



Our Ref: SAL:MM:60049:1054

Your Ref:

29 May 2007

Attention: Mr Mark Pathe

Mr Robert Needham  
Chairperson  
Crime and Misconduct Commission  
GPO Box 3123  
BRISBANE QLD 4001

Via Fax: (07) 3360 6333  
Email: [mailbox@cmc.qld.gov.au](mailto:mailbox@cmc.qld.gov.au)

Dear Sir,

RE: CMC INQUIRY INTO POLICING IN INDIGENOUS COMMUNITIE~~S~~

[CORRECTED VERSION]

Pursuant to your invitation to do so and also on behalf of the Errol Wyles Justice Foundation Limited, we make the following submissions\*.

**Possible Changes for Existing Policy and Procedure that would Result in Improved Relations Between the Queensland Police Service and Aboriginal DOGIT Communities and Torres Strait Island Communities.**

In contradistinction to the policy applied successfully by New York Mayor, Rudy Giuliani of "zero tolerance" it is considered that in DOGIT communities and Torres Strait Island communities, a

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policy of "maximum tolerance" particular in the face of so-called "victimless crime" should be demonstrated by the Police.

Unlike in NYC in the 1990's where there were strong community sensibilities to be protected and divergent economic and social classes and interests within the community, the DOGIT and Torres Strait Island communities are essentially homogeneous in all relevant respects. It follows then, that the community interest in protecting some segments of the community from other segments of the community or the sensibilities and sensitivities of the community, are rather less than in the NYC scenario of the 90's.

Wherever possible, "victimless" and "domestic" crime – short of paedophilia and extreme violence – should be "medicalised". The communities should, at least, have regular and frequent visits by mental health and social workers to the communities.

Something akin to the Drug Courts in NSW should be established to deal with behavioural problems of offenders whose conduct is otherwise tolerable within the communities in which they reside, even if mainstream opinion outside of those communities would take a harsher view. The emphasis and focus should be on rehabilitation, rather than on retribution or deterrence.

The establishment of trial centres in DOGIT and Torres Strait Island communities would also assist greatly so that Indigenous offenders were tried near to their homes and in the communities in which they live (and where their offences were allegedly committed), so that, where indictable matters are involved, a jury may be constituted from among their peers and Indigenous participation in performing jury duty and in the trial process generally, would be optimised in a familiar environment.

(The Hon. Chief Justice, Paul de Jersey, identified the absence of trial centres in such communities to explain the lack of participation by Aborigines as jurors in his 26 August, 2006 address to the Central Queensland Law Association Annual Conference).

Gradually, Indigenous people would be acclimatised to the trial process and to giving evidence and this would most likely promote the greater reliability of Aboriginal testimony in Court

proceedings. It would also ensure a greater familiarity by Indigenous people in isolated communities with the Court process and institutional justice.

**Current Practices Relating to Detention in Police Custody in Remote Communities, including the Monitoring of Detainees in Watch-houses and other Police Facilities in Aboriginal DOGIT Communities and Torres Strait Island Communities and the Possible Involvement of Community Justice Groups or other Civilians in the Monitoring of Detainees.**

It is important that if a serious complaint is made against a Police officer of committing unlawful violence towards civilians, whether or not in custody, the complaint is verified as soon as possible and acted upon by Police, so that there is a fair and impartial investigation conducted by independent officers. The Police Officers, the subject of such an allegation, should also be promptly removed from Police duties in the Community and, if possible, from the community altogether.

To avoid circumstances where vexatious complaints are made by a citizen in order to remove Police from the community, the Police should be required to act on a complaint only when it is made by Statutory Declaration, sworn in front of a solicitor, who independently takes instructions with regard to the complaint and provides his own certificate that there are reasonable grounds for suspecting that there may have been unlawful violence directed towards the complainant, or against a person to whom the complainant witnessed unlawful violence being committed by Police.

The Police should be required to act on that information, certified by a lawyer, as soon as practicable and in any event, within 24 hours of receiving it.

This would avoid tinderbox situations from emerging, such as the sustained breach of the peace occasioned when the Police failed to act upon the circumstances in which Mulrunji came to be killed, by failing promptly to conduct a fair and impartial investigation and with the main suspect, a Senior Police Officer, permitted for several days to remain in the Community Police Service.

**The Optimal Use of Existing and Future State Resources Available to Deliver Criminal Justice Services in Aboriginal DOGIT Communities and Torres Strait Island Communities.**

Within isolated communities, the potential exists for authoritarian abuse and for alienation between White Police and Indigenous people, subject to their authority.

It must be understood that the two (2) groups come from disparate cultural, social and economic backgrounds.

The use of Police Liaison Officers is not necessarily a positive, as it creates a conflict of interest between the "PLO" *vis-à-vis* his own community and the Police themselves.

An example of this was the predicament in which Lloyd Bengaroo found himself in the context of his witness to the circumstances leading to the death of Mulrunji on Palm Island on 19 November, 2004 and his being torn 'betwixt and between'.

Rather, there should be a campaign to enlist Indigenous people from DOGIT and Torres Strait Island communities into the Police Service, to serve other such communities, to the point where there are 100% Indigenous Police forces, drawn from DOGIT and Torres Strait Island communities. If White Police are to serve with them, they should not be the most senior Police, in the Local Area Command.

A program of enrolling Black Police to serve in isolated Torres Strait and DOGIT communities (whether or not their own) should be implemented as soon as practicable.

While the Black Police will be enforcing the laws of the broader community, it is to be expected that they will do so from a position of greater empathy and understanding though they would be subject to the same disciplinary and administrative management as other Police, under State legislation and regulations.

A program of scholarships for exceptional Black students to be accepted for undergraduate courses leading to the award of a Law Degree or Diploma, should also be offered on the condition that the successful candidate returns for one (1) year within the first 5 years of practice to serve as a lawyer in an isolated Indigenous community.

Any scholarship holder who fails to do so should have to pay back the amount which was afforded to him or her as a scholarship, together with interest, to fund educational and health services within isolated Indigenous communities.

### **CONCLUSION**

By the proposed measures it is intended to promote the optimal participation and involvement and sense of "ownership" of the legal system as applied to Indigenous people in isolated communities, with a view to delivering criminal justice services in a manner where they are seen as services, part of a system of oppression.

Finally, and of considerable importance, there should be a ban on Police participating in political demonstrations of the kind which has led to expressions of solidarity with Senior Sergeant Chris Hurley, including the selling of wristbands to fund his defence. These kinds of activity have the propensity to inflame relations between Black and White communities, in the same way as the sale of wristbands to support an Indigenous person charged with killing a White Police Officer and demonstrations of support for the alleged culprit in such a case, would certainly inflame members of the Queensland Police Force and their families.

There is rank hypocrisy involved in the Police promoting the view, at least tacitly supported by the Commissioner and State Cabinet Ministers, that Police Officers should not have to face the Courts to answer a criminal charge, even after a Coronial Inquest and an Independent Review by an eminent jurist have supported the bringing of the charge.

This is an abomination in terms of inter-communal relations. It demonstrates, in the starkest possible way, that racism in Queensland is institutionalised and greatly attenuates the belief by

Indigenous people that their lives and property enjoy equal protection or even a reasonable level of protection, under Queensland Law and places the notion of 'justice' in doubt when applied to Indigenous people.

With compliments,

**LEVITT ROBINSON**

**STEWART A. LEVITT**

Principal  
and Founding Director of  
The Errol Wyles Justice Foundation Ltd

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a smaller 'L' and a final flourish.