

One law for all Australians

By the Hon Philip Ruddock, Federal Attorney-General.

In all that has been written and spoken about the state of dysfunction and widespread prevalence of violence and abuse in Indigenous communities in recent weeks, the poignant words of one woman encapsulated the problem.

It was a letter to the editor of a national newspaper by a 70-year-old Western Desert woman defending the cultural values she grew up with. She wrote -

"Violent behaviour is not acceptable in the communities but the capacity to do something effective is lessened by confusion over authority, such as two systems of law... and the non-recognition of indigenous approaches, voices and solutions." [Weekend Australian, 20/05/2006]

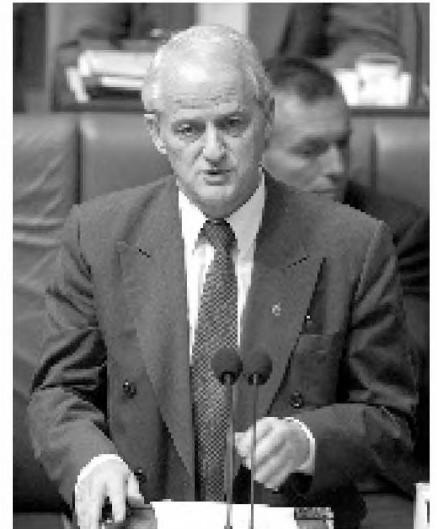
I agree. The problem with the use of customary law to diminish the culpability of the perpetrators of violent and abusive criminal acts is twofold. It offends Aboriginal culture by suggesting it in some way explains or justifies abhorrent behaviour. And it confuses young Indigenous men living in communities without any effective controls – not through the traditional elder structure nor by conventional means of law and order.

That is why the Australian Government is unequivocal in its belief there should be one law for all Australians. We do not consider that customary or cultural laws of whatever culture should ever be seen as an excuse for criminal activity. In the same way Sharia law is not an appropriate consideration when sentencing, neither should customary law.

No-one is suggesting someone's upbringing will not be taken into account. Courts will continue to consider a whole range of factors in sentencing including the character, means and physical or mental condition of the person.

The Law Council of Australia's contention that it would further disadvantage our Indigenous population by doing away with any discussion about customary law misses the fundamental point. That is everyone should be, and is, equal before the law. In that sense, Indigenous Australians are entitled to the same protection afforded to all other Australians from the perpetrators of serious and violent crimes.

While the relationship between customary law and the criminal justice system is a matter for the States and Territories, this issue demands serious



consideration and a universal approach by all Australian governments. Obviously this will be a priority when the Commonwealth sits down with the States and Territories this month at the summit convened by Indigenous Affairs Minister Mal Brough.

Any suggestion that the Racial Discrimination Act 1975 is a barrier to the effective protection of women and children does not accurately portray the intent of this legislation. The Act ensures people of one racial group shall not enjoy their human rights differently from people of other racial groups. Clearly, persons who engage in sexual violence or commit other serious crimes must be treated equally under the law regardless of their racial or ethnic background, or their cultural practices. Advice indicates legislation that prevents the reliance on any form of customary law or cultural practice would not be inconsistent with the Act.

It is a sad reality that 30 years after the Racial Discrimination Act became law, Indigenous people are still among the most disadvantaged in our society. The Australian Government recognises addressing Indigenous disadvantage is a national priority. As the Prime Minister told the national reconciliation workshop last year, the journey towards reconciliation will only be complete "when Indigenous Australians enjoy the same opportunities as other Australians".

New relationships are being built with Indigenous communities – one based on 'shared responsibility', through the mechanism of Shared Responsibility Agreements. This involves quite different approaches to those we have taken in the past. It has been met with the predictable condemnation of the Federal Opposition and some commentators who labelled it as "paternalism".

Continued page 19...

One law for all Australians cont...

These agreements will, over time, make a real and significant impact in terms of overcoming some of the complex problems that underpin the sense of hopelessness experienced by many Indigenous Australians and manifested in the violence and abuse so entrenched in these communities.

One of the ways in which the Government is assisting Indigenous communities is through the Family Violence Prevention Legal Services programme. By focussing on family violence rather than just domestic violence, it not only reflects the extended nature of Indigenous families but approaches the causes and manifestations of violence in Indigenous communities in a holistic manner.

It started out with 13 services providing legal advice and assistance, counselling and support for victims of family violence and sexual assault, as well as conducting a range of community awareness activities to promote the rights of victims

and the role the community has in demonstrating family violence is unacceptable. It has been so successful that the Government went to the last election promising to double the number of units, which happened last year; and contributed another \$23.6 million in this year's budget to take the total to 31 services across Australia.

For those of us who have been travelling to Indigenous communities for 30 years and have witnessed the pain and the suffering firsthand, there is no easy solution, only a steadfast resolve to deal with the underlying causes of the problem. The truth is all jurisdictions have been making efforts to address Indigenous family violence but for the first time, governments are prepared to admit they do not have all the solutions. A new approach is being taken. The time is right for all governments to work together to show collective leadership on this issue.

Aboriginal culture and violence cont...

The other tragic thing about this misinformed debate currently raging is the lack of appreciation of what is law and what is custom, and indeed what is pathology. Calls to legislate the right to a so-called 'customary law' defence are based on assumptions that bear little resemblance to reality including the fact that this is used very rarely. Mitigating factors for our clients tend to be, as for others, their extreme socio-economic disadvantage, miserable life circumstances, abusive childhoods and complete lack of opportunity to change their lives or lifestyles.

But restorative justice, crime prevention, mental health and social equity programs depend on governments and bureaucrats to play their part, and the fledgling, half-hearted effort in the NT to incorporate such processes into the criminal justice system suggests that this will not happen overnight. The recent calls for a law and order response to the problems in the town camps around Alice do not indicate a commitment by government to such initiatives.

The lack of good-will by key players coupled with misinformed assumptions means that each decade or so, we will continue to read about the terrible plight of Aboriginal women and children. Aboriginal men, who are actually the largest single group of victims of violent assaults in the country, will continue to be stereotyped as abusive controllers and Aboriginal Legal Aid Services vilified for defending them, if not their actions.

Small steps towards reducing domestic violence cont...

to provide emergency assistance for women experiencing domestic violence. Where a defendant is served with a restraining order the inaccessibility of police in remote communities limits their effectiveness in protecting a woman from further violence. In our view, increased accessibility to police services and safe houses/emergency accommodation is necessary to reduce violence against women in Indigenous communities.

It is clear that there is a high rate of violence against women in Indigenous communities. It is also clear that restraining orders, while imperfect, are the primary mechanism on which we must rely to reduce violence against women in Indigenous communities. Restraining orders only act as a disincentive for future violence. They can not of themselves actually prevent violence. If we are reliant on restraining orders to reduce violence against women in the short-term, immediate steps must be taken to improve their effectiveness while more long-term strategies can take effect.

CAWLS is funded by Commonwealth Attorney-General's Department

DVLS is funded by the Northern Territory Department of Justice.