



**National Aboriginal & Islander  
Legal Services Secretariat**

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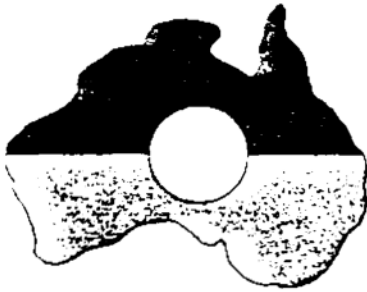
**NAILSS**

GOVERNMENT  
ARCHIVES

WORKING GROUP  
6<sup>th</sup> SESSION

REVIEW OF DEVELOPMENT

WGIP 88/OCE. AUS/2



## *National Aboriginal & Islander Legal Services Secretariat*

*Tel. (02) 699 9277 Cnr. Abercrombie & Cleveland Sts Chippendale 2008 P.O. Box 143, Chippendale*

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**NAILSS**

### ORAL PRESENTATION

Since the fifth session of the Working Group on Indigenous Peoples, there are three items that I'd like to bring to your attention by way of review of developments.

Firstly, Madame Chair, you are not unaware that the Australian government has indicated that it is going to enter into a treaty with the indigenous peoples of Australia. With respect Madame Chair, let me remind you of a similar promise made to your predecessor, Mr. Asborn Eide, at the third session of the Working Group on Indigenous Peoples, when the same government made the promise to introduce uniform national land rights on the five principles. I only hope that in relation to the treaty negotiations, that the same political hypocrisy will not take place - that the goodwill, if it does exist from the Commonwealth and the states, will in fact be evident, rather than the rhetoric.

Secondly, Madame Chair, I was pleased to welcome you to our country in December and January of this year, when you yourself saw conditions under which our people suffer, and we note, Madame Chair, that we wait with eager anticipation your final report on the conditions, as you saw them, in Australia.

Madame Chair, I would also like to draw your attention to the Royal Commission on Aboriginal Deaths in Custody. When you were in Australia in December of this year, there were approximately ninety-two Aboriginal deaths in custody. I now have the unfortunate news that we are now facing 108 deaths in custody. The Commonwealth of Australia in conjunction with the states have enlarged the terms of reference of the Commission. They have increased the number of Royal Commissioners to four to ensure that the matters that they have to deal with will be expeditious. However, at the same time they have changed the terms of reference to delete any death of an Aboriginal person in a mental institution or health institution. We don't know the number of Aboriginal people who have died after being committed to a mental institution by a magistrate, and we will never know.

There have been three matters so far concluded whereby final submissions have been received. However, the Commission has not yet made a finding of fact. We wait for what the Commissioners will do with the first finding of fact.

Madame Chair, I direct you to some of the problems we see with the Royal Commission. Firstly, NAICS and the Committee to Defend Black Rights, were granted leave to appear before the Commissioner Mr. Justice Muirhead in November of last year to protect and identify issues in relation to the collective issues of the Aboriginal People and the Aboriginal Nations, and not just the interests of individual Aboriginal families. We are now in the situation that the four Commissioners are doing their best to deny any role wider than that of the Aboriginal families to ensure that the collective view of the Aboriginal people will not

come forward. We are now finding that enormous pressure is being placed on the Commission and the Commissioners to expedite their findings. They in turn are placing enormous pressure on the Aboriginal community to come up with answers as to why we're dying in community. Its a question of blaming the victim as to why he is the victim. We reject that approach categorically.

We are faced with the unfortunate situation whereby Australia, being a federation, the Commonwealth does not have supreme power; it shares power with the states. We have the situation that in the conduct of the three matters so far, we have counsel appearing for the states, actively protecting the interests of individual police officers. It is not sufficient that the individual police officers are represented by their own counsel. Rather, the state takes an active role in protecting and ensuring the rights of police officers.

Also, I am sorry to inform you Madame Chair, that in one of the matters, namely the Markles matter in Western Australia, that Justice Muirhead has ordered the suppression of the names of the police officers who were involved. Madame Chair, in relation to witness who have appeared before the Royal Commissioner, in particular witnesses who are in custody, we had the unfortunate situation in the Iafald matter and the Kingly-Dixon matter in South Australia whereby prisoners who were brought before the Commissioner were stripped and made to squat for anal examinations. We also have the situation whereby witnesses who are in custody are being threatened with withholding of their telephone calls (which are allowed once a week), the withholding of their visits and the withholding of courses which they can or should partake in. There have been bogus complaints made against prisoners who are witnesses in the deaths in custody. I will remind you that these complaints, even though they might never eventuate in a hearing before a magistrate, can in fact and do effect the person's potential license or parole.

In relation to civilian Aboriginal witnesses, Madame Chair, we've had the unforunate situation in relation to the Eddie Murray inquiry, whereby the Eddie Murray family had to leave town do to the constant attacks and harassment by the police. We also had the unfortunate situation when Justice Muirhead visited Wee watar to view the town where Eddie Murray died, was done under the control and auspices of the police, the same police who were the subject of an inquiry investigating their activities about seven years ago. Madame Chair, it is frightening for Aboriginal people in Australia today to see what is happening with the Royal Commission.

There is a development that the Aboriginal deaths in custody are becoming regarded as being a medical problem. Therefore, it means that every aboriginal person, whether they are killed by

police, whether they are killed by corrective services officer -if we as a child were made by a magistrates order or a judges order were made subject the psychiatric report, that report may later be used to justify an hanging, that report may later be used to justify death by misadventure, as if we, the Aboriginal people, were responsible for our own deaths.

There is, Madame Chair, a collusion between the state governments, the people working to protect the state goverments, and, some people in the Commonwealth. government of Australia.

I'd like to direct your attention to the practices and procedures which were agreed to by the Commonwealth government of Australia and states to find ways and means by which they were to eliminate Aboriginal deaths in custody. Under those practices and procedures, the police were at all time told to notify the Aboriginal legal services, and the families, of and Aboriginal person theyve taken place. The Minister for Justice, Senator (Tate), knows of this; and they still allow this to happen.

Madame Chair, what is happening in Australia today is that every Aboriginal person is at risk of being killed in a police cell or a corrective service institution.

Thank you Madame Chair