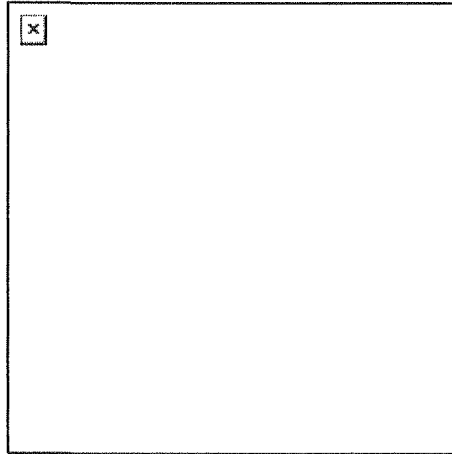


Submission No 103



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*MAGISTRATE'S CHAMBERS
MAGISTRATES COURT OF SOUTH AUSTRALIA
NORTHERN REGION*

June 28, 2010.

The Honourable the Chair,
Standing Committee on Aboriginal and Torres Strait Islander Affairs

Dear Mr. Debus,

Re: Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system

For the last two years I have been working as a magistrate based in Port Augusta. Ours is a large region. We cover all of South Australia from Whyalla to the Northern Territory Border.

I now convene all Magistrates Court circuits to the town of Coober Pedy and the Aboriginal communities in the APY Lands in the north west of South Australia. There we sit in seven locations from the corner of Western Australia, the Northern Territory, and South Australia across to the Stuart Highway. I travel by road to all circuit courts, usually with Aboriginal Justice Officers who also convene family conferences (diversion programmes for juvenile offenders), and an interpreter.

Almost all APY juveniles charged with offences that require an appearance before a judge of the Youth Court admit the offence. If they admit the offence, I divert them to a family conference instead. The need for referral is increasing. Policing of juveniles is coming into operation. It was not possible for it to be policed when there were four



police officers in the Lands as was the case when I first began sharing the circuit, two and a half years ago. There are now police stations in four communities and about nineteen police officers policing the Lands..

Family conferences are effective because more time can be spent on trying to address risk of reoffending factors at an earlier stage in the offending cycle than is available in court, because of the high cost of circuits to remote areas.

There are other reasons too. Part of the reason for the high rate of diversion of APY juveniles is that the nearest Youth Court with facilities for judges is more than a thousand kilometres away. APY juveniles have no transport. There is no public transport. The distances are so great that APY juveniles could not afford to catch it if there was any public transport.

There is also little point in putting them APY juveniles a judge unless a charge is contested (as sexual assault charges usually are). APY juveniles live hundreds of kilometres away from the nearest community based sentence supervisors (FamiliesSA officers in Coober Pedy).

Though the problems associated with attracting and retaining good staff in regional and remote areas are by no means confined to supervision of juvenile offenders, family conference co-ordinators are able to link APY juveniles in with other services that, while they might not be designed for dealing with juvenile offenders, are currently functional and functioning in the area where the juvenile offender lives at the time when the juvenile is living there.

Outside the Lands, there is a high level of involvement of Aboriginal juveniles and young adults in the criminal justice system, just as there was a generation ago, when it was called "the disproportionate numbers of Aboriginal people in custody."

The same issues cause it now as caused it then. To quote the Commissioners who identified and described these issues in (too much) detail in the findings of the Royal Commission Into Aboriginal Deaths in Custody (RCADC), "the more fundamental causes for the over-representation of Aboriginal people in custody are not to be

found in the criminal justice system but in those factors which bring Aboriginal people into conflict with the criminal justice system in the first place.”

The RCADC report examined "the position of Aboriginal people in relation to health, housing, education, employment and income," "how the attitudes of the dominant non-Aboriginal society, racism both overt and hidden and institutional racism, adversely affect Aboriginal people," and "how some laws bear unequally upon Aboriginal people.”

Putting the same thing another way, overcrowding, a learned sense of worthlessness, grief, and drug and alcohol abuse are a toxic mix. It is a toxic mix that has never been addressed. Instead, it has spread like a virus, from the cities, to the towns, and now into the communities as well.

It remains the case that “many Aboriginal people feel that the means by which communities and organisations are presently funded makes it impossible for them to exercise control over decision-making because priorities are determined in advance and there is no opportunity for long-term planning.”

Unequal opportunity begins early. It begins in houses with three nuclear families in three bedrooms under one roof with nowhere for children to read or do homework if they wanted to, no fridge for food, no heating but the open door of the stove when temperatures drop close to zero at night. The price of food and petrol excludes the same children from traditional Aboriginal education.

For all the acknowledgements to country, there is no help with preserving sacred objects or supporting the mens' ceremonies that develop the sense of self worth just as employment does, and team sports also do if a person is good at the sport.

Many people in the Lands are change-weary. The Lands are littered with memorials to passing funding fashions in the form of buildings. Purpose built, they are often used for other purposes. Perception of need for the purpose has vanished in favour of “a different approach.”

Funding applications, for anything, are not considered but assessed. They are assessed not on their merits but on the ability of those making the proposal to build "business cases" supported by yards of spreadsheets. This excludes from decision making people who speak many languages but whose educational opportunities left them with limited literacy and numeracy skills, let alone computer skills.

For all this, things are improving a great deal.

Inside and outside the Lands, housing is key to long term change. It may be that no-one else will listen to the women of one of our communities when they say "We do not want our houses painted. We want someone to teach our children to do it to the standard that 'they' say they want," or, near another community, an old man pointing at the brick making kiln fallen into disrepair. But some of the houses are being painted, and even if they have been prefabricated in a city, erected by visiting contractors, and planned around nuclear rather than extended families, new houses are appearing.

It is what is now happening inside the houses, old and new, that will determine what the fate of the new and renovated houses, and the generation of children growing up inside them.

Cycles of violence and self medication are now deeply entrenched in many places in our region. The difference between a house and a car is that a house takes longer to burn. People injure other people and their things when they are drunk. People addicted to high THC cannabis injure other people and smash their property when they have no cannabis left to smoke and no money to buy any more. Regional cities places provide not just bright lights and poker machines but also access to amphetamines.

In the short term, the self worth issues for men that often lead to violence are being addressed through sporting and employment programmes. In the short and medium term, domestic violence is also being specifically addressed, in many ways, and with varying degrees of success.

Domestic violence, like sexual assault, is behaviour learnt from the non-Aboriginal community. In the words, in English, of an old man watching proceedings in an APY court, before the words of the interpreter became too much for him to tolerate, "This is not the way of the firestick marriage! You should not be hurting your kunga. You should be making her happy!"

Violence by men against women escaped acknowledgement, let alone serious consideration, for too long. This very welcome change did not just happen. It happened because hard work and strenuous lobbying on behalf of too many women who suffered appalling injuries as a result of horrific violence committed by men.

Thanks to the people who lobbied so hard, the once heretical proposition, that children copy what they see and hear, and if they see and hear violence, then that is what they engage in as adults, is now part of mainstream thinking, and policy making.

Underpinning most of the domestic violence I see, in Aboriginal and non-aboriginal communities, towns, and cities, is the proposition "If you don't know what to do about a problem, hit it." Alcohol, or lack of drugs, means hit the problem harder.

Addressing this means bringing about behavioural change. Teaching other behaviours is considerably cheaper than the alternative. In educational terms, dealing with this sort of domestic violence by way of imprisonment sometimes amounts to little more than teaching the offender how to survive inside a gaol.

While there are other considerations, including the very real human desire to exact revenge on someone for what they have done to someone else, going by some of the criminal records I see it is questionable whether many people sentenced to gaol for domestic violence change their behaviour when they encounter similar circumstances again.

When it comes to deterrence, and addressing risk of reoffending, more immediate consequences, such as immediate bail refusal for a short period, followed by mandated attendance at a community based education appear to be at least as effective as longer custodial sentences imposed weeks or months (sometimes years) after the event.

In most Aboriginal communities and in many Aboriginal houses, the proposition "If you don't know what to do about a problem, hit it," alcohol abuse, and lack of quick access to drugs, is neither gender-specific nor confined to one gender. Lack of self worth and self medication is deeply entrenched among aboriginal women as well as among Aboriginal men. Considerably more than one Aboriginal grandmother believes "those mothers should be locked up until they stop smoking that cannabis."

That women confront these issues, as well as men, was missed by the RCADC commissioners, perhaps because of double-standards inherent in policing in the days of their Inquiry. If there were double-standards in policing then, in our region at least, those days are history. I see many Aboriginal women charged with committing violent offences. I see virtually no community based programmes for them.

Programmes and sentence administration seem to be firmly bogged in a witch-burning time warp where women are either "saints" or "sinners," and the "sinners" are beyond redemption. The most the "fallen women" can expect is to be ignored or gaoled.

If there is one thing that would reduce levels of violence among Aboriginal people, it would be serious implementation of violence intervention programmes for women as well as for men.

Just as in our region there is nothing for the violent and self -medicating women, there is no shortage of them. Unless something dramatically changes, even if domestic violence is eliminated, by foul means and fair, children will see women who care for them bashing other women or being bashed by them.

It begs the question. Who do the children learn from? What are those children going to do when they encounter a problem, just like their mother did?

Thank you for your time and your consideration. I am sorry that this submission was not forwarded earlier. We work at a considerable remove from policy makers. I was not aware of your Inquiry until a former colleague forwarded a copy of another submission.