

Background – preliminary consideration

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (“ATSILS”) provides legal services to Aboriginal and Torres Strait Islander peoples throughout mainland Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for a number of decades has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our comments are of assistance.

Introduction

We view competent Aboriginal **community controlled** organisations as being a key to the potential success of the Aboriginal and Torres Strait Islander Justice Strategy 2011-2014 (“Strategy”). Aboriginal and Torres Strait Islander organisations are in the best position to deliver services to Aboriginal and Torres Strait Islander peoples in a culturally appropriate manner. Those stakeholders (**Peak Bodies**) who are the forerunners in their fields (e.g., legal/justice, health, employment education, housing, etc) need to be included on the Taskforce to provide their valuable input. Governmental assistance is also essential in respect to the coordination of this service provision. It is also a crucial requirement that Government departments understand what each other are doing first before trying to coordinate sectors on the ground.

Communities also need to be placed in a position to develop and retain **ownership** of solutions. Those people from each respective community are already armed with information not only about the community dynamics, but also what is likely to work best for their community. The Strategy has the potential to achieve this by including a variety of stakeholders in a Taskforce, including community representatives (examples include those who have been chosen by the wider community to speak on their behalf such as Aboriginal and Torres Strait Islander Councillors and Justice Group members) as well as Aboriginal and Torres Strait Islander organisations delivering services to those communities. The Halls Creek and Mornington Island

mediation examples provided in this document are prime examples of successful community based solutions.

It is of great concern to our organisation that many Aboriginal and Torres Strait Islander peoples continue to be excluded from processes, simply because they do not fully comprehend English and do not have access to interpreters. Clearly this is of great concern in the legal system in particular, but also in other areas, such as health. Similarly, we are also concerned that so many Aboriginal and Torres Strait Islander peoples continue to suffer preventable hearing difficulties, which also affects the ability to understand and engage in mainstream communication and processes.

We view the above as the main points that require consideration in regard to the “Strategy”. We expand upon these points throughout our comments in regard to the questions posed. Prior to doing this we make some preliminary comments relevant to the Strategy.

Our Comments

Firstly, we will provide some general comments and we will then respond to the questions posed. Overall the Strategy is a positive and refreshing piece of policy. The Strategy indicates that a lot has been learned from the Aboriginal and Torres Strait Islander Justice Agreement 2000-2010 (the Justice Agreement) and its disappointing outcomes in terms of what was intended to be achieved. It must be acknowledged that the Justice Agreement, given its focus, could never achieve its stated aims (a 50% reduction in the rate of Aboriginal and Torres Strait Islander peoples incarcerated in the Queensland justice system by 2011; and to reduce the rate of Aboriginal and Torres Strait Islander peoples coming into contact with the justice system to the same rate as other Queenslanders (this was a longer term aim)). Despite the devastating result of an increase in the number of Aboriginal and Torres Strait Islander adults (i.e., an increase of 24%, from 1,160 to 1,430 per 100,000 people) being incarcerated over the period of the Justice Agreement¹, the deficiencies of the approach have been identified and acknowledged and the new Strategy presents a fresh approach to addressing incarceration rates of Aboriginal and Torres Strait Islander peoples.

¹ Assessment of the Aboriginal and Torres Strait Islander Justice Agreement 2000-2010

In order to effect real change to the bottom line statistics in relation to Aboriginal and Torres Strait Islander peoples and the justice system, a two-pronged approach is vital. Not only must there be systemic internal change to the workings of the justice system and those involved in it (law enforcement, courts, the judiciary), internal reforms must be accompanied by concerted attempts to deal with the pre-existing problems and the underlying causes of the position of Aboriginal and Torres Strait Islander peoples within the criminal law – that is to say, the core fundamental issues of family safety, community well-being, education, health and employment. The Strategy has the potential to work in this direction.

The broadening of the Strategy from simply the backend approach of bettering the justice system for Aboriginal and Torres Strait Islander peoples who come into contact with it to make it fairer is welcomed. The inclusion of strategies that are relevant to Aboriginal and Torres Strait Islander individuals and communities in many aspects of their lives (in regard to family safety, housing, employment, health, education, etc) to prevent Aboriginal and Torres Strait Islander peoples coming into contact with the justice system and then to improve the system when this does occur is clearly likely to assist in both preventing people ever coming into contact with the justice system and when they do, providing a more culturally appropriate response. It is extremely positive that the Strategy includes programs in regard to young people, their parents and their wider family and community.

We view the identification of target communities (Cairns, Townsville, Mount Isa, Rockhampton, Brisbane, discrete Aboriginal and Torres Strait Islander communities and the Torres Strait Islands) as positive, as clearly these communities (with the highest rates of offending) require more intense assistance. We also view it as constructive that the Strategy acknowledges that approaches and programs need to be adapted to suit each community where they are implemented.

In order for the Strategy to be effective, positive and competent participation, co-operation and commitment is required between all types of **community controlled** services delivered across urban, rural and remote communities. Competent Aboriginal and Torres Strait Islander services need to be recognised and resourced to conduct further work within their capacities, with communities. Aboriginal and Torres Strait Islander organisations are in the best position to discuss and implement particular programs in relation to Aboriginal and Torres Strait Islander peoples and should be utilised where possible.

We applaud the Queensland Government for its efforts in addressing the goals set out in the National Indigenous Law and Justice Framework. We could not support the Framework for a number of reasons, including that it did not expressly recognise the need for proper consultation on Aboriginal and Torres Strait Islander law and justice strategies and was simply an aspirational document requiring no commitment. The next step in the process to actualise the Strategy is financial commitment. In the same vein, in order to support the Strategy, we and others will need to see true commitment from the Government, including financial commitment.

We note that justice reinvestment is mentioned in the Strategy. However, the section regarding justice reinvestment is brief and extremely underdeveloped in terms of detailing what the Government will commit to. From what is said in the Strategy it concerns us that it could take the entire length of the Strategy for consultation to occur and for a plan in regard to justice reinvestment to be detailed, let alone implemented.

It must be clear to the Government in respect to particular programs which are not working. In regard to these programs, decisions should be made to divert money to programs that are working. Prior to consulting with people, an honest commitment needs to be shown in the form of explaining where it is likely that money will be derived. We believe that money should be invested predominantly into front end programs (this includes housing, education and employment) which will prevent people coming into contact with the justice system. We understand that this is politically an unpopular and difficult decision for the Government to make, but it is what is required if the Government is to commit to justice reinvestment. Again, we feel that this part of the Strategy is lacking and further detail is required on the Government's collective commitment across their agencies.

We also view it as extremely important in ensuring that funds are available for programs that do work and are not tagged with the terminology of pilot because of the perceived view that a pilot program is only short term, irrespective of the success of such.

The Strategy indicates a positive move away from blaming individuals or particular communities for their predicament and the lack of impact of many existing measures and programs. We view the Government's role as one, not only in regard to direct

service provision but also in coordinating overall strategies including non-government organisations.

It is not always easy to assess what works for particular communities and individuals. The Productivity Commission report, “Overcoming Indigenous Disadvantage” has indicated that qualitative data is not the only method of assessment:

Not everything that matters can be captured in indicators, and some information is better presented in words, rather than numbers. In particular, community level change may not show up in State or national data...²

The Productivity Commission analysed “things that work”, with the clarifier that these success factors (as listed below) work in conjunction with broad consultation with Aboriginal and Torres Strait Islander peoples and governments. The Productivity Commission also stated that program failure can often be attributed to a lack of these factors. The factors they identified include:

- cooperative approaches between Indigenous people and government — often with the non-profit and private sectors as well;
- community involvement in program design and decision-making — a ‘bottom-up’ rather than ‘top-down’ approach;
- good governance — at organisation, community and government levels; and
- ongoing government support — including human, financial and physical resources.³

We can see that all of these factors are catered for in the Strategy. Recently in NSW it has been said that the Two Ways Together project (a project aimed at ending

² Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2009 Overview*, Commonwealth of Australia, p. 9.

³ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2009 Overview*, Commonwealth of Australia, p. 9.

disadvantage for Aboriginal and Torres Strait Islander peoples in NSW by coordinating programs provided by different Government departments, changing the way services are delivered and business is done with Aboriginal and Torres Strait Islander peoples) has lacked results. The Aboriginal Affairs Minister for NSW, Victor Dominello said that the new framework will include Aboriginal and Torres Strait Islander peoples at the front and centre of the framework and will involve cultural empowerment and economic empowerment.⁴

In fine tuning and delivering this Strategy, lessons must be learned and changes made based on the findings of other programs and strategies in Queensland and other States/Territories, including international examples. In conducting and interpreting evaluation it must also be considered that quantitative evaluations, although often the most likely to be utilised, are not the only method of assessment available and are sometimes not an appropriate method when looking at relatively new projects. While greater amounts of time are required to show significant change through qualitative methods, qualitative methods may be more appropriate. For example this method (so long as the right questions are asked) is more likely to gain information that can be used to adapt programs, including the way they are delivered, to make them more effective.

When statistics are relied upon to assess success or to provide information as to what is occurring, statistics must be accurate, up to date and should show percentages in number figures as well, so they can be properly analysed. For example, we note that the draft Strategy document (at p. 19) refers to police data from 2004 to 2005 and then states that that there was a 6% reduction in the number of Aboriginal and Torres Strait Islander peoples being arrested by the Police and an increase of 16% in Aboriginal and Torres Strait Islander peoples being provided a notice to appear from that time to 2010. Although a national report, the 2009 Australian Institute of Criminology Report, stated that: “Indigenous juveniles appear to be treated differently by Police in Australia with a far higher proportion of non-Indigenous juveniles being processed via police warnings than their Indigenous counterparts.” As correctly highlighted in the Commissions Policy Paper, “understanding issues like this and taking preventive steps to address them will be

⁴ ABC News at 7:00 pm on 18 May 2011.

critical in reducing the over-representation of Aboriginal and Torres Strait Islander youth.⁵

As mentioned above, it would be helpful if raw numbers were provided and comparisons with statistics for non-Aboriginal and Torres Strait Islander peoples were provided. For instance, the Queensland Police Service Annual Statistical Review for 2009 to 2010 sets out the numbers of Aboriginal and Torres Strait Islander youth and adults listing numbers for arrest, caution, community conference, notice to appear, etc, as well as a separate table for non-Aboriginal and Torres Strait Islander youth and adults. Although these are basic statistics in the sense that they do not provide information in regard to a persons history, they do show that Aboriginal and Torres Strait Islander youth and adults are less likely to be cautioned, less likely to be referred to a community conference, less likely to be provided a notice to appear and are still more likely to be arrested than non-Aboriginal and Torres Strait Islander youth and adults.⁶ Recorded statistics must include the number of Police Ordered conferences compared to the number of Court ordered conferences. This is essential to assess if procedures are being followed and to improve as many aspects as possible in the diversion of young people from the justice system.

We note that in the Strategy the words “Aboriginal and Torres Strait Islander” are used interchangeably with the word “Indigenous”. We suggest that one of these terms be used for the purpose of consistency and if “Indigenous” is the preferred term, that it be defined as including Aboriginal and Torres Strait Islander peoples.

- **How can the Queensland Government best engage with community leaders to ensure that we are all working together to support the directions for reform set out under the strategy?**

As it is sometimes difficult to understand the mandate upon which individual community representatives have the power to speak, we view it as dangerous for the Government to base directions on such engagement. We understand that the Government may wish to seek advice and guidance from such individuals due to

⁵ Commission for Children and Young People and Child Guardian, ‘*Seventeen Year Olds in Queensland's Adult Prisons*’, Policy Position Paper, p. 24.

⁶ The State of Queensland (Queensland Police Service), 2010. *The Queensland Police Service Annual Statistical Review for 2009-2010*, pp. 86-87.

their expertise and knowledge and suggest that this may occur, just as a consultant may be called upon. This is also something that could occur through agreement of the Taskforce, given the expert knowledge that would exist within each organisation. However, in respect to individuals, we view that there is great potential for breakdown due to the lack of accountability that resides with individuals. At the community level, Community Justice Groups and/or in the case of discrete Aboriginal and Torres Strait Islander communities, Councils should also be involved. These organisations are valuable as they are often voted upon by the local community to speak on their behalf on a number of issues. These organisations also have a reasonably broad portfolio and a good grasp of what is likely to work best for their community.

Checks and balances are required to ensure that one particular view is not elevated at the expense of alternative views of others. It is therefore our view that representatives of peak bodies, the Government and representatives from community based organisations work together.

- **Who should be represented on the Taskforce overseeing the strategy and providing advice to government, for example, gender balance, and/or a balance between community, government and business?**

Key stakeholders, which includes, *peak bodies* need to be identified and engaged. We suggest that those organisations that lead in regard to particular areas, such as our organisation (the Aboriginal and Torres Strait Islander Legal Service) in respect to legal services, the Queensland Aboriginal and Torres Strait Islander Human Services Coalition, whose membership constitutes the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Queensland Aboriginal and Islander Health Council, the Regional Indigenous Housing Networks, the Queensland Indigenous Substance Misuse Council and also the Murri School (an independent school owned and controlled by Aboriginal and Torres Strait Islander peoples) be represented on the Taskforce.

As mentioned above, stakeholders who take a lead in their particular area of work should be included on the Taskforce. Those existing community and government stakeholders in each relevant field (e.g., legal/justice, health, education, employment, housing, etc, at all levels), including Community Justice Groups, need to be included as part of the Taskforce. The non-government organisations (mainly church organisations) who work with Aboriginal and Torres Strait Islander peoples,

particularly in employment, training and family support services should be included on the Taskforce. Private business, particularly in respect to employment and education, whether at school or Tertiary (e.g., TAFE and University) level should also be involved.

Where practical, gender balance should be considered, with the balance being decided based on a person's relevant knowledge and experience in a particular area. Clearly, a balance on a number of factors, including gender is important. Other important factors include knowledge of particular programs and communities (such as urban, rural and remote).

- **How can the Queensland Government and community leaders work together to support the directions for reform set out under the strategy?**

Community controlled Aboriginal and Torres Strait Islander representatives of **Peak Bodies** must be involved at the highest levels. This includes advising government under their specific portfolios and responsibilities attached within the Strategy. It must also include the ability to inform of their innate knowledge of service delivery. The Strategy needs to be flexible as reflected in the wording of the Strategy which acknowledges that each community is different and not all programs will have the same effect across communities, and therefore need to be tailored for each communities needs. Also, service delivery will be different to cater for differences within communities, particularly where the differences occur due to urban, rural and remote factors.

The Government must work with communities and **Peak Bodies** to identify existing gaps in services, the Government must also map the allocation of existing funds and assess whether funds and resources are being utilised in the most effective manner. We are aware that some communities have a vast array of services and some of these services are duplicated many times through different non-government organisation service providers. Not only is this a waste of valuable resources, but it also can cause confusion for community members about who provides what service. It is our view that funding must be linked to an organisations ability to engage with Aboriginal and Torres Strait Islander peoples, to obtain positive outcomes, rather than simply the ability to report in respect to the funding received. We understand the importance of reporting, however capacity building and assistance could be

provided to those organisations that can do the work, but endure difficulties complying with reporting requirements.

Over the years it seems that the larger non-government organisations such as the church groups have increasingly succeeded in gaining funding for a vast array of services, yet they may not possess the cultural competence required to engage with the community and to deliver services that are affective and measurable. Again, work needs to occur in regard to capacity building these organisations so that they become culturally competent to engage with and deliver services to Aboriginal and Torres Strait Islander peoples. One way of doing this is to include as a funding requirement that these organisations employ local Aboriginal and Torres Strait Islander people in management roles so that they can provide strategic direction for the organisation. Also, key performance indicators within common service agreements could require funded organisations to report against local engagement of, employment of and inclusion of Aboriginal and Torres Strait Islander peoples in decision making. In a similar vein, efforts must be made by Government to employ Aboriginal and Torres Strait Islander people in senior management roles to provide strategic input.

Aboriginal and Torres Strait Islander services are already leading the way by working together to better the position of community members. For example, the Inner Brisbane City Project integrates service delivery for Fortitude Valley, West End and South Brisbane. This project has been devised by the Queensland Aboriginal and Torres Strait Islander Human Services Coalition (QATSIHS), bringing five local service providers (involving health, housing, substance misuse and legal services) together to service the needs of Aboriginal and Torres Strait Islander people sleeping rough in an integrated way.⁷ Examples like this could be developed and coordinated in other communities.

The NSW Murdi Paaki Young Leaders Project in NSW provides an example of effective engagement strategy in Aboriginal communities in western NSW. Working parties exist for each community in the Murdi Paaki region. The community working parties are the key points of contact between the Government and Aboriginal communities. A Murdi Paaki Regional Assembly exists of a Chairperson from each of the 16 community working parties with an elected Chairperson of the

⁷ <http://www.qatsihsc.org.au/inner-brisbane-city-proj/> accessed 30 May 2011.

Regional Assembly. Also, the Murdi Paaki Regional Assembly and the community working parties involve Aboriginal young people in decisions regarding current and future needs of Aboriginal people and many of the community working parties specific positions on the CWP for Aboriginal young people.⁸

It is critical that the focus is on working together to find and implement solutions. Although it is acknowledged by the Government that many Aboriginal and Torres Strait Islander peoples are living in “disadvantaged” communities, individual blame against people for this predicament continues. Far more advantageous results than those presently gained could ensue through cost effective (even cost neutral) solution based initiatives developed in partnership and implemented by relevant community based organisations and relevant Government Departments. The focus needs to change away from individual blame and punitive measures to practical measures to address issues.

A good example of the above occurs where parents are unable, as opposed to not wanting to, send their children to school. For example, in remote communities where people live out of town and have no transport, children may walk or ride a bike to school in the dry season, as there is no school bus. In the wet season problems arise as the children are sent home if they arrive at school wet, due to the health issues of sitting in an air conditioned room when wet. In welfare reform communities, parents can be called before the Families Responsibility Commission and punished for their children not attending school due to the issues raised above. Although this seems like a simple problem, the solution is not always an easy one and the responsibility must be a shared one, as responsibility lies wider than simply with the parents. The Government (through the Education Department) has mutual responsibility to ensure that children attend school, whether it be by providing a bus service, or dry clothes for children to change into and often the wider community will have a responsibility in ensuring that its members are safe and their needs are met (Community Justice Groups have been known to fill gaps such as this and to transport children to and from school using Council buses).⁹

⁸ <http://www.mpajp.com.au/aboutus.html> pp. 150-151.

⁹ This example was drawn from the Senate Select Committee On Regional and Remote Indigenous Communities, 14 April 2010, Cairns, pp. 3-4, <http://www.aph.gov.au/hansard/senate/commtee/S12866.pdf>

The Strategy identifies arts based programs as being a positive way to engage communities, in particular in regard to difficult subjects requiring discussion. We agree that different programs and different methodologies must be explored and when they work, continued to be used. While it is important for evidence based programs to be implemented, other new or innovative programs should not be discounted because they have not yet been proved to work.

- **How can the Queensland Government support reconciliation, healing and peacemaking processes to promote the social norm of non-violent management of disputes within communities and across family groups?**

The term “social norm” is a difficult term to define for any community. We acknowledge that “social norms” will be interpreted differently by different people and even different groups and families within communities. This term needs to be determined at a community level and it needs to be understood that the community is the social construct that will decide what is acceptable and what is not in respect to social norms, not those external to each community.

A commitment through adequate funding needs to be allocated to the development of Alternative Dispute Resolution processes for each community, interpreters, healing, emotional and social wellbeing programs. The Government needs to put an end to short term programs including pilots and projects and commit to long term programs. It must also be taken into account that the efficiency of programs of this nature do take different periods of time to measure, depending on community and the other support services that exist geographically.

An example of the above is the dispute resolution process developed a number of years ago (1998) at Halls Creek to resolve an entrenched dispute which included physical violence between the women of two Aboriginal families who lived in Halls Creek. The feud had been running for years and was affecting the community. The mediation process involved three Aboriginal people (one woman and two men) drawn from the community, with the support of a number of other agencies, including the Western Australian Police, the Aboriginal Legal Service, the East Kimberley Aboriginal Justice Council and the local Magistrate. The Aboriginal Legal Service’s court officer knew all the families involved, through living and growing up in the community. He and the Police Aboriginal Liaison Officer, over several weeks spoke with all the family members involved and persuaded them to try mediation. The local

knowledge of the court officer made it possible to suggest Aboriginal mediators who were trusted by both families. The guidance of an Indigenous mediation panel worked to settle the long standing grievances with the families reaching agreement. The criminal charges against both families members were withdrawn.¹⁰

Particular skills of individuals and organisations within communities need to be recognised and supported (skills audits could assist in identification process). For example, in some respects Community Justice Groups have great capacity due to their knowledge base and understanding of their communities. Community Justice Group members are also the people who community members are most likely to contact when they are having issues. Community Justice Groups are an extremely valuable existing resource, which are presently greatly under resourced and undervalued. This is a service that should be resourced adequately and the terms of reference for each Community Justice Group negotiated with the Group so that they can inform of and more adequately address the issues their communities face. At present, it seems that the Community Justice Groups are not being heard and their informal role is not being valued and their role is being narrowed further to simply meet legislative requirements and in turn impact negatively upon their communities. This approach also fails to acknowledge the cultural components of how community organisations such as Community Justice Groups work. Members are key access points for many people requiring assistance within communities, no matter whether that assistance is purely justice related. It needs to be understood that the “no wrong door” policy is a naturally occurring policy for most Aboriginal and Torres Strait organisations, including Community Justice Groups. Community Justice Groups are also a key contact for individuals and external organisation who access communities to deliver services.

- **How can Indigenous communities play a role in improving safety in their communities?**

Aboriginal and Torres Strait Islander communities must own, create and drive the solutions in respect to improving safety. Even though Community Justice Groups are

¹⁰ Federal Court of Australia, ‘Solid work you mob are doing – Case Studies in Indigenous Dispute Resolution Management in Australia’, Report to the National Alternative Dispute Resolution Advisory Council by the Federal Court of Australia’s Indigenous Dispute Resolution and Conflict Management Case Study Project, 2009, Commonwealth of Australia, p. 18.

not adequately funded to run mediation and many are not trained mediators, they still often provide an informal but effective mediation service when required. One of the important aspects of Community Justice Groups is that members often have a good understanding of families and individuals in the community, the issues they face and they are accessible. Prevention and management of disputes amongst people through mediation is important in maintaining safety of community members.

Clearly, a greater intensity of work may be required with certain communities and it will be important for those communities to have ownership of community safety plans. This is not an easy task in particular communities where there is entrenched disputation. This is pertinent and complicated in small communities where families/clan groups are large and within close proximity and/or where particular cultural rules apply. It is also complex where community members accept the way in which they resolve disputes as legitimate, even though it may mean breaking the law. Guidance must be taken from representatives of these communities as to what can work and how it needs to be implemented. The example mentioned above in regard to Halls Creek as well as the mediation model developed on Mornington Island (mentioned in the draft Strategy document at p. 33) are positive examples of what can occur.

The focus and blame should not always be on individuals who are said to be inflicting violence. Cultural aspects, community norms and what has been accepted as legitimate and possibly seen as required to deal with disputation must be understood in the context of each community. Past processes of dispossession and removal have inflicted the greatest violence on Aboriginal and Torres Strait islander peoples. Further punishment also results in further infliction of violence. Healing needs of communities, families and individuals need to be assessed and appropriate healing responses developed by communities.

Services should be provided at community level and set up by the community with the aid of funding from the Government and brokered arrangements between community and the private sector. One excellent example where community is empowered and retains ownership occurred in Western Cape York Peninsula. The Western Cape Communities Co-existence Agreement included a number of traditional owner groups (eleven), four Aboriginal Community Councils, a Land Council, the Queensland Government and Comalco Aluminium Limited (now Rio Tinto Alcon). This agreement required that the Western Cape Communities Trust be

formed, with monies from the Mining Company and the Government to be paid each year to the trust for projects benefitting the traditional owner groups and Western Cape communities. The funds can be used for a number of programs, including employment, training and youth education programs. Other communities should be encouraged by this agreement and the beneficial relationship between each of these parties.

- **Are there other ways that communities and the government can work together to improve safety, reduce offending and ensure access to a fair justice system?**

Increased funding and expansion is required of initiatives such as Murri Court, the Queensland Indigenous Alcohol Diversion Project, as well as other programs that have been shown to work for particular peoples, such as Drug Court, the Homeless Persons' Court Diversion Program and the Special Circumstances Court.

Murri Court provides a number of benefits to Aboriginal and Torres Strait Islander peoples, over and above its relevance to those appearing in it. It is also a forum where Aboriginal and Torres Strait Islander peoples are more likely to leave understanding their punishment and what they can and cannot do. Murri Court could be particularly beneficial in communities where access to Interpreters is an issue for Aboriginal and Torres Strait Islander peoples, such as remote communities where English is not the first language. Hearing for many people is also an issue, resulting in people not always understanding their orders after attending Court.

The Senate Select Committee On Regional and Remote Indigenous Communities states that it was provided with evidence in regard to the “the potential for hearing difficulties to exacerbate problems associated with sentencing and court order compliance, with the potential to increase imprisonment of Indigenous people.”¹¹ Dr Damien Howard of Phoenix Consulting submitted that some anti-social behaviour can be linked to hearing loss. He also said that “the communication barrier resulting from hearing disorders can severely compromise the relationship Indigenous people have with police or other authorities, particularly where that hearing disorder is

¹¹ The Senate Select Committee On Regional and Remote Indigenous Communities Fourth Edition 2010, May 2010, pp. 143.

http://www.aph.gov.au/Senate/committee/indig_ctte/reports/2010/report4/report.pdf

unrecognised and the lack of communication is attributed to language, intellectual or other difficulties.” Dr Howard commented that hearing loss is often not considered as a potential contributor of communication breakdown with Police and in Court rooms.

¹²

The Senate Select Committee On Regional and Remote Indigenous Communities recommended that “Queensland Corrections consider including routine hearing assessments in the induction and assessment process for persons newly entering the corrective services system” (Recommendation 14).¹³

The Senate Standing Committees on Community Affairs References Committee in their report titled *Hear Us: Inquiry into Hearing Health in Australia* (May 2010)¹⁴ also made a number of pertinent recommendations to better the predicament of Aboriginal and Torres Strait Islander peoples who come into contact with the justice system, as listed below:

Recommendation 31

The committee recommends that guidelines for police interrogation of Indigenous Australians in each state and territory be amended to include a requirement that a hearing assessment be conducted on any Indigenous person who is having communication difficulties, irrespective of whether police officers consider that the communication difficulties are arising from language and cross-cultural issues.

Recommendation 32

The committee recommends that the National Judicial College of Australia work with state and territory jurisdictions to develop and deliver accredited professional development programs for judges, lawyers, police, correctional officers and court officials on the effects of hearing impairment on Indigenous engagement with the criminal justice system, and effective evidence-based techniques for engaging effectively with people with a hearing impairment in courtroom environments.

¹² Dr Damien Howard, Phoenix Consulting, *Submission 112* to Senate Community Affairs Reference Committee inquiry into hearing health in Australia, pp 26–28.

¹³ The Senate Select Committee On Regional and Remote Indigenous Communities Fourth Edition 2010, May 2010, pp. 144.
http://www.aph.gov.au/Senate/committee/indig_ctte/reports/2010/report4/report.pdf

¹⁴ http://www.aph.gov.au/senate/committee/clac_ctte/hearing_health/report/report.pdf

Recommendation 33

The committee recommends that hearing loops are available in interview rooms and public counters of all police stations, and in all courtrooms, and that loop receiver devices be made available for people without hearing aids.

Recommendation 34

The committee recommends that correctional facilities in which greater than 10 per cent of the population is Indigenous review their facilities and practices, and improve them so that the needs of hearing impaired prisoners are met.

Family Violence proceedings are a good example, where Aboriginal and Torres Strait Islander peoples, whether they are applicants (in this example, mainly through Police applications) or respondents, are not engaged in the Court process. Despite this, orders are made, despite neither party understanding the order. One of the reasons that Aboriginal and Torres Strait Islander peoples do not attend Court for family violence matters is that they have no ownership of the process and feel that they cannot influence what will happen.

Family violence proceedings are very narrow and do not encompass flexible or broad ways in which to address violence issues. They do not consider the wider reasons as to why people, in particular, men commit family violence. Research conducted by Blagg, Ray, Murphy and Macarthy suggests that “causes” of family violence in Aboriginal and Torres Strait Islander communities include:

- marginalisation and dispossession;
- loss of land and traditional culture;
- breakdown of community kinship systems and Aboriginal and Torres Strait Islander law;
- entrenched poverty;
- racism;
- alcohol and drug abuse;
- the effects of institutionalisation and removal policies; and
- the breaking down of the traditional Aboriginal and Torres Strait Islander male role and status, replaced by an aggressive assertion of male rights over women and children.¹⁵

¹⁵ Blagg, H., Ray, D., Murphy, R. and Macarthy, E. 2000, “Crisis Intervention in Aboriginal Family Violence: Strategies and Models for Western Australia, Partnerships Against Domestic Violence, Canberra, pp. 4-5.

Rather than simply linking one or two of the above mentioned causes to family violence, the influence of these factors in totality and over time in an historical context need to be considered. Alcohol has been targeted as a major “cause” of violence in Aboriginal and Torres Strait Islander communities, however alcohol is not used by all Aboriginal and Torres Strait Islander perpetrators of violence and not all Aboriginal and Torres Strait Islander peoples who drink are violent.¹⁶

Keel points out that “the solutions to family violence are seen to lie in strategies that attend to the needs of all members of the community, particularly in ‘healing’, rather than punishing the perpetrators.”¹⁷ Different ways of dealing with violence, such as support and programs for those who inflict violence, so that their issues are dealt with, particularly esteem issues, provide the best opportunity for behaviour change. The Strategy (at p. 21) recognises that penalties for violence need to address the underlying causes of violence.

Alternative Dispute Resolution, in particular as a preventative measure is also valuable in resolving violence and community disputes before they turn into violence. The Alternative Dispute Resolution process developed on Mornington Island (“Mornington Island Restorative Justice Project”), as mentioned in the Strategy (at p. 33), or the Halls Creek example mentioned above, provide examples of processes that can be developed in other communities by community members to suit their specific needs.

Providing adequate funding for Alternative Dispute Resolution and diversionary programs in all communities is a necessity. At present, not all diversionary programs can be accessed by those who could potentially benefit from them. For example the Queensland Indigenous Alcohol Diversion Program is available in six communities, however it is clear that this program could benefit many other people in other communities. An even simple measure such as Community Service is not available in all communities due basic issues such as the lack of Supervisors.

¹⁶ Keel, M., “Family Violence and sexual assault in Indigenous communities”, Australian Centre for the Study of Sexual Assault, Briefing Number 4, September 2004, p. 8.

¹⁷ Keel, M., “Family Violence and sexual assault in Indigenous communities”, Australian Centre for the Study of Sexual Assault, Briefing Number 4, September 2004, pp. 3-4.

The Government needs to ensure that policies and laws do not discriminate against Aboriginal and Torres Strait Islander peoples directly or indirectly. Public nuisance laws are a prime example of laws that indirectly discriminate against our clients. Also, possession of liquor laws in particular Aboriginal communities discriminate against our clients and are not accepted as legitimate law by our clients. Without changes to these and other laws offending will not reduce and the justice system cannot be deemed to be fair.

The Senate Select Committee On Regional and Remote Indigenous Communities heard from a number of witnesses that alcohol restrictions in Queensland had been imposed upon communities, not implemented with community support. The Senate Select Committee On Regional and Remote Indigenous Communities informed that they were of the opinion that the for alcohol management to work, the community must support the process and preferably be the driver of the process, as occurred in Halls Creek and Fitzroy Crossing.¹⁸

In order to empower Aboriginal and Torres Strait Islander peoples our organisation meets with community members in their own environment (rural, regional and remote, as well as with elders, school children and support services) and provides information in the form of education on a vast array of areas effecting community members. This education involves informing people of their rights in regard to the law (including criminal law), their responsibilities to abide by the law and the powers that police possess. In delivering this service, our organisation works in partnership with other relevant organisations, such Community Justice Groups and the Queensland Indigenous Family Violence Legal Service. During the community legal education process information is also gained from community members in respect to how laws and policies affect them and this contributes to submissions drafted by our organisation on law and policy reform.

It has been identified that mental health issues are increasing and we note the extra money in federal budget for mental health, at \$1.5 billion. The mental health system in Queensland needs to adapt to be able to work with Aboriginal and Torres Strait Islander people with mental illness. Communities need to be consulted in regard to ways of working with mentally ill members, however, health staff also need

¹⁸ The Senate Select Committee On Regional and Remote Indigenous Communities Fourth Edition 2010, May 2010, p. 118
http://www.aph.gov.au/Senate/committee/indig_ctte/reports/2010/report4/report.pdf

appropriate training, including in regard to cultural matters when working with Aboriginal and Torres Strait Islander patients with mental illness. It is essential that culturally competent psychiatric assessment tools be developed for Aboriginal and Torres Strait Islander peoples. The Queensland Aboriginal and Islander Health Council should play a key role in the development of such an instrument, as well as with broader changes to the mental health system. Community members should be employed and provided adequate training in mental health roles.

- **What are your views on the actions proposed in this Strategy to reduce offending and reoffending of young people and Aboriginal and Torres Strait Islander adults and what other actions should be considered to further this objective?**

The criminal age for being charged as an adult in Queensland must be brought into line with all other Australian States and Territories. The options in regard to diversion for police and Courts dealing with young people are broader and greater than those for dealing with adults. The treatment of 17 year olds as adults is a breach of the United Nations Convention on the Rights of the Child.

Young people need to be more actively diverted from the justice system. Too many Aboriginal and Torres Strait Islander youth are proceeding to the justice system are not being cautioned or referred to a conference by the Police at first instance. As in other areas mentioned in the Youth Strategy, young Aboriginal and Torres Strait Islander peoples need to be involved, have input and have their ideas respected.

We support the Strategy in its approach of focussing resources at those young people who are deemed to be at risk, prior to them even having contact with the justice system. This entails providing support, education, health promotion, recreational activities, positive role models and formal mentors both in and out of the community, future opportunities for training and employment and encouraging aspirations in young people. We agree with Dr Chris Sarra when he says that there must be an underlying philosophy of high expectations for success and that this is crucial in achieving better outcomes for children and young people.¹⁹

¹⁹ Aboriginal children are expected to do poorly at school. Teacher Chris Sarra blasts away the prejudice, *New Internationalist*, Issue 364, February 2004.

We also point to the work of Dr Fiona Stanley who says that crime pathways can commence even prior to a child's birth. Dr Stanley's says that there are some starting points which have ongoing effects, which generally result in incarceration and possibly suicide:

- “maternal exposure in pregnancy to alcohol > irreversible brain damage > behavioural problems/mental retardation > poor school performance > delinquency/precocious sexual behaviour > substance abuse > incarceration, suicide, etc.
- poor maternal health/overcrowding/maternal smoking > repeated ear infections > deafness > poor language skills > poor school performance > behaviour problems > delinquency, incarceration, suicide, etc.”²⁰

This suggests that young Aboriginal and Torres Strait Islander people need to be worked with prior to even conceiving. Also, Dr Stanley points to the forced removal of Aboriginal and Torres Strait Islander peoples as the most important precursor for the disadvantaged experienced by many Aboriginal and Torres Strait Islander peoples.²¹ This is where healing needs to occur and be supported through the provision of various services to deal with emotions, mental health, reconnecting families, etc.

Statistics need to be recorded in respect to Police cautions and Court cautions for Aboriginal and Torres Strait Islander youth. This not only acts as a record to assist with accountability, however, it also reminds individual officers of their obligation to divert young people from the justice system where possible. We further suggest that the Police report to the Taskforce in respect to the number of Aboriginal and Torres Strait Islander youth who are cautioned, arrested, diverted when processed by the Police, as is the case in Victoria.

Attaining bail has been identified as an issue for all Aboriginal and Torres Strait Islander people for some time. Active assistance is required in communities to ensure that a bail address is available for a young person to be released on bail. The

²⁰ Stanley, F 2008, 'The greatest injustice: why we have failed to improve the health of Aboriginal people', 2008 Annual Hawke Lecture, delivered 6 November 2008, Adelaide Town Hall, www.unisa.edu.au/hawkecentre/ahl/2008ahl_Stanley.asp

²¹ Stanley, F 2008, 'The greatest injustice: why we have failed to improve the health of Aboriginal people', 2008 Annual Hawke Lecture, delivered 6 November 2008, Adelaide Town Hall, www.unisa.edu.au/hawkecentre/ahl/2008ahl_Stanley.asp

requirements for our clients to obtain bail act to discriminate against them, in particular in respect to having a suitable permanent address to be released to, or in relation to young people, an address, as well as to be supervised by a “suitable adult”. Given that it is unlikely for relevant amendments to be made to the *Bail Act 1980* (Qld), other options need to be canvassed. Bail hostels are an option, as is assistance in the form of support to communities and families to enable people to be in a position to even make an application for bail. Once bail is granted, assistance and support should be provided to ensure the best possible chance of young people complying with their bail conditions. Programs used in other States, like the Koori Youth Intensive Bail Support, the Intensive Supervision Program in NSW (Werrington and Islington), or a youth bail service such as that in Western Australia where assistance is provided to young people to find a responsible adult could be adapted for Queensland communities.

Similar support as mentioned above could also be provided to adult people on orders. It needs to be acknowledged that orders requiring reporting on particular days at particular times are likely to be breached and are not compatible with Aboriginal and Torres Strait Islander peoples sense of time. When this is known, these types of reporting orders should be avoided and other conditions which are more likely to assist the person and the community should be made. Otherwise, people are essentially being set up to fail, particularly where there is a compliance based model.

Various social reforms have been implemented in the past in an attempt to curb youth offending behaviour in Australia. Each of these reforms has ignored the underlying personal and social issues faced by Aboriginal and Torres Strait Islander young people. Reforms must focus wider than the individual to address a number of areas of influence – including family, school and peers. Bonds to family, community, school and work create social relationships which work to control and pressure young people to conform and these relationships work on the principle of shaming the young person if they fail to conform, rather than punishment.²² Parenting programs that assist in providing support and methods of parenting are also of value. To be

²² Australian Institute of Criminology, *‘What works in reducing young people’s involvement in crime? Review of current literature on youth crime prevention,’* Canberra 2003, p. 13 http://www.cmd.act.gov.au/__data/assets/pdf_file/0016/1843/ACT_juv_justice_web.pdf Accessed: 9 December 2009.

successful, these programs need to be specifically orientated to Aboriginal and Torres Strait Islander peoples.

An important issue for young people and the community is education. This entails not just simply school attendance, but the opportunity to gain an engaging and meaningful education. All young people should have the opportunity to receive an education and therefore have access to a school from both the youngest possible age up to and including the end of secondary school. We note the Strategy encompasses better access to early education as well as support for parents.

Secondary level education is much more difficult for young people in remote areas (such as the Gulf of Carpentaria, Cape York and the Torres Strait) to access, than is the case in other regions. Young people in these locations often have to travel from their communities to attend boarding schools located great distances from their communities. While some young people can cope with the change, many cannot cope with being away from their community and family, as well as with the dramatic cultural change that comes with living in major regional centres or cities. It is acknowledged that these young people are unlikely to gain higher education and employment in their communities after school, therefore a move to a town or city will be required at some stage to attain this. However, young people must also feel safe and secure during this time of their life in particular. It is also a time in a young Aboriginal and Torres Strait Islander persons life when they are often being taught important aspects of their culture. This does not only entail ceremony (as is the case for boys becoming men and girls becoming women and for other important events), but day to day activities that are passed on to them from other family and community members. Rather than requiring young people to leave their communities to continue their education, communities should be adequately resourced to provide education through schools, as exist in every other community. The Western Cape College senior school in Weipa is a good alternative, enabling young people to be close to home and to attend a school with other family and community members. We note that at this stage the Western Cape College is the only secondary school in Cape York and would not have capacity to take all students from Cape York.

The government also has a responsibility to all children, whether they live in an urban, regional or remote community, to ensure that they can access education and attend school. Young people in all communities should have access to transport to attend school. This tends not to occur in the more remote and rural areas. For

example, with the closure of the Jessica Point State School in Napranum in 2005, students were required to attend the Western Cape College in Weipa. The community themselves resolved this issue by purchasing two 57 seat coaches with funds from the Western Cape Communities Trust and organised for the children to be transported to school each day.²³

Learning and education in all forms should be something that occurs throughout all peoples lives. It can be difficult to engage people in education and programs, however, when in institutions such as prisons people are often more likely to be interested and in a better position to engage. This should be seen as a pertinent time to work with Aboriginal and Torres Strait Islander peoples in regard to all manner of issues, despite the time in which they are imprisoned. We note that the Strategy states (pp. 8, 29 and 56) that inmates will no longer be required to receive a 12 months sentence before they can engage in literacy numeracy programs. It has been found that programs should be flexible, culturally appropriate and broad, to deal with the many issues that some Aboriginal and Torres Strait Islander peoples face. The Australian Institute of Criminology looked at prison based rehabilitation programs and said:

A number of culturally specific criminogenic needs have been identified by researchers and commentators that highlight the need for intervention at both the individual and social level (see Byrne & Howells 2002; Jones et al. 2002). These include substance abuse and personal/emotional functioning (Howells et al. 2000; Mals et al. 1999), acculturation stress and deculturation (Larson et al. 1998), the impact of separation from family, communities and land (Lippmann 1991), physical health problems, mental health issues, identity confusion, intra and inter-family violence, discrimination, literacy and numeracy problems (Lippmann 1991), generational unemployment (Hunter et al. 1999; Mals et al. 1999), life skills deficits and significant and specific transitional and post-release needs. It follows that Indigenous offender programs should not only seek to address these needs, but they need to be delivered in ways that are considered to be

²³ Richters, G., 15 October 2101. "It's not black, it's not white, Its Business, Power Point Presentation", Slide 32, <http://www.aemee.org.au/common/pdf/2010Conf-JMottonWCCT.pdf> Accessed on 18 May 2011

culturally appropriate and culturally 'safe' as well as being supported by the wider community.²⁴

Prior to being released from prison, inmates should be assisted connecting to people and service on the outside to ensure they have somewhere to go and will receive the support they require once released. We are aware that a through care program presently exists, provided by Queensland Corrective Services, but that it is minimal in regard to what it does and who it can assist. Non-Government organisations, such as the Centacare Cairns Mental Health Resource Services and SOLAS Mental Health Recovery in Local Communities in Townsville provide through care/transition to inmates with mental health issues. These programs are aimed at extremely vulnerable clients (inmates with moderate to severe mental health issues) and are flexible in that the worker and inmate assess the inmate's needs and worker works as intensely as is required with the inmate for their needs (e.g., housing, support, education, transport, training, etc) to be met. These service also have a small number of staff conducting the work, therefore they can assist a limited number of people.

²⁴ Heseltine, K., Day A., and Sarre, R., Australian Institute of Criminology, Research and Public Policy Series 112, 2011, Prison-based correctional offender rehabilitation programs: 2009 national picture in Australia, p. 32.