

Redfern Legal Centre



23 November 2020

Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody
Legislative Council, NSW Parliament

By email: First.Nations@parliament.nsw.gov.au

Dear Committee,

Please find attached our response to 'Questions on Notice' for the Inquiry into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody.

Yours faithfully,

Samantha Lee
Solicitor
REDFERN LEGAL CENTRE

Redfern Legal Centre: Answer to Questions on Notice

Question 1:

The Hon. PENNY SHARPE: Ms Lee has gone to the point of over-policing. Around the issues with Centrelink debt, are you aware if there is any difference in terms of the way that First Nations women experience having the debt collectors come from Centrelink? If you do not have anything, it is okay. I am just wondering if you, from your experience, has seen a difference in the way that is dealt with.

Ms LEE: That is a good question. Probably our credit and debt practice would be better placed to answer it. I am afraid I cannot provide much insight.

The Hon. PENNY SHARPE: Could you take it on notice? If you do not have anything, that is fine, but I would be very interested in that.

Answer 1:

Redfern Legal Centre does not have the expertise to answer the question on notice taken from the Honourable Penny Sharpe. We therefore sought a response to the question from: Welfare Rights & Advocacy Service, Dhurrawang Aboriginal Human Rights Program within Canberra Community Law and Economic Justice Australia. Please find attached a letter provided by Dhurrawang Aboriginal Human Rights Program (Canberra Community Law) responding to the question from the Honourable Penny Sharpe.

Welfare Rights Advocacy provided the following response:

A lot of the clients we have contact with from the remote communities don't even understand that they have a debt, let alone that they are repaying money for a debt out of their Centrelink payments. Usually they find out they have a debt when either they can't get an advance payment, or they don't get their FTB supplement. These clients first language is usually not English and they are often either illiterate or have very low levels of literacy and numeracy, so frequently don't understand what payments they are meant to get, or what is being taken out of their payments e.g. rent, power, the Community Shop, car loans, funeral bonds/ insurance etc, this has been further complicated by Income Management and the Cashless Debit Card. The other issue is that a large number of the clients have no idea that they are signed up for online letters or how to access these letters. They also do not understand about Bank/ Indue Statements or how to read them. Our experience is that women are usually the ones that are expected to deal with Centrelink for themselves and their male partners

Some of the reasons for the debts include

- Not understanding what they have to tell Centrelink or not being able to easily contact Centrelink*
- Boarding school being paid FTB payments but child is no longer attending that boarding school – clients then end up with an FTB debt and have to try to get the money out of the boarding school*
- Unable to do the tax returns so end up with FTB debts and not being paid FTB – there has been a significant decrease in Tax Help in remote and rural regions and the cost of getting tax returns done is exorbitant*
- FTB debts due to Child Support Agency doing a reassessment of ex-partners income after the ex-partner has done their tax returns (often several years later) – These clients are always on private collection as ex-partner or their family have told them not to get CSA involved*

- *Change of care of children – a lot of clients believe that the other person will tell Centrelink- however there is often a delay whilst Centrelink send the client a form to confirm that their child/ren have left their care (can be up to twelve weeks before FTB cancelled)*
- *Children being taken into care by Child Protection Department (the clients assume that the Child Protection Department will tell Centrelink straight away)*
- *Child going into Youth Detention Centre- clients assume the Youth Detention Centre will tell them if they need to tell Centrelink*
- *Not telling Centrelink the correct amount of wages they or their partner receive – not realising they must declare their or their partner's income before tax or other deduction are taken out of their wages*
- *Partner not telling them the correct rate of earnings or in some cases not even advising that they have been working*
- *Not understanding what income is or not realising they received income – so don't declare income from artwork, royalties, native title distributions etc.*
- *Payments not being cancelled because client was sent to a Private Prison – who do not advise Centrelink client is in prison as the state-run prisons do*

Most of our clients advise that when they have contacted the Centrelink Indigenous Debt Recovery line they have been able to reduce their repayments to a manageable amount, however to do this they do need to be able to access a phone which is often difficult in remote locations. If they want to continue to repay at a lower rate they need to contact Centrelink every thirteen weeks.

The other issue is that frequently someone has organised the client's repayments and told them what to do with Centrelink but the clients have not understood that if things in their lives change they need to contact Centrelink.

I also note that there are difficulties with appeals as frequently the ARO can't contact the client by phone so then the client gets a letter which often they can't read or understand. Unless the client has had advice it is also difficult for clients to do appeals by phone in remote areas as often the person conducting the appeal has no contextual understanding of the client's situation and the client does not know that they have detail their situation and does not understand what the rules are for waiving a debt

Response from Economic Justice Australia:

Regarding the Indigenous Authorised Review Officer proposal, in 2018 EJA proposed that the then Department of Health Services establish an Indigenous Appeals Unit.

Question 2:

Mr DAVID SHOEBRIDGE: But in a system where we have the Inspector of Custodial Services having one role, official visitors having another role, the ombudsman having another role, internal complaints and reviews in custodial services having another role, the police having another role, the Coroners Court having another role— there are at least six so-called independent bodies. Surely one of the recommendations out of this inquiry should be bringing many of those powers and oversight roles into a single body so that there is sufficient gravity and oversight to actually have a statutory oversight body that can do something in corrective services? ombudsman.

The Hon. TREVOR KHAN: Mr Shoebridge, you cannot bring coronial services in with the

Mr DAVID SHOEBRIDGE: I am not saying that you bring them all in. I am just pointing out— I pointed out at least six and that smattering of different agencies does not seem to be working.

Ms LEE: I will have to take that on notice. It is a big leap. I can see the pros and cons in regards to that, but it is something that I think needs further consideration.

Answer 2:

Redfern Legal Centre (RLC) submits there are still gaps, overlaps, inefficiencies and failures with the current oversight model. But RLC has always maintained the position that police complaints and investigations is a specialised field of investigation that requires expertise and specific powers.

In 2015, Redfern Legal Centre made an extensive submission to the NSW Department of Justice regarding the 'Review of Police Oversight in New South Wales' known as the "Tink Review". Our submission addressed some of the issues raised by Mr David Shoebridge. In this submission Redfern Legal Centre proposed that the then Police Integrity Commission (PIC), be expanded to take over the responsibilities of the Ombudsman, with one agency taking on the various functions that were previously performed by two. RLC did not support that ICAC be the single agency due to the reasons outlined at length in the Wood Royal Commission as to the unique nature of the police misconduct.

Whether a single or multi-body oversight sector is in place, of more importance is, as Aboriginal Legal Service outlines in their submission, the model be:

- appropriately resourced
- ensure accountability and independence in investigations
- be guided by international best practice

RLC submits that the Inquiry has been able to hear from numerous witnesses about some of the key problems and concerns with the current oversight model. The models the Committee has stated it is considering include: empowering either the Coroners Court or the LECC to take on the oversight of Deaths in Custody or establishing a new First Nations-led investigative body.

Redfern Legal Centre can see the benefits with resourcing and empowering existing institutions such as the Coroners Court, to take on such investigations. But it is submitted, that in order to properly explore these suggested models, a more in-depth mapping out of the models and alternatives should be explored.

There may be many individuals and agencies that did not make a submission to this Inquiry that may have significant expertise within this area of oversight.

It is therefore proposed, that the Inquiry consider making a recommendation that a First Nations Death in Custody Oversight Advisory body be formed that includes a number of experts from the field, such as; academics, Aboriginal Legal Service, Jumbunna (UTS) and representatives from the Coroners Court. The aim of this body could be to formulate well-informed alternatives to the existing model.

This Advisory could also be afforded with the task of properly exploring the proposal made by the Jumbunna Institute of Indigenous Education and Research at UTS - the establishment of a First Nations-led investigative body to inquire and determine the circumstances of First Nations deaths in custody.