



2011 United Nations
Permanent
Forum on
Indigenous
Issues

Side Event:
Tuesday 24
May 2011

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY 20 YEARS ON ...

IT'S TIME FOR CHANGE!



INTRODUCTION TO THE PANEL

- ◉ Frank Lampard
(Chair, Aboriginal Legal Rights Movement of South Australia)
- ◉ Wayne Muir
(CEO, Victorian Aboriginal Legal Service)
- ◉ Tammy Solonec, Solicitor
(Aboriginal Legal Service of Western Australia)
- ◉ Cathy Eatock (Australian delegate to UNPFII)

OUTLINE

- ◉ Background to Royal Commission (Cathy Eatock)
- ◉ Overview of Royal Commission and recs on Coronial Inquests (Tammy Solonec)
- ◉ Recs on Police Engagement (Wayne Muir)
- ◉ Recs on Prison Services (Frank Lampard)
- ◉ Where to from here?
- ◉ NATSILS advocacy
- ◉ Justice Reinvestment (Tammy Solonec)
- ◉ Open discussion

ABORIGINAL DEATHS IN CUSTODY CAMPAIGN



COMMITTEE TO DEFEND BLACK RIGHTS:

HELEN
CORBETT



EARLY CASE EXAMPLES... CATHY EATOCK

- ◉ Malcolm Smith (Long Bay Prison, NSW)
- ◉ Eddie Murray (Wee Waa Watch House, NSW)
- ◉ Robert Walker (Perth Prison, WA)
- ◉ David Gundy (Shot in home, NSW)

**RAISING THE PROFILE:
Bruce Urquardt & Greg Eatock**



**LONG BAY MARCH:
Greg Eatock & Chirpy Campbell**



CULTURAL CAMPAIGNING: Bruce Urquardt & Tony Donovan



HIGH VISIBILITY APPROACH



COMMITTEE TO DEFEND BLACK RIGHTS NATIONAL CONFERENCE



ISSUES WORKED THROUGH AT THE CONFERENCE: Len Colbung & Greg Eatock



**SIT IN OF NSW ABORIGINAL AFFAIRS DEPT:
Leila & Arthur Murray**



**MEDIA ATTENTION AT NSW ABORIGINAL AFFAIRS
Greg Eatock**



The Royal Commission



OVERVIEW OF THE ROYAL COMMISSION

- ◉ Established in October 1987 in response to a growing public concern that deaths in custody of Aboriginal people were too common and that explanations were too evasive.
- ◉ The final report, released on 15 April 1991 investigated 99 deaths that occurred between 1 January 1980 and 31 May 1989.
- ◉ Final report was 5 volumes in length and contained 339 recommendations.
- ◉ One third of the 99 Aboriginal deaths in custody investigated by the Royal Commission transpired in WA, making WA the Australian jurisdiction with the highest number of Aboriginal deaths in custody for the period examined.

Coronial Inquests



KEY RECOMMENDATIONS RELATING TO CORONIAL INQUESTS

- ◉ Key recommendations (recs 6 - 40)
- ◉ Investigations to cover deaths in prisons, lockups and in police presence (or escaping police - e.g. high speed chases)
- ◉ State Coroners to be responsible for investigations
- ◉ That deaths in custody be treated as a homicide (suicide never presumed) by highly qualified police
- ◉ That ATSILS be notified immediately of deaths
- ◉ That all family members be entitled to representation

THE SITUATION TODAY

- ◉ Deaths in custody continue
- ◉ Incarceration rates have doubled
- ◉ Lack of funding to ATSILS to represent families
- ◉ Coroner's Court under funded and has a severe back log (still hearing cases from 2008).

Examples of recent cases:

- ◉ Ward Inquest
- ◉ Deon Woods

Engagement with Police



INTERACTION WITH POLICE

- ◉ Relations with Police (rec 60-61)
- ◉ Police Complaints (rec 226)
- ◉ Police Training (rec 228)
- ◉ Juvenile Justice (rec 62)
- ◉ Diversion from custody (rec 79 - 89)
- ◉ Imprisonment as a last resort (rec 92 - 121)

- ◉ The situation today and into the future...

Services to Prisoners



THE SITUATION TODAY

◉ Findings from a survey of 41 Aboriginal prisoners at Adelaide Remand Centre, November 2005 revealed:

- * 30 (73%) expected to have insecure or no accommodation on release
- * 15 (36%) reported being homeless before admission
- * 37 (90%) were on Centrelink payments before admission, 2 (5%) had some casual employment and 2 (5%) had no income at all
- * 35 (85%) did not have a drivers licence (ie no photo id)
- * More than half had no birth certificate or Medicare card.

Medical Journal Australia, Anthea S Krieg Volume 184 Number 10 15 May 2006

ISSUES ABORIGINAL PEOPLE EXPERIENCE

Trauma

- * extreme trauma, multiple and ongoing
- * physical, sexual, psychological and emotional abuse
- * compromised ability to manage and cope in the community
- * high complex needs
- * marginalised and unable to access mainstream services
- * relationship between language and memory
- * explicit and implicit memories and triggers
- * affect regulator
- * immobilisation
- * development of avoidance strategies that allow the child to function- disassociation, distraction.

HEALTH

- Many women struggle as supporting parents with enormous pressure put on them by family members.
- involvement of drugs and or alcohol
- domestic violence
- complex medical problems – diabetes
- renal disease, chest disease, hypertension
- Stress
- racism and oppression
- cultural pressures
- mental illness
- Greif and loss

HOUSING

- ◉ Overcrowding
- ◉ frequent moves
- ◉ racism in private rental
- ◉ lack of public housing
- ◉ loss of specific Aboriginal housing unit
- ◉ loss of Aboriginal support workers

EDUCATION

- ◉ frequent moves
- ◉ lack of support
- ◉ difficulties experienced
- ◉ racism

SOCIAL SECURITY ISSUES

- ◉ on completion of 14 days or more in prison client is eligible for Crisis payment. This is half of a Newstart allowance.
- ◉ Newstart allowance- \$453 per fortnight , therefore half is \$226.50.
- ◉ can elect to have half of next allowance in advance at the time of their release.
- ◉ Centrelink allows 13 weeks to obtain a birth certificate and 100 points of ID.
- ◉ Birth Certificate - \$34
- ◉ Proof of age card - \$25

SERVICES PROVIDED TODAY

- ◉ Recs re Custodial Health and Safety
- ◉ Initial Contact
- ◉ Review of prisoner's situation in line with Corrective Services policy and procedures
- ◉ Family contact
- ◉ Arrange legal counsel
- ◉ Establish ongoing schedule of appointments
- ◉ Follow up on all issues raised by prisoners to be dealt with outside prison
- ◉ Confirm through care and reintegration

Where to from here?



ATSILS ADVOCACY OF 20 YEARS SINCE RCIADIC

- ◉ NSW / ACT ALS Project
 - National Survey on implementation of recommendations
 - What measures were taken?
 - Will compile results and report back
 - What has been achieved?
 - Report due in October 2011
 - Conference: Justice without Prejudice
 - Contact Raymond Brazil - raymond.brazil@alsnswact.org.au
- ◉ Rallies held in Perth and Brisbane (15 April 2011)
- ◉ ANTaR campaign to reduce Indigenous incarceration and Project 10%

Justice Reinvestment



What is Justice Reinvestment?

‘... a localised criminal justice policy approach that first emerged in the United States. Under this approach, a portion of the public funds that would have been spent on covering the costs of imprisonment are diverted to local communities that have a high concentration of offenders. The money is invested in community programs, services and activities that are aimed at addressing the underlying causes of crime in those communities’.

Mick Gooda

**Aboriginal and Torres Strait Islander Social Justice
Commissioner**

Australian Human Rights Commission

*ANTaR NSW Seminar - Juvenile Justice Strategy:
A Better Way, Sydney Mechanics School of Arts NSW
20 March 2010*

International Success

◉ Historical beginnings in the USA

- Imprisons more people than anyone else in the world
- 2/3 of prisoners return to jail despite increased spending
- 1990s: US Public Policy Response – New York Think Tank

◉ United Kingdom

- ‘Social Return on Investment’ (SROI) Model that aligns with Justice Reinvestment.
- New UK Govt has committed to “introduce a new ‘rehabilitative revolution’ that will pay independent providers to reduce re-offending, paid for by the savings this new approach will generate within the criminal justice system”

◉ United States

- Now being formally pursued in 11 States
- Using the Justice Reinvestment Model, Kansas reduced its prison population by 7.5%.

The Model

The model for Justice Reinvestment is a four step cycle:

1. Identify Communities (Mapping)
2. Development of Options to Generate Savings
3. Quantify Savings to Reinvest in Identified Communities
4. Measure and Evaluate Impact on Identified Communities

NB: The model should repeat periodically to continually identify high risk communities

STEP 1: MAPPING

- ◉ Geographic analysis of the prison and juvenile detainee populations
- ◉ identify which communities contribute most offenders to the prison and juvenile detention populations, where the offending is committed and the underlying causes of the offending.
- ◉ Identified communities are termed 'high stakes communities'.
- ◉ The Australian Human Rights Commission has identified a number of high stakes Aboriginal communities, however more detailed analysis and mapping with cooperation of State and Territory Governments is required.

STEP 2: GENERATE SAVINGS

- ◉ Quantify savings to reinvest in identified high stakes communities to improve public safety.
- ◉ Often savings are taken from simply not building more new prisons.
- ◉ Can also look to other areas - e.g. E.g. The initiative in Kansas was funded by a liquor tax.
- ◉ Requires a whole of Government approach, including Treasury and COAG.

STEP 3: REINVEST IN COMMUNITIES

- ◉ Development of options, including government and community initiatives to improve services in high stakes communities.
- ◉ Initiatives address not just *where* but also *why* people are incarcerated.
- ◉ E.g. an initiative established in Kansas addressed substance abuse related crime with substance treatment programs in targeted suburbs.
- ◉ Involves developing new diversionary, rehabilitative and targeted Programs as well as expanding pre-existing Programs that have proven results.

STEP 4: EVALUATE IMPACT

- ⦿ Measure and evaluate the impact of the programs on the chosen communities.
- ⦿ Reporting should be provided to the community and Parliament.
- ⦿ Constant cycle of improvement and supporting programs that are proven to work.

The Cycle of Justice Reinvestment should continue on so that mapping is done on a periodic basis and where new high risk communities are identified ... proven services are put into those communities

Applying the Model in Kansas

The Problem:

- ⦿ High incarceration rates, comparable to Cuba and Rwanda (less punitive than Texas)
- ⦿ Gross overrepresentation of African Americans (7 times more likely to be imprisoned)
- ⦿ Since 2004 Kansas has experienced a 7.5% reduction in its prison population. The parole revocation rate is down 48% and parole absconders are down 70%. Parolee reconviction rate dropped by 35%.

Applying the Model (see handout):

1. Analysis and mapping
2. Development of Options to generate savings and improve local communities
3. Quantify savings and reinvest in high needs communities
4. Measure and evaluate impact

Application to Australia



2009 AHRC Social Justice Report Recommendations (Tom Calma)

1. That the Australian Government, through COAG, set criminal justice targets that are integrated into the Closing the Gap agenda.
2. That the Standing Committee of Attorneys General *Working Party* identify Justice Reinvestment as a priority issue under the National Aboriginal and Torres Strait peoples Law and Justice Framework, with the aim of conducting pilot projects in targeted communities in the short term.
3. That the Australian Social Inclusion Board, supported by the Social Inclusion Unit, add Justice Reinvestment as a key strategy in the social inclusion agenda.
4. **That all state and territory governments consider Justice Reinvestment in tandem with their plans to build new prisons. That a percentage of funding that is targeted to prison beds be diverted to trial communities where there are high rates of Aboriginal and Torres Strait peoples offenders.**

POSSIBLE DIFFERENCES BETWEEN APPLICATION IN USA AND AUSTRALIA

- ◉ Mapping may show a more sparse spread of high risk communities (i.e. in USA it was often high density ghetto suburbs)
- ◉ Geographic expanse and increased costs associated with remote and regional communities
- ◉ High number of one race (i.e. Aboriginal people) incarcerated
- ◉ The need for culturally appropriate programs.

FURTHER INFORMATION ON JUSTICE REINVESTMENT IN AUSTRALIA

- ◉ “Building Communities not Prisons: Justice Reinvestment and Indigenous over-imprisonment”, Melanie Schwartz, Australian Indigenous Law Review, Vol 14 No 1, 2010
- ◉ Noetic Solutions, “A Strategic Review of the New South Wales Juvenile Justice System”, Report for the Minister for Juvenile Justice, April 2010, available at http://www.djj.nsw.gov.au/strategic_review.htm.
- ◉ Senate Legal and Constitutional Affairs Committee's 2009 'Access to Justice' Report, http://www.aph.gov.au/senate/committee/legcon_ctte/access_to_justice/report/report.pdf.

OPEN DISCUSSION....

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