



21 March 2006

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The Secretary  
Senate Community Affairs References Committee  
Parliament House  
CANBERRA ACT 2600

and via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Dear Sir/Madam

**Inquiry into petrol sniffing in remote Aboriginal Communities**

Petrol sniffing is a significant issue in the Aboriginal Community in South Australia. I am pleased to present a submission by the Law Society of South Australia to the Inquiry that is being conducted by the Senate Community Affairs References Committee. The Society would appreciate an opportunity to make a presentation to the Committee in relation to the issues raised in this submission.

Please do not hesitate to contact me if you require any further information.

Yours sincerely

Deej Eszenyi (Ms)  
**PRESIDENT**

## **LAW SOCIETY OF SOUTH AUSTRALIA**

### **SUBMISSION TO SENATE INQUIRY INTO PETROL SNIFFING**

The Law Society of SA makes this submission to the Australian Senate Inquiry into Petrol Sniffing in remote Aboriginal communities.

#### **TERM OF REFERENCE A**

#### **THE EFFECTIVENESS OF EXISTING LAWS AND POLICING WITH RESPECT TO PETROL SNIFFING IN AFFECTED INDIGENOUS COMMUNITIES**

It is submitted that before consideration is given to existing laws and policing, a fundamental question remains unanswered.

#### **What is a Petrol Sniffing death?**

#### **Uniform Data Collection Techniques**

This issue was raised before the South Australian Coroner Mr Chivell in 2002.

The Coroner was told by Dr Torzillo of Nganampa Health Council that whether a death is attributed to petrol sniffing may depend upon such factors as whether an individual who died in hospital, may have come from the AP Lands, and who wrote the death certificate. Unless this issue has been clarified since 2002 it is submitted that uniform data collection techniques and a uniform definition of petrol sniffing deaths in the tri-state region of SA, NT and WA should be a matter of priority and should be a matter considered by the Senate.

The collection of data should include information about the degree of impairment that sniffers suffer, within the tri-state region. There should be some uniformity of testing and measurement and description of that impairment.

This should apply particularly to children under 18 years. The State has special responsibilities to children and proper planning for their care requires information about the numbers affected and the degree of impairment

It is further submitted that the Senate should consider making recommendations for uniform, or at least complementary, sanctions and sentencing practices and legislation between States in the tri-state region.

**Complementary Sanctions, Sentencing Practices And Legislation Between States in the Tri-State Region.**

Evidence was received in the 2002 SA Coronial hearings into the deaths of Kunmanara Ken, Hunt and Thompson<sup>1</sup> that petrol sniffing is an offence in Western Australia which is punished. In South Australia on the AP Lands it is an offence which is not punished significantly. In the Northern Territory petrol sniffing is not an offence. Under the bylaws that apply on the APY Lands possession of petrol for the purpose of inhalation is subject to a fine.

In the 2002 coronial hearings, evidence was received from Mr McLean JP, from Warburton in Western Australia to the effect that the Western Australian equivalent of the SA *Public Intoxication Act 1984* also applies in WA to persons who are affected by sniffing of petrol. On his evidence, there is gradation of penalty from detention under Public Intoxication legislation to remand in custody leading to court sanctions for sniffers.

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<sup>1</sup> [www.courts.sa.gov.au/coroner/findings/2002/](http://www.courts.sa.gov.au/coroner/findings/2002/) Kunmanara Ken, Hunt and Thompson

Whatever view is taken of the merits of this system, it has the benefit of being graduated, and of having a logical stepped approach to sanctions, which is publicly known about.

### ***Public Intoxication Act 1984 SA***

In the 2002 inquests, the SA State Coroner of SA recommended

*8. 5 The range of sentencing options available to courts sitting in the Anangu Pitjantjatjara Lands must be increased. The SA Department for Correctional Services must provide supervisors so that bonds, undertakings and community service obligations can be enforced. The establishment of Outstations/Homelands and a secure care facility would also provide options to courts;*

*8. 6 The Public Intoxication Act should be amended so that it applies on the Anangu Pitjantjatjara Lands. There should be a declaration that petrol or hydrocarbons, or the vapours thereof, are a drug for the purposes of the Act. A secure care facility would provide a 'sobering up' facility to which detainees could be taken pursuant to the Act;*

*8. 7 Although night patrols have not received support on the Anangu Pitjantjatjara Lands to date, the possibility of encouraging and supporting Anangu to establish them as part of an overall crime prevention strategy in consultation with SAPOL should be explored;*

Since the 2002 inquests, petrol has been proclaimed to be a drug to which the *Public Intoxication Act* applies but there are no sobering up centres for the purposes of the Act on the AP Lands, to which intoxicated sniffers can be taken to 'sober up' .

The existing police cells attached to the Police Stations on the AP Lands are not suitable for PIA detention because they are not safe places of police custody. Nothing has changed in that regard since 2002.

It is submitted however that the *Public Intoxication Act* is an appropriate policy response to sniffing provided it can be immediately implemented by a consistent practice of removing petrol cans from sniffers and detaining them until the sniffers are

no longer affected. The deprivation of liberty involved in detention under the *Public Intoxication Act* is necessarily short term; it does not purport to deprive a person of their liberty for an extended period of time, but only until they are sober.

On the other hand, deprivation of liberty for therapeutic purposes, without the lawfully imposed sanction of a court, should be approached with great caution. The Supreme Court of South Australia regularly overturned sentences of imprisonment for the former offence of public drunkenness, when the court had imprisoned a person, convicted of public drunkenness for their own good. *Gollan v Samuels* (1973) 6 SASR 452

It is understood that offences of sniffing petrol would continue to be dealt with by courts in the normal way. This is appropriate. The *Criminal Law Sentencing Act (SA)* already allows for bonds and community service in lieu of fines. There ought not to be an option of imprisonment for petrol sniffing offences simpliciter, because of the principles in *Gollan v Samuels* (supra). Further, the mental impairment of chronic sniffers (assuming they are fit to plead to offences of possessing petrol for the purposes of inhalation), would not justify penalties of general deterrence. *Mason Stewart v R* (1993) 61 SASR 204.

A consideration of sentencing principles is fundamental to the proper consideration of sanctions for petrol sniffing. It is submitted with great respect that the Mount Theo program, must be considered with great caution because it may involve effective deprivation of liberty without legal sanction.

The Law Society understands that two versions of a Bill are presently before the South Australian State Parliament. *The Regulated Substances Amendment Bill* and the

Bill to amend the *Pitjantjatjara Land Rights Act 1981* are intended to implement petrol sniffing diversion and rehabilitation programs. The Society has considered them and considers that they have considerable merit, both in terms of significantly increased criminal sanctions for offences of trafficking petrol for the purpose of inhalation and in terms of an improved legal mechanism for diversion and rehabilitation process for petrol sniffers.

The Law Society of SA endorses the submission of the NPY Women's Council that it is unfortunate that this legislation is being held up because of a private member's amendment that is not relevant to the control of petrol sniffing. (Refer to NPY Women's Council Submission para 10.9).

## **TERM OF REFERENCE B**

### **THE EFFECTIVENESS OF DIVERSIONARY INITIATIVES AND COMMUNITY LEVEL ACTIVITIES**

It is necessary to understand what diversionary initiatives are and what their limitations are in dealing with petrol sniffing in the tri-state region. They must be considered in the context of the threefold analysis of interventions by D'Abbs and Mc Lean adopted by the SA State Coroner in the 2002 Inquest findings.

Diversionary initiatives are relevant to preventing youth from taking up sniffing and to diverting sniffers who are not too significantly impaired from continuing the practice. On their own, diversionary strategies are unlikely to be successful. So much emerged from the analysis by the State Coroner of the Fregon program in the 2002 Findings.

#### *10.5 Primary intervention – youth workers*

*Margaret Kavanagh said that NPY Women's Council had first obtained funding specifically for petrol sniffing in 1998 through the National Illicit Drug Strategy (\$800,000 over four years) (T379). They set up a large reference group, and recruited*

*Messrs John Harvey and Bernald Tjalkuri as youth workers at Fregon. Unfortunately they had major problems finding suitable housing for Mr Harvey (T381). There was also a lack of support from the community advisor and from senior people in the community (T382). There was also an Outstation component to the project, but that was unsuccessful because the senior people were unable to apply enough pressure on the young people to go (T382). The work was extremely stressful – Mr Harvey saw someone set himself alight, he was attacked by someone who threatened him with a knife, and he was put in several other dangerous situations (T383).*

*10.6 The focus of the project extended to Amata, commencing in July 2001. A youth worker was not recruited until Mr Harvey's brother started in Amata in July 2001, but again there were problems with housing (T388). Eventually he moved to Finke where there was a house available, so the allocation was 70% at Amata and 30% at Finke. Funding was due to conclude on 30 June 2002 and the Commonwealth had not, at the time of the inquest, given any indication that it would be continued (T391). The difficulties faced by Mr Harvey in trying to plan his employment future in the light of such short-term, ad hoc planning is obvious. It is not surprising that there have been recruitment difficulties if this is the way projects are funded.*

*10.7 As I have already mentioned, Ms Gillian Shaw is a health educator with extensive experience in relation to petrol sniffing in Central Australia. She prepared an evaluation report on the Fregon project for the NPY Women's Council (Exhibit C38c). The program at Fregon had two components, a youth activities program and a rehabilitation centre (Homeland) (T583). Ms Shaw found that the youth activities program could not provide accommodation for the youth worker, there was a troublesome relationship with the local community council, which resulted in the youth worker not being supported, and there was a lack of community participation in activities (T583). Ms Shaw said:*

*'A youth worker put into a community with high levels of chronic sniffers is just not going to be effective in decreasing those levels of sniffing.'  
(T583)*

*10.8 This is to be contrasted with the Mt Theo program, where the sniffing had not become so chronic. Ms Shaw said:*

*'My experience with the Mt Theo project was that when it was just starting it had very, very strong school support. I mean, they let their truancy officer do the work to establish that,*

*whereas what happened in Fregon was essentially those – the organisations there ... some of them were positively obstructive but others were just, as I say in this report, very, very stretched and just not able to take on anything else.'*

*I will discuss the Mt Theo program shortly.*

*10.9 Ms Shaw also said that because there was no local police support, there was no backup for youth workers trying to exert pressure onto children to stop sniffing which provides another contrast with Mt Theo (T585).*

*10.10 Ms Shaw said that youth workers are an integral part of any community development strategy. The youth worker can encourage members of the community to develop programs such as sport and recreation, and not be responsible for running every event themselves as a distraction, and merely providing entertainment for the community (T594).*

The Coroner's analysis of an unsuccessful intervention strategy was further refined by his understanding of the need for a multifaceted approach to confronting petrol sniffing successfully in the cross border region. In his conclusions on intervention programs he said the following:-

*10.103 Summary and conclusions*

*A variety of intervention strategies to combat petrol sniffing were analysed at this inquest. Clearly a successful strategy must have broad community support.*

*10.104 Strategies at three different levels are called for:*

- Primary interventions – to reduce recruitment into substance abuse;*
- Secondary interventions – seeking to achieve abstinence and rehabilitation;*
- Tertiary intervention – providing services to the permanently disabled.*

*10.105 Strategies include:*



- *Youth activities through provision of youth workers;*
- *Neuropsychological testing;*
- *Outstations / Homelands;*
- *Avgas;*
- *Legal sanctions;*
- *Night patrols;*
- *Programmes for 'Children At Risk';*
- *Disability services;*
- *Secure care facilities;*
- *Policing;*
- *Crime Prevention strategies.*

*10.106 The implementation of any one of those strategies by itself is likely to fail, but introduction in combination with a variety of others will give a better chance of success.*

*10.107 All these strategies must be accompanied by strategies to address socio-economic issues such as poverty, hunger, health, education and employment.*

*10.108 The implementation of these strategies will doubtless involve difficult problems such as recruitment and retention of suitable staff. Creative solutions will need to be found. Anangu cannot be expected to find all of the human and other resources to tackle these problems. They need the assistance and input of non-Anangu professional people to tackle these problems direct, and to give them the power and skills to take up the task in due course.*

The Law Society supports these findings.

The particular geographical circumstances of the Western Desert region of SA, WA and NT mean that strategies of isolating sniffers, or trying to isolate sniffing problems in a particular area, are simply not feasible. The high mobility of sniffers and the relatively high availability of sniffable petrol in the cross border region mean that

isolation style diversion programs like Mount Theo are not as easy to implement as in other parts of Australia.

It is submitted that it is these geographical circumstances that impelled the State Coroner to make the findings he did for South Australia. Experience on the APY Lands also dictates that strategies which might impact sniffing in a particular community often have the effect of driving the cohort of sniffers elsewhere. To be effective, diversionary strategies need to be uniform in their application, across the APY Lands and across the tri-state region.

It is axiomatic that diversionary strategies will not be the entire solution. The causes of petrol sniffing are many and include:

- the decline of traditional authority
- boredom
- lack of employment
- a response to sexual or other abuse.

The root causes need to be identified and steadily addressed.

#### **TERM OF REFERENCE C –**

#### **LESSONS THAT CAN BE LEARNED FROM THE SUCCESS OF SOME COMMUNITIES HAVE HAD IN REDUCING PETROL SNIFFING INCLUDING THE IMPACT OF NON SNIFFABLE OPAL PETROL**

The Law Society of South Australia endorses the submission of the NPY Women's council at paragraph 12 to the effect that the introduction of Opal needs to be comprehensive across the whole central Australian region, but, comprehensive coverage is not the sole answer to the problem .

The Senate is also respectfully referred to what was said by the South Australian Coroner in the 2005 inquest findings, regarding the AVGAS scheme, which was introduced to the APY Lands in 1992.

In Para 32 of the Executive Summary he said,

*32. While the development of 'Opal Unleaded' fuel is a welcome development, it should not be seen as a panacea for petrol sniffing. Action will be required to prevent the development of a black market in 'sniffable' petrol, and to develop adequate security measures to prevent theft of the new Avgas, which will be rendered 'sniffable' once it becomes unleaded.*

In paragraph 10.28 of the Findings he said

*10.28. Intervention strategies – AVGAS*

*In the 2002 inquests, I recommended:*

*'13.2.8.4 The Commonwealth Government should continue to resource the Avgas initiative through the Comgas scheme, as it represents a successful interdiction strategy without which petrol would be much more widely available.'*

*10.29. Mr Dixon, Executive Director, Aboriginal Services, Department of Health, told me that the 'Comgas' scheme, by which the Commonwealth Government subsidises the use of Avgas in indigenous communities, has been reviewed and its retention has been supported. He said the Commonwealth Government had decided to continue to subsidise the use of Avgas as part of the scheme (Exhibit C9, p16).*

*10.30. A decision has been taken that, as an environmental measure, Avgas will become unleaded. The constituents of fuel which perform the same function as lead does, will be aromatic, and will render Avgas 'sniffable'. It will therefore be necessary to provide much better security for the storage of Avgas at airstrips on indigenous communities to prevent petrol sniffers gaining access to it.*

*10.31. One optimistic development has been the announcement by BP Australia that they have developed a fuel called 'Opal Unleaded' which will, in due course, replace Avgas in the scheme (see the 'Fact Sheet' developed by BP, and the 'Questions and Answers' document prepared by the Office of Aboriginal and Torres Strait Islander Health, Exhibit C16). The new fuel contains no lead and low levels of aromatic hydrocarbons, which will mean that sniffers will not achieve a 'high' by inhaling it. I note that the new fuel was officially launched on 18 February 2005.*

*10.32. Dr Torzillo said that it remains to be seen whether the development of Opal Unleaded will constitute an effective weapon in the fight against petrol sniffing. There may be a resurgence of the black market when sniffable petrol is no longer available on communities. The police response will be of even greater importance if this occurs.*

## **IMPLEMENTATION OF CORONIAL RECOMMENDATIONS**

Unfortunately, there has been alarmingly slow progress in dealing with petrol sniffing in South Australia since the 2002 inquests. The Coroner's 2002 recommendations on

the use of the *Public Intoxication Act* were repeated word for word in his 2005 inquests. At para 13, the Coroner said,

*13.1. In the 2002 findings, I made a number of recommendations which I thought may prevent, or reduce the likelihood of, a recurrence of an event similar to the deaths being considered (see Section 25(2) of the Coroners Act, 1975). Tragically, with the exception of Kunmanara Ryan, the deaths now being considered are so connected with petrol sniffing that they must be considered 'similar' to the deaths being considered in the 2002 inquests. Indeed, since the 2002 findings, the problem of petrol sniffing has become worse, not better.*

*13.2. To that extent, either the recommendations I made in 2002 were inappropriate, or they have not been effectively implemented. With the exception of the secure care/correctional facility recommendation, it has not been suggested in this inquest that the 2002 recommendations were inappropriate. It has therefore been necessary to consider the extent to which they have been implemented.*

*13.3. Detailed planning has been done, and substantial funding has been committed. However, with the exception of SAPOL and the Department for Correctional Services, most of the necessary remedial action is yet to be implemented.*

*13.4. In those circumstances, it is appropriate that I should repeat the general recommendations I made in the 2002 findings. Making due allowance for the fact that Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee has been replaced by the Aboriginal Lands Task Force, I now recommend:*

*1. That Commonwealth, State and Territory Governments recognise that petrol sniffing poses an urgent threat to the very substance of the Anangu communities on the Anangu Pitjantjatjara Lands. It threatens not only death and serious and permanent disability, but also the peace, order and security of communities, cultural and family structures, education, health and community development;*

*2. Socio-economic factors such as poverty, hunger, illness, lack of education, unemployment, boredom, and general feelings of hopelessness must be addressed, as they provide the environment in which substance abuse will be resorted to, and any rehabilitation measures will be ineffective if the person returns to live in such conditions after treatment;*

*3. The fact that the wider Australian community has a responsibility to assist Anangu to address the problem of petrol sniffing, which has no precedent in traditional culture, is clear. Governments should not*

*approach the task on the basis that the solutions must come from Anangu communities alone;*

*4. The Commonwealth Government, though the Central Australian Cross Border Reference Group, and the South Australian Government through the Aboriginal Lands Task Force, should accelerate their efforts to find solutions to these issues and get beyond the 'information gathering' phase forthwith. They should use the extensive knowledge, published material and professional expertise that is already available;*

*5. It is particularly important that Inter-Governmental coordination of approach be a high priority in order to avoid the fragmentation of effort and confusion and alienation of service-providers which are features of current service delivery to Anangu communities;*

*6. Commonwealth and State Governments should establish a presence in the region, if not on the Anangu Pitjantjatjara Lands then at least in Alice Springs, of senior, trusted officials, in order to develop local knowledge, personal relationships with service providers and receivers, and some expertise and experience in cross-cultural issues, rather than relying on infrequent meetings with ever-changing officials in order to communicate with Anangu. Such officials should be invested with sufficient authority to manage and assess programmes on an ongoing basis, so that service providers can have a line of communication with the funding body, and some certainty as to future arrangements;*

*7. Many of the strategies for combating petrol sniffing which have been tried in the past should not be discarded simply because they failed to achieve permanent improvements. Some of them might be regarded as having been successful for as long as they were extant. For any strategy to be successful will require broad Anangu support. Most strategies will fail unless they are supported by others as part of a multi-faceted approach. Strategies should be aimed at primary, secondary and tertiary levels, as I have outlined in these findings;*

These recommendations speak for themselves .It is commendable that the SA Government has recently announced the construction of Australia's first rehabilitation clinic for petrol sniffers (Press release SA Government February 2006,) but this announcement was made 4 years after the initial coronial recommendation .

The APY Lands were made the subject of a COAG trial in 2003. It is understood that an evaluation of that trial will be completed later in 2006. It is submitted that the Senate should recommend that the evaluation be made public, so that the effectiveness or otherwise of the COAG process can be the subject of informed public debate. Petrol sniffing and its consequences are notoriously difficult social and cultural problems for communities and

governments to deal with; it is for that reason imperative that debate about it be open and informed.

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and a central vertical stroke, positioned above the printed name.

Deej Eszenyi (Ms)  
**PRESIDENT**