

Joint Submission to the
Senate Community Affairs Reference Committee
Inquiry into Petrol Sniffing in Remote Aboriginal Communities

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INTRODUCTION

Ngaanyatjarra Council (AC) and Ngaanyatjarra Health Service (AC) are pleased to provide this submission to the Senate Community Affairs Reference Committee Inquiry into Petrol Sniffing in Remote Aboriginal Communities.

The issue of petrol sniffing crosses borders, not only in the geographical sense, but also in terms of how people think about and categorise behaviour. For that reason, we present a joint submission which combines both 'justice' and 'health' considerations into a single approach.

Ngaanyatjarra Communities are fortunate in the sense that their efforts to deal with this issue in their own way, on their own terms, have been largely successful.

However, the position of relative empowerment enjoyed by Ngaanyatjarra Communities has been eroded over the past eleven years and is currently under serious threat. Ngaanyatjarra Communities welcome the interest of the Commonwealth Government in this issue.

This Submission mainly addresses Terms of Reference 2(a) and 2(c).

THE NGAANYATJARRA PERSPECTIVE

The Ngaanyatjarra Lands comprise 250,000 square kilometres of land in Western Australia, falling entirely within the Shire of Ngaanyatjarraku. Ngaanyatjarra people comprise most of the population of the Ngaanyatjarra Lands and have maintained a continuous association with their country. The Ngaanyatjarra Lands were the subject of a successful Native Title determination handed down on 29 June 2005.

Ngaanyatjarra Council (AC) is a regional body that has represented Ngaanyatjarra Communities for twenty five years. The twelve Ngaanyatjarra Communities are:

- Irrunytju (Wingellina) Community Inc.;
- Warakurna Community Inc.;
- Mantamaru (Jameson) Community Inc.;
- Papulankutja (Blackstone) Community Inc.;
- Warburton Community Inc.;
- Patjarr (AC);
- Tjirrkali (AC);
- Tjukurla (AC);
- Wanarn (Wannan) Community (AC);

- Kiwurrkurra Council (AC);
- Cosmo Newberry (AC).
- Pira-Kata (AC);

As a cohesive cultural, social and political bloc, the Ngaanyatjarra Communities, under the umbrella of Ngaanyatjarra Council and the Ngaanyatjarraku Shire, have contributed greatly to the existing pool of knowledge on the causes of, and ways to address, petrol sniffing in remote communities.

In particular, we would like to draw the attention of the Committee to:

- The landmark work “*Heavy Metal: the Social Meaning of Petrol Sniffing in Australia*” 1992 by Maggie Brady – a work to which Ngaanyatjarra people made a significant contribution;
- The “*Ngaanyatjarraku Community, Law and Justice Submission to the Attorney-General of Western Australia*”, prepared by the Shire of Ngaanyatjarraku and Warburton Community, Kalgoorlie, April 2002.

Ngaanyatjarra Council particularly welcomes the focus of this Inquiry on remote communities. While inhalant misuse is clearly a national issue, the focus on remote communities highlights the fact that the most effective and appropriate ways of dealing with this issue will vary among regions and among cultures.

PETROL SNIFFING ON THE NGAANYATJARRA LANDS

Petrol sniffing remains an extreme threat to Ngaanyatjarra Communities, particularly to young people in those Communities.

Through their own efforts, including a ‘zero tolerance’ approach to substance misuse, Ngaanyatjarra Communities have, in recent years, succeeded in keeping the problem of petrol sniffing to a manageable level in Ngaanyatjarra Communities.

A key platform of the ‘zero tolerance’ approach to substance misuse is the restriction of supply of deleterious substances to Ngaanyatjarra Communities. While restriction of supply may not be effective against all drug use in all social contexts, the experience of Ngaanyatjarra Communities over many years is that this approach is highly effective against petrol sniffing in remote communities on the Ngaanyatjarra Lands.

Ngaanyatjarra Communities have therefore worked very strongly together to keep deleterious substances such as petrol out of Ngaanyatjarra Communities.

We note, and agree with, the comment of the Hon John Kobelke on page 2 of the submission of the Western Australian Government that:

“the 11 [now 12] Western Australian Communities in the Ngaanyatjarra Lands have significantly lower levels of petrol sniffing than the central desert communities in the Northern Territory and Western Australia”.

This achievement has been the result of the combination of three interconnected factors:

- The exclusive use, on the Ngaanyatjarra Lands, of substitutes for sniffable fuel such as diesel, Avgas and now Opal Fuel;
- The establishment and enforcement of the *Ngaanyatjarra Council By-Laws 1989*. These By-Laws were created by the Ngaanyatjarra Communities themselves using power delegated to them under the *Aboriginal Affairs Planning Authority Act 1972*. These By-Laws prohibit the possession of petrol for the purpose of inhalation (By-Law 9); and
- The development of concerted and coordinated programs for young people aimed at promoting opportunity and inclusion.

THE EFFECT OF OPAL FUEL

Ngaanyatjarra Communities welcome the introduction of Opal fuel to the Ngaanyatjarra Lands. While Ngaanyatjarra Communities had been using Avgas as a substitute for petrol for some years, there were some mechanical problems with the use of this fuel in vehicles.

These problems created a disincentive for Ngaanyatjarra people, government representatives, staff, visiting contractors and tourists to use Avgas in their vehicles, with the resulting increased risk of sniffable fuel being brought into the Ngaanyatjarra Lands.

THE PROPOSED SUBSIDISATION OF OPAL FUEL IN ALICE SPRINGS

While Ngaanyatjarra Council supports the supply of Opal fuel in locations where such supply is likely to reduce petrol sniffing, we consider that the subsidisation of a *limited* supply of Opal fuel in Alice Springs will not be effective to reduce petrol sniffing in remote communities or in Alice Springs.

In our view, the costs of subsidising Opal fuel in Alice Springs, even so as to halve the supply of sniffable fuel, would not be likely to have a significant impact on the practice of petrol sniffing, either in Alice Springs or in more remote communities. There will still be more than enough sniffable fuel available in Alice Springs for local sniffers to access and use.

In order to stamp out the practice of petrol sniffing in all areas it would be necessary to replace *all* sniffable fuel in Australia with Opal fuel or some other fuel substitute.

In our view, this would be an unrealistic proposal which would be unduly costly in view of the fact that even such a radical measure will not address the underlying causes of substance misuse.

In our view, the cost of subsidising the *universal* supply of Opal fuel would be money better spent on ensuring secure support of existing supervised community service and youth programs and projects designed to address social dysfunction and other issues that contribute to the practice of petrol sniffing and other forms of drug misuse.

AN ALTERNATIVE PROPOSAL

1. Strategic limitation of supply

As noted above, keeping sniffable fuel out of Ngaanyatjarra Communities has proven an effective way of keeping petrol sniffing under control in those communities.

Ngaanyatjarra Council considers that the supply of Opal fuel *only*, in strategic regional locations outside of the Ngaanyatjarra Lands, would be the most effective and cost efficient way of limiting the supply of sniffable fuel to Ngaanyatjarra Communities. The same principle could inform decisions as to where Opal fuel is subsidised in relation to other remote communities.

Ngaanyatjarra Council's view is that the best way to keep sniffable fuel out of remote communities, including Ngaanyatjarra Communities, is to look at those population centres that act as 'last fuel stops' before entry into Ngaanyatjarra Communities, and seek to ensure that *only* Opal fuel is available in those locations.

In the case of the Ngaanyatjarra Communities, this would mean that *only* Opal fuel would be available in centres such as Laverton, Leonora, Yulara, Curtin Springs, Mt Ebenezer, Eralunda, Marla, Coober Pedy and other regional centres where people usually need to 'fuel up' before driving onto or through the Ngaanyatjarra Lands.

In our view, the subsidisation of Opal fuel in these centres, and the supply of Opal fuel in these centres *to the exclusion of* sniffable fuel, would be the most effective way of reducing the supply of sniffable fuel to remote communities.

2. Strengthening of the Ngaanyatjarra Council (Aboriginal Corporation) By-Laws

As stated above the control of petrol sniffing on the Ngaanyatjarra Lands has been achieved through three mechanisms, each of which is very much dependent on the other.

One of those mechanisms is the restriction of the supply of sniffable fuel and the provision of alternative, non-sniffable fuel. Another is the continued enforcement of the *Ngaanyatjarra Council (Aboriginal Corporation) By-Laws 1989*.

Petrol sniffing is not an offence under the Western Australian Criminal Code and it appears unlikely that that will change. However, Ngaanyatjarra Communities chose to enact their own By-Laws making it an offence to possess petrol for the purpose of inhalation. These By-Laws have proven effective in managing petrol sniffing as they are specifically designed for situations that often arise in remote communities.

Ngaanyatjarra Council has followed with interest the proceedings in Mutitjulu of the Northern Territory Coroner in relation to the deaths of three petrol sniffers. The Coroner, Mr Greg Cavanagh, is reported as having told the ABC that, when a young man in the act of sniffing petrol approached the hearing:

"I smelt the unmistakable smell of petrol fumes wafting across. Now I wanted to help that boy," [...] I thought about getting up and going over to him to take away the can of petrol. But no one - not me, not the white lawyers, not the police, or the Aboriginal men did anything."

"Of course it's not illegal for him to do what he did. Indeed I would have committed an offence myself if I had walked over to take the can away." [...] I was angry at myself at my impotence to stop what was going on." (ABC News Online, Thursday 11 August 2005)

The position of the Ngaanyatjarra Communities is that this situation is unacceptable and will not be tolerated on the Ngaanyatjarra Lands. It is for that reason that the Ngaanyatjarra Council By-Laws effectively provide police with the power to take sniffable fuel and sniffing implements away from sniffers.

Offences under the By-Laws are generally heard in Warburton. We wish to stress that Warburton now has a senior Ngaanyatjarra man appointed as a Justice of the Peace, as well as a non-indigenous Justice of the Peace, to hear these matters.

Ngaanyatjarra Communities need to have the power and flexibility to continue to apply the By-Laws effectively and need to have the current threats to the By-Laws, as outlined below, removed in order to continue to progress being made against petrol sniffing in the Ngaanyatjarra Lands.

WHY USE THE BY-LAWS?

The specific reasons why Ngaanyatjarra Communities chose to use the By-Laws to deal with petrol sniffing, rather than other forms of regulation, include the following:

Traditional/customary law cannot deal with petrol sniffing

Ngaanyatjarra people are among the most traditionally oriented in Australia. Their traditional law and culture is strong and is used to great effect against certain actions which contravene customary law.

It is sometimes suggested that customary law processes, including ‘shaming’, should be called upon to deal with substance misuse such as petrol sniffing. However, there is simply no mechanism within Ngaanyatjarra customary law to deal with individuals who misuse substances.

As Brady points out in her 1992 study of petrol sniffing – a study to which Ngaanyatjarra people contributed - customary law emphasises a high degree of personal autonomy and freedom and supports the personal ownership of one’s own body. Customary law also provides for a high degree of freedom for children and young people and promotes the principle that young people should learn through their own experience.

Under customary law it is difficult for anyone to legitimately intervene in petrol use by another person, whether that person be an adult or a child (Brady 1992: 74). In such circumstances, any intervention could itself constitute a breach of customary law which will incur sanctions from the person’s relatives, even if the intervener is the person’s parent.

In order to legitimately intervene in the self-destruction being undertaken by a petrol sniffer, without committing a breach of customary law or causing a rift among the sniffer’s relatives, Ngaanyatjarra people call upon external authority figures such as police to assist them. This practice allows for some anonymity on the part of those who are concerned about the sniffer, as there is no particular Ngaanyatjarra person who can be accused of interfering.

The decision to prohibit petrol sniffing is a community decision and its enforcement by police who are empowered by the community underlines the ‘communal’ nature of the decision. Of course, police can only assist if they continue to have the power under the By-Laws to do so.

While Ngaanyatjarra people are extremely concerned about substance misuse by their children, such substance misuse is not a breach of customary law and cannot be dealt with under customary law. Ngaanyatjarra people use the Ngaanyatjarra Community By-Laws as a mechanism to call upon external authority to assist them in dealing with a problem that they could not otherwise deal with.

The By-Laws are an expression of the collective will and intent of Ngaanyatjarra People

The By-Laws are one of the few structures that permit Ngaanyatjarra people a measure of true self-determination and self-governance within the framework of mainstream

Australian society. The By-Laws create an enforceable mechanism through which Ngaanyatjarra people may express their collective will and enforce their expectations of those who live on and or visit the Ngaanyatjarra Lands.

The effectiveness of this capacity to exercise the collective will of the people is demonstrated by the measurably lower rates of petrol sniffing in the Ngaanyatjarra Lands.

Ngaanyatjarra people oppose the modelling of sniffing behaviour

It is well established that young people in indigenous societies learn by observation. For Ngaanyatjarra people it is most important to prevent the modelling of petrol sniffing behaviour to young people in Ngaanyatjarra Communities. Brady (1992, pp 82-85) refers to many examples of people talking about new sniffers 'learning' to use petrol by observing experienced sniffers.

Brady observes that the modelling of petrol sniffing behaviour is an important factor in its uptake by others and may be **more** important than social or personal dysfunction in explaining the initial decision to take up sniffing (pp 82,83)

Ngaanyatjarra Communities do not want to give young people the opportunity to 'learn to sniff'. While the treatment and support of existing sniffers is obviously very important, Ngaanyatjarra Communities are not willing to allow active sniffers to remain visible in Communities. The By-Laws are the only workable source of empowerment for sniffers to be removed from Ngaanyatjarra Communities and, where possible, referred for treatment.

Minor By-Law offences allow for early intervention and avoidance of a more serious charge

It is occasionally suggested that the existence of the offence of petrol sniffing under the Ngaanyatjarra Council By-Laws must result in an increase in Ngaanyatjarra people coming into contact with the criminal justice system. There is no evidence for this suggestion. In particular, there is no evidence that Ngaanyatjarra people experience a higher rate of incarceration than indigenous people in remote communities where petrol sniffing is unregulated. In fact, in our view, the opposite is the case.

People who are under the influence of petrol are notoriously violent and unpredictable. Anyone who has come into regular contact with petrol sniffers can attest that a person under the influence of petrol cannot be reasoned with.

A person who is under the influence of petrol and is not apprehended at an early stage is likely to go on to commit serious offences under the Criminal Code, such as extensive property damage, violent assault and homicide.

The fact that police are currently empowered under the By-Laws to apprehend sniffers without having to wait until the sniffer commits a serious offence under the Criminal Code:

- Prevents petrol sniffers from coming into contact with the justice system under more serious charges;
- Prevents what starts out as an arguably ‘victimless’ crime (apart from the sniffer him or her self) from becoming a crime that impacts directly upon innocent victims; and
- Allows for petrol sniffing to be clearly identified as the ‘real’ problem for the purposes of referral and treatment. Once apprehended for the offence of possession and use, a person can be referred to treatment if such treatment is available. By contrast, if a person is sentenced for property damage or assault, that person, once incarcerated, is likely to be treated the same as any other prisoner despite the very different needs of that person. Without a specific offence of possession and use, it is up to police, lawyers and judges to ascertain whether a person should be treated primarily as a sniffer in need of assistance or as an ordinary criminal.

The By-Laws deal with situations that cannot be dealt with under the WA Criminal Code

We note that section 206 of the Western Australian Criminal Code provides that:

“(2) A person who sells or supplies an intoxicant to another person in circumstances where the person knows, or where it is reasonable to suspect, that that or another person will use it to become intoxicated is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.”

We also note, with some alarm, the view of the Hon John Kobelke in the submission of the Western Australian Government that section 206 represents “the appropriate legislative response” to the issue of petrol sniffing.

The experience of the Ngaanyatjarra Communities is that such limited regulation is neither appropriate nor adequate.

‘Supply’ is not the only way, or even the most common way, that young people access sniffable fuel on the Ngaanyatjarra Lands. Sniffable fuel is usually accessed in an opportunistic way, without the knowledge or consent of the owner, in situations where it has been carelessly brought onto the Lands and is not properly secured, or is deliberately brought onto the Lands by a person wishing to keep it for his or her own use.

Sniffers often leave their own tins of petrol lying around and these can be picked up and used by young people. Further, sniffers are likely to be in a state of intoxication to the

point where they would be unable to form the necessary intent or hold the necessary knowledge to commit an offence under section 206.

Thus the ‘possession’ of sniffable fuel on the Ngaanyatjarra Lands by a sniffer or another person is just as likely, if not more likely, to result in that fuel becoming available to others as is the intentional ‘supply’ of sniffable fuel from one person to another. In order for police to be empowered to take petrol away from a sniffer, thus removing that petrol from the ‘supply chain’ it is necessary for the offence of ‘possession’ under the By-Laws to remain.

THE CURRENT THREAT TO NGAANYATJARRA COMMUNITIES DEALING WITH PETROL SNIFFING

As stated above, the restriction of the supply of sniffable fuel, the continued existence of the By-Laws and the maintenance of youth programs on the Ngaanyatjarra Lands all go hand in hand and have together provided Ngaanyatjarra Communities with an effective way of managing the problem of petrol sniffing.

Currently, the biggest threat to the ability of Ngaanyatjarra Communities to continue to manage this problem is not the supply of sniffable fuel but the threat to the existence of the Ngaanyatjarra Community By-Laws.

The effectiveness of the By-Laws is being undermined

Over the past eleven years, the effectiveness of the By-Laws has been progressively undermined by the Western Australian State Government.

In particular:

- In 1995, with the passage of the *Sentencing Act 1995* the Western Australian Government removed the option to impose prison sentences of three months or less.

In a submission to the Attorney General of Western Australia the Hon JA McGinty, the Shire of Ngaanyatjarraku and Warburton Community stated that Ngaanyatjarra people identified this change as “*a direct cause of increased social instability in their communities*” (Shire of Ngaanyatjarraku, 2002: p iii).

The effect of the change was that where offences were committed under the By-Laws, the presiding magistrate had to choose between imposing a sentence of more than three months or not imposing any custodial sentence at all. Prior to this change, petrol sniffers who were charged with possession under the By-Laws could serve a short custodial sentence at a treatment facility on the Ngaanyatjarra Lands. Following the change, this was no longer a practicable option.

A review of the effect of the removal of sentences of three months or less was planned by the Western Australian State Government but was never completed.

- In 2003, with the passage of the *Sentencing Legislation Amendment and Repeal Act 2003*, the Western Australian Government went on to increase the minimum term of imprisonment to more than six months.

This step was taken despite there being no formal review of the effect of the original amendment to maximum prison terms, and despite the vehement and public opposition of the Ngaanyatjarraku Shire, Ngaanyatjarra Communities and other agencies including the NPY Women's Council.

From the point of view of the carers of petrol sniffers and the victims of violence, the removal of short term prison sentences, with the result that processes which had been proven to be effective on the Ngaanyatjarra Lands were undermined, is a dramatic step backwards in the management of substance misuse in remote communities.

While Ngaanyatjarra Council does not necessarily support the criminalisation of petrol sniffing on a State wide basis, from the point of view of Ngaanyatjarra Communities the ability to charge a sniffer with the offence of possession and use is of extreme importance.

While gaol is not, of itself, a solution to petrol sniffing it is imperative for Ngaanyatjarra people to be able to remove petrol sniffers from the Ngaanyatjarra Lands so as to prevent the modelling of petrol sniffing behaviour. It is also a better option for the sniffers themselves. In our view, the sentencing of a petrol sniffer to a short term of imprisonment, from where he or she can be referred to treatment is preferable to having that person sentenced to a far longer period of imprisonment for homicide, serious assault or extensive property damage. Where that happens, the focus is shifted away from the individual's sniffing problem and toward the crime that was committed as a direct or indirect result of that problem.

Ngaanyatjarra Communities have consistently requested that the full range of sentencing options under the By-Laws be restored. These requests have gone unheeded by the Western Australian Government.

WALRC proposal to repeal the By-Laws

The latest threat to the ability of remote Western Australian communities to effectively deal with petrol sniffing is the recommendation of the Western Australian Law Reform Commission that the *Aboriginal Communities Act 1979*, and therefore all Community By-Laws, be repealed.

The WALRC proposes, as an alternative to the By-Laws, that Aboriginal Community Justice Groups will be established to deal with issues such as the possession and sniffing of petrol, under customary law.

The system proposed by the WA Law reform Commission would be ineffective for the reasons already set out in this submission; that the possession and sniffing of petrol is not an offence under customary law and cannot be dealt with under customary law.

Ngaanyatjarra Communities have consistently demanded the right to enact and maintain their own By-Laws and will vehemently oppose any steps toward the repeal of the Ngaanyatjarra Council By-Laws.

Further, as stated above in this submission, Ngaanyatjarra Communities do not accept that the existing provisions of the Western Australian Criminal Code are adequate to deal with petrol sniffing in remote communities.

Given that, in the direct experience of Ngaanyatjarra Communities, the By-Laws have been highly effective in reducing petrol sniffing on the Ngaanyatjarra Lands, and given the consistent position that Ngaanyatjarra Communities have taken against the erosion of the By-Laws, we are concerned that the existence of the By-Laws was not mentioned at all in the Western Australian Government's submission to this Inquiry. It appears that the Western Australian Government is treating the By-Laws as though they have already been repealed.

CONCLUSION

Ngaanyatjarra Communities are extremely concerned that their power to deal with petrol sniffing on their own terms, in their own communities, has been severely undermined by past changes to Western Australian legislation and is currently under threat by proposals for further changes in the future.

It is very important for petrol sniffers to have reduced access to sniffable fuel. It is also very important for social supports, such as youth programs, to continue to be available to people in remote communities.

However, it is of equal importance that members of remote communities retain the power to implement and maintain solutions that work for them, including enforceable By-Laws. Any assistance from the Commonwealth for Ngaanyatjarra Communities to retain this power would be most welcome.

REFERENCES

Brady, M, *Heavy Metal: the Social Meaning of Petrol Sniffing in Australia*, AIATSIS, Canberra, 1992

Shire of Ngaanyatjarraku, Ngaanyatjarraku Community, *Law and Justice Submission to the Attorney-General of Western Australia*, Kalgoorlie, 2002.