SUBMISSION - Indigenous Juveniles in the Criminal Justice System

PREAMBLE

Since **1788**, and notwithstanding existing and highly developed social structures, indigenous culture has been caged and crushed within the rules of that introduced English judicial system that was and remains so manifestly deficient against thousands of years of lived experience. Beyond first European settlement it took another 179 years until, in **1967**, we amended Section 56 of our Constitution and enabled our legislators *to 'make special laws'* for indigenous Australians whenever that was *'deemed necessary'*. Years of legislative inertia followed and the man so actively involved in that constitutional change, the renowned anthropologist W.E.H Stanner, protested:- **"***A different* (indigenous*) tradition leaves us tongueless and earless towards this other world of meaning and significance".* 24 more years of legislative indolence; then in **1992** Australia's High Court in its most eloquent way offered Eddie Mabo and all indigenous Australians a scathing indictment of our judicial system. Another quarter century passed; in **2017** those gathered at Uluru noted "*Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people* (and) *our youth languish in detention in obscene numbers."* In **2023**, the more so than at any previous time and as the Uluru Statement so clearly identifies, it is the Crime and Punishment features of the English system which so decimate indigenous society.

A SOLUTION

One aspect of the English judicial system, never taken up by the Colonial or any other Australian government, does offer a mechanism for an indigenous stake in the ownership of Australia's judicial system. On its website today the United Kingdom Magistrates Association records:- *'Magistrates (also called Justices of the Peace) are ordinary people who hear cases in court in their community. They sit in benches of three, including two 'wingers' and one who sits in the centre who has received special training to act as chair, known as the Presiding Justice.'* Whilst the 'wingers' aspect of the UK system is applicable only in Lower Courts and only for minor civil and criminal cases, it demonstrates respect for the concept of 'ownership' by community of a relevant part of its judicial affairs. The current crisis in our indigenous juvenile justice system requires much more than the tentative English approach, but the English model is there to be followed. A massive expansion of the concept of 'wingers' in appropriate Australian courts will start to give back to indigenous Australians a rightful stake in that management of their society which was so ruthlessly taken away from them in 1788.

THE SUBMISSION.

- **It is submitted that the Attorney General immediately undertake the necessary process to implement, within all courts under the Attorney's jurisdiction, that process whereby two indigenous chosen 'wingers' sit with every presiding justice in prescribed criminal cases involving indigenous juvenile defendants.**

- **If such an immediate and extensive change to the operation of our courts is beyond the Attorney General's political ambition then at the very least, and in the first instance, the Attorney should immediately commence the staged implementation of that 'wingers' concept for all indigenous juvenile offenders, in all our lower courts.**

- **The 1967 amendment of our Constitution laid down an uncontroversial Australian view with respect to just that which this submission proposes. The time has long passed when indigenous communities should remain as mere observers on the sideline of Australian justice. They have, they have always had, a rightful stake in the ownership of those judicial outcomes that presently and so adversely impact their children.**

England has proved it can be done. This Submission requires no referendum or other excuse for delay; England's own system already has what are, for Australia, the beginning of workable solutions to that last cry from Uluru.

A retired lawyer – June 2023