



31 May 2008

Senator David Johnston
Chair
Senate Select Committee of Regional and Remote Indigenous Communities
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: indig.sen@aph.gov.au

Dear Senator Johnston

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 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.

In the last 6 months, our service has commenced an outreach project from our offices in Darwin and Alice Springs, which includes information sessions, education workshops, legal advice and minor assistance to people in prescribed communities.

2. Background

We have made the following submissions, relevant to this inquiry, in recent years:

- Prisoner Growth in the Northern Territory
- The Inquiry into the Sexual Abuse of Aboriginal Children in the NT, leading to the *Little Children are Sacred* report.
- Submission to the Legal and Constitutional Senate Inquiry on the Intervention
- Submission to the Senate Community Affairs Commission on the further laws relating to the intervention

3. Little Children Report

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 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.¹

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

¹ p 7

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.

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) 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.

4. The Emergency Response

The first recommendation of the *Little Children* report placed an emphasis on the importance of genuine consultation with Aboriginal people:

It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.²

We are concerned that the NT emergency response has adopted a flawed approach, being the design and implementation of a response without reference to Aboriginal people in the region and in a manner which excludes them from ongoing participation in the response.

When the intervention was first announced, it was our impressions that we would experience an increase in our workload in:

- FaCS matters, through advice and representation in Child in Need of Care matters; and
- Criminal defence work, through an increase in criminal prosecutions in pornography, alcohol and complex sexual assault matters.

In fact, the legal issues people from prescribed communities have raised have been:

- Housing concerns, including overcrowding, high rental costs through poll renting and poor housing conditions;
- CDEP, which we note has now been reinstated;
- Income management, primarily around the administration of store cards and the lack of transport to and from Centrelink and stores;
- Policing, including lack of information in relation to changes to alcohol laws

We briefly outline our other concerns in relation to the emergency response below:

- Takes a 'one size fits all' approach across communities when evidence demonstrates that approach is ineffective.
- Has been introduced with undue haste without sufficient time for planning and training of staff such as Centrelink, leading to unnecessary confusion and hardship.
- Does not include sufficient additional resources required for agencies whose mandate is child protection³.

² P 22

³ See, for example recommendations 13 and 19 of the *Little Children* Report

- 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 alcohol/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.

- Creates a double standard which reinforces the view that only those people living in those communities are paedophiles/drunks – this is perpetuated through the exemption enabling materials/alcohol to travel through prescribed communities.
- Does not draw on existing mechanisms used by Indigenous people to manage their own income, such as Centrepay.
- Fails to recognise existing financial commitments people may have such as car loans and outstanding fines which may exceed their disposable income.
- Does not draw on or refer to any evidence in relation to the number of people living in prescribed communities who do not spend Centrelink money on 'priority needs' compared to the wider community.
- Ignores the reality that a significant number of child sexual assailants are non Indigenous people living in non-prescribed areas.
- Conveys the impression that people living in prescribed communities are more likely to be drunks and sexual assault perpetrators. This has a broad impact on the collective esteem of the community.
- 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 some prescribed communities.

Conclusion

We repeat our concerns⁴ which have previously been made to this Senate that important recommendations of the *Little Children are Sacred Report* are

⁴ http://www.aph.gov.au/Senate/committee/legcon_ctte/nt_emergency/submissions/sub109.pdf
http://www.aph.gov.au/senate/committee/clac_ctte/NT_emerg_response_08/submissions/sub03.pdf

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 appreciate the opportunity to participate in this process and look forward to the review of the emergency response.

Yours sincerely

Suzan Cox QC
Director