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News from our place... SNAICC

Letter from Brian Butler, Chairman of SNAICC to the Hon. Michael Lavarch, Federal Attorney-General

Dear Mr Lavarch

I write on behalf of the Secretariat of National Aboriginal & Islander Child Care (SNAICC) seeking a meeting with you to discuss the matter of Federal legislation that will restore the rights of Aboriginal & Torres Strait Islander people in relation to their children.

Our organisation has since its inception in the early eighties been calling for legislation that places responsibility for the welfare of Aboriginal children with their communities and tribes.

In the early eighties the Minister for Aboriginal Affairs had called on State and Territory Ministers responsible for child welfare to implement appropriate measures in relation to Aboriginal children or he would consider national legislation. In retrospect this appears to have been a mere threat to evince some form of response from State and Territory Governments to update their procedures and legislation.

Despite the passing of over ten years, the situation has not changed significantly. Aboriginal children are still over-represented in the child welfare and juvenile justice statistics and the level of state intrusion in the lives of Aboriginal families continues.

Whilst federal legislation will not be a universal panacea for the ills of a system that has the inertia of years of racism and colonialism within it, I have no doubt that it would nevertheless go a considerable way towards restoring the rights of Aboriginal families, clans and tribes to do as they see fit in relation to their families and children.

You are no doubt aware that in Canada and the United States of America, the indigenous child welfare system has gone a long way in addressing the demands of Indian tribes to control this field.

I am convinced that the present system of child welfare that has seven or eight different laws in all the States and Territories is a long way from satisfying the desires and demands of Aboriginal communities. Many tribes have multiple jurisdictions to contend with. All communities certainly have to deal with inappropriate systems that are not of their own making and do not incorporate their concepts of child and family welfare. Moreover, the system that this legislation shores up is intrusive, authoritarian in its relations with Aboriginal families and children, and racist in its methods, failing to recognise kinship systems that exist in all Aboriginal communities.

The Aboriginal Child Placement Principle does not adequately address these problems as they are systemic as well as legislative. There are fundamental differences in concept that are also involved that have been violated by legislation, policy and practice.

Rather than the present modus operandi which is based on non-Aborigines making mistakes and committing abuses - Aborigines suffering and protesting, would it not be better to change the emphasis so that it is Aborigines who make the decisions and the mistakes? How long does the paternalism have to go on?

The principle of self-determination in relation to the field of child and family welfare is not being served by the Aboriginal Placement Principle in individual pieces of legislation in eight different locations, often subject to the whim of government in those areas. It is in fact being subverted.

We are talking here about Aboriginal family lives that are being experimented with. The consequences of inappropriate decisions by state welfare authorities are not felt by the ones who make those decisions. They are experienced by Aboriginal people daily.

Given that we know from overseas examples like Canada and the US, that appropriate changes can be made that reduce the level of state intrusion in Aboriginal family life, it appears to be irresponsible to allow the present abuses to go on.

In asserting the right of self-determination in relation to all matters affecting Aboriginal affairs in this country, we include the area of child welfare. The Federal government has Constitutional responsibility for Aboriginal affairs and the power of external affairs power to justify making a special law for the benefit of Aboriginal children.

I am urging you to at least consider what we are saying by meeting with our representatives to discuss this matter and explore the possibilities further. Do not close the door on this issue as many others have before you in earlier Labor Governments.

I look forward to hearing from you at your earliest convenience,

Yours sincerely,

*Brian Butler
Chairman*

National Aboriginal & Islander Children's Day, 4th August 1993

Theme: THEIR FUTURE, OUR RESPONSIBILITY

This year's National Aboriginal & Islander Children's Day (NAICD), reflects a growing concern that the wellbeing and the welfare of Aboriginal children is the sole responsibility of Aboriginal people, their families and communities.

Saying this does not mean that we have not realised this before or that we have not accepted this responsibility before. It says that if we are to make sure we get the best for our children, then we will have to rely on ourselves to make sure that it happens, because the experience of the last ten years has shown us that left to their own devices, governments will do little.

In Australia, where the prime responsibility for the wellbeing of children rests with the State and Territory governments, we have a fragmented system that provides different standards and rights for children in different geographical parts of the country. It is a situation that drew the attention of the UN Special Rapporteur on the Rights of the Child who visited this country last year. In terms of the rights and wellbeing of our children, this situation means that a concerted effort at improving the acknowledged disadvantage of our children cannot be addressed.

In an international comparison of the standards of Indigenous children's rights with other 'developed' countries where there are significant populations of Indigenous Peoples, like the United States and Canada, Australia is also a long way behind. In the US and Canada, the essential right of the Indian People to self-determination in relation to the rights and service provision to their children, is safeguarded through Federal legislation and the Constitution respectively. State and Provincial jurisdictions are subordinated to the tribal and community jurisdiction.

The result is that Indigenous Peoples in those two countries have, to a large extent, taken back responsibility for the welfare and wellbeing of their own children. It has meant that the kinds of abuses that were committed by the state, in the name of the best interests of Indian children, have been minimalised.

In Australia, as mentioned earlier, we are a long way behind. We would like to see the position of our children hauled back into the 20th century, in much the same way as the Mabo High Court decision did for the recognition of our existence, through its negation of the principle of 'terra nullius'.

For Aboriginal children, 'terra nullius' is still a reality. The laws in the States and Northern Territory provide the most meagre of acknowledgments that our children and families are different and have different concepts, structures and relationships.

Because of this situation, which includes the inertia of a child welfare system that is institutionally racist, our children are still over-represented in all the child welfare and juvenile justice statistics.

Ten years ago the Council of Social Welfare Administrators and Ministers said they would respond appropriately to the problems our children face in the system. Their plans have been given enough time to be tried and tested and they are not working.

We have waited long enough and have seen that the problems are too great for the piecemeal changes to have any effect. The problems are well documented, they include the removal of children from families who have had inordinate levels of state intrusion for over three generations.

It is time we were given back our age-old and ancestral responsibility for our children. It is time for federal legislation to be implemented in this country and for the construction of an Aboriginal child and family welfare system run by tribes and communities for the best interests of our children and families. We want this legislation to hand back to us the legal responsibility for our children that over-rides State and Territory jurisdiction. It should also, as the US Indian Child Welfare Act 1978 does, guarantee federal government financial support for the running of Aboriginal services.

Without the Federal Government playing this role, using its external affairs powers and its Aboriginal affairs responsibility, we cannot take up our responsibility.

This is what we mean by 'our responsibility for our children's future'.

For more information about NAICD activities in your area, and interviews, our secretariat in Melbourne [03 417 6744] will gladly help you.