



14 April 2008

Chair
Senate Community Affairs Committee
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Senator Moore,

Thank you for the opportunity to provide a comment on this important issue.

1. Introduction

The Northern Territory Legal Aid Commission aims to ensure that the protection or assertion of the legal rights and interests of people in the Northern Territory are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal or Territory legal systems; or
- Obtain adequate information about access to the law and legal system

Our service provides legal advice and assistance to persons in a range of matters, including:

- Family law;
- Domestic violence;
- Child in need of care;
- Criminal law; and
- Civil law.

We also have a significant Community Legal Education function and in the last 18 months have been implementing the 'Indigenous Families Project'

which uses a community development model to produce legal education DVDs in Indigenous languages in the NT.

Since the NT Emergency Response commenced, we have increased our outreach Community Legal Education and advice and minor assistance functions to be in a position to assist people living in prescribed communities.

We welcome the opportunity to respond to this Inquiry. The following submission only relates to schedules 2 and 4 of the Proposed Bill and does not relate to Schedule 3, access to Aboriginal land.

2. Background

We note that the Explanatory Memorandum to the Bill refers to the *Little Children are Sacred* report. However, the recommendations in this report relating to this issue did not suggest broadcasting prohibitions in arbitrary regions in the NT. The Report identified the educational needs of the community to be a priority:

The Report found:

It was a common theme in consultations that many Aboriginal people did not understand the mainstream law and many mainstream concepts. It appeared to the Inquiry in its consultations that some Aboriginal communities were unclear on what child sexual abuse was.¹

The recommendations of the report focussed on the educational needs in relation to restricted programming:

87. That an education campaign be conducted to inform communities of:
- a. the meaning of and rationale for film and television show classifications
 - b. the prohibition contained in the *Criminal Code* making it an offence to intentionally expose a child under the age of 16 years to an indecent object or film, video or audio tape or photograph or book and the implications generally for a child's wellbeing of permitting them to watch or see such sexually explicit material..²

We ask the Senate to consider these aspects of the Report in deliberating the passage of this Bill.

While welcoming the focus on addressing the needs arising out of the *Little Children are Sacred* report, the Commission is concerned that the national emergency response to the report has detracted from the content of the Report and the urgent need for collaborative implementation of some of the

¹ P 53

² Ampe Akeyernemane Merke Mekarle 'Little Children are Sacred, p 200

recommendations which are vital to changing offending behaviour in the NT. In some important respects, most notably Income Management, the national emergency response diverts attention from the fundamental principle of community participation which the Report found to be so important:

It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.³

The report contained valuable recommendations in relation to the need for proactive and long term approaches to addressing offending. There is a need to redirect some focus back to the content and recommendations of the Report. From a legal services perspective, we would welcome a renewed focus on the Report as a whole, with particular focus on the recommendations listed below:

FACS and Police

- Recommendation 16: That FACS and Police undertake greater liaison with family or clan groups when conducting investigations, including the conduct of post-case debriefings, and utilising trained community brokers where appropriate.
- Recommendation 26: That FACS and Police work to better integrate the Child Abuse Taskforce with other local joint Police/FACS responses, and further develop local coordinated, culturally appropriate multi-agency responses (such as the Peace at Home program) which can improve the statutory and therapeutic response for children, families and communities.
- Recommendation 29: That Police conduct effective, meaningful and ongoing consultations with individual Aboriginal communities with a view to developing protocols for working with the community and supporting each community's own efforts at maintaining peace, law and order.

Review of Legislation

- Recommendation 30: That the Department of Justice review all legislation relating to court procedures for vulnerable witnesses and child victims of alleged sexual abuse following the first 12 months of operation of the new legislation.

Offender Rehabilitation

- Recommendation 36: That the government provide more sex offender rehabilitation programs with adequate resourcing and in particular that:
 - a. wherever possible the court should structure sentences for sex offenders to provide the opportunity for community based rehabilitation
 - b. Correctional Services must provide ongoing sex offender rehabilitation programs in jail (irrespective of length of sentence)

³ P 7

- and for persons on remand, including culturally appropriate programs
- c. supervision of parolees must be meaningful, and include:
 - i. attendance at an offender rehabilitation program
 - ii. time back in their community
 - iii. written reports from the parole officer to the sentencing Judge.
- Recommendation 38: That the government to provide youth specific, culturally appropriate rehabilitation programs for juvenile sex offenders in detention, and for those on parole or subject to community-based orders.
 - Recommendation 39: That the government to commence meaningful dialogue as soon as possible with Aboriginal communities aimed at developing alternative models of sentencing that incorporate Aboriginal notions of justice and rely less on custodial sentences and more on restoring the wellbeing of victims, offenders, families and communities.

Alcohol

- The 'rivers of grog' were identified as a core issue in relation to Aboriginal child sexual abuse. As we are too well aware, alcohol and substance addiction, often at extreme levels, is linked to offending behaviour in the NT. Nine recommendations were made in relation to addressing alcohol abuse, including Recommendation 61: That the government continue to implement the Alcohol Framework as a matter of urgency and focus on reducing overall alcohol consumption and intoxication...

Community Justice

- The Report made important findings about the impact of local Community Justice Initiatives. Recommendations 71 – 73 support government facilitated dialogue between community members and the legal profession and the subsequent establishment of Community Justice Groups in Aboriginal communities who desire them.

3. Process and Promotion

We note that this Inquiry has received little promotion or publicity. We received a email letter in relation to this Inquiry providing us with a 3 week timeframe in which to respond. Thankfully we have the resources to do so. We are concerned that many people and organisations which will be the subject of these new provisions will not have the time, resources or even the energy to respond.

We also note that the Senate Environment, Communication and the Arts Committee has a current Inquiry into the Sexualisation of Children in the Contemporary Media Environment, including radio and television, children's magazines, other print and advertising material and the Internet⁴. The

⁴ http://www.aph.gov.au/Senate/committee/eca_ctte/sexualisation_of_children/index.htm

Sexualisation of Children Inquiry has received broad national promotion through supporting individuals and organisations.⁵

We submit that the current 'mainstreaming' policies of the past and present government demand that the issue of child exposure to restricted materials be considered in a broader context, not in the artificial context of arbitrarily determined prescribed communities.

The Emergency Response

Although the provisions of the proposed Bill are relatively minor when compared with the Emergency Response as a whole, we are concerned that this Bill continues an approach which has already taken place under the guise of the Emergency Response. We outline these concerns below:

- Draws an arbitrary and artificial distinction between people living in prescribed communities and others.

In relation to restricted materials, people and their children living within 20 metres of a prescribed community, will still have access to pornographic material, including R 18+ programming.

In relation to Income Management, people living within 20 metres of a prescribed community will not have their welfare payments quarantined, no matter how irresponsible their expenditure is while people living within the community will irrespective of how well they organise their finances and care for their children.

- Takes a 'one size fits all' approach across communities when evidence demonstrates that approach is ineffective.
- Creates a double standard which reinforces the view that only those people living in those communities are paedophiles – this is perpetuated through the exemption enabling materials to travel through prescribed communities.
- Does not draw on or refer to any evidence in relation to the number of people living in prescribed communities who access R 18+ programming.
- Ignores the reality that a significant number of child sexual assailants are non Indigenous people living in non-prescribed areas. It is a recognised practice for paedophiles to expose their victims to pornographic images.
- Conveys the impression that people living in prescribed communities are sexual assault perpetrators. This has a broad impact on the

⁵ 'the Bartlett Diaries: <http://andrewbartlett.com/blog/?p=1967>; 'Kids Free 2B Kids' <http://www.kf2bk.com/senateenquiry.htm#easy>

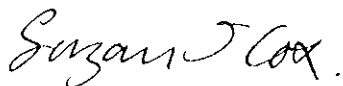
collective esteem of the community. In relation to this Bill, it undermines the ability of local leaders to convey practical or philosophical concerns they may have through the proposed section 1127B consultation provisions. People may feel pressured to agree lest they be seen as child abusers.

- In relation to the consultation provisions, we note that some key mechanisms to effective consultation in communities have broken down since the commencement of the Emergency Response. Significantly, the introduction of Government Business Managers and the amalgamation of Local Government Councils has had the combined effect of undermining the local authority and management structures in prescribed communities.

Conclusion

We repeat our concerns⁶ which have previously been made to this Senate that important recommendations of the *Little Children are Sacred Report* are being lost in the NT emergency response. These concerns continue to grow as the response continues. We have and will continue to raise these concerns through formal channels. We look forward to the review of the emergency response.

Yours sincerely



Suzan Cox QC
Director

⁶ http://www.aph.gov.au/Senate/committee/legcon_cte/nt_emergency/submissions/sub109.pdf