

**CMC INQUIRY INTO POLICING
IN INDIGENOUS COMMUNITIES
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RE: AFTER STREET

1. INTRODUCTORY COMMENTS

I was the inaugural CEO (Administrator) of the first Aboriginal and Torres Strait Islander legal service on Cape York Peninsula called Tharpuntoo legal Service Aboriginal Corporation. That legal service has now been restructured into some other arrangement. Tharpuntoo is a Wik western CYP language word meaning someone who takes a stick off someone in a fight or someone who settles an argument.

It was my policy at that time, supported by all the Chairpersons of the CYP communities, that this legal service would establish in each community, a form of legal entity suitable to be able to be utilised by the respective community people living there. Any arrangement to in the communities had to be:

- controlled and administered by the communities
- professional legal support from the main Tharpuntoo office at Cairns
- processes that accommodates any customary concerns or issues
- relationship building with Police to improve community understanding of laws and a joint approach to improving watch house conditions.

The rationale simply being the further away legal assistance was the bigger the problem grew. The legal entities in respective communities would be modelled on a Para-Legal type role, being flexible to accommodate the existing and separate language groups that have been forced into other traditional country. It was the envisaged that Tharpuntoo office in Cairns would remain a small administrative support arm for these Para-legals, and Tharpuntoo would look after the CYP community people that ended up in legal troubles while in the Cairns area or having their trials in Cairns. Apart from legal troubles. It is the nature of all Aboriginal bodies that many social support issues are directed to such a body. That is the nature of being an Indigenous support body. Particularly one so far away from their respective homes.

Therefore, in conclusion, my strategic goals at this time were to accommodate legal support and representation for both the community and Cairns situations in a coordinated process. Included in this process was the Indigenous inmates at the Lotus Glen Correctional Centre of which the CYP people made up substantial numbers. .

No Lawyers to be Hired

It must be remembered, that at the time of the formation of Tharpuntoo, Queensland would not allow lawyers to be directly employed by Tharpuntoo, as was the case in other Aboriginal legal services in other States and territories. This fact alone of only being able to “retain: lawyers to ensure of their availability to travel over the CYP monthly court circuits, set back other community legal programs initiatives.. For example, legal educational issues, improving and promoting community accessibility

to Tharpuntoo; community publications that deal with the difficulty of raising then the issues of Child Sexual Assault. Some publications were later finalised by Tharpuntoo:

- Know Your Legal Rights
- Firearm safety
- Child Sexual Assault

and widely distributed across CYP communities and in the Cairns area. I have attached the Know Your legal Rights and the Child Sexual Assault publication. What is prominent in these documents is the use of the Aboriginal colours as our community research then had shown that without something Aboriginal on the front cover and something that community people, especially the youths, would identify with, these documents would be discarded. The faces on the cover are from CYP people themselves.

No Land Council

The other major set back for Tharpuntoo at that time was being directed by both the then ATSIC Peninsula Regional Council for CYP and by the then Minister for Aboriginal affairs, Jerry hand, because there was no land council to address the growing interest in development over CYP, Tharpuntoo would be given extra Commonwealth funds to look after these complicated land and mining issues in CYP.

This was not a function that was compatible with our Charter as an Aboriginal and Torres Strait Islander legal support service but the Tharpuntoo Directors (being originally Chairpersons) needed access to professional advice and support. The role of Tharpuntoo was to provide access to that support and not to provide such support itself.

This was in line with how I then saw the role of community Para-Legals or a better description would be Community legal Support Advisers, that it was not the purpose to provide legal support but to assist their community to be able to access such professional support. The role was similar to a David Jones store when searching for the Directory person to find out where a certain shop was located in the store.

My vision then of the crucial role of these community trained and based support people conveniently described as a Para-legal was later supported in the later final Deaths in Custody Reports. It still remains lost opportunities but not so far that such programs can be introduced.

The rationale is simply that incarceration rates for Indigenous peoples have never decreased and the over the top costs and growing of attempting to deliver legal support services from a far distance when community based initiatives have not been given the chance to work.

The other more pressing initiative in line with your inquiry is that there are role for Police and the community to work together in establishing the Community legal Support Advisers in the more remote Indigenous communities. Their roles will be developed from each community needs and capacity expectations and should have no boundaries except for the core business of legal support.

There is a pressing need to address, plan for what now happens after the Street Report, and trials are over from the Palm Island situation. The first trial has just commenced this week of June and already I am aware from the direct contact of Aboriginal and Non-Aboriginal people of their perceptions that the whole trial will result in very little justice for the Palm Island peoples. I can only remind them to maintain, against their deepening suspicious reactions to how this trial is progressing, to have faith in the legal system and if they lost that, they can have mine. I made this same telling comment to Street in conversation when he was appointed. So far, the Street Report has held the ground that justice is available to Indigenous people but a trial with its inherent legal strategies to smother justice may not keep that ground intact.

This is what my brief submission will concentrate on. What happens After Street? There are a dearth of official reports that deals with most of your inquiry questions and do not really need to be scratched over again except for definite planned implementation.

The other pressing need is whether the “submitted comments” referred in your inquiry as “recommendations” allowed by the Deputy Sate Coroner pursuant to section 46 of *Coroners Act 2003(Q)* with the Palm Island situation will effectively address the “practical recommendations for change” desired by Indigenous community. The “starting point” for her comments, as stated by the Deputy Coroner:

Must be by reference to recommendations [339 recommendations] of the Royal Commission into Aboriginal Deaths in Custody.

It is reprehensible that the detailed recommendations of the Royal Inquiryshould have to be referred to, so many years after the Royal Commission. The evidence is clear however that these recommendations are still apt and still ignored.

The Deputy State Coroner comments must be connected with the person’s death for which they clearly are and these comments are applicable across not only the Palm Island situation but across Queensland, in general; where daily Indigenous peoples and Police collide.

2. Collision Relationship

Historically and contemporary , the relationship inherited and existing between Police and Aboriginal and Torres Strait Islander peoples is a collision just waiting to happen. Acknowledging that fact should not halt the continued search for some predictable solvable traffic hazard initiative by government and community.

If community expectations (and including the views of all those non-Indigenous people who also felt the legal system had let them down as well with the Palm Island situation) are left out of the solvable search with government, the Deputy Sate Coroner comments will be wasted and destined to be echoed in another like situation.

3. Proposed Indigenous Complaint Investigation Unit

There are two main government reasons stated for directing the CMC to inquiry into Policing issues in Indigenous communities:

- Report on the findings of the inquiry; and
- Provide practical recommendations for change.

My suggestion is directed to the latter for the purpose of this inquiry and that is to concentrate on the overall government and public expectations for change from this inquiry; **the establishment of a proposed Indigenous Complaint Investigation Unit that is formed and place within the Office of the Premier and most importantly, within earshot and responsibility of the Premier.**

Anything else or short of will leave the public and Indigenous communities dissatisfied. This is a crucial time in the relationship between Police and Indigenous Queenslanders and the government must show strong and decisive leadership.

Noting the dismal yet compelling comments of the Deputy State Deputy Coroner of the lack of effective and concrete government actions to address at times the unaddressable; that is attempting to predict Indigenous crimes and Police reactions to such crimes, is a folly itself.

What can be done though is to set up a government process to address Police complaints that concern Indigenous peoples. This need or fixation to address the specific recommendations from the Royal Commission into Aboriginal Deaths in Custody should not distract from what practically need to be urgently done now.

The Recommendations are crucial but we should not allow them to become sacrosanct. They are guides for government actions and benchmarks to assess those actions. Take Recommendation 339 as an example. How will reconciliation address or reduce Indigenous crimes. After the end of the ten year campaign of official government supported reconciliation, not much has created change for Indigenous crimes rates, higher incarceration rates, increased juvenile crime and bigger juvenile detention Centres and further continued planned disintegration of Indigenous family and cultural life.

Reconciliation programs are a continued public necessity yet it is not reconciliation that is needed to address Police complaints from Indigenous peoples but a process that is workable without bringing Policing to a standstill. It is also not solely about Police accountability; as existing law deals with that; regardless how viewed as effective or not. Each Police complaint needs to be viewed in its context. It is about *practical recommendations for change* now that work with a process framework that will attract public and Indigenous support and confidence.

4. Role and Function of Proposed Indigenous Complaint Investigation Unit

The role and functions of this proposed Unit need not be set by legislation. It would be a duplication of existing structures such as the CMC itself. It is my recommendation that this Unit be set up:

- within the Office of Premier
- be accountable to the Premier
- be accountable in Reporting to parliament

By establishing the proposed **Indigenous Complaint Investigation Unit** within the Office of the Premier, it satisfies the public expectations that any Police complaints involving Indigenous peoples will be quickly brought to the attention of the Office of Premier and to the Premier himself on the more serious Indigenous deaths in custodies. It is not envisaged that the Unit is to second guess other regulatory bodies that deal with Police behaviour or complaints. The Unit is to work in conjunction with these bodies when a specific Indigenous complaint is formally lodged. All Indigenous deaths in custody will be, apart from those other bodies that require notification, will also be formally notified to this proposed Indigenous Unit.

To allay any doubt, **Indigenous Complaint Investigation Unit** within the Office of Premier and the Premier himself will be included into investigations on every Indigenous deaths in custody. Through the Indigenous Unit, Reports will be tabled into parliament.

The Unit is to have clear independence from other Ministerial Departments except for the Office of Premier. The Police Minister and Department are to cooperate when there is an Indigenous death in custody and any other Department that on advice from the Unit, is directed by the Premier to cooperate.

In summary of the main purpose of the proposed Indigenous Complaint Investigation Unit is to investigate or assist in the investigation with all existing and future allegations regarding Queensland Police in an arrest, community and other watch house situations and Correctional Centres.

Purpose

Each situation/complaint is to be part of the proposed six (6) monthly reports to the Premier and regular update to Parliament. All deaths in custody Reports of the proposed **Indigenous Complaint Investigation Unit** are to be tabled at the conclusion of investigation into Parliament.

Information Reports

Information Reports of the proposed **Indigenous Complaint Investigation Unit** will be collated with the Office of Premier as a joint exercise to advise the Premier and updates from these Information Reports will be tabled in Parliament.

In other words, in the reporting period (6monthly) the proposed **Indigenous Complaint Investigation Unit** cannot just go off on a tangent outside the office of Premier in collating Reports to parliament. The Unit is operate independently within the Office of Premier and be able to criticise and make recommendations that do not need the Office of Premier to approve or agree.

Role and Functions

The proposed **Indigenous Complaint Investigation Unit** is recommended to have the following roles and functions:

- address situations/complaints regarding Queensland Police and Community Police
- a legal educative and awareness function

- ensure proper social and community support for all Police officers and their families stationed in remote Indigenous communities
- Same if needed for other urban areas
- Monitor cultural awareness programs at Police Academy and make recommendations
- Ensure Confidentiality/indemnity process is established in Unit from all parties except for a Court Order for information made available from both the public and Police Officers (except for an Indigenous death in custody)
- Has independence to release its own press Statements

Staffing

The proposed **Indigenous Complaint Investigation Unit is to be staffed by:**

- **Indigenous lawyers** with appropriate administrative support.
- The main office, apart from the Office of Premier, is to be situated at Townsville.
- Office space is to be allocated across other Queensland government departments that are concerned with remote Indigenous communities.
- Ensure Aboriginal and Torres Strait Islander staffing.
- Consideration of legislation to set up proposed **Indigenous Complaint Investigation Unit.**

Conclusion

The proposed **Indigenous Complaint Investigation Unit** is an initiative to address the public perceptions and identified weaknesses inherent where Police need to investigate Police conduct or actions. The key to any success is the support to Indigenous Police Liaison Officers in remote Indigenous communities. These crucial interface people have been ignored for too long.

Unlike other reporting bodies such as the Aboriginal Social Justice Commissioner in that deaths in custody recommendations that are relevant to Queensland is in his field of reporting and benchmarking, the proposed **Indigenous Complaint Investigation Unit is narrowed down to direct action to the public with a transparent reporting and investigative process. The Unit's reporting relationship to parliament is a relationship with all Queenslanders.**

Yours truly,

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