Our Ref: MM1216616
(Please quote our reference on all correspondence)
Direct Line: 9926 0310

25 May 2004

The Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Dear Sir

Re: Inquiry into Indigenous Law and Justice

Thank you for the opportunity to make comments to this inquiry. The Children's Legal Issues Committee of the Law Society has requested that I provide you with the following comments.

1. Placement principles for indigenous children

The Law Society has previously raised concerns with relevant agencies about the operation of the "Aboriginal and Torres Strait Islander principles" formulated in Chapter 2 of the *Children and Young Persons (Care and Protection) Act* 1998 in New South Wales.

Despite the Society's comments relating primarily to New South Wales legislation, the concerns raised have resonance in all parts of Australia where indigenous children are in foster care. Any legislation that mandates a regime of care and protection requires ongoing assessment of the adequacy and practical effectiveness of the principles that legislation espouses.

Background

Part 2 of Chapter 2 of the Children and Young Persons (Care and Protection) Act 1998 as amended introduces what are called "Aboriginal and Torres Strait Islander principles".

Section 13 sets forth the hierarchical approach to the placement principles of children the subject of Care Proceedings. These are subject to the objects in Section 8 and the principles in Section 9. The welfare of the child is paramount and governs the Court's decision making.

The hierarchical approach under Section 13 provides:

(a) Placement with extended family or kinship group as recognised by the community.

(b) Placement with an indigenous community to which the young person belongs.

(c) If not practicable or in the best interests of the child or if the child could suffer detriment, then only after consultation with the family kinship groups and appropriate welfare organisations a placement out of home can be undertaken.

Subsection 7 of Section 13 provides that the principles do not apply to placements of less than two weeks or emergency placements apparently made pursuant to Emergency Care and Protection Orders. These provisions are similar to obligations under the preceding legislation in New South Wales[1].

The concern of the Law Society and practitioners in the children's jurisdiction is that the Department of Community Services and/or the Courts frequently fail to give proper effect to the principles even allowing for the best interests of the child or children. The failure is illustrated in the following ways:-

(a) There is frequently a failure to properly identify whether the child is Aboriginal or a Torres Strait Islander as defined under Section 5 (this is a wide definition which may require investigations of the general community in which the child lives to identify whether the child is indigenous).

(b) The apparent or alleged paucity of placements with indigenous carers frequently means the children are placed in foster care placements for months while proceedings are pending. These placements frequently do not accord with the principles. The explanation for the failure to place children is based on the lack of availability of appropriate placements or a failure to identify the need for such a placement.

(c) There is frequently a failure to consult with the welfare groups or indigenous community groups that may be able to assist in identifying a placement. This is exacerbated in some country areas where appropriate temporary arrangements have been made through local indigenous welfare groups or communities. Often when the matter is referred to the Department, the child or children are frequently removed from a placement which is culturally appropriate. This change is not on the basis it is in their best interests to remove them but because as the bureaucracy has not assessed those carers. There is no basic attempt made to engage with the indigenous welfare services which are otherwise well known to the Department of Community Services and the Courts in those country areas.

[1] *Children (Care and Protection) Act* 1987 (see Section 87).

(d) Where an indigenous child is placed in a non-indigenous placement there is typically no real attempt to allow the child to develop any understanding of the child's heritage and culture. Any plans proposed by the Department are espoused in a general way and non-specific in their services. There is frequently a reliance upon the foster carer doing the right thing without any commitment by the Department and its Officers to ensure the heritage and culture needs are followed through.

(e) Not infrequently indigenous siblings are separated, sometimes into indigenous appropriate placements and sometimes not. There is frequently a failure to provide regular contact not only between the siblings but with their extended family members as another form of identifying their heritage. That failure is both in breach of the principles referred to and the objects of the Act which require a child to know and develop a relationship with the child's family and in the wider sense his or her community.

The Law Society considers that the relevant Government agencies must always consider family and kinship options for children entering a care environment, not least because it is culturally appropriate.

2. Listing of Indigenous Care Agencies in Australia

Practitioners have noted that the Minister for Indigenous Affairs may consider compiling a list of appropriate and approved indigenous welfare agencies to be made available to stakeholders in care proceedings including solicitors, Magistrates and agencies such as the Legal Aid Commission and Department of Community Services. The Law Society proposes the list be available in electronic form to facilitate easy updating.

3. Aboriginal Court Liaison Officers in New South Wales

The Committee takes this opportunity to congratulate the Aboriginal Court Liaison Officers (ACLOs) on the excellent work they do in New South Wales. ACLOs have the responsibility of providing advice and support to Police in the management of Aboriginal issues across the Local Area Command. The role of the ACLO is to foster mutual relationships between the NSW Police and local Aboriginal Communities and assist in developing, implementing and reviewing programmes that bring about positive outcomes between the two parties.

Currently ACLOs receive training including the use of computers, first aid, report writing, use of radios, dealing with domestic violence, sexual assault and dealing with DNA sampling procedures. Annual refresher courses will be recommended and a conference will be held in the next few months which will include a training day. Basic legal background would be an excellent addition to the training.

NSW Police currently employs 56 ACLOs statewide in 37 police stations across 28 LACs. There are 11 ACLOs in Sydney – 7 in the metropolitan area and 4 in the greater metropolitan area. The need for additional ACLOs has been identified, and the Law Society supports any initiatives in this regard.

If you would like further information about this submission please contact Simon Arcus, Executive Member, Children's Legal Issues Committee on (02) 9926-0310 or by electronic mail at swa@lasocnsw.asn.au.

Yours faithfully

Gordon Salier
President