah MacLean and Peter D’Abbs, “Petrol Sniffing in Aboriginal Communities: A Review of Interventions” (2002) *Drug and Alcohol Review* 21 66. See also A. Mosey, *Report on Petrol Sniffing in Central Australia* (1997) 19.

<sup>5</sup> Maggie Brady, “Petrol sniffing among Aborigines: differing social meanings” (1991) 2(4) *International Journal of Drug Policy* 28-31, 29-30.

<sup>6</sup> Brady, above n 5, 30. See also Chivell, above n 2, 1.

metaphorically to the social order [constituting one of] many behaviours that lead to impaired health and social functioning.”<sup>7</sup> The severity of the problem makes it apparent that a genuine commitment to dealing with the issue of petrol sniffing is imperative for young people and their communities, and that young people are a key group to whom the response should be tailored.

To date, the Federal Government’s response to the practice of petrol sniffing by young Indigenous people has been limited, in spite of heightened media attention and requests from government departments, coroners, community leaders and youth workers for an integrated, revised strategy. Despite a Senate inquiry into petrol sniffing in 1985;<sup>8</sup> recommendations by the Royal Commission as part of its *Inquiry into Aboriginal Deaths in Custody*;<sup>9</sup> several Coronial inquests into petrol sniffing related deaths;<sup>10</sup> and countless submissions by the Social Justice Commissioner, youth workers and community council leaders;<sup>11</sup> the Government is yet to develop a consistent policy to deal with the problem.<sup>12</sup> The absence of a coherent approach is encapsulated in the statement of a former coordinator of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women’s Council, as part of her evidence at an inquest into petrol-sniffing deaths in 2002:

“...It’s the biggest shame that young people today in this part of the world are dying from petrol sniffing. And the neglect that I think has happened has been going on for some time, and that

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<sup>7</sup> Maggie Brady, above n 4, 14.

<sup>8</sup> Commonwealth of Australia, Senate Committee on Volatile Substance Fumes, *Volatile Substance Abuse in Australia* (1985).

<sup>9</sup> Commonwealth of Australia, *Royal Commission into Aboriginal Deaths in Custody National Report* (1991)

<sup>10</sup> Donald, W. *Coroners Act: Summary of Findings*, Case A82/94: NT, 8 September 1998; Chivell, above n 2; Cavanagh G., *Inquest into the deaths of Kumanjay Preseley, Kunmanara Coulthard and Kunmanara Brumby* [2005] NTMC 034 available <http://www.nt.gov.au/justice/docs/courts/coroner/findings/2005/A22-04,%20A49-04,%20A54-04%20Petrol%20Sniffing.pdf>

<sup>11</sup> Dr William Jonas AM, *Social Justice Report 2003: Responding to Petrol Sniffing on the Anangu Pitjantjatjara Lands: A Case Study* (2003); Milton James, “Petrol Sniffing On Cape York Peninsula: An Intervention Strategy” (2003) available at [www.cyi.org.au/steven/](http://www.cyi.org.au/steven/); ABC Online News “Council urges wider distribution of ‘unsniffable’ petrol” 18 February 2005.

<sup>12</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003: Responding to Petrol Sniffing on the Anangu Pitjantjatjara Lands: A Case Study* (2003); Peter D’Abbs and Maggie Brady “Other people, other drugs: the policy response to petrol sniffing among Indigenous Australians” 23 *Drug and Alcohol Review* 253 – 260, 253.

there is a reluctance for the wider community in Australia to take responsibility or concern about it...”<sup>13</sup>

Instead, Government emphasis has remained on substitution of non-sniffable fuel and community solutions,<sup>14</sup> which are based on limited, short-term funding for treatment and rehabilitation programs and the employment of youth workers.<sup>15</sup> Moreover, little attention has been paid to the specific needs of the group constituting a significant proportion of petrol sniffers: Aboriginal young people.<sup>16</sup>

Furthermore, as part of his findings into the deaths from petrol sniffing of three more young Indigenous people, including a fourteen year old boy, Coroner Greg Cavanagh conveyed a concern that mounting “hopelessness” in communities amongst young people and their families was replacing credence that an effective solution, based on the many recommendations made, would be devised.<sup>17</sup> All of this indicates that a coordinated, sustained approach to the prevention and treatment of petrol sniffing as part of a broad-based policy review must be undertaken by Governments, and in particular the Federal Government.

This submission will exclusively consider the needs and rights of Aboriginal children and young people in remote communities, as they constitute the group of Indigenous Australians who most commonly sniff petrol and who are most at risk as a result. It will argue that a rights-based approach to the issue of petrol sniffing can provide an effective framework to address this practice, which integrates underlying health, social and community issues. This will be done by setting out the components of rights-based framework to the problem, before canvassing the way in which this approach can inform the three matters listed by the Senate Community Affairs References Committee for its *Inquiry Into Petrol Sniffing in Remote Aboriginal Communities*. These matters are:

- (a) the effectiveness of existing laws and policing with respect to petrol sniffing in affected Indigenous communities;

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<sup>13</sup> Former coordinator of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council in evidence at the Coronial Inquest, above n 1, 32.

<sup>14</sup> J Taylor, “PM announces funds to fight petrol sniffing” 20 February 2001 available [www.abc.net.au/worldtoday/stories/s249140.htm](http://www.abc.net.au/worldtoday/stories/s249140.htm)

<sup>15</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, above n 11, 2.

<sup>16</sup> Maggie Brady has found that of the 35 deaths in eight years from petrol sniffing, the mean age of the deceased was 19 years. See Brady, above n 5, 30. Note, “young people” range from age 10 to 24 as defined by UNICEF. See UNICEF, “Youth Health – For a Change: A UNICEF Notebook on Programming for Young People’s Health and Development” (1997).

<sup>17</sup> Cavanagh, above n 10, 33.

- (b) the effectiveness of diversionary initiatives and community level activities;
- (c) lessons that can be learned from the success some communities have had in reducing petrol sniffing, including the impact of non-sniffable Opal petrol.<sup>18</sup>

Ultimately, it will be submitted that use of a rights-based framework to underscore a response to the issue of petrol sniffing by young people in remote communities is likely to empower young people and stimulate community acceptance and involvement in sustained programs aimed at prevention, treatment and rehabilitation.

## 2 FOUNDATIONS FOR A RIGHTS-BASED APPROACH TO THE PROBLEM OF PETROL SNIFFING BY INDIGENOUS YOUNG PEOPLE IN REMOTE COMMUNITIES

### *A The Current Welfare-Based Approach to Petrol Sniffing*

The Commonwealth government's policy on the problem of petrol sniffing by young people emphasises community responsibility, and is based on a framework of conditional benevolence and interventionist care found within its Indigenous "practical reconciliation" policy. This policy outlines that whilst governments provide financial support and services some centralised initiatives and discretionary funding of community programs, the problem of petrol sniffing is not treated as a health issue, but instead as a product of wider social dysfunction.<sup>19</sup> For instance, in responding to the ongoing problem of petrol sniffing in August this year, Prime Minister John Howard stated that, "the Commonwealth government has quite a number of programs there but it's a difficult problem. It's the result of many reasons and a lot of social dysfunction and ultimately the solution is in the hands of communities as much as in the hands of governments."<sup>20</sup> This comment makes it apparent that current responses to the issue betray uncertainty about both the causes of addiction and approaches to treatment of the issue, and the responsibility of the Commonwealth government to deal with the problem.

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<sup>19</sup> For a detailed discussion of this policy approach see D'Abbs and Brady, above n 12, 253-258.

<sup>20</sup> Karen Michelmores, "Communities Can't Solve Sniffing Crisis" *The Age* (Melbourne) 12 August 2005, 5.

*B An Alternative Response: The Human Rights Framework for Dealing with Issues  
Relating to Young People*

The incapacity of current responses to reverse the trend of petrol sniffing amongst Indigenous young people indicates that it may be meritorious to reconfigure the framework of assumptions underlying policy development from a welfare-based approach to a human rights-based approach. As opposed to treating petrol sniffers, their families and communities as recipients of government services and discretionary funding, an approach based on international human rights standards views them as rights-holders who are entitled to equal, fundamental protections on account of their status as human beings. Like the subject, the role of the Commonwealth government is also transformed by this framework, from benevolent carers who impart assistance on an optional basis, to facilitators who have a legal obligation to work with individuals and their communities to secure rights through domestic legislation and policy development.<sup>21</sup> For example, Larissa Behrendt has advocated the practical utility of incorporating a rights-based approach into real social problems through practices which emphasise Indigenous people's equal footing, including in negotiation and collaboration, in order to achieve an "empower[ment ...] to take the primary role in creating directions and developing policies and delivering programs."<sup>22</sup> This indicates that although a rights-based approach is sometimes criticised as relying upon abstract ideals, in tackling the problem of petrol sniffing by young people, it may provide a practical framework in which benevolent treatment is replaced by an effective mechanism for institutional change.

A fundamental element of this alternative approach for the Commonwealth Government to deal with the problem of petrol sniffing by young Indigenous people is that the standard of action undertaken is measured against normative international standards to which it has pledged its support.<sup>23</sup> In this way, the suitability of strategies used to prevent or treat the problem of petrol sniffing are not derived from community-based concepts of reasonableness but from inalienable human rights. Likewise, rather than providing temporary panaceas to pressing issues, policy commitments are reconfigured into vehicles for the achievement of long-term human rights goals that can be directly

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<sup>21</sup> For this perspective see for example: Noel Pearson, *Our Right to Take Responsibility* (2000) and Larissa Behrendt, *Achieving Social Justice* (2003).

<sup>22</sup> Larissa Behrendt, "Treaty and Health: It's Not Either/ Or" National Forum Indigenous Health and the Treaty Debate" University of New South Wales, 11 September 2004 (copy on file with author) available at: [http://www.gtcentre.unsw.edu.au/publications/papers/docs/2005/6\\_LarissaBehrendt.pdf](http://www.gtcentre.unsw.edu.au/publications/papers/docs/2005/6_LarissaBehrendt.pdf)

<sup>23</sup> Vienna Convention on the Law of Treaties article 26: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

compared to the domestic experience. Indeed, it appears that universal norms underpinning a rights-based approach are ideal to tackle a situation like this, in which not only the issue, but the inadequacy of legislative and practical intervention dramatically diverges from the ideal, thereby providing a tangible motive to re-evaluate the approach in terms of internationally accepted principles.<sup>24</sup>

### *C Content of the Obligation*

In using a rights-based approach to devise a solution to the problem of petrol sniffing by Indigenous young people the Commonwealth government must aim to satisfy the requirements of article 33 of the *Convention on the Rights of the Child*.<sup>25</sup> This provision explicitly sets out the responsibility of States to engage in a variety of measures to ensure that the rights of the child are protected in relation to drug abuse. Specifically, the convention asserts:

“States parties shall take all appropriate measures including legislative, administrative, social and educational measures to protect children from illicit use of narcotic drugs and psychotropic substances as defined in relevant international treaties...”

Other Conventions relating to States’ responsibilities regarding drug abuse,<sup>26</sup> indicate that the scope of “appropriate measures” under article 33 includes “all practicable measures” for protection, including early identification, treatment, education, after-care and social reintegration of substance abusers.<sup>27</sup> Additionally, these measures are required to be culturally appropriate, mindful of risk factors including gender and environment,<sup>28</sup> and designed to meet the needs of specific population groups, paying special attention to youth.<sup>29</sup> These additional conventions show the measures necessary to satisfy requirements under Article 33, and illustrate that prevention of drug abuse is to be treated

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<sup>24</sup> Philip Alston and Glen Brennar, *The UN Children’s Convention in Australia* (1991) 15.

<sup>25</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 44/25 (entered into force 2 September 1990) (‘CRC’).

<sup>26</sup> *Convention on Psychotropic Substances*, opened for signature 21 February 1971 (entered into force 16 August 1976) and *Single Convention on Narcotic Drugs* (entered into force 25 March 1961).

<sup>27</sup> *Convention on Psychotropic Substances*, art 20; *Single Convention on Narcotic Drugs* art 38.

<sup>28</sup> UN General Assembly Declaration on the Guiding Principles of Drug Demand Reduction Resolution 54/132 (1998) paragraph 8(b).

<sup>29</sup> UN General Assembly, above n 28. See Allison Smith Estelle, “International Responses to Drug Abuse among Young People: Assessing the Integration of Human Rights Obligations” Harvard School of Public Health, (2000).



as a human rights issue, as opposed to a manifestation of social dysfunction or a health problem.

*D Three Principles Instrumental to the Implementation of a Rights-Based Framework*

*1 Interdependence and Indivisibility*

Furthermore, in seeking to devise a response to the problem of petrol sniffing by young people in conformity with human rights standards, it is necessary to consider the content of three general guiding principles identified by UNICEF as essential to a rights-based approach, the first of which is the interdependence and indivisibility of human rights.<sup>30</sup> Indeed, the right contained in article 33 of the CRC cannot be separated from other rights, as it depends upon and influences the achievement of these rights. For example the interdependence of rights is illustrated by the many factors that can underlie petrol abuse and be exacerbated by this abuse, including the destruction of aboriginal culture, denial of rights, enforced isolation, inadequate housing, destruction of the traditional economy, and the enforcement of inappropriate laws and values.<sup>31</sup> Furthermore, the indivisibility of rights is evidenced by the need to consider the scope of “appropriate measures” under article 33 in light of other human rights protections contained in the CRC, in order to ensure that punitive measures of diversion, which are not explicitly prohibited under the conventions, are considered in terms of the best interests of the child.<sup>32</sup> This indicates that a holistic approach to the implementation of a rights-based approach is required, by which protections dealing with the many human rights that are compromised by the practice, and effects, of petrol sniffing, are incorporated into an integrated response.

*2 Accountability and Duties of States*

The second general principle identified by UNICEF is the accountability and duties of States, which arise from their voluntary acceptance of responsibility for the rights of their citizens through ratification of human rights treaties.<sup>33</sup> Under the “progressive realisation principle”, this requires States to make “deliberate, concrete, targeted steps”<sup>34</sup> towards

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<sup>30</sup> UNICEF, *Human Rights for Women and Children: How UNICEF Helps Make Them a Reality* (1999) 5-7.

<sup>31</sup> Brady, above n 5, 30. See also Cavanagh, above n 10, 18.

<sup>32</sup> These other protections include: art 24 (the right to the highest standard of health and facilities of rehabilitation); art 27 (standard of living); art 3 (best interests of the child); art 37 (detention to be a measure of “last resort”); art 19 (protection from physical violence).

<sup>33</sup> Vienna Convention on the Law of Treaties, Article 26.

<sup>34</sup> Committee on Economic, Social and Cultural Rights, 22nd session of the Committee, General Comment No. 14 (2000). In relation to Indigenous rights see Tom Calma, “Social Justice and Human Rights: Utilising Indigenous Socio-Economic Data in Policy Development” Indigenous

satisfying their human rights commitments to the extent allowed by available resources, and to monitor progress on these commitments. The relevance of this principle to the Commonwealth government's treatment of Indigenous children is illustrated by the fact that in 2005, the country report of the Committee on the Elimination of Racial Discrimination specifically requested that Australia set benchmarks to monitor progress on working upon the level of disadvantage of Indigenous young people.<sup>35</sup> It is apparent that this essential component of a rights-based approach acts as a way to ensure that the Government cannot distance itself from human rights standards by ensuring that they are put into action and measured against internationally recognised standards of behaviour.

Importantly, the accountability of States acquires a distinct dualism in the response to the rights of Indigenous young people, as the traditional tripartite relationship between State, parent and child, which forms the international model for accountable action, must also include Indigenous communities. For Indigenous children, States are required to support parents' work in protecting and realising the rights of their children,<sup>36</sup> and to assist Indigenous communities to make independent decisions and take action to protect the rights of their children.<sup>37</sup> For instance article 19 of the *Draft Declaration on the Rights of Indigenous Peoples* confers on Indigenous peoples the right to full participation in all matters affecting them.<sup>38</sup> Whilst this aspect of the principle of accountability does not exempt the Commonwealth government from its responsibility to ensure the realisation of

Socioeconomic Outcomes: Assessing Recent Evidence conference Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 12 August 2005, 5 [http://www.anu.edu.au/caepr/conference/Calma\\_Social\\_Justice.pdf](http://www.anu.edu.au/caepr/conference/Calma_Social_Justice.pdf) (copy with author)

<sup>35</sup> Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on Australia CERD/C/AUS/CO 14, March 2005.

<sup>36</sup> CRC, arts 17(2), 18(1).

<sup>37</sup> *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*, opened for signature 27 June 1989, art 7(1) (entered into force 5 September 1991) ('*ILO Convention 169*'): "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly."

See also: General Assembly, Vienna Declaration on Human Rights and Programme of Action (1993) GC/A/CONF.157/23 (12 July 1993) paragraph 20: "States should ensure the full and free participation of Indigenous people in all aspects of society, in particular in matters of concern to them."

<sup>38</sup> Commission on Human Rights, *Draft Declaration on the Rights of Indigenous Peoples*, art 19: "Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures as well as to maintain and develop their own Indigenous decision-making institutions."

the rights of Indigenous children, it does introduce a collaborative element, which indicates that development and execution of strategies dealing with petrol sniffing must be undertaken in conjunction with Indigenous communities, as an extension of the rights of the Indigenous child.<sup>39</sup>

### *3 Universality*

The final guiding principle identified by UNICEF is universality of rights, which is derived from States' obligations to ensure that all children are treated equally in "dignity and rights".<sup>40</sup> In giving primacy to the individual child, this principle indicates that petrol sniffing should be treated as a serious issue despite only affecting a small proportion of Australian children. Also, as it requires States to effectively address issues of difference, exclusion and injustice for individual children and their communities, it dictates the need to respond to individual situations, as opposed to developing a policy that deals with Indigenous children as a generic class.<sup>41</sup> The merits of this principle to the problem of petrol sniffing is evidenced by a study of recorded intervention techniques by D'Abbs and MacLean, who find that strategies must monitor and respond to the needs of individual children in communities, as the same techniques which are highly successful in one community may have little effect on the practice of petrol sniffing in another.<sup>42</sup> It is apparent that this fundamental requirement of a rights-based approach functions to ensure that issues affecting minority groups are given particular attention, which is especially pertinent with respect to the wellbeing of Indigenous children, whose endemic disadvantage can be concealed within general statistics on the health and wellbeing of young people in Australia.

### *E Four Key Principles of Children's Rights-Based Approach*

#### *1 Protection from Discrimination*

Additionally, the Committee on the CRC have designated four key articles as having overarching application to any rights-based approach that addresses the rights of children

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<sup>39</sup> UNICEF Innocenti Research Centre *Ensuring the Rights of Indigenous Children* Innocenti Digest Number 11, 17.

<sup>40</sup> *Universal Declaration of Human Rights*, art 1 (entered into force 10 December 1948) ('UDHR');

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

<sup>41</sup> UNICEF Innocenti Research Centre, above n 39, 15.

<sup>42</sup> D'Abbs and MacLean, above n 4, 67.

and young people, of which the first is the principle of non-discrimination.<sup>43</sup> This principle provides that Indigenous children affected by petrol sniffing should have equal rights to develop their potential, and allows States to adopt differential treatment to achieve equal rights for disadvantaged groups,<sup>44</sup> by undertaking “special measures” that may improve economic and social conditions.<sup>45</sup> Indeed, incorporation of this principle facilitates recognition of the statistically higher risk that petrol sniffing presents to Indigenous children. Also, it signifies the need for a response to petrol sniffing to be sensitive to the particularly unequal enjoyment of rights by Indigenous young people, as a result of disadvantage, remoteness and socio-economic factors. The relevance of this approach is exemplified in a statement by Justice Muirhead on dealing with Indigenous children, that, “the young Aboriginal is a child who requires tremendous care and attention, much thought, much consideration.”<sup>46</sup> This key principle indicates that it is imperative for a rights-based approach to petrol sniffing to be tailored to deal with the extreme vulnerability and general disadvantage of Indigenous children.

## *2 Best Interests of the Child*

The “best interests” principle is also identified by the Committee of the CRC as fundamental to any rights-based approach involving children.<sup>47</sup> Whilst the precise content of the principle is relatively indeterminate, it essentially requires States to consider the best interests of the child in any decision regarding their wellbeing, via a balancing act in which their autonomy and need for protection is considered. Regarding the cultural context of Indigenous children, UNICEF has determined that the best interests principle,

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<sup>43</sup>Committee on the Rights of the Child General Comment No 5, General Measures of Implementation of the Convention on the Rights of the Child CRC/GC/2003/5 (27 November 2003) para 12.

See CRC, art 2(1): “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

<sup>44</sup> Committee on the Convention on the Rights of the Child General Comment No 5, above n 43, para 12. See also United Nations Human Rights Committee, General Comment 18, Non discrimination, HRI/GEN/1/Rev.1 at 26 (Thirty-seventh session, 1989).

<sup>45</sup> *Draft Declaration on the Rights of Indigenous Peoples*, art 22: “Indigenous people have the right to special measures for immediate effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and disabled persons.”

<sup>46</sup> *Jabaltjari v Hammersley* (1977) 15 ALR 94 at 98 per Muirhead J in Cavanagh, above n 10, 32.

<sup>47</sup> CRC, art 3: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

as an “operative principle of law” has paramountcy in any conflict between individual and collective rights, and cannot be usurped by the best interests of the Indigenous group.<sup>48</sup> With respect to the issue of petrol sniffing, the principle emerges as a crucial consideration in assessing the reasonableness of community-based diversionary or rehabilitation strategies that “protect” children from petrol abuse. For example, this principle would be instrumental in prohibiting the practice in some communities of punishing petrol sniffers with corporal punishment.<sup>49</sup> It would also bear heavily upon the infrequent practice of incarcerating young petrol sniffers for minor theft or vandalism for the “protection” of themselves and the community.<sup>50</sup> Whilst this principle is not intended to displace all other interests, it is apparent that it is fundamental to ensuring that strategies to protect Indigenous young people from drug abuse are reasonable, suitable, and measured against objective rights contained in the CRC.

### *3 Right to Life, Survival and Development*

The third primary consideration identified by the Committee on the CRC is the right to life, survival and development, which is primarily concerned with accessibility and equality of services.<sup>51</sup> This right entails a broad conception of development, including emotional, psychological, spiritual and cultural development,<sup>52</sup> and requires services to be equitable and accessible by all children. With respect to the issue of petrol sniffing, this principle has the capacity to significantly shape the provision of services and support centres for the treatment and rehabilitation of Indigenous children and young people, taking into account their remoteness and the absence of many basic services in their communities. For example, in many instances petrol sniffers are hospitalised as medical patients, who are often discharged upon physical recovery, without attention to treatment for emotional or psychological trauma.<sup>53</sup> This key requirement of a children’s rights-based approach makes it apparent that services to treat petrol sniffing must be specifically tailored to the needs of Indigenous young people in remote locations.

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<sup>48</sup> UNICEF Innocenti Research Centre, above n 39, 7.

<sup>49</sup> D’Abbs and MacLean, above n4, 67.

<sup>50</sup> See for example, *Girrabul v The Queen* [2003] NTSC 101. Discussed in detail below.

<sup>51</sup> CRC art 6: “1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”

<sup>52</sup> Committee on the Convention on the Rights of the Child General Comment No 5, above n 43, para 12.

<sup>53</sup> Brady, above n5, 29.

#### 4 Participation

The final core principle recognised as essential to any approach based on children’s rights is a respect for the views of the child,<sup>54</sup> which is closely related to their best interests and empowerment. This right requires the Commonwealth government to ensure that Indigenous children and their communities have access to information in their language, are able to express ideas, and are financially supported to participate in the design, implementation and evaluation of policies on issues affecting them.<sup>55</sup> Intrinsic to this principle is the empowerment of Indigenous young people, and promotion of their self-esteem and status as rights-holders in the international community. This is reflected in an observation by Marta Santos Pais that,

“free and open communication and, indeed, the possibility of participating in national and global debates are important elements in empowering Indigenous children and preventing their marginalisation and discrimination.”<sup>56</sup>

That this norm is key to formulating a response to the issue of petrol sniffing is apparent from the few instances where the voices of Indigenous young people do emerge, to assert their ownership over the issue, or to provide insights into the context and motives behind petrol sniffing. Not only does a recent survey of young Indigenous leaders report that substance abuse was the primary concern of a majority of delegates,<sup>57</sup> individual voices in reports can inform strategies to deal with the problem. For instance, the mother of a young man who died from petrol sniffing recalls that he threatened her by saying, “if you don’t stop drinking grog, we’ll start sniffing petrol.”<sup>58</sup> It is apparent that the principle of participation forms an integral element to a rights-based approach to petrol sniffing as it is not only likely to guarantee that strategies closely address underlying issues but also may assist in ensuring young people feel ownership of the solution.

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<sup>54</sup> CRC art 12: “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

<sup>55</sup> Committee on the Convention on the Rights of the Child General Comment No 5, above n 43, para 12.

<sup>56</sup> UNICEF Innocenti Research Centre, above n 39, 19.

<sup>57</sup> National Indigenous Youth Group, *Aboriginal and Torres Strait Islander Youth Perspectives: Having our voices heard* (2004) available at: [http://www.thesource.gov.au/involve/NIYLG/pdf/having\\_our\\_voices\\_heard.pdf](http://www.thesource.gov.au/involve/NIYLG/pdf/having_our_voices_heard.pdf)

<sup>58</sup> Cavanagh, above n 10, 13.

### 3 IMPLEMENTATION OF A RIGHTS-BASED APPROACH TO THE ISSUE OF PETROL SNIFFING

Having outlined the viability of a rights-based model in tackling the problem of petrol sniffing by Indigenous young people, this framework may be used to formulate recommendations on the three matters listed for discussion by the Senate Community Affairs References Committee for their *Inquiry Into Petrol Sniffing in Remote Aboriginal Communities*. These matters are:

- (a) the effectiveness of existing laws and policing with respect to petrol sniffing in affected Indigenous communities; and
- (b) the effectiveness of diversionary initiatives and community level activities; and
- (c) lessons that can be learned from the success some communities have had in reducing petrol sniffing, including the impact of non-sniffable Opal petrol.

#### *A The Effectiveness of Existing Laws and Policing with Respect to Petrol Sniffing in Affected Indigenous communities*

##### *1 Child Protection and Local By-Laws*

Whilst at Federal level there are no laws specifically addressing petrol sniffing, child protection legislation, some by-laws, and occasional discretionary intervention by Courts have dealt with the problem in various degrees, and in each instance the legislative approach must be revised to accommodate the rights of the child. Whilst some studies indicate that they are rarely used, child protection provisions in every jurisdiction enable authorities to intervene where a young person has been found petrol sniffing.<sup>59</sup> This includes the *Community Welfare Act 1983* (NT), which provides welfare to petrol sniffers under the age of 18 years who are declared in “need of care”.<sup>60</sup> Additionally, by-laws in the Pitjantjatjara Lands in South Australia make it an offence to possess or supply petrol for inhalation and empower police to confiscate and dispose of containers suspected of being used for sniffing.<sup>61</sup> Thirdly, there is evidence that in some jurisdictions Courts order the incarceration of sniffers, including children, for theft or vandalism related to petrol sniffing, on a discretionary basis of “protecting” petrol sniffers and their

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<sup>59</sup> D’Abbs and MacLean, above n 4, 67.

<sup>60</sup> Section 11.

<sup>61</sup> section 43(3)(b) *Pitjantnatnara Land Rights Act 1981* (SA).

communities.<sup>62</sup> For example, at first instance a Magistrate ordered the incarceration of a 14 year old petrol sniffer on the basis that he was “not subject to effective control [and]...the protection of the community dictated this 14 year old be locked up, for the simple reason that the community can have a break from him.”<sup>63</sup> It is apparent that these welfare-based and punitive approaches to the issue reflect an interventionist, rather than preventative, approach and ignore fundamental principles regarding the rights of the child, as they present a real risk that their best interests, including their rights to family and freedom, may be explicitly violated.

*2 A Way Forward? The Volatile Substance Abuse Prevention Act (2005) (NT)*

However, the yet to be gazetted *Volatile Substance Abuse Prevention Act (2005) (VSAP Act)* (NT) presents a recent legislative response that explicitly considers the impact of legislative approach to petrol sniffing on young people, and includes mechanisms for their special treatment and protection under the law.<sup>64</sup> Whilst the Act extends the power of police to intervene in substance misuse,<sup>65</sup> enabling them to take petrol sniffers to a “place of safety”, which may constitute their homes, a remote community or, as a “last resort” a police cell, it includes prohibitions on the incarceration of young people, and legislatively promotes rehabilitation through giving Courts the power to order compulsory treatment programs for chronic petrol abusers. The particular attention paid to the rights of the child in the *VSAP Act* is evident from its object:

“(1) ...to support child, family and social welfare and improve the health of people in the Territory by providing a legislative framework for

(a) the prevention of volatile substance abuse; and

(b) the protection of persons, particularly children, from harm resulting from volatile substance abuse.”

Although the *VSAP Act* continues to utilise a welfare approach to deal with the issue, it signifies an essential ideological shift from using legislative regulation to punish petrol sniffers, to exploiting its potential to establish protections and promote recovery from this addictive practice. Indeed, whilst the language of the Act continues to betray a welfare-

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<sup>62</sup> See *Girrabul v The Queen* [2003] NTSC 101; *Gary Ward & Ors v R & Anor* [1998] WASCA 10.

<sup>63</sup> *Girrabul v The Queen* [2003] NTSC 101. See also Cavanagh, above n 10, 22.

<sup>64</sup> No 22 of 2005.

<sup>65</sup> See section 18 *Misuse of Drugs Act 1993* (NT).



based response to the issue, it implicitly negotiates between regulation of the activity and the rights of young people.

### *3 Recommendation 1: Reading Child Rights in the Language of the Law on Petrol Sniffing*

The Commonwealth government should develop a legislative approach to petrol sniffing that incorporates the interests of young people, and a rights-based perspective, into the language of the law. In developing this response, it should reflect upon the detrimental effects of welfare-based and punitive legislation on the rights of Indigenous young people. This is in the interests of enabling the “best interests of the child” to form an instrumental consideration in formulating a legislative response to deal with prevention, regulation and rehabilitation of petrol sniffers.

#### *B The Effectiveness of Diversionary Initiatives and Community Level activities*

##### *1 Community Level Activities*

Federal, State and Territory governments have principally relied upon the funding of community-based programs, including outstations and education programs to combat the problem of petrol sniffing at grass-roots level in remote communities, and lessons from these activities may contribute to a rights-based approach to the problem by the Commonwealth government. Although the impact of short-term funding schemes means that the success of many programs relies significantly upon the ability of communities to petition for grants, many programs that have thrived have exhibited similar features of cultural sensitivity, sustained and consistent rehabilitative support, community backing and traditional education. One successful programs is the Mt Theo program, which has reduced petrol sniffing at Yuendumu in Central Australia by providing young people with care, counselling and an outstation retreat where Aboriginal heritage and culture are taught.<sup>66</sup> Other aspects of the program include traditional teaching and bonding, community consensus, recreational activities in communities, and family consent prior to the removal of petrol sniffers to the outstation.<sup>67</sup> Furthermore, D’Abbs and MacLean have reported on other programs, primarily focused on recreational activities, which have formed part of the most successful campaigns to combat sniffing. Their main features were a wide range of recreational options for young people; accepted and sustained by communities; and consistently available support at times when young people were most

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<sup>66</sup> Chivell, above n 2, para 10.16.

<sup>67</sup> Brian Watters, “Volatile Substances: Time For Policy Makers to Take a Deep Breath” Paper presented at the Inhalent Use and Disorder Conference convened by the Australian Institute of Criminology, 7 -8 July 2003, 2.

likely to sniff petrol.<sup>68</sup> Whilst the list of features present in successful programs is by no means exhaustive, and success is largely dependent on the individual community, those that are apparent compliment a rights-based approach, and may inform an integrated, multifactorial response to the issue by the Commonwealth government, as they provide a mechanism for the empowerment of Indigenous young people and their communities.

## *2 Commitment to Empowering Local Communities*

The current reliance upon local community projects does however, need to be tempered by commitment and accountability by the Federal Government to provide assistance to communities, in order for a policy securing the rights of Indigenous young people to be achieved. Presently, policies of “mutual obligation” and “shared responsibility” have been used to distance the Government from the problem of petrol sniffing, and in many cases means that dysfunctional communities are left to deal with the issue unassisted. The effect of this approach is encapsulated in a critique by Coroner Greg Cavanagh, that the problem is,

“not sensibly addressed by peddling the myth that such disadvantaged citizens might simply help themselves and solve the problem. They and their families are not able to do so by themselves.”<sup>69</sup>

This statement makes it apparent that deferral of obligations to provide strategies to deal with the problem of petrol sniffing does not constitute a viable policy under a rights-based approach. Where communities lack the capacity or functionality to do so, this policy is likely to result in the further contravention of the rights of the young person. For example, Brady reports that a Community Council in receipt of \$1 million in royalty payments from the Northern Territory, allocated only 3.5 per cent to young peoples’ interests despite the fact that young people made up 50 per cent of the population.<sup>70</sup> This indicates that an approach to the problem of petrol sniffing, which advocates assisted empowerment with local initiatives must be undertaken, in order to ensure that communities unable to independently function in the interests of Indigenous children are monitored, and provided with support.

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<sup>68</sup> D’Abbs and MacLean, above n 4, 67 - 69.

<sup>69</sup> Cavanagh, above n 10, 33.

<sup>70</sup> Brady, above n 5, 32.

*2 Recommendation 2: Incorporating Culturally Sensitive Local Responses into an Integrated Approach*

The Commonwealth government should implement a permanent base of locally-supported programs to deal with the issue of petrol sniffing by young people, which monitors their success and provides flexible support for the particular needs of communities. In basing this policy on a rights-based framework, the ultimate interests of empowering Indigenous youth and providing active, grass-roots commitments to securing their rights should be paramount.

*C Lessons that can be Learned from the Success some Communities have had in reducing Petrol Sniffing, including the impact of non-sniffable Opal petrol*

*1 Opal petrol as part of a solution*

Present enthusiasm for the potential of Opal petrol to deal with the problem of petrol sniffing amongst Indigenous young people should take into account the fact that an approach to the issue, under a rights-based approach, is must be multidisciplinary and multifactorial. Whilst studies of the effects of non-sniffable fuel have not been extensively undertaken in Australia, D'Abbs and MacLean have stated that the success of the strategy has varied across communities. Also, adoption of this as an exclusive solution raises the risk of creating a black-market in sniffable petrol, or a reliance on other substances.<sup>71</sup> Instead, the approach may integrate a variety of measures, including non-sniffable petrol, in order to adequately address the underlying causes and effects of substance abuse. For example, following his investigation into the petrol sniffing related deaths of three young Indigenous males, Coroner Chivell set out a combination of youth activities, neuropsychological testing, outstations/homelands rehabilitation, non-sniffable fuel, legal sanctions, night patrols, programs for 'children at risk', disability services, secure care facilities, policing and crime prevention strategies to deal with the problem.<sup>72</sup> This coordinated approach, which would produce an integrated system of change and a response to the issues of prevention, treatment, and rehabilitation of sniffers, is in conformity with a rights-based approach that requires a holistic attitude to securing human rights, and exploits the full gamut of resources from a broad base of disciplines, and service providers.

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<sup>71</sup> Gary Hughes, "600ml bottle of petrol costs \$50, for sniffing" *The Age* (29 October 2005) 8.

<sup>72</sup> Chivell, above n 2, para 10.

### *2 A Case Study: Combating Petrol Sniffing Through Human Rights in Canada*

Additionally, the case study from Canada of highly successful treatment and rehabilitation programs to deal with petrol sniffing by young people indicates that these aspects of a rights-based approach to the issue can be effective and should be given paramountcy over the use of non-sniffable fuel. Faced with endemic petrol sniffing amongst its First Nation and Inuit peoples, the Canadian government allocated \$17.5 million towards prevention and treatment of substance misuse and created eight successful treatment facilities designed to meet the needs of Indigenous youth. The approach to treatment at the centres is multi-disciplinary and pays specific attention to cultural values and traditions. For example, the Whiskyjack Treatment Centre Inc treats petrol sniffers from 8 to 17 years of age and focuses on mental and emotional wellbeing in conjunction with development of physical, social, recreational skills and education.<sup>73</sup> Also, families are encouraged to support and participate in treatment. It is also noteworthy that the Canadian Government has included a constitutional safeguard securing the rights of Indigenous peoples, which would inform this policy development.<sup>74</sup> Whilst the suitability of this approach to Australian regions is diminished by the remoteness of many communities, it may nevertheless suggest a model for the effective use of a rights-based approach that is designed for young people, focuses on a holistic approach to assisting in their wellbeing, and relies upon familial support.

### *3 Recommendation 3: Opal Should Be Part of Any Solution*

The Commonwealth government should support the use of Opal petrol as part of a multidisciplinary, holistic approach to the issue of petrol sniffing by young people. This approach is in conformity with human rights principles, as it seeks to secure the full range of rights for Indigenous young people, which have been violated due to petrol abuse. Furthermore, policy development should focus equally upon preventative *and* rehabilitative strategies.

## 4 CONCLUSION

This submission has outlined the components of a human rights framework, and has practically applied this model to the serious problem of petrol sniffing facing Indigenous children and young people. With respect to the matters outlined by the Senate *Community Affairs References Committee Inquiry Into Petrol Sniffing in Remote Aboriginal*

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<sup>73</sup> Melanie Lehmann, *Development of A Manual for the Detoxification and Treatment of Aboriginal Solvent Abusers* (1998), 28-9.

<sup>74</sup> s35(1)

*Communities*, three recommendations on the *approach* to policy development on this difficult issue have been produced:

*Recommendation 1:* The Commonwealth government should develop a legislative approach to petrol sniffing that incorporates the interests of young people, and a rights-based perspective, into the language of the law.

*Recommendation 2:* The Commonwealth government should make a coordinated commitment to local programs on petrol sniffing that improve the rights of young people at grass-roots level by monitoring and building upon their successes.

*Recommendation 3:* The Commonwealth government should support the use of Opal petrol as part of a multidisciplinary, holistic approach to the issue of petrol sniffing by young people that gives equal weight to preventative *and* rehabilitative strategies.

The acceptance of these recommendations requires wholesale revision of the relationship between the Commonwealth government and Indigenous young people in remote communities. Instrumental to the principles underscoring the CRC is the power of Indigenous children to determine their conditions, via assistance by the State, until this assistance is no longer required. That is, there needs to be a staged devolution of governmental intervention in Indigenous communities where this involvement becomes unnecessary, and therefore an implementation of sustainable strategies that supports the ultimate aim of self-governance and self determination. This fundamental shift, necessary for a rights-based approach, requires a revision of the roles of the Government, the child, and the community, from the dynamic of the traditional welfare relationship, and may indeed be the hardest aspect of reform to achieve.<sup>75</sup>

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<sup>75</sup> Alston and Brennan, above n 24, 15.