Youth detention Royal Commission ‘compromised’

By ERWIN CHLANDA

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Peak Aboriginal organisations say the appointment of former NT Chief Justice Brian Martin (pictured) as the Royal Commissioner to investigate youth detention in the NT “does not satisfy any threshold of independence.

“Only a few weeks ago he delivered to the NT Government a report about the establishment of a regime to investigate corruption, at the instigation of the now disgraced and former NT Corrections Minister, John Elferink,” says Olga Havnen, the Deputy Chair of the Aboriginal Medical Services Alliance NT (AMSANT).

She says: “He sat at the apex of the NT’s justice system. He presided over all judicial officers who sentenced young Aboriginal offenders to detention, and he knew them all; he himself sentenced juveniles to detention.

“Worse, although Mr Martin retired as NT Chief Justice in 2010, he was later that same year appointed as an additional judge of the Supreme Court of the Northern Territory and he continues to hold that appointment.”

Ms Havnen’s statement is part of a media release late yesterday from the Northern and Central Land Councils and AMSANT whose Chief Executive John Paterson said on behalf of the three organisations: “We are hurt and furious because, yet again, we have been ignored – this time on the most important matter of the safety of our children.

“We are also deeply disturbed that NT Chief Minister Adam Giles was party to developing the terms of reference and selecting the Royal Commissioner.”

Mr Martin was not available for comment, but a spokesperson for him said “I am sure he will be considerate” of the request.

Mr Patterson says the “Royal Commission is compromised from the start”.

He says organisations calling for an “independent” expert heading up the enquiry included the Central Australian Aboriginal Legal Aid Service and North Australian Aboriginal Justice Agency “which are both unable to comment … because they will likely be representing parties before the Commission”.

Says Ms Havnen: “There are many other eminent former judges around the country who would qualify as truly independent, but the Prime Minister clearly did not canvas that field.

“Although Mr Martin retired as NT Chief Justice in 2010, he was later that same year appointed as an additional judge of the Supreme Court of the Northern Territory and he continues to hold that appointment.

“We are further upset that the terms of reference are not cast widely enough to include the wider NT youth justice system, rather than a narrow focus on youth detention, and that they do not specify an examination of the huge over-representation of Aboriginal youth in detention.

“Not only does the Northern Territory justice system lock up more juveniles than any other jurisdiction, more than 90 per cent of those detainees are Aboriginal. ”

Meanwhile the Australian Lawyers Alliance (ALA) says the Turnbull Government has missed a once in a generation opportunity to deal with the inherent racism of the Australian legal system towards Indigenous people.

The alliance questioned whether Mr Martin was the right choice as Royal Commissioner “given the high rates of incarceration of youth and adults, particularly Indigenous people, in which the judiciary has played a part”.

ALA spokesman Greg Barns said that Prime Minister Malcolm Turnbull should have heeded widespread community opposition to his view that a royal commission into NT youth detention ought to be narrowly focused: “The revelations of what is happening in the NT should have resulted in a broad Royal Commission.

“The risk now is that mistreatment and abuse in other parts of Australia will continue, out of sight and out of mind of the narrow Royal Commission in the NT.”

**Comment: After sustained objections to his appointment, Brian martin stood down as Royal Commissioner and was replaced by Mick Gooda.**

**As Olga Havnen, Deputy Chair of the Aboriginal Medical Services Alliance NT (AMSANT) stated: “[Brian Martin] sat at the apex of the NT’s justice system. He presided over all judicial officers who sentenced young Aboriginal offenders to detention, and he knew them all; he himself sentenced juveniles to detention.” One example is the case of Graham X, sentenced to seven years in notorious Berrimah prison by Chief Justice Brian Martin in 2007. Graham was 15 years of age when he was charged by police. Although charged with a serious sexual offence, Graham X was freed to continue with his life in suburban Darwin. Due to inefficiency of the police officer responsible for the case, Graham X did not appear in the Supreme Court until he was almost 19-years-old. Brian Martin was then under extreme pressure from the national media after sentencing a community elder to 4 month’s jail for the anal rape of a 14-year-old girl.**

**Unfortunately, Graham X’s case was not appealed in 2007 or presented to the Royal Commission in 2017 as an example of the unjust incarceration of Aboriginal youth. The ABC headed their report on the case “Man jailed for rape of 13yo girl”. An alternative heading could have been, “Chief Justice sentences Aboriginal boy to seven years for rape of white girl”, for there is little doubt this was a racist trial. An alternative heading could be: “Chief Justice proves his credentials by sentencing Aboriginal boy to seven years.” Considering its reputation for investigative journalism, the ABC could have reported, “Alleged teenage rapist loose on Darwin streets while case delayed for three and a half years – tried as a man – sentenced to seven years in adult prison”.**

**In sentencing Graham X, Brian Martin said, “If you had been tried as a man, the sentence would have been far greater”. What a prejudicial comment! Of course a case of a man charged with sexual assault against a 13-year-old girl would have a very different outcome to a case of a 15-year-old charged with sexual assault against a 13-year-old girl. The Chief Justice’s comment should be soundly condemned because it is totally irrelevant and highly prejudicial against Graham X who was standing in the dock as an almost fully grown 19-year-old. In the jury’s eyes he was being tried as a man in comparison to a white girl described as “naïve”.**