

Supplementary
Submission
No 39a

**INQUIRY INTO OVERCOMING INDIGENOUS
DISADVANTAGE**

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Response to Overcoming Indigenous Disadvantage Interim Report from Simon Luckhurst

As my initial submission commented mainly on issues pertaining to law and order and Aboriginal disadvantage, most of my response concerns Chapter 9 of the Interim Report...

Preamble

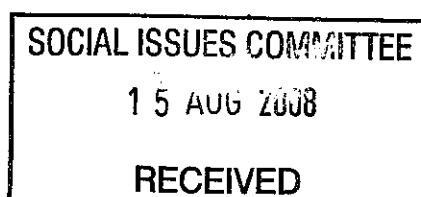
The committee notes in its preamble to Chapter 9 that 'Once an individual has been incarcerated, they are highly likely to become trapped in the 'revolving door' of recidivism.' Much of the rest of the chapter is devoted to issues of Aboriginal incarceration and how this has an impact on life expectancy. This approach is to be lauded. However, at several points comments deserve to be made.

Firstly, while the chapter looks at many issues concerning incarceration, including policing, recidivism and rehabilitation, imprisonment and alternatives to imprisonment, I found little of comfort in regards to the implementation of diversion programs aimed at encouraging Aboriginal people to avoid contact with the Criminal Justice System (CJS) in the first place.

Strategies to assist Aboriginal youth and adults to avoid initial contact with the CJS should take two forms.

The first is a pro-active approach to 'rewarding' those people who avoid contact with the CJS. While it is undeniable that certain necessities exist in applying programs to those who have transgressed the law so that they are assisted to avoid further contact with it, these should be balanced by comparable programs offered to those who are 'doing the right thing' and who staying away from potentially dangerous situations, yet who might fall if they see others who do the wrong thing appearing to be 'rewarded' for their transgressions. Forums on leadership and healthy lifestyles in the form of camps, sessions with community elders and high profile personalities will all assist in encouraging people who are on the 'right path' not to deviate from that track.

The second strategy involves finding ways to resolve minor transgressions. In Moree, for example, some Aboriginal youths are consistently fined for not wearing bicycle helmets. By the time they have reached the age where they wish to obtain a driving license, they have accumulated a substantial debt and have come to the attention of the State Debt Recovery Office, which will prevent them from driving. Should they decide to drive unlicensed, and are caught, they will risk exposure to the CJS. While not suggesting that laws regarding bicycle helmets should be relaxed, a community-based alternative might be trialed, where all youths are supplied with bicycle helmets, or a helmet 'library' is established.



In a similar fashion, while the recent introduction of 120-hour learner driver log books¹ is a laudable initiative, one wonders what impact it will have on Aboriginal youths seeking to obtain a license where access to cars might be problematic. A potential drawback is that of people attempting to drive unlicensed, and so coming into contact with the CJS. In this regard, community-based strategies should be developed ensuring adequate support for people seeking driving licenses. I note that this inquiry has recommended the implementation of drivers' licenses schemes for Aboriginal learner drivers in regards to employment, but would ask that the inquiry make note of this imperative in light of the potential for drivers without licenses to come into contact with the CJS, and whether the schemes mentioned at points 48.2 and 48.3 were established before or after the requirement for 120 hours of driving pre-driving test was introduced.

As for the interaction of Aboriginal people and NSW police, some comments deserve to be made. Firstly, NSW Police is a large organization with a bureaucracy well equipped to prepare submissions and reports with which to comment on strategies concerning Aboriginal people. There is no equivalent body in NSW, as far as I'm aware, of equal capacity and controlled by Aboriginal people, which can respond at the same level to claims made by NSW Police. I make this point because while the NSW Police denies the existence of 'racial profiling,' anecdotal evidence suggests that it does in fact exist. In this regard, Aboriginal people become particularly vulnerable towards exposure to the CJS – and statistics should be reviewed in order to determine whether racial profiling in areas with high Aboriginal populations exists.

The interim report refers later in this chapter to the 1991 Royal Commission into Aboriginal Deaths in Custody, yet does not mention the 1994 Wood Royal Commission into NSW Police, which found many instances of racism and entrenched corruption within the force. While NSW police claim reforms have 'cleaned up' the force, as recently as 14 August 2008 I received disturbing information suggesting that in some areas of NSW, the old attitudes of police towards Aboriginal people still exist, and more disturbingly, are coming from positions of command. If the committee is serious about exploring the interaction of NSW Police and Aboriginal people, it needs to consult and discuss with Aboriginal people what is happening 'on the ground' rather than review statistics compiled by NSW Police.

As an Aboriginal ex-police officer, I strongly urge the committee to meet with Brad Trindall in Narrabri to find out more about this situation.

Point 9.3

In regards to the comprehensive work done by the Royal Commission into Aboriginal Deaths in Custody, it should be noted that while it made specific recommendations to keep Aboriginal people safe while incarcerated, in cases where these recommendations have not been followed Aboriginal people have died. This was the case with that tragic death of Wendy Hancock, as described in my initial submission to this inquiry.

¹ Learner drivers are required to record 120 hours of instructed driving prior to sitting their driving test for their provisional license.

The committee should recommend the immediate establishment of a body which oversees the implementation and continued following of Royal Commission recommendations. This should be a body which is able to conduct investigations and to decree fines and other forms of punishment to individuals and organisations which fail to follow rules and procedures which have been designed to keep Aboriginal people safe whilst in custody.

Part of Rose Hancock's decision to undergo the stress of drawn-out legal proceedings in her daughter's case is so that someone or some organization is found responsible for failing to keep her daughter alive when protocols existed for this to occur. Whether Rose is able to continue with her case, (not an easy task for an individual challenging the state) is going to be dependant on her own health, which due to the stress of the matter is rapidly declining. It shouldn't be necessary for a 60-year old widow to have to mount a legal challenge in this regard – it should be mandatory for the state to conduct its own inquiry, beyond a coronial investigation, and if necessary be able to levy and administer sanctions and punishments accordingly.

Point 9.12

In response to my observations regarding the families of those who have died in custody suffering stress which may contribute to long-term health issues, (and indeed for families of those who are incarcerated as noted by Ray Leslie at 9.13 and the committee itself at the Committee Comment at 9.15) perhaps the committee could go further and recommend the formation of a support body which provides support and advice in the case of Aboriginal deaths in custody. Arthur Murray, a former employee of the NSW Aboriginal Deaths in Custody Watch Committee, was one such prison visitor, entrusted with visiting vulnerable Aboriginal people held inside NSW jails. He understands the value of this role in both keeping Aboriginal alive in jail, as well as assisting in avoiding recidivist behaviours.

Point 9.57

As the Committee has stated its intention to explore community initiatives regarding Aboriginal people and the CJS, I would strongly urge it to talk to Brad Trindall (whom I consulted in my original submission) as an Aboriginal ex-police officer who underwent significant stress in his role as a police officer, not from his own community, but from his fellow officers. Part of the reason for this stress came from Brad's willingness to explore the interaction of the police and his community, and his desire to remove some of the negative aspects of this interaction (such as racial profiling) and instigate more positive initiatives.

Points 9.69 – 9.82

There is a strong need for substantial, appropriate, ongoing and immediate support for prisoners leaving NSW jails (I would suggest that this should exist for all prisoners, not just Aboriginal prisoners, however I realise that such a recommendation is beyond the scope of this inquiry). Anecdotal evidence I have heard from ex-prisoners is that they are often at their most vulnerable immediately after release, and that while the Assistant

Commissioner (at Point 9.69) may assert how important it is to ‘get them to take responsibility for their own behaviour and actions²’ it can be argued that the time to do this is immediately after sentencing. On release support should be provided to assist ex-prisoners to avoid the old patterns of behaviour which led them into contact with the CJS in the first place. Stories of waiting lists for support services, accommodation and rehabilitation options all seem to end with the fact that by the time the support is available, old contacts and patterns have been re-established, and old patterns of behaviour rekindled.

Point 9.108

I was intrigued to see part of my original submission was quoted in the interim report at this point, as the point seems to be looking at home detention, whereas my argument is specifically referring to intervention strategies designed to avoid Aboriginal people at risk coming into contact with the CJS in the first place. While it can be argued that community sentencing options are part of an intervention strategy, they are not the only part of it. As noted later in the Interim Report, issues such as Mental Health and Child Sexual Assault both contribute to persons coming into contact with the CJS, and as such, my discussion of the merits of intervention are as relevant in these areas, if not more so, than in regards to community based sentencing.

Point 9.142

As noted in my initial comments in this response, there is a need to not only establish diversion programs designed to ensure Aboriginal people who have come into contact with the CJS are able to avoid further contact with it, but also to introduce programs which divert people at risk prior to any contact with the CJS occurring.

Point 9.153

While initiatives encouraging employment of Aboriginal police officers are laudable, it should be noted that there also exists a strong need for initial and ongoing support for Aboriginal police officers during the length of their employment tenure with the NSW Police. Aboriginal police officers may often find themselves in difficult positions where they are between their community (where the police force is not always seen in a positive light) and the force itself (which is not without a history of racist practices.) Support services, run for and by Aboriginal officers, should be a priority in any police employment strategies.

With more support services within NSW Police, more Aboriginal police officers might be able to be retained. It would be useful to know what sort of staff turnover exists for Aboriginal police officers as compared to police officers as a whole within NSW Police.

² As the Commissioner asserts that this process begins ‘six month prior to release’ it appears to overlook that fact that a high number of Aboriginal prisoners in NSW jails, possibly approaching 50%, are serving sentences of less than six months...