THE SOUTH AUSTRALIAN ABORIGINAL FINE DEFAULT INTERVENTION STUDY 1986 - 1987

A Report by the Aboriginal Task Force of the
Justice and Consumer Affairs Committee
South Australian Cabinet*

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SUMMARY AND RECOMMENDATIONS

"There is something inherently undesirable and obnoxious about a situation where an offender is ultimately deprived of his liberty with respect to an offence for which Parliament has seen fit to make non-custodial penalties the only option." (G. Hiskey SM - 29th July, 1987)

In failing to pay a court fine, a disproportionately high number of Aboriginal offenders are imprisoned for fine default. The central concern of this study was to:-

1. identify reasons why such a large percentage of Aboriginals failed to pay fines;

2. explore ways of ensuring fines are paid on time; and

3. suggest sentencing alternatives which would avoid the serving of time in prison as punishment for these offences.

I. THE SETTING OF FINES

The failure to pay a fine may relate to the lack of means to do so. At the sentencing level, magistrates were not being provided with sufficient information by defence lawyers on the financial status and history of default of the offender.

Magistrates should be provided with background reports on offenders by defence counsel, supplemented if necessary by correctional or welfare agencies, or by a court worker. The magistrate should be convinced of the ability of the offender to pay the fine. If this precaution is not taken, the order of a fine becomes, by default, an order of imprisonment.

We found, in our study, that a significant number of Aboriginals refused to pay fines as a matter of principle and protest. Intense feelings of hostility and belligerence towards the criminal justice system were noted, and it was this underlying attitude of Aboriginal offenders towards the system which ensured that fines were not paid. Co-operation with a system with which they felt themselves, their families and friends, in constant conflict, was seen as a betrayal of loyalties. These feelings were fostered in childhood and adolescence by negative parental attitudes and early encounters with the law.

II. THE POINT OF DEFAULT

In exploring ways of ensuring fines were paid on time during the duration of the study, two processes of intervention were introduced at the experimental court of Port Adelaide. With the co-operation of the court staff, one of the researchers adopted the role of Aboriginal court adviser. He discussed with defendants their problems in court and urged them to pay their fines on time or to approach the court clerk to make arrangements for payment by instalments.

The second experiment involved the introduction of an early warning notice scheme. On information provided by the clerk of the court, offenders who were about to default on their fines were contacted two weeks before warrants for their arrests were issued, either by an Aboriginal Legal

Rights Movement fieldworker or by the Aboriginal court adviser (the researcher) and were urged to make payment before they defaulted.

We found that early or additional warnings of default did not succeed in increasing the payment of fines by Aboriginals during this period.

The reason for this must be largely attributed to the severely negative attitude which these Aboriginals had towards the criminal justice system. rejecting the legitimacy of the system, they did not accept the justice of their sentences.

The payment of fines by instalments, and the full time implementation of an early warning scheme could be criticised as creating an added demand on the time of ALRM fieldworkers and of the clerk of the court.

However, the role of Aboriginal court adviser, performed by the Aboriginal researcher, showed itself to have considerable educative value and potential. It was warmly evaluated by the Port Adelaide court staff, encouraged by the magistrates, and generally appreciated and well used by Aboriginal defendants.

III. ALTERNATIVES

Participants in this study, and concerned professionals, have judged that it is a careless system which imposed automatic imprisonment by default of fine. The court, not the offender, should make the final decision on the form of retribution. Alternatives have several implications. We will put these forward as three models:-

Model 1: Fine Default Scheme

This process would introduce a special Community Service Order Scheme for fine defaulters, which would intervene in the usual process of imprisonment following default. This scheme could be conducted through the Department of Correctional Services, without the necessity of the offender being returned to court. This is the model presently favoured by the Department.

While a step in the right direction, the fine default scheme could still be seen as a program operating in response to a problem of default, rather than treating the problem itself. Judging by past patterns, it is unlikely that Aboriginals would make application to the court to work off a fine by community service on their own volition.

Under this model, there is the danger that the fine default CSO scheme would come to be seen as just another stage (at extra cost) in the process of default and ultimate imprisonment.

Model II: Court Reassessment

It could be argued that rather than to imprison minor offenders, it would be less costly to bring the defaulter back to court for a second assessment on their ability to pay their fine(s), to review new information on their financial means, and to make a modified or different order.

The prospect that the magistrate may have to deal with the offender again would give greater incentive to courts to examine the appropriateness of fines in the first place.

If the offender's financial circumstances had changed, the original fine may need to be reduced. On the other hand, a community service order, or some other form of supervision, may be seen to be more appropriate.

If a magistrate assesses that the offender has means to pay, but won't pay, then an extended period of imprisonment may be the appropriate deterrent.

At present, courts have no direct feedback on rates of fine default, or on which of these cases result in imprisonment.

Mechanisms could be established to bring a defaulter of fine, bond or community service order, back to court before final determination to imprison.

Courts would need to act quickly in the event of fine default in not allowing too long a period to pass between the offence and retribution.

The return to court of defaulters may be seen to be an impractical demand on an already burdened judicial system, with no guarantee that reassessment will change the situation.

The prospect of a reduction of a fine at a second court sitting might well prove to be an inducement to consume, dispense or conceal income and assets. It might be seen as a sign of weakness on the part of the court which could encourage contempt for the law.

Model III: Stepped Sentencing Package

An alternative model could be to develop a sentencing package in which community service orders are given highest priority, but which also embodies a sequence of options in the event of failure.

At the time of sentencing the offender, a magistrate could order:-

. community service hours/other bonds or initial fine;

. extended hours or fine by default; and

. days in prison by default.

The formula for stepping up the severity of the order following default or breach should be clearly defined by legislation.

By a change of emphasis, community service could replace fines as the primary order in most cases of minor offending. Sentencing magistrates, unless convinced that it is inappropriate, need only order the number of CSO hours if they wish - or they may pronounce the terms of the entire recognizance.

The Department of Correctional Services would then evaluate the suitability or willingness of the offender to undertake a CSO program. Only if the offender is deemed unsuitable or unwilling should the initial fine then be imposed.

As an incentive, community service work should be able to cut out more orders by days of labour than by days in prison. In the event of default, a higher fine should be imposed. Fines, in general, should be seen as harsher sanctions than CSOs. Eight hours of community service work (or an

initial $25 fine) should be seen by offenders to be preferable to 16 hours or a $50 fine by default, or three days in prison when an offender defaults twice.

If there is a breach of a CSO, an extention of work hours or a fine by default would be made by the Department of Correctional Services according to the statutory formula. Imprisonment should be the last resort.

It is advisable that such orders be exercised without undue delay, the full term should seldom need to exceed 12 months.

If this model works people would be pushed through the system at a quicker and more effective rate than before. However, caution is needed. In light of the present Aboriginal state of mind towards the system, their refusal to be cohersed would result in Aboriginals receiving heavier fines and longer terms in prison for minor fines.

Model IV: Wage and Benefit Deducations

A simple strategy would be the automatic confiscation of fines from wages and social security incomes. Some care would need to be taken to ensure that it was taken from 'drinking' money rather than 'food and clothing' money. This approach could be criticised if unreasonable hardships on innocent members of the family were created as a result of monitary confiscations. These deductions could be likened to legislation enforcing financial support from non-custodial parents for their children.

Comments

While the third model might combine the most logical elements of incentive and inducement to offenders to 'pay up and get out' of the system, we have no assurance that it would have this effect on Aboriginals.

The reason for this uncertainty arises from the psychology and practice of passive resistence which has developed among Aboriginals towards the criminal justice system. That is, if they resist the present arrangements, they may well resist any arrangements - for better or for worse.

This is a formidable problem - which threatends the success of even the best conceived reform. Policy and systemic change must, therefore, go hand in hand with participatory and liaison efforts if the best possible combination of solutions are to be implemented successfully.

Recommendations

1. That the three models proposed in this summary, be given serious consideration.

2. That the means of offenders be assessed at the time of sentencing.

3. That Community Service Orders and other bonds be employed more frequently for Aboriginals.

4. That sentencing options be formalised, and that some form of sentencing package, under the one recognizance, be given serious consideration.

5. That seminars for magistrates be established as an ongoing practice.

6. That CSO programs incorporate elements of resocialisation, education about the law, and employment training.

7. That the Aboriginal Legal Rights Movement attend hearings, provide background reports and make sentencing recommendations to courts as minimum service to Aboriginal clients.

8. That the Aboriginal Legal Rights Movement play a greater follow-up role in counselling and informing its clientele of the consequences of non-payment of fines and in mediating between clients and the courts;

9. That if the Aboriginal Legal Rights Movement cannot perform this counselling function, then a special position of Aboriginal court advisor be introduced on a permanent basis in courts which deal with high numbers of Aboriginal defendants.

10. That transient offenders be ordered to attend Community Service Order programs in their home territory.

11. That, where possible, an Aboriginal component be added to all Community Service Order programs, where local offenders can see their labours helping their own families and community (i.e. cleaning up their own streets, helping their own elderly, running sports and recreational programs for their own children and youth, painting and repairing their own homes, constructing and maintaining their own community centre, and so forth).

12. That, in the absence of an Aboriginal component in local CSO programs, Aboriginal offenders be offered the option of attending a special Aboriginal CSO program, such as the one established at Norwood Community Correction's District Office.

13. That an Aboriginal corrections panel, composed predominantly of Aboriginal professionals, community leaders and staff, be set up within the Department of Correctional Services to review the performance of Aboriginal offenders during the term of their sentence and to advise on appropriate CSO work or other details relating to their orders. This panel should be given statutory or some other formal status within the corrections administration.

14. That the Department of Correctional Services, Community Service Order Division, approach the Department of Aboriginal Affairs to see whether the community development goals of that Department could encompass the labour of Aboriginals undertaking community service work.

15. That the Police Department continue to recruit Aboriginals into the force as officers and Police-aides.

16. That the Police Department conduct its own internal investigation into allegations of brutal and unfair treatment of Aboriginals during arrest and interrogation and attempt to root such practices out if, or where, they have been used (refer to Appendix 5).

17. That the Police Department also continue to update the training of its older and more senior officers in community policing and in Aboriginal and Ethnic liaison.

We must emphasis that these ideas are merely 'buds' of our experiments, interaction with, and assessment of the nature of the difficulties encountered in the criminal justice system. They are not yet the fruits.

The practical implementation, and the need for legal and structural adjustment of the system to accommodate any combination of these changes, have not yet been explored.

Obviously, a process of examination and negotiation with the departments and agencies concerned must occur, as the next step, before a fully acceptable and comprehensive package is arrived at.

In the light of what we now know, we feel that it is critical that this process be not delayed.

We recommend that an existing inter-departmental committee be given the task of generating an implementable model and program for change. We also recommend that this committee be given appropriate resources that a full process of investigation and consultation is assured.

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SOUTH AUSTRALIAN
ABORIGINAL FINE DEFAULT - INTERVENTION STUDY

Background

In relation to more than a century of ethnographic study, research on Aboriginal criminal justice issues is relatively new. While not the first to document the high rates of Aboriginal imprisonment the work of Elizabeth Eggleston (1976) did much to draw attention to the matter. The impetus for exploring alternative systems of social control lay at the heart of the seven year Australian Law Reform Commission Inquiry into the recognition of Aboriginal customary laws, particularly in regard to a whole range of minor and juvenile offending where Aboriginal sanctions and community-based rehabilitation might be more appropriate (1986). Following heightened Aboriginal protest over numbers of deaths in custody the Minister of Aboriginal Affairs, Mr. Clyde Holding, established a national inquiry into the broader issues of Aboriginal criminal justice in May, 1986, now to be conducted by the Human Rights Commission.

A number of isolated studies and state government inquiries on matters of policing, court procedure, juvenile crime and corrections have also reported on the nature and seriousness of 'the problem' (Hazlehurst 1986). Some sound proposals for reform have emerged from these studies. In some states drunkenness 'loitering with intent' and 'vagrancy' have been decriminalised, as occurred in South Australia between 1984 and 1985. Legal Aid schemes and prison retraining programs have, with varying success, been introduced. These changes should have had an effect upon Aboriginal imprisonment rates.

A comparison of national prison populations between 1981 and 1986, however, reveals only a slight decline in Aboriginal imprisonment. Aboriginals have comprised between eleven and fourteen per cent of the total prison population over this period (Hazlehurst [1987a]). In South Australia Aboriginal people, who constitute just over 1 per cent of the state population, represented 15.2 per cent of the state prison population in 1983, 15.6 per cent in 1984, 11.9 per cent in 1985 and 14.2 per cent in 1986 (table 1). The decriminalisation of the above charges should have had a direct effect on the decline of Aboriginal imprisonment in 1985.

TABLE 1

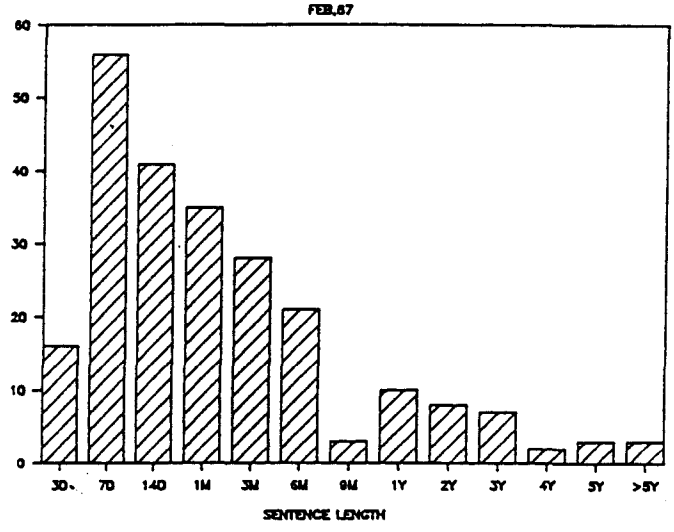
NUMBERS OF PRISONERS BY JURISDICTION, RACE AND SEX
SOUTH AUSTRALIA: 1982-1986

	Aboriginal				Other				Unknown			
	Male	Female	Total	%	Male	Female	Total	%	Male	Female	Total	%
1982	114	4	118	14.5	658	10	668	82.8	24	2	26	3.2
1983	114	2	116	15.2	615	15	630	82.5	15	3	18	2.4
1984	82	6	88	15.6	407	9	416	73.8	60	-	60	10.6
1985	88	5	93	11.9	611	33	644	82.2	44	2	46	5.9
1986	109	6	115	14.2	609	27	636	78.5	58	1	59	7.3

Source: Walker, J and Biles, D. Australian Prisoners Results of the National Prison Census. 30 June 1982 - 1985, Tables 3 and 3A, Australian Institute of Criminology, Canberra; South Australian Department of Correctional Services, figure 1986, Adelaide.

FIGURE 1

SENTENCED PRISONERS RECEIVED BY SENTENCE LENGTH:
SOUTH AUSTRALIA



Source: Department of Correctional Services, 1986-87

According to national statistics the predominant number of Aboriginal prisoners are male, under the age of thirty, serving relatively short sentences between three and six months. Recent studies in South Australia demonstrate that Aboriginal juveniles are more likely to appear before South Australian Children's Court than merely Children's Aid Panels, and at a younger age, than non-Aboriginal juveniles. Aboriginals are over-represented at every level of the juvenile justice system - more are arrested than summonsed, more are heard in court, more charges are laid against them for similar offences. By the time they reach adulthood Aboriginals are receiving harsher penalties as a consequence of their prior convictions. The National Prison Census shows that 77.3 per cent of Aboriginal remandees, compared to 53.2 per cent of non-Aboriginals, had previous prison records (Bailey 1984; Gale and Wundersitz 1985a, 1985b, [1987]; Bailey-Harris and Wundersitz 1985; Hazlehurst [1987a]).

It would be too easy to assert that Aboriginal over-representation in our prisons is the direct result of extraordinary criminality. With the exception of violent crime, which has been recognised as frequently the product of physical and social dislocation (Wilson 1982), the largest proportion of Aboriginal offending falls within minor categories. Repeated claims have been made of police routine checks and harrassment of persons overtly black, police brutality in custody, fabrication of charges, and inadequate and unreliable legal defence, but by their nature such allegations are difficult to substantiate. However, systematic research clearly indicates that the problem of high Aboriginal incarceration is as much a problem of the justice administration as it is a problem of the people it penalises. Over-zealous policing of Aboriginals and the consequences of disadvantage throughout the juvenile and later judicial processes, are becoming increasingly unacceptable to both governments and the public. After repeated findings of over-representation, but little in the way of practical solutions emerging from these reports, the South Australian Attorney-General recommended to the Justice and Consumer Affairs Committee in March 1985 that a special Task Force on Aboriginals and criminal justice be established.

The Aboriginal and Criminal Justice Task Force, set up in June that year, has a mandate to draw out policy implications in the current

TABLE 2

INTAKES TO PRISON BY RACE AND LEGAL STATUS AT RECEPTION: SOUTH AUSTRALIA

1984/85 Financial Year

Race/Status	Unsentenced	%	Fine Default	%	Sentenced	%	Total	%
Aboriginal	265	5	476	11	131	3	872	19
Non-Aboriginal	1581	35	1370	30	401	9	3352	74
Unknown	126	3	134	3	29	1	289	7
TOTAL	1972	44	1980	44	561	12	4513	100

(Percentage figures are taken as a proportion of the grand total).

1985/86 Financial Year

Race/Status	Unsentenced	%	Fine Default	%	Sentenced	%	Total	%
Aboriginal	258	6	492	12	123	3	873	21
Non-Aboriginal	1368	32	1229	29	392	9	2989	72
Unknown	138	3	139	3	36	1	313	7
TOTAL	1764	42	1860	45	551	13	4175	100

(26.5% of all fine defaulters admitted to prison were Aboriginal).

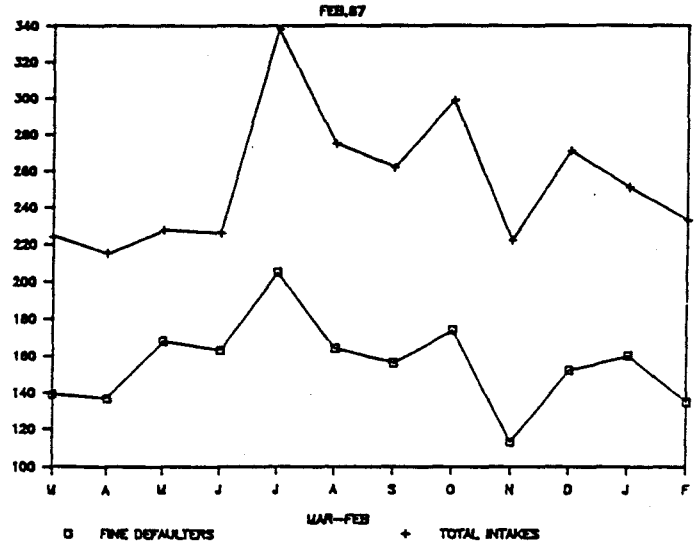
1986/87 Financial Year (to end of March 1987)

Race/Status	Unsentenced	%	Fine Default	%	Sentenced	%	Total	%
Aboriginal	205	6	344	11	126	4	675	21
Non-Aboriginal	927	29	1001	31	378	12	2306	72
Unknown	90	3	110	3	28	1	228	7
TOTAL	1222	38	1455	45	532	17	3209	100

Source: Department of Correctional Services, 1984-1987.

FIGURE 2

SENTENCED INTAKES FOR 12 MONTHS:
SOUTH AUSTRALIA



Source: Department of Correctional Services, 1986-87

findings, and to develop 'action strategies' which will effect practical and measurable reform. It is an interdepartmental committee, which reports directly to the Justice and Consumer Affairs Committee of the South Australian Cabinet (Task Force on Aboriginals and Criminal Justice 1987). It comprises of representatives from the Courts Services Department, the Attorney-General's Department (Office of Crime Statistics), the Police Department, the Department of Community Welfare, the Department of Correctional Services, the Office of Aboriginal Affairs and the Department of Premier and Cabinet. The Aboriginal Legal Rights Movement, the Aboriginal Sobriety Group and the Aboriginal Customary Law Committee, were also invited to act as advisers to the Task Force.

Fine Default

Although its merits are frequently debated, the fine is used more commonly than any other form of sanction in Australia. In a Victorian study of fine imposition and enforcement, four main advantages of the fine were listed:

1. flexibility; fines can be adjusted to suit both the gravity of the offence and the means of the offenders.
2. economy; fines raise revenue and also avoid costly imprisonment of offenders.
3. versatility; fines fulfil the sentencing objectives of retribution, deterrence and reparation.
4. humane aspect; fines spare the offender the potentially damaging effects of imprisonment (and may also be refunded in the event of a miscarriage of justice) (Challinger 1983).

In the studies undertaken by the N.S.W. Bureau of Crime Statistics and Research (Houghton 1985) and by the Research and Planning Unit, S.A. Department of Correctional Services (1984) it was revealed that, in practical terms, the fine falls far short of those ideals.

In South Australia magistrates have not been obliged under legislation to take an offender's means into consideration when issuing a fine. A significant number of Aboriginal offenders are either unemployed or under-employed, increasing the likelihood of fine default. During 1985-86, 21 per cent of all prison intakes in South Australia were known Aboriginal offenders; of all intakes 12 per cent were for Aboriginal fine default (table 2). Fines defaulted by Aboriginal

TABLE 3

SOUTH AUSTRALIAN PRISON INTAKES FOR FINE DEFAULT 1985-86

Days Served in Default	Aboriginal	Other *	Total
1-3	141	252	393
4-7	160	509	669
8-14	75	270	345
15-28	90	274	364
>28	21	79	100
	487	1384	1871

(* Includes 'Unknown' as well as 'non-Aboriginal')

TABLE 4

SOUTH AUSTRALIAN OUTCOMES OF IMPRISONMENT FOR FINE DEFAULT 1985-86

	Paid		Served			
	No.	%	No.	%	Total	%
Aboriginal	60	13.4	387	86.6	447	100
Non-Aboriginal	317	28.3	805	71.7	1122	100
Unknown	57	39.6	87	60.4	144	100
TOTAL	434		1279		1713 *	

(* This figure is slightly lower than that for intakes over the same period due mainly to subsequent remanding and/or sentencing of some offenders on other charges).

TABLE 5

COMMUNITY SERVICE ORDERS COMMENCED 1985-86 BY ABORIGINALITY: SOUTH AUSTRALIA.

	Male	%	Female	%	%	Total	%
Aboriginal	85	93.4	6	6.6	100	91	12.6
Non-Aboriginal	543	89.9	61	10.1	100	604	83.5
Unknown	25	89.3	3	10.7	100	28	3.9
Total	653		70			723	100%

12.6% of Community Service Orders commenced in 1985-86 were imposed on (known) Aboriginal Offenders in the State.

TABLE 6

OUTCOME OF SUPERVISION ORDERS EXPIRING 1985-86 BY ABORIGINALITY: SOUTH AUSTRALIA.

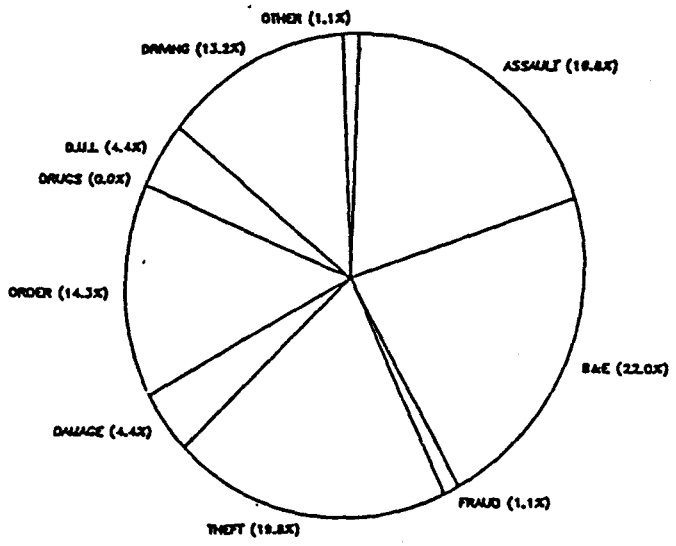
	Aboriginal	%	Non-Aboriginal	%	Unknown	%	%	Total	%
Probation	107	7.2	1302	88.1	69	4.7	100	1478	68.1
Parole	35	14.0	204	82.0	10	4.0	100	249	11.5
CSO	37	8.3	389	87.6	18	4.1	100	444	20.4
Total	179		1895		97			2171	100%

Source: Department of Correctional Services, 1986-1987

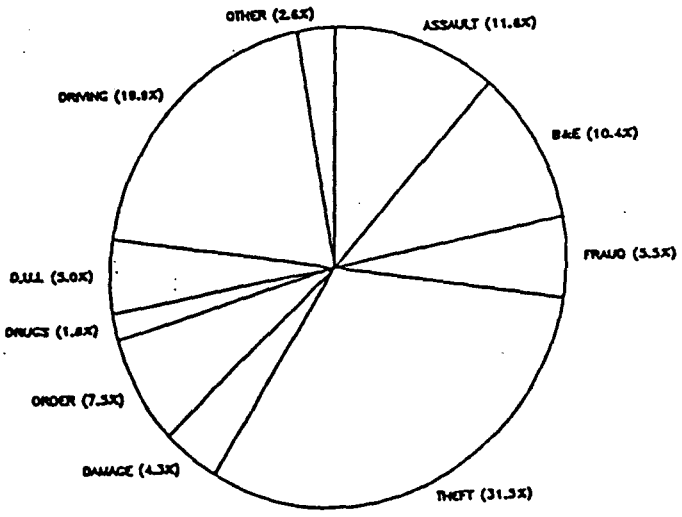
FIGURE 3

COMMUNITY SERVICE ORDER OFFENDERS 1985-86: SOUTH AUSTRALIA.

Offences Committed by Aboriginals



Offences Committed by Non-Aboriginals



Source: Department of Correctional Services, 1986-1987.

offenders ranged from $25 to $1,796 (mean $233; median $154). For other offenders this was slightly higher (mean $262; median $180).

Imprisonment has been automatic in the event of fine default in South Australia. If a fine is not paid, and no effort is made to negotiate an extension for payment with the court, a warrant is issued for the amount of the fine by the Clerk of the Court, and is then exercised by the police. Until the last month of this study fines were being 'cut out' in prison at a rate of $25 a day.

According to Department of Correctional Services figures there is a tendency for Aboriginal defaulters to be serving shorter prison terms for fine default than other offenders (table 3). This is attributed to the generally less serious nature of Aboriginal offending. The most common offence category for Aboriginal defaulters was Offensive Behaviour (20%), while Driving Offences (31%) and Drink Driving (17%) were most common for people of non-Aboriginal background.

For the year 1985-86, 28.3 per cent of non-Aboriginal fine defaulters obtained early release as a result of part or full payment of their warrant(s) compared to 13.4 per cent of the known Aboriginal defaulters (table 4). The impact of fine default upon the South Australian total prison intakes is clear in table 2 and figure 2.

According to the observations in the S.A. Department of Correctional Services Report the main disadvantage of the fine was that, although legislation may specify maximum penalties for particular offences, the amount of the fine was still largely in the discretion of the sentencing magistrate. While this is 'desirable in the interest of flexibility', noted the Report, 'this practise is not without its associated difficulties'.

The following sentencing guidelines are generally agreed upon:

1. the fine should be proportional to the gravity of the offence and the means of the offender;
2. the fine should not be so high as to render imprisonment by default a certainty;
3. nor so low as to amount to a 'licence to re-offend';
4. the fine should not interfere with payment of compensation or reparation;

5. the burden of payment should fall on the offender only (S.A. Department of Correctional Services 1984, pg. 12-13).

During the hearing most sentencing magistrates do question offenders about their ability to pay a fine, particularly if a case for the consideration of means is argued for by their legal counsel. But it appears that these fines are seldom proportional to the means of the Aboriginal offender. It is most likely that the burden of payment will fall on the family of the offender and that the fine will render imprisonment a certainty.

In the N.S.W. study it was found that imprisonment by fine default was very high and increasing. In 1983, 5,000 persons, over half those received into N.S.W. goals, were imprisoned for fine default. It was pointed out that this was considerably higher than figures in the United Kingdom (24%) Western Australia (35%) and Tasmania (10%) (1985, p.55).

The economy factor of the fine must be seriously debated when incarceration rates for fine default reach such high proportions. The administrative costs of processing short-term prisoners for fine default far exceed the amount recovered from defaulters in prison. The arguments of the humane or the deterrent values of the fine also come under question when offenders, unable to pay fines, are either tempted to commit further felonies to repay them, or simply opt to cut out their fines in prison. Either way the general community suffers and the practical objectives of deterrence and reparation are lost.

The N.S.W. study confirmed the distinctions made by Morgan and Bowles (1981) between four kinds of defaulters:

1. principled; persons who, by either conscience or personal campaign refused to pay a fine;

2. calculating; persons who wilfully refused to pay a fine, and preferred to serve time in prison;

3. negligent; persons who, through their poor ability to cope or reluctance to deal with the court system, made no effort to pay the fine;

4. indigent; persons unable to pay the fine in time, the unemployed or underemployed, the poor and needy.

The fourth situation represented the majority of those imprisoned for fine default (Houghton 1985; Morgan and Bowles 1981). The third and fourth situation would also apply to the majority of Aboriginal defaulters throughout Australia:

> The findings from the Bureau study give a clear picture of who is being imprisoned for default and why. To summarise, defaulters imprisoned in N.S.W. are most often males under the age of 30 who were fined for driving and traffic offences and who owed, on average, $382 in fines. Many owed much less than this. Most were cutting out one fine only with an average sentence to be served of less than two weeks. Almost half had previously been imprisoned, either for the non-payment of fines and/or for some other reason. Most were unemployed at the time of receiving the fine and remained unemployed until imprisoned (Houghton 1985, p.56).

It is, perhaps, this category of offender, the unemployed male under thirty, whose frustration may ferment into more serious criminality in prison. The practical, 'hands-on' community service work order, on the other hand, enables the offender to experience retribution and to make amends to society through physical exertion rather than idle frustration.

Community-based work order schemes, successfully introduced in Britain, the United States, New Zealand and several Western European countries in the mid 1960s and early 1970s, have strongly influenced Australian programs. Schemes for adult offenders were introduced in Tasmania in October 1972, Western Australia in 1977, the Northern Territory in 1979, New South Wales in 1980, Queensland in 1981, Victoria and South Australia in 1982 and the ACT in 1985.

The community service sentencing option was introduced into South Australian legislation with the passing of amendments to the Offenders Probation Act (1913-1981). Initially the scheme was to offer the courts an alternative to short term imprisonment for suitable offenders. While seen as a substantive penalty, the work order was aimed at benefiting both the community and the offender. The philosophy behind this approach outlined by a former Chief Secretary, Mr. John Olsen, in a preface to a departmental report, Community Service for Adult Offenders is as follows:

> The community service order scheme offers a positive means of dealing with the offender by enabling him to make up for his negative acts in a positive way. Using the age old concept of restitution, the offender is required to make good the harm done through his offending to the victim, to the community and to himself. The ultimate aim is to make the offender accountable to himself as well as to society.
>
> The community service order offers other benefits. By enabling the offender to keep his job, by maintaining the family unit and reducing exposure to undesirable associates, it is a constructive punishment offering considerable rehabilitative opportunities (S.A. Department of Correctional Services, Forward, 1982).

The objectives of the scheme for South Australia were listed as:

1. punitive; in the loss of personal liberty for some part of the week while the offender undertook the work order;

2. beneficial; for the community which was the recipient of the unpaid labour of the offenders;

3. less expensive; to the community than imprisonment;

4. less disruptive; of the offender's family obligations and employment;

5. rehabilitative; for the offenders who, by working alongside volunteers and the less fortunate in the community, were frequently able to restore their self esteem and lost work habits and even to develop new employment skills;

6. less likely to promote recidivisim; by avoiding fine default and undesirable association in imprisonment (S.A. Department of Correctional Services 1982; Oxley 1984; Kattau 1986).

In a comparison made in February 1984 with the general prison population, Aboriginals (36 per cent) and unemployed persons (84 per cent) were grossly over-represented amongst fine defaulters in South

Australia. In addition, Aboriginals and the unemployed were the most likely sectors to have previously defaulted on payment of a fine, and fine defaulters were most likely to have had prior records of imprisonment. Once in prison, the report related, length of default period and previous prison experience appear to play a more important part in determining the outcome of the imprisonment than do the amount owed, and the amount being cut out per day. In other words, a history of previous imprisonment was likely to decrease the probability of payment, while a long default period in prison appeared to work as an incentive to pay. The finding of this study supported the hypothesis that there was a significant relationship between Aboriginality, previous fine default, and imprisonment rates. Inability to pay was the most common reason given by non-Aboriginals for default (30 per cent) but about 50 per cent of the Aboriginals interviewed asserted that they would rather 'do time' than pay their fines as long, the data implies, as the term of imprisonment was not for too long a period (S.A. Department of Correctional Services, 1984, pp 5-7).

While the gaoling of fine defaulters is not exclusive to South Australia, persons in this category appear to constitute a higher percentage of prisoners sentenced in this state than in other Australian state and territory. In South Australia almost two-thirds of prisoners received under sentence each year are fine defaulters. For 1985-86 there were 1,871 prison intakes as a result of failure to pay fines imposed by criminal courts.

The South Australian Department of Correctional Services recommended to Cabinet that a series of measures, aimed at minimising the incidence of imprisonment for fine default, be taken. These included:

1. requiring courts to take an offender's means into account in settling the level of fines;

2. requiring that people only are gaoled if their failure to pay is deemed wilful and contemptuous;

3. providing courts with a range of alternative sanctions, including community service orders, which can be substituted for fines.

On 14 May 1984 the Department of Correctional Services appointed an

Aboriginal Liaison Officer as an inititative in this area. One of her functions was to help develop links with the Aboriginal community and to encourage Aboriginal community groups to become involved in community service schemes.

The South Australian Fine Default Action Study

In response to the findings of the South Australian Department of Correctional Services, and to a growing concern in government and the general public about high Aboriginal imprisonment rates, the Terms of Reference of the Aboriginal Task Force were drafted as follows:

1. to review, and report to the Justice and Consumer Affairs Committee on programs relating to Aboriginals and criminal justice in South Australia;

2. to identify gaps in existing programs or services, and to recommend priorities for further initiatives;

3. to obtain funding for, and to initiate, action-orientated research;

4. to ensure that relevant interest groups and communities both are consulted with, and are involved in, criminal justice initiatives relating to Aboriginal people.

Two areas for priority action were identified:

1. to develop policies to reduce the unusually high number of Aboriginals gaoled for fine default;

2. to study and find ways to improve the interaction between police and Aboriginals in urban areas - particularly with regard to finding ways of reducing arrest-rates for minor offences.

In November 1985, the Aboriginal Task Force invited the Australian Institute of Criminology, Canberra, to make its Senior Research Officer, Mrs Kayleen Hazlehurst, available to the committee to assist them in the development of a proposal for action-oriented research into the area of Aboriginal fine default. Following initial meetings

(11-13 November 1985) with the committee and its representatives, the Task Force extended an invitation on 4 March 1986 to the Director of the Institute of Criminology, Professor R. Harding, for Mrs Hazlehurst to act as a consultant to the project.

The main function of Mrs Hazlehurst was to visit South Australia every few months to advise the researchers on the Aboriginal fine default study and action strategy; to assist in the negotiations for implementation; and to act as a consultant in preparing the final report. Dr Adam Sutton, Director of the Office of Crime Statistics, was to play a consultative role in the monitoring progress of the research and to assist in the analysis of data collected. Under funds provided by the Criminology Research Council, a full-time project researcher, Mr Michael Harris, was initially hired for a term of nine months. This was extended another three months, to a total of twelve months. Mr Harris' own Aboriginal background and his seven and a half years of experience at the Department of Community Welfare brought valuable expertise to the project. On 30 June 1986, Ms Leanne Weber, then research officer with the South Australian Department of Correctional Services, and author of the

Department's 1984 Fine Default in South Australia study, worked closely with Mr Harris in the early months in the development of an action plan for the study.

This study was supported by the South Australian Minister of Aboriginal Affairs, Mr. Gregory Crafter, and was administered by the South Australian Office of Aboriginal Affairs, under the supervision of its Director, Mr. J. Moriarty, in conjunction with the Aboriginal Task Force of the Justice and Consumer Affairs Committee.

The major challenge for contemporary research on Aboriginal criminal justice issues today was to marry academic studies of 'problems' and 'causes' with positive action and experimentation for change. The South Australian Aboriginal Fine Default project aimed at combining research and action in order to investigate ways of reducing the numbers of Aboriginal fine defaulters being sent to gaol. An action-oriented approach was, therefore, adopted in this study. Action research focuses, primarily, upon practical problems and the discovery of methods for determining social change. Pure research, on the other hand, deals with theoretical problems and the discovery of

scientific principles or laws (Theodorson and Theodorson 1969, p.4; Halsey 1972, pp. 165-179).

Action research is an exercise in applied research. Specific problems are identified; methods for intervention and the desired change are devised; the results of the experiment are monitored and recommendations are subsequently formulated on the basis of these results. It is designed to do more than state 'the problem'. It is designed to do more than measure the problem. Problem-solving mechanisms are temporarily established for testing and refinement. No one criminal justice agency was in control of this project, but all relevant agencies would be invited to make an active contribution to the experiment - each according to their relevant capacity. Inter-departmental collaboration and support were seen as primary to the success of such a project. Where they are not pro-offered, or where they are only proffered in part, the experiment may fail or may be only partially successful.

THE AIMS of the fine default action study were as follows:

1. to identify factors relevant to the over-representation of Aboriginals imprisoned for fine default;

2. to develop intervention strategies, to be employed at a selected court, for the reduction of unusually high rates of Aboriginals imprisoned for fine default;

3. to measure the effectiveness of those intervention strategies, which were successfully put in place for the duration of the study, in their impact upon Aboriginal fine default.

Stage 1 Data Collection

This project was to establish a set of indicators which could later be used in assessing whether the program of action taken under this study had been successful. The study was to involve two courts - Port Adelaide as the experimental court and Adelaide Court as the control court. Both courts were to complete weekly tally sheets, on the following indicators:

1. the number of fines imposed upon individuals (Aboriginal/ non-Aboriginal);

2. the number of extensions on fine payment granted by the Clerk of Court;

3. the number of warrant warnings sent to the Aboriginal Legal Rights Movement;

4. the number of warrants issued for arrests following the non-payment of fines;

5. the number of fines paid in part;

6. the fines paid in full;

7. the number of warrant suspension orders issued;

8. the number of orders revoking suspension of the warrant issued.

In addition to this specialised collection, both courts were asked to identify Aboriginality upon their regular Courts of Summary Jurisdiction forms (Office of Crime Statistics - Attorney-General's Department) for the duration of the study. Although Aboriginality is eventually provided in these later state collections the process involved delays of up to three months. As an action-oriented study, rather than a study merely collecting data for its own sake, an important aspect of this research involved feedback to the agencies on current trends, and any indications of change to these trends as a result of conscious change of policy or practice. An indication of Aboriginality, therefore, facilitated faster processing of this information.

Stage 2 Action Strategy Program

The second aim of the study, and one which separated it from purely analytical forms of research, was the design of a program of action and consultative dialogue with criminal justice agencies. The objectives of this interaction were to:

1. improve communications between the relevant criminal justice agencies;

2. increase appreciation of the nature and breadth of the problem of Aboriginal fine default;

3. identify, in consultation with those agencies, areas in which intervention might address this problem;

4. establish uncomplicated strategies for intervention which were acceptable to those agencies.

Agencies to be approached were the police, magistrates and court staff, the Department of Correctional Services, Aboriginals at court, Aboriginal Community groups, and the Aboriginal Legal Rights Movement.

Communications were to be established with police officials and street officers in the experimental area of Port Adelaide to seek their co-operation in the study. Police would be asked to examine their policing practices, specifically towards Aboriginal people, and to make efforts to avoid situations where it was known Aboriginal people would be likely to be provoked by police behaviour into committing multiple minor offences. While the researchers were not seeking that the police be negligent in their duties, they were asking the police to consider those situations where excessive diligence on the part of the police might be seen to be discriminatory or unfair. This would extend to areas where police discretion would be employed, such as the issuing of a caution to a juvenile rather than apprehension or in the exercise of warrants where a person clearly wished to pay off a fine.

A reduction in court appearances of Aboriginal people was hoped for in the Port Adelaide area through this process.

The researchers were to hold meetings with magistrates and court staff to urge them to explore every option available to the court system, under existing legisation, which might divert Aboriginal offenders from penal institutions. The courts were to be asked to examine their sentencing practices to consider ways in which they could either reduce the number of fines imposed upon Aboriginal offenders - particularly those with a history of fine default; reduce the amount of these fines; or by encouraging special arrangements for payment of

fines.

Magistrates who would be practising at the Port Adelaide Court during the term of this experiment were to be asked to also examine why community service orders had not been regularly used for Aboriginal offenders as options to fines. Through meetings with the researchers, magistrates and court staff were to be encouraged to express their concerns, and to analyse the nature of the obstacles (whether legal or practical) which they felt prevented the greater employment of sentencing options for Aboriginals.

The researchers needed to enlist the support of both the Adelaide Magistrates and Port Adelaide court staff in the collection of data on Aboriginal fines and fine default. In addition to this, the Port Adelaide Court would be asked to implement a special strategy for intervention during the collection period. This strategy would be relatively simple but was expected to be effective in bringing about some change in defaulting trends. The project would also look largely to the Aboriginal Legal Rights Movement for its support and participation in the intervention activities.

As the legislation concerned with the imposition of fines and community service orders was about to be amended (Criminal Courts [Sentencing] Act, 1986) the researchers hoped to review the draft of these amendments and, where necessary, make a submission on matters which had emerged in their study as obstacles to the smooth running of these schemes for Aboriginal people.

The researchers also wished to hold regular discussions with the Department of Correctional Services on the practical ways in which the department could intervene in the cycle of Aboriginal imprisonment by fine default. One of the central issues in these discussions was the recognised need for the Department of Correctional Services to recommend community service orders more frequently for Aboriginal offenders in their pre-sentence reports and community service assessments. The question of whether a special Aboriginal community service order package was required needed to be addressed. Magistrates should be able to find these recommendations acceptable for sentencing. An imaginative and co-operative approach was called for. The researchers wished to ask the Department to analyse its own internal restraints to the success of this project in the past, not

only in terms of policy and practice, but also in terms of attitudes and habit among its supervisory staff. As future legislation would not only make alternative sentencing options more accessible to the justice system, but would also condone their greater use, these issues needed to be addressed by the department as a matter of some urgency. It was the hope of the researchers that a genuine option for an Aboriginal community service order program could be established by the Department of Correctional Services before the end of the study.

It was the further objective of this study to begin to build up links with Aboriginal community groups to discuss ways in which their members could avoid imprisonment by fine default and the kinds of incidents which would lead to arrest. It was considered important that Aboriginal interest in, or reservations about community service order programs were noted and any preferences which they had in the implementation or management of these programs be recorded. The discussion of these ideas with community groups in the Adelaide and Port Adelaide area, where future legislation, policy and programs would affect and possibly benefit their people, was seen to be central to this study.

Stage 3 Analysis

The proposed final stage of the project was to assess the trends in the light of the indicators established in Stage 1. Collection and interaction was to be ongoing during the period of the study in order to provide some feedback to the participating agencies. Final analysis, however, would be reserved to the last month of the collection process. The purpose of this analysis was to ascertain whether the indicators, established at the outset before intervention, had shown any change in trends towards the latter part of the study. The objective was to see whether the strategies of intervention were having any effects at the experimental court of Port Adelaide (as opposed to the control court of Adelaide) in the decrease of numbers and average amounts of fines imposed, increase in payment of fines, and the decrease in numbers gaoled for fine default.

The Study July-October 1986

The first four months of this study revealed to the researchers the ambitiousness of such a project. In entertaining avenues for change

and in seeking to undertake action planning in line with the objectives of the study many obstacles were encountered. While at first disheartening, it was realised that the difficulties experienced by the researchers were in fact extremely informative. They revealed aspects of the criminal justice structure and process, policy and practice, which determined the processing of Aboriginal people through the system along the well-worn channel into the prison system, as opposed to the less understood or accepted channels which were diversionary in nature.

It was clear that while forthcoming legislative reform provided the opportunity for an increased flexibility in the use of alternative sentencing options, habit and systemic elements in that process discouraged their full adoption. The researchers further recognised that the success of this short project would rest completely upon the goodwill and co-operation of the relevant agencies to join with us in the experiment; to undertake a serious degree of self-examination (a difficult request to make of busy professionals at any time); and to become active agents for change during the period of the experiment.

Securing the interest, arousing the enthusiasm and obtaining some commitment from police, courts, corrections, legal service, and community groups - to the extent that they felt themselves to be a part of the study - was probably the most ambitious aspect of this project. After four months of informal discussions, formal meetings, and negotiations with the criminal justice sectors it was decided by the researchers that even if such a degree of commitment was not secured, as was hoped, and that a significant degree of change was not seen in the indicators by the end of the project, the exercise in identifying legal, practical and systemic obstructions on a small scale would itself prove to be a useful guide to the kinds of difficulties statewide efforts for change would encounter.

It was noted that, although the Department of Correctional Services anticipated that a general community service order scheme would be fully functional in 1982, by the outset of this study on June 30 1986 it was still functioning at a substantially lower profile than had been expected. The low priority given it by the government for statewide implementation left the impression that the scheme was under-staffed and under-utilised. Financial and human resources which might have been diverted from traditional options into the new scheme,

to provide the necessary administration on a scale that would have indicated a seriousness about the desired change, seemed wanting. Some of this reluctance could be attributed to a 'chicken-or-egg' hesitancy to jeopardise over-taxed existing correctional programs, particularly prisons, before their relief through genuine options could be assured.

In the majority of cases magistrates we spoke to were also 'uneasy' with sentencing and penalty options - even though they recognised them as 'a good thing'. Correctional staff, employed specifically to explore the possibility of separate Aboriginal community service order programs by liaising with Aboriginal community groups, related how their efforts were frequently frustrated by 'conservatism' within the Department of Correctional Services. On the other hand, there was a confessed fear among some correctional staff, trying to get the general programs on their feet, that Aboriginals would 'spoil' the good reputation of programs in the wider community.

Thus, it was apparent early in our study that we had a situation of theoretical but insufficient tangible support of the establishment of Aboriginal community service order programs and some dissuasion of Aboriginal offenders onto the general programs.

Policy, practice and government support, it seemed, competed with the spirit of legislative reform, albeit that these intentions for reform were unclear in certain respects.

Meetings and Liaison

In order to estabish a communication network with criminal justice agencies, to discuss intervention strategies and to set in place the indicator collection mechanisms, formal meetings were arranged with the appropriate agencies. A summary of some of these follows:

Meetings with Magistrates

On 18 September 1986 the project researcher, Mr. Michael Harris and the Director of the Office of Crime Statistics, Dr. Adam Sutton, met with the Chief Magistrate, Mr. N. Manos, to explain the objectives and methodology of the study and to seek his support and advice. Mr. Manos agreed that the provision of comprehensive background reports on

the defendant to the magistrate would better assist magistrates in determining the appropriate penalty for that particular offender. The researchers explained that they hoped to gain the co-operation of the Aboriginal Legal Rights Movement in the provision of fuller reports.

Mr. Manos said that he would like, however, to see some consistency in the magistracy regarding fines and community service orders imposed on offenders, that is, the appropriate penalty given in accord with the gravity of the offence. In some instances, Mr. Manos said, offenders were asked if they would like to be placed on a community service order, however most offenders chose to 'do time' instead of work orders. Mr. Manos pointed out that the costs of keeping offenders in prison for many minor offences was quite a 'ludicrous' proposition. Mr. Manos, however, was of the opinion that in many cases offenders gaoled for fine default knew how to play the system - three meals a day, leisure-like activities, no hard labour - giving the impression that prison was seen to be more of a holiday than a punishment. The Chief Magistrate agreed that alternative penalties to fines were required and that community service orders appeared to be the most obvious alternative. Mr. Manos said he would be keen to see a program specifically for Aboriginal offenders established. He recommended to the researchers that they meet with Mr. J.N. Crammond, Supervising Magistrate of the region (Holden Hill, Port Adelaide and Elizabeth Courts), before they approached individual magistrates affected by this study.

A meeting with Mr. Crammond was held on 16 October 1986, with Michael Harris, Dr. Adam Sutton and Mrs. Kayleen Hazlehurst. After outlining the purpose of the study, ways in which legal aid background reports, community service orders and fine payment instalments could be incorporated into court procedure were discussed. Mr. Crammond pointed out to the researchers that the court was generally inadequately serviced by the Aboriginal Legal Rights Movement. This was not necessarily due to a lack of commitment on the part of legal officers but more due to a lack of resources. Some Aboriginal clients did not receive legal representation, or the preparation of their cases by counsel was scant. Mr. Crammond felt it was critical that the Aboriginal Legal Rights Movement play a major role in the courts and in determining the penalties imposed upon Aboriginal offenders. Often offenders did not recognise the need to see their lawyer before a court hearing, or lawyers had difficulty in locating them before the

cases, creating a situation where they must take their instructions just before entering the court.

On the issue of community service orders for Aboriginal offenders, Mr. Crammond said that he was uncomfortable with any suggestion of any special arrangement for Aboriginal people, but did agree that they should be entitled to have access to community service options just as any offender. On the whole, he agreed this was not happening. One of the obstacles appeared to be in existing legislation. Under section 4 of the Offenders' Probation Act (1913-1981), 'character, antecedents, age, health or mental condition of the person charged' usually disqualified Aboriginals from community service order recommendations. Mr. Crammond questioned the purpose of these criteria of 'suitability' for this program. It was thought that sentencing alternatives were being more frequently employed for juveniles.

Mr. Crammond, however, felt that prison was seen by many offenders as a preferable option particularly when a number of warrants could be 'cut out' at one time. For example, five warrants could be cut out in five days in prison, he said. Offenders could equally end up in gaol following bail and failure to appear in court. Guarantors, often relatives and friends, were disadvantaged by persons who forfeited bail. As the present legislation stood, with the minimum work order for community service at forty hours, it was difficult, he said, to place the small fine offender under these programs. Many fines given to Aboriginal petty offenders were around $100. Much would depend upon the amendments made in the Criminal Courts (Sentencing Bill) (1987) in diverting the small fine offender category into the community service program.

Mr. Crammond felt that the court did not get enough feedback on individual cases either in the way of legal service reports or welfare reports. Magistrates, he felt, were also ill-informed on more general trends. It was expected that new computerisation programming of criminal justice data would be able to provide specific and general information to courts in the near future. 'At the moment', he said, 'I wouldn't have a clue who pays their fine and who doesn't'. As Mr. David Swaine, Mr. Gary Hiskey and Mr. Allan Moss would be sitting at the Port Adelaide Court during the term of the study Mr. Crammond suggested that a meeting be set up with them to explain the research.

Magistrate Garry Hiskey, of the Adelaide court, was visited by Michael Harris, Kayleen Hazlehurst and Adam Sutton on 21 October 1986. Mr. Hiskey informed the researchers that he would be sitting at the Port Adelaide Court from 1 December 1986. After outlining the study to Mr. Hiskey the researchers discussed with him issues relating to the use of community service orders. Mr. Hiskey explained that under the present legislation Aboriginals were inevitably excluded from this program. In most cases Aboriginals had prior records which 'almost always directly or indirectly involved violence. Those who undertook the assessment of Aboriginals were selective about the scheme. Generally offenders were not considered suitable if they had committed any offence of petty larceny, disorderly behaviour or assault'. Mr. Hiskey interpreted this cautiousness as resulting from a fear of the community service order program failing if high risk offenders were given placement. He did question however whether there had been a tendency to be 'over-protective' of a program, which after all, was deemed to be a form of sanction.

Under the existing Offenders Probation Act a community service order could be issued under a recognisance, or good behaviour bond, providing the person charged was considered suitable under section 4 of that Act. 'Suitability' was at the discretion of the Department of Correctional Services. The magistrate could ask for either a pre-sentence report or a direct community service order assessment from the probation/parole division.

Mr. Hiskey said he could see areas in existing legislation and practice which could be examined. 'Courts', he said, 'should be given the third alternative under legislation of issuing community service orders as a direct sentencing option.' In addition, a community service order program, he said, 'could be established as an alternative to fine default.' As of the present magistrates had no legal authority to exercise either options.

Mr. Hiskey agreed with the researchers that Aboriginal legal representation could give a better picture to magistrates of the financial situations of the Aboriginal clients. This would assist magistrates to look to some alternative forms of sentencing. When he was pressed, however, Mr. Hiskey admitted that there was a 'great unease' among the judiciary about community service orders for Aboriginals. There was a general 'presumption' that Aboriginals would

fail to perform under the program, would not complete the program, or worse still would discredit the program in the eyes of the public in some way.

The researchers pointed out that this, of course, was an unacceptable reason to deny the majority of Aboriginal offenders an equal opportunity to a sentencing alternative well within the reach of the court under existing law. Mr. Hiskey agreed with this argument but also stressed that there were a range of practical matters complicating their use. He asked whether Aboriginal community bodies had approached corrections to be included on this program along with other service agencies. This initiative, he said, 'should come from the Aboriginal bodies'. Mrs. Hazlehurst pointed out that negotiations for the involvement of Aboriginal community groups in the special Aboriginal community service order program, which the department hoped to set up had been conducted over a period of almost two years, and that Aboriginal bodies - having become enthusiastic about the program - were still waiting for the program to eventuate. She also pointed out that there were surely work programs which could be designed entailing a lower risk of incident or conflict within the wider community.

A further problem experienced by magistrates was the fact that a large number of Aboriginal offences resulted in low fines of, say, $100 with one year to pay. These minor offences would not fall under the minimum of forty hours community service work. Instead fines might be paid by instalments over the year on a weekly basis. However, this increase in the number of payments also meant an increase in the number of times a person had to remember to pay the fine - increasing the likelihood of default.

Mr. Hiskey advised the researchers that they would need to approach the magistrates involved in this study with care if they wished to get a positive response. 'They know about community service orders and most of them give imprisonment reluctantly. We don't deliberately send people to gaol, and the next alternative is a fine or bond. More thought could be given to bonds', he said. While Mr. Hiskey felt that magistrates were supportive of sentencing options there were 'reservations' about how to get to the desired end. Magistrates, he felt, needed more information on numbers of Aboriginals who were given fines and what percentage of those ended up in prison.

After some discussion with the researchers Mr. Hiskey agreed that 'imprisonment was expensive, no longer a deterrent and a dubious form of rehabilitation' for Aboriginal offenders. He asked the researchers whether they would like him to communicate to the other magistrates of the Port Adelaide Court the concerns of this study to see the greater use of community service orders for Aboriginals. However, until such times as the Department of Corrections provided a special Aboriginal community service order program, Aboriginals would be subject to the terms and conditions of the general community service program and were less likely to have the opportunity of working under Aboriginal supervision or on Aboriginal community based work projects. The researchers said that they would be also making personal approaches to the magistrates David Swaine, Alan Moss, and any other magistrate who would be sitting at the Port Adelaide Court during the term of the study.

Meetings with Court Staff

On 28 August 1986, the project researcher met with the Acting Clerk of Court, Adelaide Magistrates Court, Mr. Bob Speer. When Mr. Harris explained that he would like the court staff to assist in the recording of specific information in regard to Aboriginals coming through the court, Mr. Speer said that court staff were fairly busy and that the indicator collections he was suggesting would mean additional work for the staff. After further discussion, Mr. Speer agreed that such an exercise was 'long overdue'. He suggested that Port Adelaide might be a better court from which to conduct the intervention than Adelaide Magistrates Court (the latter being considered for the intervention study at that time). Mr. Speer pointed out that Port Adelaide Court had a larger volume of Aboriginal people passing through its court and it was also likely that more Aboriginal people were approaching the court for assistance in the negotiation of extensions of fines or their payment by instalments.

Mr. Harris agreed to get back in touch with the Adelaide Magistrates Court after he had discussed the project with the Port Adelaide Court. However, he explained to Mr. Speer that even if Port Adelaide became the experimental court he would still be asking for the co-operation of the Adelaide Court staff, as the control court in the study.

On 7 September 1986, and 1 October 1986, two meetings were held with Richard Smythe, Clerk of the Court, and Phil Hocking, Deputy Clerk, Adelaide, and Mr. Michael Harris. Mr. Tony Moroulis, Task Force representative from the Department of Courts, attended the second meeting. At the first meeting the aims and objectives of the project were outlined and the clerks of the Adelaide Court expressed a strong interest in the fine defaulters' study. The problem of identifying Aboriginality was raised and it was suggested to the researchers that they approach the police to supply this information directly during the term of the study. Otherwise, to wait for the information to be supplied by the police to the Office of Crime Statistics on its Statistics from Courts of Summary Jurisdiction form would mean a delay of several months.

At the second meeting Mr. Harris explained the delays in matching police information with individual offender statistics. Ideally, he said, it would be quicker for the purposes of this study if Aboriginality could be monitored at the court level as the cases progress through the court. Mr. Hocking said that they, at the Adelaide Court, would do all that they could to identify Aboriginality on individual cases for the duration of the study. Where they could not accurately identify Aboriginality from recorded information they would have to rely on identifying them by sight or name. The clerks agreed to participate in the collection of other data relating to the study and to seek ways of identifying Aboriginality more accurately in the process. At the conclusion of the meeting the researchers said they would meet again with them the next week at which time they hoped to be able to set up formal indicator collections.

After Mr. Harris consulted with the Aboriginal Task Force, it was agreed that Port Adelaide was the better court from which to conduct the experiment of intervention. On 9 and 15 September the project researcher met with Mr. Brian Harris, Clerk of the Court, and Mr. Trevor Bond, Deputy Clerk, of Port Adelaide. The project researcher explained that the nature of the study was action-oriented and that in order to measure whether intevention strategies affected change in Aboriginal fine default, it was necessary to obtain the co-operation of the court staff in data collections. The collection indicators were discussed in detail and it was explained that tally sheets would be delivered to the court and subsequently collected on a weekly basis.

Mr. Bond was concerned that the court would have a problem identifying which cases were Aboriginal as race was not included on court sheets and not all cases would be identifiable by name. It was again suggested that the researchers go back to the police and get them to record Aboriginality.

Mr. Bond further explained that, under the present arrangement, a Suspension of Warrant form was issued by the Clerk of the Court when a person approached the court to make application for more time to pay an expired fine. If the fine was not paid after the set extension time the order to suspend the warrant was revoked. When a Suspension of Warrant is issued, the applicant must apply in person. One copy of the order is retained in court records, one copy is forwarded to the police, and a copy is kept by the offender. Aboriginality is identifiable as the applicant comes in. In these instances, Court staff could mark those applications with an 'A' to indicate Aboriginal cases.

A Suspension of Warrant order is only used as a last resort. Ideally, the researchers told the clerk that they would like to intervene at an earlier stage of this process before a warrant had been issued, or needed to be suspended. The Project Researcher, Mr. Michael Harris, explained to Trevor Bond and Brian Harris, that this would be the effect of the proposed intervention strategy involving the Aboriginal Legal Rights Movement under this study. The clerks were concerned about extra strain being placed on court staff. The project researcher said he would discuss these problems with the other researchers.

- On 12 September 1986, Michael Harris had met with Mr. Richard Foster, Registrar, Magistrates Court Division, and Michael Moore, Administrative Officer. This meeting was arranged following delays to the fine defaulters study. It was considered that support from Richard Foster might ensure better co-operation from courts' staff, in particular the Port Adelaide Court. Mr. Foster and Mr. Moore both supported the study saying that such an exercise in this area was 'long overdue'.

Mr. Harris pointed out that he was having difficulties obtaining the level of co-operation necessary to the success of the study. Mr.

Foster estimated that if the work involved would not place undue strain upon other commitments of the court staff, he could not see a problem in the implementation of the study. He said, however, that he would not like to influence the decision of the Port Adelaide Court. It would be better for the researchers to gain Port Adelaide's support by further negotiation. The registrars said they would be happy for the researcher to report back to them on his progress.

On 7 October 1986, Mr. John Moriarty, Director of the Office of Aboriginal Affairs, convened a meeting with Dr. Adam Sutton, Director of the Office of Crime Statistics; Ms. Helen Paige, Chairperson of the Aboriginal Task Force of the Justice and Consumer Affairs Committee; Ms. Janine Haynes, Project Officer, Office of Aboriginal Affairs; and the Project Researcher, Mr. Michael Harris. The meeting was called due to some concern being expressed by the members of the Task Force about the difficulties being encountered with the study. Without the willing participation of criminal justice agencies, project deadlines could not be met. Negotiations had still not produced an agreement for the establishment of intervention or indicator collections. The Task Force, at this time, was considering calling upon the assistance of the Attorney-General and the Minister of Aboriginal Affairs in securing this co-operation. This action, however, was not taken. The following week Mrs. Hazlehurst from the Australian Institute of Criminology, Canberra agreed to come back to Adelaide to give some practical assistance to the researchers in these negotiations.

Mr. Michael Harris and Mrs. Kayleen Hazlehurst discussed the apparent dilemma of how to secure a record of Aboriginality upon court indicator collections. The proposal of pursuing the co-operation of the police at the first point of record was discussed, but it was realised that this would involve possibly months of further negotiations and petitions to higher authorities. As so much ground-work had already been undertaken with the courts it seemed logical to approach them again. This time the researchers made a simple proposal for identification. A meeting was arranged with Mr. Brian Harris, Clerk of the Court, and Ms. Christine Moss, Magistrate's Clerk, Port Adelaide Court with the Project Researcher, Mr. Michael Harris, Dr. Adam Sutton and Mrs. Kayleen Hazlehurst on 14 October, 1986.

As a witness to the court proceedings, it was asked of the

Magistrate's Clerk if she would place an 'A' on the top corner of courtroom proceedings as an assistance to the Clerk of the Court, who was to complete the indicator collection forms. Although the researchers recognised that this would depend upon a decision of Aboriginality on sight, the Clerk of the Court would be supplied, in addition to this, a list of Known Aboriginal Offenders which the researchers would obtain from the Department of Correctional Services. A further check could be made by name. The researchers assured Mr. Brian Harris and Ms. Christine Moss that they would be prepared to accept a small margin of error in this study, but that they expected, by this process, that it would be such a small percentage as to not significantly harm the indicator collection project. After some discussion Mr. B. Harris and Ms. Moss seemed satisfied with this suggested process and agreed to allow the researchers to introduce the collection system the next day. The forms were delivered to the Port Adelaide Court on Wednesday, 15 October, to allow three days of trial before the formal launching of the collections on the following Monday, 20 October 1986. This was felt to be a major breakthrough for the researchers.

The next day, 15 October 1986, the researchers approached Adelaide Magistrates Court with the same proposition as a solution to the collections by Aboriginality. Mr. Michael Harris, Dr. Adam Sutton, Mrs. Kayleen Hazlehurst and Mr. Tony Moroulis met with Mr. Richard Smythe, a Clerk of the Court, Mr. Phil Hocking, a Depty Clerk of the Court, and Mr. Trevor Wilkinson, Magistrate's Clerk. The Adelaide Magistrates Court staff also agreed that this process of identification and collection would be acceptable to them. They agreed to put in place the collections for the researchers on the following Monday. The forms were subsquently delivered to the experimental court, Port Adelaide, and the control court, Adelaide.

Meetings with the Aboriginal Legal Rights Movement

The Project Researcher met with the Director of the Aboriginal Legal Rights Movement, Mr. Jim Stanley, and the Senior Field Officer, Mr. Harry Taylor for a formal discussion of the aims and objectives of the study on 25 August 1986. Although the members of the organisation were already aware of the project, as they had attended the meeting of the Aboriginal Task Force in the earlier days of its development, it was still necessary to secure their co-operation and participation in

the study. Mr. Harris asked the representatives whether they felt there was more information they could provide magistrates during court hearings.

In regard to Aboriginal fine defaulters, Mr. Michael Harris asked Mr. Stanley and Mr. Taylor whether the movement would be prepared, subject to court notification, to arrange to contact Aboriginals about to default on fines of the consequences if they failed to either pay their fine or to approach the court for an extension of time for payment. The movement could also assist Aboriginal clients approach the Clerk of the Court to arrange payment by instalments any time after the fine had been issued.

In a letter addressed to Mr. Stanley, Mr. Harris again outlined the purposes of the study; how he hoped the Aboriginal Legal Rights Movement would participate; and asked for another meeting at which he could bring a sample of the form they might expect to receive from the experimental court notifying them of Aboriginals about to default. Mr. Harris pointed out in this letter that it was 'imperative that we establish the necessary links between the courts, correctional services, Office of Crime Statistics and Aboriginal Legal Rights Movement, as soon as possible' (17 September 1986). Mr. Stanley told Mr. Harris that he supported the study and agreed, in principle, that his staff be involved in the project. He asked if another meeting could be held involving his field officers and lawyers.

On 15 October 1986 another meeting was held between Mr. Harris, Mrs. Hazlehurst and representatives of the Aboriginal Legal Rights Movement - Mr. Jim Stanley, Director, Mr. Harry Taylor, Senior Field Officer, and Mr. Paul White, Solicitor. Mr. White said that the movement generally did provide the magistrate with background information on family situations, financial matters, assets, debits, and length of time required to pay a fine. The court, he said, was supposed to take into consideration the defendant's circumstances of employment, family commitments and so forth. It was not usual, however, for the previous history of default to be provided to the court. Mr. White questioned whether this would prejudice the case against the defendant. The solicitor asked whether, as a point of law, the magistrate was entitled to have such information on past default.

The researchers argued that, while the legal representatives of a

client must consider the best way to present any one case, in some instances the revelation that a defendant had a record of fine default might lead a magistrate into seeking to impose either a more manageable fine, or an alternative form of sentence - such as a community service order program at Yalata had been functioning quite successfully for Aboriginal people.

It was felt by the movement representatives that community service orders 'were not employed in Adelaide, as a matter of policy, for Aboriginal offenders' and that no special Aboriginal community service program had yet been developed. If such a program was developed here it was thought that Aboriginal organisations should be allowed to assist in the supervision of work projects undertaken for them by Aboriginal labour.

It was agreed at this meeting that the movement would participate in the intervention exercise of this study. More information was needed upon exactly what additional information the courts required from Aboriginal legal counsel as background to clients' cases. It was agreed that the Port Adelaide Early Warning Notices of warrants should be forwarded directly to Mr. Harry Taylor. Mr. Taylor would arrange to notify these people that their fines were due before warrants for their arrest were issued. Mr. Stanley and Mr. Taylor asked whether the movement could advertise in the local Aboriginal newspapers that they were providing this additional service. The researchers thought this was a good idea as it would probably help overcome any misinterpretations arising in the community.

Meetings with the Department of Correctional Services

For the month of July 1986 there were a total of 204 fine defaulters admitted in Department of Correctional Services' institutions throughout the state. Of the sixty-two defaulted fines imposed by the Adelaide Magistrates' Court, thirty-nine were known to be imposed on non-Aboriginal offenders and sixteen on Aboriginal offenders. The corresponding figures for the forty-one fines defaulted from the Port Adelaide Magistrates' Court were nineteen non-Aboriginals and thirteen Aboriginals. The ethnicity of the remaining defaulters was unknown. For the year 1985-86 12.6 per cent of community service orders were imposed on known Aboriginal offenders in South Australia (tables 5 and 6). However, Aboriginal offenders made up 26.5 per cent of the state

intakes for periods of imprisonment, in default of payment (table 2). The department reported that:

> Only 4 (4.4%) CSO's were imposed on Aboriginal Offenders at Adelaide Magistrates' Court, compared with 86 for non-Aboriginal offenders. 6 (7.1%) out of 85 CSO's imposed at Port Adelaide Magistrates' Court were for Aboriginal offenders. The mean number of hours imposed on Aboriginal offenders was 104, with a range of 40 to 240 hours. Hours imposed on non-Aboriginal offenders ranged from 20 to 250, with a mean of 118 (Department of Correctional Services, Background Information on Aboriginal Offenders, 1985-86).

Statistical collections undertaken by the Department of Correctional Services demonstrated an interesting contradiction of popular thought throughout the criminal justice system. While not directly compatible, breach of bonds (6.6%) and of community service orders (14.0%) by Aboriginals was encouraging compared to parole (40.0%). The department concluded from these figures that CSO's were a relatively successful form of supervision for Aboriginal offenders. Likewise, non-Aboriginal offenders breached parol orders (16.2%) more frequently than bonds (6.3%) and community service orders (5.6%). Clearly, Aboriginals breached supervision orders more often than non-Aboriginals, just as they defaulted more frequently on fines.

While it is not possible to give an account of the community service order program here, it is important to note that there has been a lengthy history of controversy over the implementation and policy of the employment of this program specifically for Aboriginals. As a matter of policy and practice they are not given to serious offenders and multiple offenders are also seen to be a poor risk. The Department of Correctional Services, at both its managerial and supervisory staffing levels, have admitted that there has been a tendency to be protective of this program from failure or disrepute. While the logic of this protectiveness might be sound - wishing to guard both the general public from dangerous or habitual offenders, and wishing to protect the program from collapse - the sum effect of this protectiveness could result in an unfair presumption that Aboriginal offenders are unlikely candidates (see 'Policy Guide 1986', Department of Correctional Services, 1986, Appendix 1).

An examination of offending categories of non-Aboriginals and

Aboriginals placed on CSO programs between 1985-1986 suggests that a significant number of Aboriginal offenders could appropriately be given these orders.

The most common offence category for non-Aboriginal Community Service clients was Theft (31.5%), followed by Driving Offences (19.9%) and Assault (11.6%). The most common offence categories for Aboriginal offenders were Break and Enter (22%), Assault (19.,8%) and Theft (19.8%) (Figure 3). (It could be argued that Aboriginal offenders, carrying out work orders for Aboriginal community groups, might be less likely to breach their order or re-offend against their own people than when carrying out an order in the general community.)

Several formal and informal discussions were held between the Project Researcher and correctional staff between August and October 1986.

The Department of Correctional Services at that time had encountered difficulties with overtaxed staff and industrial disputes. Suitability of the community service order candidate and availability of staff to supervise work projects were only two such problems. Selecting suitable work projects within the community and determining whether these were accessible sites to the offenders were other considerations. Mr. Harris pointed out that the running of Aboriginal programs might entail other problems of family and clan territoriality and history of feuding between sectors of the Aboriginal community. The careful selection of Aboriginal supervisors and expectations of nepotism and leniency within community groups might also need to be addressed. In all these areas Aboriginal community leaders could be assisting the department, if they were invited to do so.

In addition to magistrates not calling for community service assessment reports as often as they might, Aboriginals may not be readily recommended for CSOs in pre-sentence reports or in community service assessment reports from the Department of Correctional Service. Mr Paul Kasapidis (co-ordinator of the Adelaide Metropolitan Community Service Order Program) expressed the view to the researchers that there should be separate community service order programs for Aboriginals. Ms. Debby Rose, during her time as the Aboriginal liaison officer with the Department, indicated that considerable effort had been made in establishing contact with Aboriginal community groups and in arousing their interest for involvement in community service work order

projects. After some months of discussions Ms. Rose was certain that there was support in the Aboriginal community both for offender participation and for the participation of Aboriginal community groups. But the long delays and the failure of such a program to eventuate had disillusioned community groups in recent months.

The researchers had hoped that a special program for Aboriginal offenders could be introduced during the period of the study. They emphasised to the department the value of this, while data collections on fine default were in progress, in measuring its impact.

At a meeting between Mr. Harris, Dr. Sutton, Mrs. Hazlehurst, Mr. Robert Durant , Director of Community Corrections, and Mr. Peter Visser, Co-ordinator of Community Corrections, on 21 October 1986, we were assured that a new metropolitan scheme specifically for Aboriginals was being designed by the department. This Aboriginal community service order scheme would cater for two categories of Aboriginal offenders which, broadly speaking, referred to aculturated and non-aculturated (or more traditional) Aboriginals. The starting date of this program had already been pushed back several months and was hoped for by December or early January. The difficulties in the Department of staffing and resources raised doubts about its inauguration. 'The will' to use community service orders more for Aboriginals was there, but again 'the way' emerged as the problem in our discussions.

Aboriginal offenders could already receive community service orders via a bond on general programs. By the end of 1986 it was clear that a second option might develop out of the special Aboriginal community service program under the department - but there was the question as to whether more resources would be required by the department to launch, structure, and supervise this project, particularly during its early months. A third option, and one which magistrates had identified, would be the establishment of a special fine defaulters' community service program. This was not possible at the time under existing legislation.

The Department of Corrective Services, we were told, had developed a rule-of-thumb measure of community service time with fines: a $25 fine could be cut out by eight hours' work. Under the new legislation it would probably be recommended that this be increased.

This equation was seen to be useful if it were formalised. Particularly if some consistent measure, approximating seriousness of offence, amount of fine and length of community service order, could be referred to by magistrates when they were considering the latter as sentencing options to fines or imprisonment. A seminar between the magistracy and corrections, clarifying these issues, would be a move in the direction urged by the Chief Magistrate, Mr. Manos, towards greater consistency in the sentencing process and the use of options.

Mr. Paul Kasapidis said that Aboriginal offenders he currently had on his work programs had been 'no problem' and that he was keen to see the scheme utilised for more Aboriginals. He hoped that the new Aboriginal scheme for the metropolitan area would be recognised and used by surrounding district courts. Aboriginal staff could be trained to manage these programs with the view of eventually taking managerial responsibility, he said. The present plan would be to arrange a pick-up service for offenders from the Aboriginal Sobriety Group, community centre at Wakefield Street. Mrs. Hazlehurst asked whether, if there were sufficient orders coming from Port Adelaide Court, the pick-up service could also come to that area. Presumably, when the program is functioning at its fullest capacity, a series of pick-up points around the districts could be arranged.

Meetings with Police

Between July and October 1986 the Project Researcher undertook informal discussion with patrol policemen about policing of Aboriginals on the street. Many of the policemen said they did feel some uneasiness in approaching Aboriginals, in public bars and at their homes. Some of this unease - even a confessed 'prejudice' - was said by the officers to be due to their own 'ignorance', or lack of understanding of Aboriginal people. It was pointed out by the policemen that they also had the same difficulty approaching ethnic communities for the same reasons. The Project Resercher felt while some of these officers expressed a genuine sense of dilemma in Aboriginal policing, other police officers appeared to have resigned themselves to the fact that they 'had a job to do' and should do it without distinction between race or ethnicity. When they approached an Aboriginal or a white person on the street they claimed they used exactly the same approach.

On 20 October 1986 Mr. Harris and Mrs. Hazlehurst met with Chief Superintendent John Bartlett, from the South Australian Police Department. As supervisor of the Aboriginal Liaison Unit and the Ethnic Liaison Unit, Mr. Bartlett had had a long interest in improving police relations with the Aboriginal and ethnic communities. At present he said he had only two field workers in Aboriginal liaison and that these officers were already spread thinly over the area. The Police Department, however, was providing an all-day workshop for police cadets on Aboriginal policing. Aboriginal community groups and speakers were asked to participate in this training session.

In September 1986 four Aboriginals were employed to begin their training as police-aides (taken from four different tribal regions) and there were three fully qualified Aboriginal police officers (and two in cadet training) on the force. Mr. Bartlett felt that more needed to be done in the liaison area. As individual Aboriginal community workers and youth workers became known to the patrol police officers some of the tension and reserve between them noticeably dissolved. Police officers generally appreciated the work of Aboriginal community workers, once they recognised the nature of this work. One of the main purposes of the Aboriginal workshop for police recruits was to 'tell the police what they should expect in Aboriginal policing and to help overcome incidents of police misinterpretation of situations'. This year the unit hoped to produce a primer for police on Aboriginal policing and Aboriginal groups in collaboration with the South Australian College of Advanced Education.

On the same day, 20 October, a second meeting was held with Mr. Tom Rieniets, Inspector of the Port Adelaide Patrol Base, Mr. Bartlett, Mr. Harris and Mrs. Hazlehurst. The police officials agreed with the researchers that high numbers of Aboriginals were being arrested for minor offences. Although unsupervised Aboriginal children and juveniles, and inebriated adults, were seen to be a consistent problem for the police, it was also agreed that there would often be situations where a police officer's reaction to a situation might escalate the number of charges.

Mr. Rieniets said that his division had already incorporated an Aboriginal workshop into their training sessions for his officers. An Aboriginal educator, Mr. Harold Hunt, from the Aboriginal Community College, Port Adelaide, had been employed to conduct the five week

program. Over this time approximately 108-120 officers attended the one and a half hour session on Aboriginal issues. (This included officers from the Port Adelaide, Regency Park and Henley Beach subdivisions.) Although the researchers were most pleased to hear that the Port Adelaide police had already begun to make inroads into the area of police/community relations they questioned whether one and a half hours was enough training for patrol officers who had to work in a district with such a high population of Aboriginal people.

Mr. Rieniets also related that he was personally trying to have some involvement with an informal community group set up originally as an information sharing network. The Port Adelaide Community Services Network Organisation represents a collection of interested representatives of all professional and human service agencies, volunteer groups and some Aboriginal community members. This forum provided the opportunity for agencies and members of the community to discuss their concerns regarding youth, mothers' support, health, recreation, childhood services and other community problems.

The main problem seen by the Port Adelaide police was the lack of things for kids to do in the area. Much youthful offending was seen as recreational, an escape from boredom or parental neglect. The police would like to see more programs developed with the youth, particularly a young drop-in centre. 'But no-one wants to get involved', Mr. Rieniets said. He was hoping to generate more interest in preventative action in this direction on the Port Adelaide Community Services Network Organisation. The police in the Port Adelaide area will run 'Blue Light Discos' for young people as of March 1987.

Aboriginal parents who frequented the Golden Port Tavern would 'give their children $10 and tell them to get lost', Mr. Rieniets said. Sometimes during the evening the young people would be picked up for offending or the parents themselves would be, once inebriated. Mr. Harris said that he was concerned that these children had 'no models in their parents'. The researchers were most interested in the police involvement in preventative work, particularly for juveniles and children, and encouraged Mr. Rieniets in his efforts in this direction.

Mr. Bartlett said he was most pleased to see the recent developments

at Port Adelaide and offered to be of assistance to Mr. Rieniets in his Aboriginal/police liaison efforts in the future - particularly if it was decided at some point to set up a Port Adelaide Aboriginal/police liaison unit. Mr. Bartlett also offered to provide materials or assistance in Aboriginal/police training from his own liaison unit if required. Mr. Rieniets said he would keep this in mind.

The researchers asked whether Mr. Rieniets felt they should approach other police stations in the Port Adelaide area on their project. Mr. Rieniets said that he would communicate to them the objectives of this study - that the researchers were urging the police to examine ways in which police could be more informed of the Aboriginal community, and to consider ways in which attitudes could be addressed which would result in minimising confrontation situations.

Project of Intervention, Port Adelaide, November, 1986 - May, 1987

A preliminary report on the findings and initial communications conducted by the researchers with the participating agencies and departments was compiled in October 1986. This was distributed to them for their information.

After some delays in securing the co-operation of participating agencies the project of intervention got underway. At this point it was recognised that it would be necessary to extend the study for another three months to make data collections of the intervention worthwhile. Even over this seven month period, between October and May, the project experienced many difficulties and some serious setbacks.

Methods for Intervention

The general objectives of the intervention program were to encourage a process of regular consultation, and participation in the study which could lead to practical initiatives in criminal justice administration and practice; and to set up low-labour data collections which would facilitate an evaluation of the intervention strategies at the experimental court of Port Adelaide and the control court at Adelaide Magistrates Court.

A range of specific methods for intervention was developed.

1. Police

It was explained to Inspector Tom Rieniets, local commander of the Port Adelaide Patrol Base, that the researchers would like support in the communication of their concerns about Aboriginal policing to Port Adelaide patrol officers. These concerns were that, in the approach and apprehension of Aboriginal adults and juveniles, police were not creating situations of confrontation which would lead to arrest or multiple charges; that warnings were given to juveniles in preference to apprehension for minor misdemeanours; and that patrol officers were seen to be conducting their work in a non-discriminatory manner.

Further, it had been brought to the researcher's notice that police frequently went to people's homes, telling them that a warrant for a certain amount had been issued and warning them to have it paid by a certain day. They were known to be more strict with Aboriginals, particularly those who appeared resentful of them. The Port Adelaide police were asked, for the term of this study, to use this same discretion in the exercise of warrants for Aboriginals.

As much of the Project Researcher's time would be involved directly with the court, it was not expected that a great deal of his time could be dedicated to talking with patrol officers individually.

Mr. Rieniets was supportive of the project and agreed to communicate these concerns directly to his staff. Mr. Rieniets also offered to supply the researchers with sample statistics on the arrest, detention rates and number of warrants issued for Aboriginals and other persons in his area.

During the period of intervention further discussions were held with Mr. Rieniets to tell him of the progress of the study. In the Port Adelaide area Mr. Harris was also able to talk with some patrol officers in the course of his work. He asked them to consider policing practices among Aboriginals in the Port Adelaide area and to make efforts to avoid situations where they knew their behaviour would induce hostility and confrontation - such as name calling, unnecessarily intrusive inquiry, harsh interrogation, or rough handling leading to charges of offensive language, assault of a police

officer and resisting arrest. Officers were asked to examine the high incidence of Aboriginal arrests and to consider those aspects of police practice which, if modified, might contribute to a decline in these rates of arrest. The aim of this aspect of the intervention was to make patrol officers conscious of the unusually high incidence of Aboriginal apprehension and more aware of the extent to which policing methods play a part in this.

As systematic intervention had not been possible with the police, the researchers asked Mr. Rieniets if he would allow us to employ a short attitudinal survey with his patrol officers to help them analyse police perceptions of Aboriginal policing issues. This questionnaire, comprising of seven tick box questions and two written responses, was administered by Mr. Rieniets at the end of the study in May 1987 to fifty officers in the Port Adelaide area.

2. Courts

Magistrates were asked whether they saw any merit in having the Australian Legal Rights Movement provide comprehensive background reports to the court on their Aboriginal clients, with specific recommendations for alternative sanctions. Some magistrates agreed that this would be helpful to them in making their sentencing decisions. But it was also pointed out that a lot of Aboriginal offenders attended hearings with no representation at all. Recommendations made by the ALRM may, or may not, have a bearing on the outcome of the particular cases. Meetings were held with magistrates during the course of the study to seek their support and then to keep them informed of the developments of the intervention activities.

A meeting was arranged with Mr. J.D. Swain, Stipendiary Magistrate and Mr. A. Moss, Magistrate, of the Port Adelaide Court, on 12 November 1986 with Mr. Michael Harris. Mr. Swain and Mr. Moss had both read the preliminary report drafted by the researchers in October. Mr. Swain related that, during the period he had been serving on the Bench at Port Augusta where a high proportion of Aboriginals appeared, he had become familiar with many of the offenders and their circumstances. By his own discretion he said he would not impose fines on those he considered would not pay them but ordered community service orders for the number of days the fine would have amounted to.

Mr. Swain and Mr. Moss agreed with Mr. Harris that the criteria for suitability should not apply only to Aboriginals. Mr. Harris asserted that he knew of many non-Aboriginal offenders, known to have had a background of assault and domestic violence, who were put on community service orders. The researcher urged the magistrates to consider the background reports submitted to them by the legal council and to employ CSOs more fairly for Aboriginals coming through their court at Port Adelaide.

Mr. Swain seemed doubtful as to whether the ALRM would have sufficient staff and resources to man their side of the action intervention. The movement was already limited in their efforts to represent Aboriginal clients generally, he said. To expect them to give this exercise their attention seemed rather ambitious. Mr. Harris explained that he would act as the link between the ALRM and the court on this matter. If the court was having any difficulties he asked that they alert him immediately. He explained further that he would personally fill in the gaps in the intervention process, and if necessary, would undertake some of the tasks he had previously asked the movement to do.

Mr. Swain explained that he was the Chairman of the Port Adelaide Community Corrections CSO Committee. During his three years of association with the Port Adelaide Court and this committee, Aboriginals in this area had demonstrated a poor record of adherence to the conditions of community service orders. He said that he was not convinced that they were the best alternative for Aboriginal offenders.

Mr. Harris replied that there were Aboriginal offenders currently on CSO programs in other locations which had been reported as being successful for Aboriginals. Mr. Swain and Mr. Moss agreed that this was the case, however, they reiterated that in the Port Adelaide area Aboriginals had had a poor record on community service programs and this tended to 'spoil it for others generally'. Mr. Harris suggested that Port Adelaide Aboriginals could be placed on other programs in the metropolitan area if these were thought to be more successful.

Magistrates acknowledged that the lower socio-economic situation of many of the Port Adelaide Aboriginal residents limited their ability to pay a fine. They said that they tried to impose orders which did

not place 'additional hardship and stress on the person'. Mr. Swain explained that some Aboriginal offenders appeared before him with multiple charges. In these circumstances he usually heard all charges concurrently and tried to clear them all with a medium fine. 'If I imposed a minimum fine for each offence it would amount to more than what I would set as a medium amount for all', he said. The possibility of the courts attaching conditions of payment to fines, by instalment, was explored. Except in the case of debit this was not deemed very practical.

The magistracy felt that they did not have a lot of room for the use of alternatives in sentencing. They were bound within the confines of present regulations and legislation. Some magistrates, with whom the researchers spoke at the Port Adelaide and Adelaide Magistrates Court, stressed that they would like to see community service orders become a genuine sentencing option to magistrates. With the forthcoming new Sentencing Bill it was hoped that the court would be given greater flexibility in their use.

After further communications the magistrates at Port Adelaide Court said that they were prepared to:

1. consider alternative penalties to fines, where they were appropriate;
2. consider community service orders for Aboriginal offenders who met the current criteria of suitability;
3. where fines were the only recourse, give consideration to the amount they were imposing in relation to the offender's means on provision of a background report by their legal council.

Mr. J.N.A. Crammond, Supervising Magistrate of the Courts in the Northern Metropolitan region, Mr. N.S. Manos, Chief Magistrate of the Adelaide Magistrates Court and Mr. G. Hiskey, Special Magistrate of the Adelaide Magistrates Court were also provided with copies of the study's preliminary report. Their comments on the report were invited. At an earlier meeting with Dr. Sutton and Mr. Harris on 18 September 1986, Mr. Manos had said that he did not want the magistracy to be seen to be treating individual groups differently, however, he had recognised the importance of this study as it was looking for gaps in the system. He added that it had been a long time since anything

had been done for Aboriginals in regard to the penal system. Mr. Manos said he was concerned that such large numbers of Aboriginals did not receive CSO orders. In cases he presided over, depending on the offence, he would ask the offender if they would like to be placed on a CSO program. In most instances, he said, non-Aboriginals preferred CSOs while Aboriginals opted for fines. Mr. Manos requested that we keep him informed of any difficulties we encountered in the study. In December 1986 Mr. Hiskey transferred to the Port Adelaide Court and presided there for the remainder of the study.

Court staff at Port Adelaide agreed to participate in the intervention program by providing the Aboriginal Legal Rights Movement with an Early Warning Notice two weeks before a fine was due. A list of names of Aboriginal offenders who had not made regular payments, or who had made no payments on fines, and who appeared likely to default, would be supplied to the movement (Appendix 2).

Mr. Harris and Aboriginal legal counsellors would be encouraging Aboriginal offenders to approach the Clerk of the Court, should they have difficulty in paying their fines on time, to seek an extension on their fine or to negotiate a reasonable plan of payment.

Court staff at the Adelaide Magistrates and Port Adelaide Courts agreed to facilitate indicator collections by noting Aboriginality on S.A. Courts of Summary Jurisdiction forms, and by completing Weekly Tally Sheets provided by the project researcher.

Court staff were asked to keep the researcher informed of the number of fines paid in full or in part by Aboriginals during the period of the study; the number of Aboriginals approaching the court to negotiate extensions or instalment arrangements on their fines; and, in the case of Port Adelaide Court only, the number of early warnings sent out.

3. Aboriginal Legal Rights Movement

The Aboriginal Legal Rights Movement was asked if it would, in the first instance, provide comprehensive background reports on their representatives prior to sentence. These should contain specific details regarding their client's:

- present income;
- outstanding financial commitments and debits;
- employment or unemployment records;
- previous history of default on fines, if any;
- recommendations for alternative sentences to fines;

- where fines were ordered, recommendations on the amount of fine which their clients should find manageable without a) the burden of payment falling upon the family of the offender or b) rendering imprisonment by default a certainty;
- family situation and responsibilities;
- personal health or other relevant details;
- a recommendation by the legal council of possible alternative forms of sanction including recommendations for orders for alcohol or drug rehabilitation or other forms of care where this was seen advisable.

The ALRM was also asked to provide a service to offenders immediately after the hearings. If fines were ordered legal counsellors were encouraged to stress to their clients their obligations to meet these fines and to help them approach the Clerk of the Court in the negotiation of manageable payment arrangements. Conscientious legal officers could keep a routine check on this situation themselves, communicating their concerns about non-payment in their regular interaction with clients and their families.

On the provision by the Port Adelaide Clerk of the Court of an Early Warning Notice the ALRM should be able to notify potential defaulters that a warrant for their arrest was about to be issued. By special arrangement, made with the Clerk of the Court by the researchers for the term of the study, notices would be sent to the ALRM listing names of Aboriginal offenders who had not made regular payment, or who were about to default on fines. The movement was asked to intervene at this point by making contact with, and encouraging, these people to either pay their fine in full or to approach the Clerk of the Court to seek an extension of time to pay. Arrangements for payment by instalments could be made.

The methods employed by the ALRM in contacting their clients on this matter were left up to the movement. It was thought that field

officers could most appropriately include this task in their daily activities as the numbers needing to be contacted were expected to be small (i.e. between five and ten at any given time). In our initial discussions a suggestion was made by an ALRM administrator that they could advertise that this would be a new service to be provided by the movement in local Aboriginal newspapers.

At a meeting on 15 October 1986 between Mr. Jim Stanley, Director of the ALRM, Mr. Harry Taylor, Senior Field Officer, Mr. Paul White, Solicitor, and the researchers Mr. Michael Harris and Mrs. Kayleen Hazlehurst the ALRM agreed to participate in the fine default study by:

1. providing magistrates with background reports on their clients;
2. taking offenders aside immediately after their case, where a fine had been imposed, and informing them of the consequences of non-payment. Field officers would further advise offenders of steps they could take in affecting regular payment or, in the case of their inability to meet the fine, in arranging an extension for payment through the Clerk of the Court;
3. On receipt of the Early Warning Notice from the Port Adelaide Court the ALRM agreed to try and contact those people listed to urge them to make arrangement for the payment of their fines before warrants were issued.

The ALRM was asked to keep records of the number of reports it prepared for the Port Adelaide Court, and of those people it contacted in its early warning intervention activities.

4. Researcher's Intervention 3 March-29 March 1987

The project researcher, Mr. Michael Harris, was becoming concerned that ALRM field officers were not appearing on a full-time basis at the Port Adelaide Court to carry out their role in the intervention. On 3 March 1987 Mr. Harris met with Mr. Jim Stanley and Mr. Harry Taylor to discuss his concerns.

Mr. Stanley advised Mr. Harris that legal rights field officers had been able to perform the functions agreed upon up until the end of February to their satisfaction. However, Mr. Stanley said that he had come to the conclusion that the movement could no longer participate

in the project for the following reasons:

- field officers' work loads had increased significantly to the point where their services were increasingly in demand at other metropolitan courts. The ALRM could no longer confine one field officer full-time to Port Adelaide Court;

- the movement was operating on a limited budget and it was impractical for them to continue any further as they were finding it difficult to undertake normal duties with their current staffing resources.

Both Mr. Stanley and Mr. Taylor said they supported the project and were sincerely sorry that they were unable to participate for the remaining period of the study. Mr. Stanley indicated that the movement would be happy to provide advice on Aboriginal legal matters if requested for the purposes of the study.

Following the official withdrawal of the ALRM from the study on 3 March the project received a further setback. The next day it was discovered that a briefcase containing some of the project researcher's court data and notes had been stolen form the Office of Aboriginal Affairs. The incident was reported to the police.

The withdrawal of the ALRM and the theft of the data caused considerable disruption and loss of momentum in the project. Following consultations with the court staff of the two courts there appeared some consolation in the fact that some of this data could be retrieved from their records. While taking longer, Aboriginality on Courts of Summary Jurisdiction forms would eventually be provided after police had matched these with their part of the form and the information had been returned to the Office of Crime Statistics. Retrieval of lost data at the courts, however, would be more tedious and would require checking by hand of their records in some instances.

After discussion between the researchers and the courts it was agreed that the project researcher, Mr. Michael Harris, would perform the intervention responsibilities of the ALRM. For the remainder of the study Mr. Harris attended the Port Adelaide Court most days of the week.

The Clerk of the Court provided Mr. Harris with notice of those due to attend court the following day so he could schedule his attendance at court around hearings concerning Aboriginals.

Mr. Stanley of the ALRM had made it clear earlier to Mr. Harris that it did not want him to appear to be affiliated with their organisation, or to be acting on their behalf. The organisation did not want him to make representations to magistrates on behalf of their clients - even when their own officers were unable to represent them. Mr. Harris was, therefore, unable to provide background reports, as outlined earlier, to magistrates during his intervention at Port Adelaide.

From early March, Mr. Harris added to his broader role of communication between the different agencies in the project, the specific intervention activities to have been undertaken by the ALRM. On 3rd April Mr. Michael Harris wrote to Mr. J.D. Swain seeking formal permission to perform a function similar to that of Aboriginal field officers in his court. Mr. Harris explained that he would be attending court on a regular basis. He said he would not be making any submissions to the Bench in respect of Aboriginal offenders, but he wrote, 'should you or your colleagues seek any comment from me regarding the availability of alternatives such as community service programs, then I shall be happy to assist' (3 April 1987).

At a meeting, requested by Mr. Swain with Mr. Harris on 7 April 1987 the role of the researcher at the court was discussed. Mr. Swain asked if Mr. Harris would be providing information in Court on behalf of Aboriginal offenders who were not represented by the ALRM. Mr. Harris explained that he did not consider that he had the authority to do so as Mr. Stanley had specifically dissuaded him from this.

Mr. Harris outlined that his primary function in the court would be to spend time with Aboriginal defendants before court commenced to explain to them how the court worked and how they could approach the court if they were having difficulties in paying their fines. Mr. Harris said he would like to attend hearings of Aboriginals at Port Adelaide until the end of the study. He would try to ascertain from Aboriginal people their ability to pay fines and the nature of the problems they were having in dealing with the courts. He also said he would be promoting the use of sentencing alternatives and would be

encouraging Aboriginal people to seek from their legal council a recommendation to the magistrate for community service orders instead of fines. Mr. Swain said he was quite happy with this role and that he and Mr. Hiskey would see no difficulties in offering their co-operation in this respect. He said he would speak to the other three magistrates whom he felt would also have no objections. Mr. Swain assured the researcher that he, personally, would give him every encouragement in his work.

In addition to his court work the project researcher assumed the responsibility for contacting Aboriginal people on the receipt of notice from the Clerk of the Court of potential fine defaulters. He made personal visits to the homes of those listed and followed up with an explanatory letter urging people to contact either himself, or the Clerk of the Court to negotiate extensions and payment arrangements (Appendix 3). He kept in close contact with Mr. Brian Harris and the five Magistrates' Clerks on matters regarding his attendance at court. Special arrangements were made by the Court Orderlies and the Magistrates' Clerks to avoid simultaneous scheduling of Aboriginal cases in the five courtrooms to allow the researcher to attend as many Aboriginal hearings as possible.

The project researcher saw his main role at the experimental court as one of providing information to Aboriginals on ways of avoiding fine default. In any given day between five and eleven Aboriginal offenders might be heard with up to thirty-five or so accompanying relatives and friends also being present. Mr. Harris estimated that he spoke to at least 150 Aboriginal people during his period of intervention. In some cases he spoke to individuals, other times he spoke with groups. After a few days of his intervention he compiled an information handout for distribution at the court (Appendix 4).

A record was kept of conversations he had with Aboriginal defendants and their relatives. Mr. Harris recorded these conversations in his own words each day after court. A sample of a cross section of these provides some insight into the attitudes and views of Aboriginals on the criminal justice system, and how it affects them (Appendix 5).

5. The Community

In the first month of the study, informal interviews between the Project Researcher and Aboriginal fine defaulters revealed a feeling of antipathy towards the criminal justice system in general. It was said that Aboriginal people were treated 'unfairly' from the first point of contact with the police, right through the system.

Many Aboriginal people lived in a constant state of embattlement with 'the system'. Fines were left unpaid not merely because of financial circumstance but almost out of duty to one's side. 'The white man has made us like this, we know we can't beat the system. Some Nunga's wouldn't mind mixed community service orders. But as far as I am concerned I'd prefer to do the time and let the government pay':

> I couldn't care less about going to gaol. At least I get a feed, clean clothes, all the comforts of home without the freedom of movement. I like it because the government is paying for it. When you look at it it's really a big joke. The government wastes millions of dollars processing petty offences and locking people away for petty offences while the streets are full of all sorts of lunatics. They're the only ones who should be locked away!

There was a feeling that little had changed since the time of early colonialism:

> Remember, it was criminals they exported to Australia. Why? Because they didn't know how to deal with them back in their own country. Too bad if their gaols were overcrowded. If they didn't lock all those people up there for stealing petty things like a loaf of bread or something small then their gaols would be able to take the bad criminals. It seems funny, they locked people up for sometimes the smallest offences. They're doing exactly the same today and we're heading towards 2000. How far have we come?

While many Aboriginals were prepared to admit that offenders deserved to be punished they also felt that in the process of apprehension and processing through the criminal justice system they were often treated in excess of the seriousness of their crime. Examples they gave included police interrogation of Aboriginal children, juveniles and minor offenders - and sometimes even innocent witnesses - 'as if they were serious criminals'; rough handling by police down at the station;

middle-of-the-night house raids on routine inquiries and entry into homes without permits which frightened young children. These things only reinforced hostilities between the police and the present and the upcoming generation of Aboriginals.

> In the past white men came into our camps, they beat our men, they abused our women, we really don't believe they had the right to do what they did because the people then were not criminals. Today the same thing occurs. We are still being abused. Some of us rightfully deserve punishment, but we can tell you a lot of us don't deserve the treatment we receive considering the types of offences we commit.

There was a general criticism that too much government money was being spent upon processing Aboriginals through the criminal justice system for petty and minor offences and too little on providing employment and skills training for Aboriginals.

Inter-group and family rivalry within the community frequently thwarted initiatives for change. The urban population comprised of established families, who had migrated from the mission stations in the 1960s; more recent interstate migrants; and a transient population from centres like Port Augusta, Salisbury, and Elizabeth, neighbouring reserves like Point Pearce and Point McLeay, and more traditional areas in the Far West and North West of the state. The transient population, often in town for a good time, caused trouble for the local residents with the police. Old rivalries between resident families and their joint resentment towards interstate Aboriginals, who were said to 'get all the senior government jobs while our own blacks who have been educated are unemployed', significantly fractionated the community. One person felt that 'we are treated worse by these blacks than by the whites like most people think'.

Some of the older Aboriginals with traditional backgrounds were concerned about the effects of European law on the lives of their people. Traditional Aboriginals could see little meaning in 'punishment' when so much time passed between when the offence was committed and when the case was finalised.

They felt that there could be some accommodation of 'black urban courts', similar to tribal courts in traditional areas:

> Our law is strong. The European law is always compromising, seeking loopholes, interpreting...why don't they try for

> certain tribal laws to be used for judgement for Nunga's? I don't mean spearing us, but something harsh. I'm sure we'd respond differently. There has got to be black lawyers and black judges and police.

It was recognised that fines and imprisonment were disruptive of Aboriginal family life, 'despite this our people are usually always heavily fined or given detention'. Imprisonment has become a way of life for Aboriginals in South Australia, as it has in many other parts of the country. However, it was asserted, 'the view held by many that Aboriginals accept prison is rubbish. If they could have it any other way they would'.

Over-powering disillusionment in Aboriginal society is probably the most formidable barrier to community participation in programs for change:

> Life is short, so why bust your guts trying to make it in a world that doesn't really care about people less fortunate? The whole system is one of dependency, terms in gaol are just like welfare, only the conditions are harsher and there are more restrictions.

From the point of view of another informant it was a system preoccupied with law but little concerned with justice:

> As long as I know there's injustice I will never be an honest person...The white man will never understand us. He is bent on progress and power which will eventually see the total destruction of Aboriginal society as we know it. I just take it as it comes. There will never be true justice on this earth while the white man is in charge.

In the context of these comments it should be clear to any government or agency wishing reform that gestures of co-operation or interest from the Aboriginal community to participate in change are hard won, and should not be treated lightly.

Unfortunately, the slow manner in which the first Aboriginal community service order program was established in the Adelaide Metropolitan area had the effect of appearing to do precisely that.

Basil Sumner, Co-ordinator of the Aboriginal Sobriety Group, first became involved in discussions with the Department of Correctional Services three years ago regarding the development of an Aboriginal

CSO program. When these communications began, expectations in the Aboriginal community were high. Ms. Debbie Rose, Liaison Officer with the Department, undertook initial discussions with the Aboriginal community and succeeded in generating considerable enthusiasm for the project in 1984.

In a meeting with Mr. Basil Sumner, Mr. Les Graham, field worker, Mr. John Stepanciac, volunteer worker of the Aboriginal Sobriety Group and Mr. Michael Harris on 31 October 1986, it was explained that the organisation was still keen for the program to commence, but two-year delays on the part of the Department had somewhat dampened community enthusiasms. The Sobriety Group could not understand the reasons for these delays. The practical framework for the program and the main ideas and role which they would take had resulted from early consultations. They understood the Aboriginal CSO program had the support of the Minister for Correctional Services. Delays in the implementation of the program appeared to stem from within the department itself.

Mr. Sumner said that the majority of Aboriginal offenders he had spoken with expressed enthusiasm at the opportunity to work for their own people. Regarding general community service order programs, however, Mr. Sumner said the reaction was not so favourable. There appeared several reasons for this, he said. Firstly, many Aboriginals were as opposed to working off their penalties for white society as they were to paying them fines:

> A proportion of Aboriginal offenders do not like to work anyway, under any circumstances. A significant number of Aboriginal offenders have indicated that they would like to see an Aboriginal CSO program and that they would like to work in it for the Aboriginal community. On the other hand, some Aboriginal offenders have indicated they would be prepared to work on CSOs for anybody if only they could be considered for them.

Mr. Sumner said that members of the Aboriginal community and Aboriginal offenders who he spoke to were not opposed to non-Aboriginal offenders working on Aboriginal programs. Unemployed Aboriginal offenders should be given work projects on week days, he said, as weekends are generally occasions for family and extended family gatherings and sporting activities. Weekend programs would be provided for employed Aboriginals.

Work in the Aboriginal community was 'abundant', he said. There were many needy residents in the Aboriginal community who could have work done for them in, and around their homes - particularly the elderly or infirm. (However, offenders should not work around homes where young or able bodied men resided.) Aboriginal organisations such as the Sobriety Group, the Aboriginal Housing Board and other service agencies had unlimited work to offer, he said.

Mr. Sumner insisted that supervisors for the Aboriginal CSO programs should be Aboriginal:

> If they want us to play a part and be involved then we must have a role that is active. We don't want to be continually consulted, then programs developed. We want to contribute directly to the development and running of these programs.

With the new discussions on CSOs between the Fine Default Study researchers and the Aboriginal Sobriety Group, Mr. Sumner stressed that he and his staff had had to exercise considerable diplomacy in the Aboriginal community to rekindle enthusiasm that was once very high. 'These sorts of let downs are typical where our people are concerned. You have to be aware that similar situations occur in community welfare, where the government tells us they need our advice and participation to develop a program, then go away and do whatever they like'.

Mr. Harris explained that he was in regular communication with Mr. Robert Durant , Director of Corrections and Mr. Peter Visser, Co-ordinator of Community Corrections and other senior members from the Department of Correctional Services, and that he was assured that an Aboriginal community service order program would be implemented by the end of 1986 or early in the new year. Mr. Sumner said he was pleased to hear this, but he was still waiting upon formal contact from the Department of Correctional Services.

In a meeting with Mr. Visser and Mr. Durant , Mr. Harris said he had been told that the program had been set back due to recent funding constraints and limited human resources. Mr. Visser had said that as soon as they had the go-ahead they would be back in touch with the Aboriginal Sobriety Group to start making arrangements for the setting up of the program.

Other Aboriginal community groups approached by the Project Researcher for suggestions for an Aboriginal community service order program were:

The Dean Nelli Hilta Association
The Aboriginal Hostels Ltd.
Adelaide Aboriginal Community Centre
Aboriginal Community College, Port Adelaide
Karinga Hostel

A range of employment for CSO workers was suggested by these organisations. The Dean Nelli Hilta is an Aboriginal community centre for Aboriginal families which provides recreation for all ages. They proposed the setting up of work groups to tend the gardens of the elderly, to mow lawns, and to buy groceries for house-bound Aboriginal people. Programs, they said, could also be designed in other areas of health, welfare and employment skills training. They also suggested that Banjora House, a hostel for Aborigina girls, needed gardening, rubbish removal and property maintenance. Women offenders could help in domestic tasks. The small boat building project, run by the Department of Community Welfare - a learning skills project for juvenile offenders - provided a model for other skills training projects.

The director of Aboriginal Hostels suggested that Karinga Hostel might be able to run a project where the hostel could act as a home detention centre for offenders given home dentention orders, and could also provide community service work for residents for the duration of their stay.

The community organisations we spoke to were, without exception, in favour of community service order programs employing Aboriginal labour in Aboriginal community work. Some saw these as better run by Aboriginal managers, if they were suitably trained, others did not mind if they were run through the general program as long as the work was still organised in the Aboriginal community. There was a strong emphasis that these programs should be run efficiently and by persons with management expertise. That they were well supervised was their only reservation about CSOs for Aboriginals. Collaborative arrangements between white and black supervisory staff on these programs was acceptable.

Aboriginals we spoke to in general have stressed the need to do more for children and youth, to set up sporting and spare time pursuits for young people to divert them from the kinds of peer-pressure and recreational street offences which inevitably leads them to a lifestyle of offending and confrontation with the police.

Between 1979 and 1981 the federal government provided funds to the Department of Community Welfare to run community youth programs. Michael Harris, who was involved in these programs at the time, recalled that:

> Community Youth Programs were implemented in five areas throughout South Australia. Perhaps the most significant program, and by far the most successful, was the Port Adelaide Aboriginal Youth Centre, located on Port Road, Alberton. During its life the youth program had a far-reaching effect upon juveniles and youth in the area. Activities were regularly organised, a number of community leaders and local businessmen provided support and sponsorship and more importantly, a link was being developed between Aboriginal youth and police in the area. The involvement of the police at the youth centre was, in fact, a major highlight of the program. Police officers and police cadets had regular interaction with the youth in a sporting capacity and at times were involved in group sessions with youth discussing their problems. I noticed that this interaction between police and Aboriginal youth had a significant impact upon the rate of offending by youth in the area. The two youth workers employed during the period the centre operated must be given credit for much of what took place. Both workers extended themselves to get people involved in supporting the centre.

After the closing down of the youth program at Port Adelaide 'things slipped back' again for a time, Mr. Harris noted. However, the relocation of the Aboriginal Community College at Port Adelaide in February 1986 appears to have had a similar effect upon offending among both Aboriginal adults and juveniles. Its programs for all ages have proven to be quite an attraction. The researchers wanted to see whether the extent of this was measurable in their collections during the term of the intervention.

On 22 October 1986 Mr. Harris attended a meeting of the Port Adelaide Community Services Network Organisation to explain to them the purposes of the intervention study and that he would be consulting

the Aboriginal community on a regular basis.

6. Corrections

During Mr. Harris' many conversations with Department of Correctional Services personnel, community-related needs to have Aboriginal community service programs, the existing process by which Aboriginals could get on these programs, and related issues of present and forthcoming legislation were discussed. The kinds of problems magistrates were expressing were also communicated. Magistrates had mixed feelings about the programs, and about an Aboriginal program in particular. Some felt strongly that CSO alternatives were rather jealously guarded by the Department of Corrections and were not given to magistrates as a genuine sentencing option, others had reservations about Aboriginals on CSO programs at all. These problems were apparent in sentencing habits.

The researchers urged a more imaginative and open-handed addressing of the issues between the magistracy and corrections. Although they were conscious that they had little power or influence in pushing things along, they hoped that their constant encouragement for the establishment of the first Aboriginal community service order program would keep the issue alive in the community, the judiciary and the department while the administrative logistics of setting this up were being worked out.

In their discussions with the Department of Correctional Services the criticisms of the Aboriginal community against the department, for its perceived lack of support of Aboriginal offenders, was put before them. It was explained that this criticism appeared to have arisen from a growing disillusionment within the Aboriginal community after two years of intense negotiations for a CSO program. The researchers also told the department that in the course of their work they had assured community groups that the department was still sincere in its intention, but that the October 1 schedule for implementation was now moved forward to December due to various internal difficulties.

Correctional officials were sympathetic and indicated that they had become acutely aware of the impatience of the Aboriginal community. Some of the practical issues of running such a program were outlined.

Mr. Durant and Mr. Visser

explained that, in order for community credibility to be maintained, the Aboriginal community service order program must be a tightly run operation, the same as the other programs. Plans were to attach it to the existing district office at Norwood with the employment of an Aboriginal to supervise the work projects. Offenders from the surrounding metropolitan areas could be referred to the Norwood program. As the Port Adelaide general CSO project officers were already over-worked they saw the transfer of Aboriginal programers to Norwood as constructive in two ways - both because it would have more relevance for Aboriginal offenders and because it would help to relieve the local program. A central pick-up service would be provided for Aboriginal workers at the Aboriginal Community Centre at Wakefield Street, in the city.

Under the existing legislation a CSO order could only be secured on a supervisory bond. The Department of Correctional Services includes a comment on a CSO option in its pre-sentencing report to the court. A magistrate, wishing to use this option must then ask for a CSO assessment from the department, at which time a probation or parole officer screens the offender on grounds of suitability and placement (i.e. accessibility to a CSO work program). It was hoped, under future legislation, CSOs might be made a direct sentencing option to magistrates, thus economising effort in their administration. A third alternative would be to establish a specific Fine Defaulters CSO program, this was also under discussion in the department and was being considered seriously by legislators for the forthcoming new sentencing bill.

On 5 November Mr. Harris met with Mr. Jack Moloney and Mr. Jack Roper of the Port Adelaide District Office of the Department of Correctional Services to explain the intervention project, to ascertain the availability of their CSO program for Port Adelaide Aboriginal offenders, and to ask their opinion on the proposed Aboriginal Community Service Order Program, for Norwood.

The officers confirmed Mr. Harris' own impression that, while there was support at the top levels of the Department for a special Aboriginal program, this view was not necessarily shared by all policy, administrative and service divisions of the department - particularly in the areas of middle and lower management. Resistance from within the department was, to a large extent, irritated by

problems of restricted human resources to mount the project, and existing industrial discontent.

Mr. Moloney and Mr. Roper were aware that many Aboriginals were being overlooked for community corrections alternatives and agreed that the criteria of suitability under the section 4 of the Offenders Probation Act needed reviewing. It was most likely, for instance, that many Aboriginal offenders would have a record of multiple offending, and even if these offences were minor this would exclude them from a CSO program according to correction policy. The officers, however, were supportive of the department's overall protectiveness towards existing CSO programs for the same reasons cited by their superiors.

Both officers agreed that a separate Aboriginal program was required for those Aboriginal offenders who expressed a preference to undertake work projects rather than pay fines. Contrary to the impressions of the local magistrates, however, both asserted that Aboriginal offenders they had had on their program in the past and at present had presented few problems. They had between ten and fifteen currently on CSOs at the Port Adelaide District Office.

Mr. Moloney and Mr. Roper were not adverse to Mr. Harris' suggestion that, for the the convenience of our study, it would have been desirable to have had the new Aboriginal program implemented from the Port Adelaide office. However, it was understood that a decision had been taken for it to be placed at Norwood. Both questioned how realistic it would be to expect Aboriginal offenders placed on these programs from other districts to travel successfully to and from Norwood. Mr. Harris explained that a pick-up service was to be provided from the central city location of Wakefield Street. As the Aboriginal Community Centre was already a social meeting place this should simplify some of the travel difficulties.

Mr. Harris pointed out that work in the Aboriginal community was plentiful and Aboriginal community organisations were expressing a keenness to play a role in the CSO program. This enthusiasm, he explained, was likely to diminish if the department continued to move at the rate it had been over the past two years, despite its internal problems of staff attitudes and resources. Both officers expressed a concern over this, as they recognised that Aboriginal community involvement was essential to the success of the new program. At the

end of the discussion the officers assured Mr. Harris again that they had no problems with Aboriginal CSOs and, if it were possible, they would be glad to see the Aboriginal CSO program extended into the Port Adelaide area. They asked to be forwarded a copy of the study's interim report for their review.

On 8 November Mr. Visser telephoned Mr. Harris regarding the preliminary report. He said he had no real problems with accepting what we were saying about the various agencies, including the Department of Corrections - even though they were implicitly critical. He indicated his recognition that these criticisms had been offered in a constructive spirit. He felt that we should attempt to convey the feelings of the Aboriginal community to the Minister, the Head of the Department, the Executive and the line of Managers. He felt that the time was ripe for the launching of the Aboriginal program, with a little additional pressure from the community.

On 20 January 1987 the Aboriginal Community Service Order Program became operational at the Norwood District Office. By the end of this study the program had been running for four months. A description of this program was provided to the researchers by Ms. Barbara Habel, District probation and parole officer of the Norwood District Office on 11 June 1987. A summary of her report follows:

> ...Information provided by Probation Officers, Community Service Officers and leaders in the Aboriginal community indicated that while community service can be an appropriate alternative to short-term imprisonment for Aboriginal offenders, success depends on to what extent such a program addresses the cultural-specific issues affecting Aboriginal offenders. Broadly speaking, Aboriginal offenders can be grouped as:
>
> 1. those who have identified with mainstream culture, and
> 2. those who have not been able to successfully integrate the demands of mainstream culture with their own heritage.
>
> For the first group of offenders, placement within the general District Office program should present no problems. For the second category of offenders, placement on a project more attuned to their own familiar surroundings, such as the Aboriginal community, may well have benefits in the offender more readily being able to idenify with the aims of the project, hence showing a greater willingness for regular attendance and involvement.
>
> In response to the needs of the second category, an Aboriginal Community Service Program was designed as a

demonstration project, administered and organised by the Norwood District Office...The aim was to create a more specialised community service program for Aboriginals, as well as greater frequency of recommendations for community service orders for Aboriginal offenders.

The first task was to design the program with a number of projects on Aboriginal property. An Aboriginal was employed to supervise offenders, and equipment for working on the projects was supplied by the Norwood District Office.

The second task was to arrange visits to all the metropolitan District Offices and the Courts Unit to explain the program to staff and to urge them to consider recommending community service orders for Aboriginal offenders where appropriate. This promotional exercise also extended to visits being made to the Chief Magistrate, Mr. Manos (who distributed copies of a departmental paper on the program to all magistrates), as well as to magistrates at the Adelaide, Port Adelaide, and Para Districts Magistrates Courts. Visits were also made to Judge Lewis of the District Court, and the Aboriginal Legal Rights Movement...The ultimate aim is to assure that there will be increased access to community service orders for Aboriginals.

The implementation of the program is similar to the existing program. Aboriginal offenders are assessed by District Office staff for inclusion in the community service program in the usual manner, via community service assessments or pre-sentence reports.

Once the order is made, the local Community Service Officer conducts the initial interviews and makes a decision in conjunction with the Aboriginal offender as to whether he/she remains on the local program or is transferred to the Aboriginal program. If transfer is appropriate, the Community Service Officer contacts the Norwood District Office for reporting instructions...A central pick-up point at the Aboriginal Community Centre in Wakefield Street was arranged...The program is operational on Tuesdays only, at this time...

A few of the magistrates who were visited expressed some hesitancy in sentencing Aboriginals to community service. The reason offered was that frequently the offender reappears in court within a few months, having breached the conditions of the community service order by not attending regularly. Those magistrates were urged to reconsider their decisions in light of the the specialised nature of the Aboriginal Community Service Program.

There have been thirteen Aboriginals on the scheme thus far. Two completed their hours and two had to transfer back to their local scheme as a result of finding employment which excluded them from working on Tuesdays. Currently there are nine Aboriginals on the scheme, six males and three females. After being in operation for four-and-a-half months, there had not been one breach report submitted. There is rarely 100 per cent attendance, but offenders on the scheme have tended to contact this office to request leave to be absent when necessary. This has not always occurred in the past.

> This office is operating with the view that there is cause for optimism that the Aboriginal Community Service scheme will prove to be a successful sentencing alternative for the courts (Report - Aboriginal Community Service Program, Barbara Habel, District Probation and Parole Officer, Norwood District Office, 11 June 1987).

The researchers were pleased to note that the first intake of Aboriginal offenders to the Norwood scheme included a number of transfers from the Port Adelaide area. 'Consequently, a second pick-up point at the Port Adelaide District Office was also arranged', the report said.

Aboriginal organisation representatives are to have an ongoing input into the establishment of the program and the identification of suitable work projects in the metropolitan area.

In his own communications with Aboriginal community groups between January and May, Mr. Harris urged these organisations to contact Mrs. Habel at Norwood or himself if they felt they had any work within the community which they would like to offer the program.

Changes sought

1. a decline in the number of Aboriginals being arrested in Port Adelaide;

2. a decline in the number of charges placed on Aboriginals in Port Adelaide;

3. magistrates being able to make more informed assessments of appropriate sentences for Aboriginal offenders;

4. a reduction of the number of fines imposed upon Aboriginal offenders, particularly those with limited means or with a history of fine default;

5. a reduction in the mean amount of fines being imposed on Aboriginals;

6. an increased employment of sentencing alternatives for Aboriginal offenders;

7. an increase in the numbers of Aboriginal offenders being recommended for community service order programs by the Department of Correctional Services and being placed on these by courts;

8. the establishment of a specialised Aboriginal community service order program in Adelaide;

9. the establishment, by the ALRM, of its own system of follow-up for the payment of fines;

10. an increased practical concern and assistance offered by the ALRM in the counselling of their clients on steps they can take in the payment of their fines;

11. the establishment of an early warning system between the courts and the ALRM of Aboriginal clients about to default on fines;

12. more Aboriginals approaching court staff for assistance in establishing payment of fines by instalments arrangements;

13. a reduction in numbers of warrants issued for the arrest of Aboriginals for non-payment of fines;

14. a decline in the number of Aboriginals being imprisoned for fine default;

15. to introduce an element of self-examination: among Port Adelaide police towards Aboriginal policing methods, among Port Adelaide magistrates towards Aboriginal sentencing habits, and among Port Adelaide Aboriginal offenders towards their personal and family responsibilities to pay fines.

7. Port Adelaide Court

Summary of specific methods of intervention:

. Patrol officers would be encouraged to avoid any methods which could be construed as excessive or discrimatory in Aboriginal policing and to avoid provoking or escalating situations of confrontation with Aboriginals.

. The Aboriginal Legal Rights Movement were to provide the magistrates with comprehensive background reports on their clients indicating their employment status, financial, personal and domestic situations and, where it would not bias the immediate case, a previous history of fine-default.

. The Aboriginal Legal Rights Movement were to make a recommendation to the magistrate in these reports on alternative penalties to detention or fines where this seemed advisable.

. Where fines were deemed most appropriate, magistrates were asked to give consideration to both the means and inclinations of offenders to pay their fines, and the broader implications of these.

. Magistrates were urged to consider ways in reducing the proportion of Aboriginal offenders being fined by giving greater consideration to sentencing alternatives.

. Court staff would supply early warning notices to the Aboriginal Legal Rights Movement two weeks before fines were due.

. The Aboriginal Legal Rights Movement would act on the early warning notices by making an effort to visit, leave messages or otherwise make contact with Aboriginals about to default on fines.

. Aboriginal offenders would be encouraged and, where necessary, assisted to make arrangements with the court in the payment or extension of fines.

TABLE 7

INTAKES TO PRISON BY RACE AND SEX: SOUTH AUSTRALIA

1984/85 Financial Year

Race/Sex	Male	%	Female	%	Total	%
Aboriginal	746	17	126	2	872	19
Non-Aboriginal	3123	69	229	5	3352	74
Unknown	252	6	37	1	289	6
TOTAL	4121	92	392	8	4513	100

1985/86 Financial Year

Race/Sex	Male	%	Female	%	Total	%
Aboriginal	772	18	101	2	873	21
Non-Aboriginal	2778	67	211	5	2989	72
Unknown	283	7	30	1	313	7
TOTAL	3833	92	342	8	4175	100

1986/87 Financial Year (to end of March 1987)

Race/Sex	Male	%	Female	%	Total	%
Aboriginal	593	18	82	3	675	21
Non-Aboriginal	2155	67	151	5	2306	72
Unknown	194	6	34	1	228	7
TOTAL	2942	91	267	9	3902	100

(Percentages are rounded to the nearest whole number and in some cases this may cause individual percentages to add up to a different figure from raw and column totals).

Source: Department of Correctional Services, 1984-1987.

Findings

The number of Aboriginal intakes to prison remained almost constant (872 to 873) between the 1984/85 and 1985/86 financial years. However the percentage of Aboriginal prisoners among intakes increased from 19 per cent to almost 21 per cent because of a decrease in total intakes in 1985/86 (4513 to 4175). In the financial year 1986/87 (to March 31) the percentage of Aboriginal prisoners in the intake has remained at 21 per cent. However, total intakes of prisoners are likely to increase in the current financial year on current trends (table 7).

The number of Aboriginal women admitted to prison dropped both as a proportion of all intakes and in absolute numbers (126 to 101) between 1984/85 and 1985/86. The numbers have increased again as a proportion of all intakes in 1986/87 to date and on current trends will also increase a little in absolute terms.

Aboriginal women contribute approximately 12 per cent of all Aboriginal intakes compared with all women who contribute 8 to 9 per cent of all intakes. Aboriginal women constitute about 31 per cent of the intake of female prisoners (table 7).

Aboriginal prisoners are over-represented among prison intakes given that they constitute just over 1 per cent of the state population. In addition they constitute an even higher proportion of prisoners who are admitted for fine default (24 per cent for 1984/85, 27 per cent for 1985/86, 24 per cent for 1986/87 of all fine defaulters) or for immediate imprisonment (23 per cent for 1984/85, 22 per cent for 1985/86, 24 per cent for 1986/87). They constitute a lower proportion of prisoners who are initially admitted on remand but the proportion is increasing in the overall state figures (13 per cent for 1984/85, 15 per cent for 1985/86, 17 per cent for 1986/87) (Department of Correctional Services 1984-1987).

In the financial year of 1984/85, 1,980 persons were admitted to South Australian gaols for fine default of whom 476 were Aboriginal (24 per cent of all fine defaulters admitted); in 1985/86, 1,860 persons were admitted for fine default of which 492 were Aboriginal defaulters (26.5 per cent of all fine defaulters admitted); in 1986/87, up to the end of March, 1,455 persons had been admitted for fine default of whom 344 were Aboriginal (24 per cent of all fine defaulters admitted so

TABLE 8

FINE DEFAULTERS BY RACE AND COURT : JANUARY 1986 - April 1987

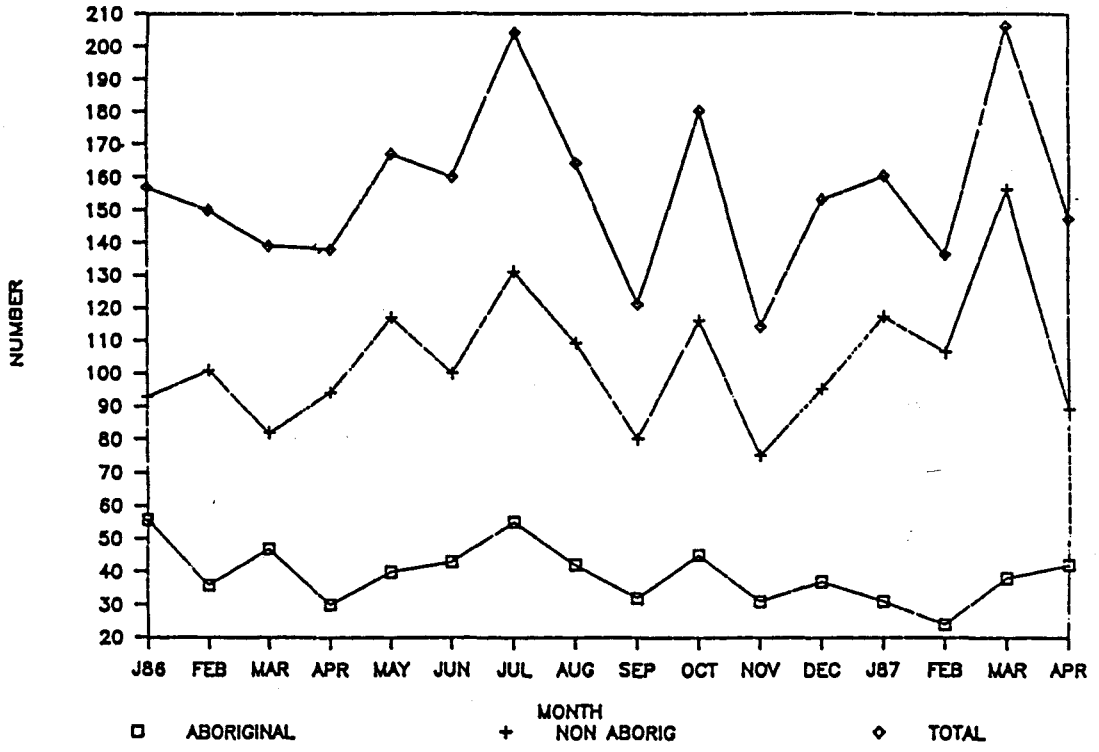
Month	Aboriginal				Non-Aboriginal			
	Port Adelaide Court	Adelaide Court	Other Courts	Total	Port Adelaide Court	Adelaide Court	Other Courts	Total
January '86	12	9	35	56	14	21	58	93
February	15	8	13	36	25	27	49	101
March	7	11	29	47	15	24	43	82
April	3	7	20	30	10	33	51	94
May	3	13	24	40	19	38	60	117
June	6	11	26	43	14	37	49	100
July	14	18	23	55	19	39	73	131
August	8	9	25	42	14	28	67	109
September	4	3	25	32	11	22	47	80
October	13	17	15	45	13	35	68	116
November	1	6	24	31	8	22	45	75
December	5	8	24	37	14	24	57	95
January '87	6	5	20	31	9	27	81	117
February	4	2	18	24	15	30	61	106
March	8	9	21	38	21	40	95	156
April	11	11	20	42	24	13	52	89

Month	Unknown Race				All Races			
	Port Adelaide Court	Adelaide Court	Other Courts	Total	Port Adelaide Court	Adelaide Court	Other Courts	Total
January '86	1	3	4	8	27	33	97	157
February	2	7	4	13	42	42	66	150
March	2	4	4	10	24	39	76	139
April	4	3	7	14	17	43	78	138
May	1	3	6	10	23	54	90	167
June	6	5	6	17	26	53	81	160
July	8	5	5	18	41	62	101	204
August	2	5	6	13	24	42	98	164
September	1	3	5	9	16	28	77	121
October	2	4	13	19	28	56	96	180
November	1	3	4	8	10	31	73	114
December	5	8	8	21	24	40	89	153
January '87	6	5	20	31	18	35	107	160
February	0	1	5	6	19	33	84	136
March	3	3	6	12	32	52	122	206
April	2	7	7	16	26	42	79	147

Source: Department of Correctional Services, 1986-1987.

FIGURE 4

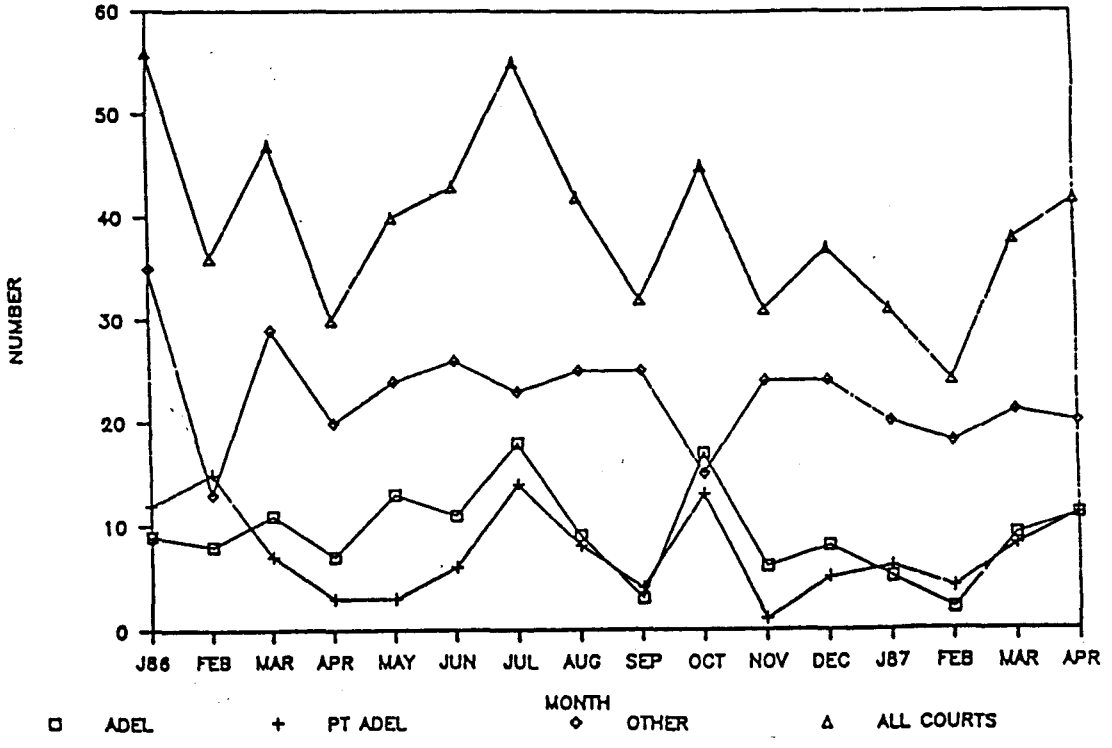
FINE DEFAULTERS AT ALL COURTS: JANUARY 1986-APRIL 1987



Source: Department of Correctional Services, 1986-1987.

FIGURE 5

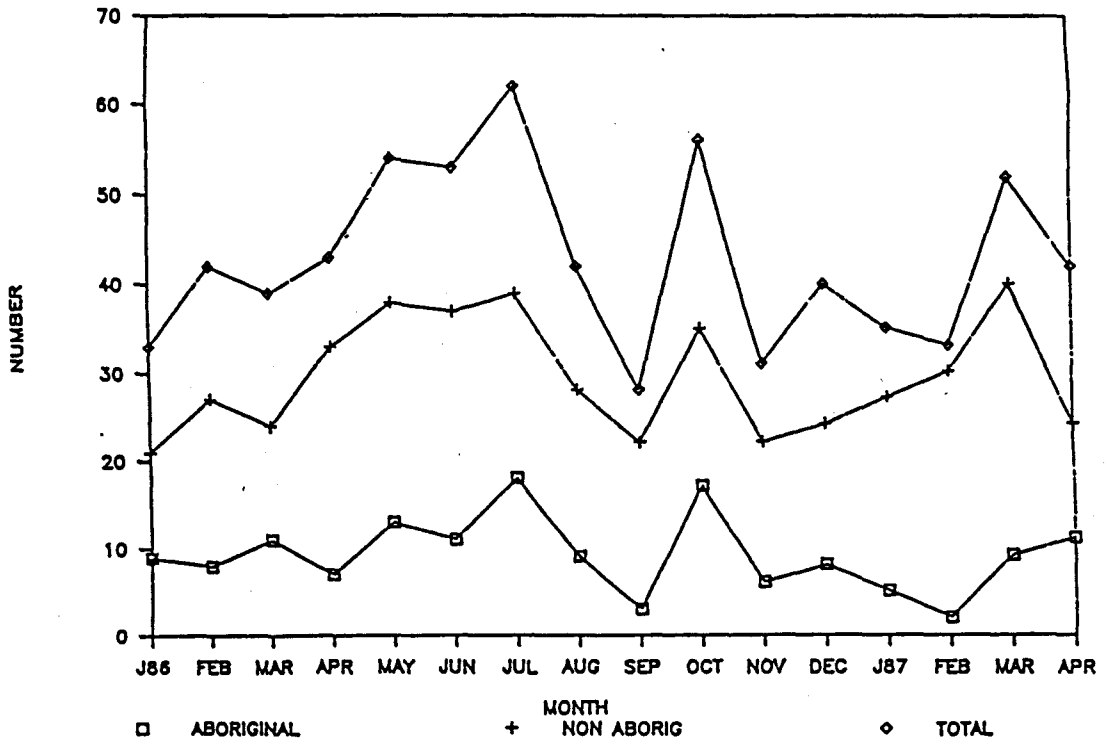
ABORIGINAL FINE DEFAULTERS FROM ALL COURTS: JANUARY 1986-APRIL 1987



Source: Department of Correctional Services, 1986-1987.

FIGURE 6

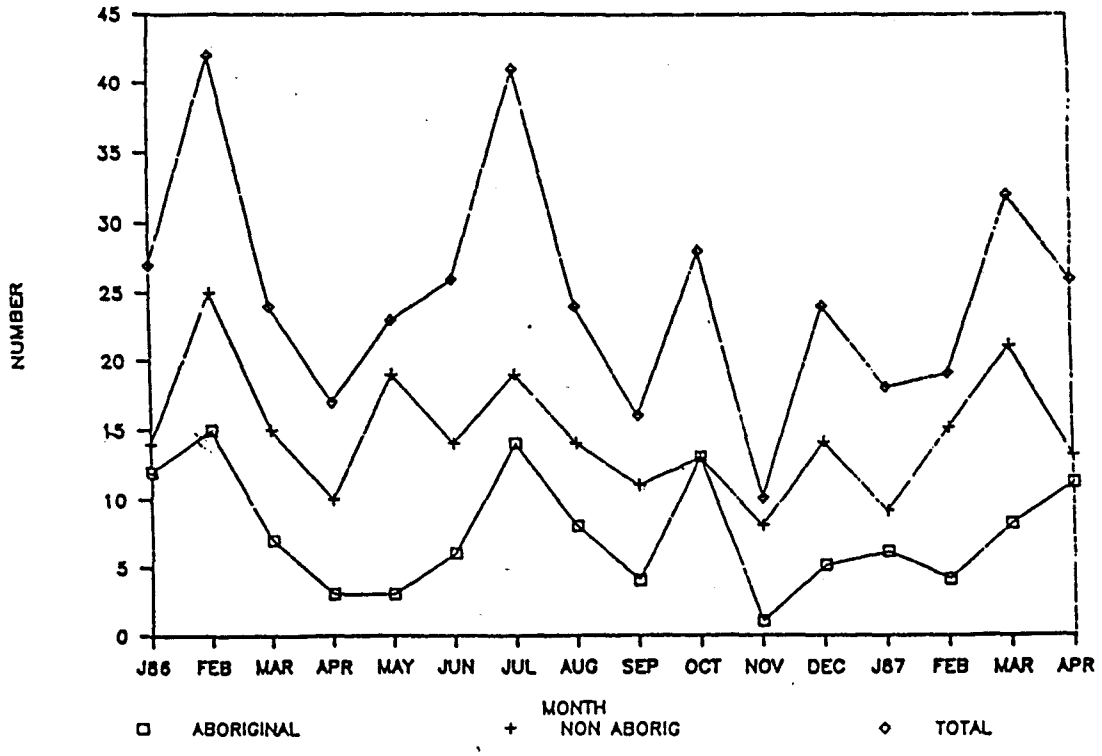
FINE DEFAULTERS FROM ADELAIDE COURT: JANUARY 1986-APRIL 1987



Source: Department of Correctional Services, 1986-1987.

FIGURE 7

FINE DEFAULTERS AT PORT ADELAIDE COURT: JANUARY 1986-APRIL 1987



Source: Department of Correctional Services, 1986-1987.

far; table 2, figure 2).

Over a five month period, at the experimental court of Port Adelaide, 34 Aboriginals were sentenced for fine default between February and June 1986; 40 between July 1986 and November 1986; and 34 between December 1986 and April 1987. For the comparable period, Aboriginals sentenced at Adelaide Magistrates Court totalled 50, 53, 35 respectively. Both courts have shown a decline in their figure in the latter five month period (table 8).

In comparison to fine default for non-Aboriginals in all South Australian courts, Aboriginal trends show a gentler levelling out, with a slight tendency towards the decline, while non-Aboriginal trends show a more dramatic variation with a slight tendency towards the increase (Figure 4). Although the Port Adelaide Court deals with a lower volume of persons, the fluctuations in Aboriginal fine default at these two courts were remarkably similar (Figure 5), with the exception of the period between July 1985 and April 1986, when fluctuations at the Adelaide Magistrates Court seemed less pronounced than those at the Port Adelaide Court (figures 6 and 7) (Department of Correctional Services 1984-1987).

Where Aboriginal fine default peaked at these two courts over the sixteen month period, these peaks were consistently at a slightly lower level. The lows in the figures also show a consistent decline. In relation to the slight upward trend of non-Aboriginal default this observation was most hopeful. The researchers feel relatively confident that this trend will hold and may even continue to decline in the light of recent innovations in the system and anticipated legislative change.

On the basis of trends demonstrated in figures 4 to 7, and particularly figure 5, which shows considerable similarity in the trends between both the experimental and control courts at Port Adelaide and Adelaide, we do not believe we can claim to have had any effective influence upon sentencing practices at the former court over the latter (although it is probable that we have raised awareness of fine default issues in the Port Adelaide Court and inadvertantly in the Adelaide Magistrates Court as well).

It is important to note, however, that fine default is a process which

TABLE 9

ALL RECEIVALS BY RACE AND COURT: JANUARY 1986 - March 1987

Month	Aboriginal				Non-Aboriginal			
	Port Adelaide Court	Adelaide Court	Other Courts	Total	Port Adelaide Court	Adelaide Court	Other Courts	Total
January '86	18	13	54	85	29	43	159	231
February	20	14	38	72	35	62	159	256
March	8	14	62	84	31	56	150	237
April	8	13	39	60	22	82	155	259
May	5	14	46	65	29	76	154	259
June	11	15	50	76	27	59	137	223
July	22	22	48	92	39	74	168	281
August	12	13	42	67	24	60	190	274
September	9	10	56	75	16	54	139	209
October	19	23	49	91	22	72	168	262
November	5	8	48	61	16	47	120	183
December	7	14	51	72	23	82	145	250
January '87	8	15	45	68	21	67	166	254
February	7	6	52	65	29	71	142	242
March	12	19	41	72	37	80	184	301

Month	Unknown Race				All Races			
	Port Adelaide Court	Adelaide Court	Other Courts	Total	Port Adelaide Court	Adelaide Court	Other Courts	Total
January '86	2	6	18	26	49	62	231	342
February	4	13	19	36	59	89	216	364
March	5	8	11	24	44	78	223	345
April	4	10	12	26	34	105	206	345
May	5	7	21	33	39	97	221	357
June	10	7	17	34	48	81	204	333
July	10	10	18	38	71	106	234	411
August	5	9	12	26	41	82	244	367
September	2	9	25	36	27	73	220	320
October	4	9	28	41	45	104	245	394
November	2	4	10	16	23	59	178	260
December	5	13	11	29	35	109	207	351
January '87	3	6	11	20	32	88	222	342
February	1	4	11	16	37	81	205	323
March	3	5	10	18	52	104	235	391

Source: Department of Correctional Services, 1986-1987.

TABLE 10

REMANDEES BY RACE AND COURT: JANUARY 1986 - March 1987

Month	Aboriginal				Non-Aboriginal			
	Port Adelaide Court	Adelaide Court	Other Courts	Total	Port Adelaide Court	Adelaide Court	Other Courts	Total
January '86	4	4	15	23	15	19	80	114
February	4	6	14	24	9	29	83	121
March	0	3	21	24	15	20	82	117
April	4	5	10	19	10	36	72	118
May	2	1	17	20	7	34	63	104
June	5	3	15	23	12	20	63	95
July	6	2	17	25	3	15	30	48
August	4	3	9	16	1	11	24	36
September	4	2	21	27	2	13	28	43
October	5	4	22	31	1	12	32	45
November	3	2	6	11	5	16	47	68
December	1	5	16	22	5	46	66	117
January '87	1	8	16	25	9	32	62	103
February	2	3	17	22	13	25	59	97
March	3	8	13	24	11	28	58	97

Month	Unknown Race				All Races			
	Port Adelaide Court	Adelaide Court	Other Courts	Total	Port Adelaide Court	Adelaide Court	Other Courts	Total
January '86	1	2	11	14	20	25	106	151
February	2	2	12	16	15	37	109	161
March	2	4	6	12	17	27	109	153
April	0	3	4	7	14	44	86	144
May	3	3	12	18	12	38	92	142
June	2	2	9	13	19	25	87	131
July	2	5	10	17	25	27	92	144
August	3	3	4	10	16	27	112	155
September	0	2	12	14	7	23	97	127
October	2	4	15	21	15	33	105	153
November	1	1	5	7	9	19	58	86
December	0	2	3	5	6	53	85	144
January '87	0	2	4	6	10	42	82	134
February	0	2	5	7	15	30	81	126
March	0	1	3	4	14	37	74	125

Source: Department of Correctional Services, 1986-1987.

can take up to a year, particularly on large fines when a long period has been given to pay. The mixture of influences which were impacting on the criminal justice system during the period of our study - special training of police in Aboriginal community awareness, the alternative sentencing debate and improved access to CSOs for Aboriginal offenders upon magistrates and correctional staff, the Aboriginal community education process on payment of fines, the Aboriginal Community College, new legislation - may eventually emerge in the statistics as a general decline in Aboriginal fine default over the forthcoming year.

A comparison of receivals and remandees by the Department of Correctional Services, by race and court between January 1986 and March 1987, has provided some interesting results. Aboriginal receivals from Port Adelaide Court were 59 for the five month period from January to May, 73 for June to October and dropped dramatically to 39 from November to March. For Adelaide this fluctuation was not nearly as pronounced with 68, 83 and 62 receivals for the respective period. From Port Adelaide Court there were 146, 128 and 126 non-Aboriginal receivals, with an increase being shown from the Adelaide Magistrates Court of 319, 319 and 347 non-Aboriginal receivals (table 9).

While the Port Adelaide Court and Adelaide Magistrates Court showed a 47 per cent and 25 per cent decrease respectively over the fifteen month period for Aboriginals, Port Adelaide showed only a 14 per cent decrease and Adelaide an 8 per cent increase for non-Aboriginal receivals over the same period. The most noticeable feature of this was the 47 per cent drop in Aboriginal contributions from the experimental court which occurred, incidentally, over the intervention period between November and March.

Similarly, between November and March remandee rates have had a 126 per cent increase for non-Aboriginals at the Port Adelaide Court (19 to 43) and a 107 per cent increase at the Adelaide Magistrates Court (71 to 147). For Aboriginals at the Adelaide Court a 86 per cent increase was also apparent (14 to 26), while at the Port Adelaide Court there was again a notable 58 per cent decrease from 24 to only 10 remandees (table 10). We could perhaps from this, deduce that our intervention campaign with the Port Adelaide police was more successful than we had imagined it would be and was possibly even more successful than our

TABLE 11

PORT ADELAIDE COURT BY RACE AND INDIVIDUAL FINES IMPOSED
20 OCTOBER 1986 TO 29 MAY 1987

	Aboriginal	%	Non Aboriginal	%	Total	%
October '86	24	5.4	439	94.6	463	100
November	25	3.6	685	96.4	710	100
December	19	2.8	685	97.2	704	100
January '87	9	3.0	268	97.0	274	100
February	36	12.8	280	87.2	316	100
March	27	2.7	1005	97.3	1032	100
April	18	2.5	732	97.5	750	100
May	9	2.4	377	97.6	386	100
TOTAL	167		4471			

Source: South Australian Fine Default Study 1986-87

TABLE 12

OFFENCE GROUP BY RACE 1985-1987 *
ADELAIDE COURT, SOUTH AUSTRALIA

Offence Group	1985				1986				1987 interim			
	Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Offences Against Person	42	10.7	452	6.5	48	12.2	440	7.0	13	12.0	79	13.1
Robbery	5	1.3	43	0.6	3	0.8	53	0.8	7	6.5	7	0.8
Sexual	6	1.5	40	0.6	3	0.8	35	0.6	-	-	2	0.2
Drugs	20	5.1	1030	14.8	16	4.1	756	12.1	3	2.8	102	11.3
Fraud	15	3.8	465	6.7	16	4.1	523	8.4	1	0.9	45	5.0
Break & Enter	13	3.3	211	3.0	21	5.3	154	2.5	5	4.6	45	5.0
Theft of Vehicle	14	3.6	105	1.5	31	7.9	115	1.8	6	5.6	16	1.8
Shop Theft	14	3.6	1043	15.6	9	2.3	860	13.7	2	1.9	125	13.9
Larceny	9	2.3	262	3.8	10	2.5	380	6.1	2	1.9	56	6.2
Unlawful Possession	14	3.6	238	3.4	8	2.0	206	3.3	3	2.8	38	4.2
Driving Offences	22	5.6	1389	19.9	21	5.3	1117	17.8	2	1.9	126	14.0
Possession of Gun	5	1.3	103	1.5	5	1.3	108	1.7	-	-	14	1.6
Property Damage	17	4.3	199	2.9	10	2.5	272	4.3	3	2.8	26	2.9
Offensive Behaviour	148	37.9	848	12.2	142	36.0	715	11.4	45	41.7	132	14.6
Offence Against Good Order	43	11.0	417	6.0	50	12.7	418	6.7	16	14.8	63	7.0
Restraint Order	-	-	28	0.4	-	-	25	0.4	-	-	7	0.8
Other	4	1.0	97	1.4	1	0.3	81	1.3	-	-	19	2.1
TOTAL	391	100%	6970	100%	394	100%	6258	100%	108	100%	902	100%

Source: Office of Crime Statistics, 1985-1987, Adelaide.

* 1987 preliminary

intervention at the courts. But we are reminded that there was another powerful influencing factor also at work, the Port Adelaide Community College. The police themselves had drawn to our attention that since the college had been relocated at Port Adelaide, street offending and excessive drinking at the local hotels had declined. Either way, these results were encouraging.

A cross comparison of our collections on fines imposed on Aboriginals and non-Aboriginals at the Port Adelaide Court confirmed these impressions. Aboriginal rates have shown a steady decline from 5.4 per cent of the total in October 1986 to 2.4 per cent in May 1987, with the exception of February (immediately after the holiday period when the college was closed) which produced the unique rate of 12.8 per cent (table 11). The college seemed to have had a general stabilising influence in the Port Adelaide Aboriginal community. The intervention project may well have had an added influence in lowering apprehension rates in the area between November and May.

Figures, collected for the study by the Port Adelaide Police Division for a period of fifty days (14 April to 2 June 1987), show that of the 687 persons they detained in their prisoner holding cells, 135 (20 per cent) were Aboriginals. Of the 146 held under the Public Intoxication Act, but not charged, 28 (19 per cent) were Aboriginal. Therefore, no more than 107 Aboriginals (15 per cent) were reaching the courts and presumably some of these were being acquitted.

Data for Courts of Summary Jurisdiction was analysed primarily over a two year period* as well as preliminary information from the first few months of 1987 which was available. It is important to note that certain offences are excluded from these calcuations, these include minor traffic offences, local government by-laws and environmental offences. Thus, numbers are significantly lower than those collected by the researchers. Three courts were examined, Adelaide Magistrates Court, Port Adelaide and 'Other' courts for the rest of South Australia.

Adelaide Magistrates Court

Of the defendants appearing at the Adelaide Magistrates Court in 1985, 5.3 per cent were Aboriginal, this figure raised slightly to 5.9 per cent in 1986. Over a third of Aboriginal defendants appeared on

.....

*Of these cases, findings for the last 6 months (i.e. July-Dec 1986) were based on 85% of the total returns expected.

TABLE 13

ADELAIDE MAGISTRATES COURT BY RACE AND PENALTY
1985-1987: SOUTH AUSTRALIA

PENALTY	1985				1986				1987			
	Aboriginal	%	Non Aboriginal	%	Aboriginal	%	Non Aboriginal	%	Aboriginal	%	Non Aboriginal	%
Fine	208	53.3	2580	37.0	171	43.4	2143	34.2	52	48.1	339	37.6
Suspended Imprisonment	20	5.1	280	4.0	18	4.6	203	3.2	4	3.7	45	5.0
Imprisonment	51	13.1	295	4.2	57	14.5	290	4.6	12	11.1	47	5.2
Other (e.g. Bonds)	111	28.5	3813	54.7	148	37.6	3622	57.9	40	37.0	471	52.2
TOTAL	390	100%	6968	100%	394	100%	6258	100%	108	100%	902	100%

Source: South Australian Office of Crime Statistics 1985-86

TABLE 14

NUMBER OF FINES AND AVERAGE FINE AMOUNT 1984-1987*: SOUTH AUSTRALIA

	January - June 1984		July - December 1984	
	No.	$	No.	$
ADELAIDE COURT				
Aboriginal	278	32	174	48
Non-Aboriginal	1769	80	1077	108
Total	2047	(73)	1951	(103)
PORT ADELAIDE COURT				
Aboriginal	44	46	72	53
Non-Aboriginal	651	81	619	113
Total	695	(79)	691	(107)
OTHER COURTS				
Aboriginal	492	48	347	68
Non-Aboriginal	2436	110	2233	115
Total	2928	(100)	2580	(109)

	January - June 1985		July - December 1985	
	No.	$	No.	$
ADELAIDE COURT				
Aboriginal	116	62	92	87
Non-Aboriginal	1296	103	1284	131
Total	1412	(100)	1376	(128)
PORT ADELAIDE COURT				
Aboriginal	54	64	69	58
Non-Aboriginal	577	91	463	124
Total	631	(89)	532	(116)
OTHER COURTS				
Aboriginal	337	83	288	116
Non-Aboriginal	2333	127	2199	154
Total	2670	(121)	2487	(149)

	January - June 1986		July - December 1986	
	No.	$	No.	$
ADELAIDE COURT				
Aboriginal	88	123	83	108
Non-Aboriginal	1187	164	956	144
Total	1275	(161)	1039	(141)
PORT ADELAIDE COURT				
Aboriginal	47	84	45	84
Non-Aboriginal	473	120	272	106
Total	520	(116)	317	(103)
OTHER COURTS				
Aboriginal	296	114	203	139
Non-Aboriginal	2755	153	2061	152
Total	3051	(149)	2264	(151)

	January - May 1987	
	No.	$
ADELAIDE COURT		
Aboriginal	52	119
Non-Aboriginal	339	144
Total	391	(141)
PORT ADELAIDE COURT		
Aboriginal	8	134
Non-Aboriginal	159	115
Total	167	(116)
OTHER COURTS		
Aboriginal	92	107
Non-Aboriginal	824	144
Total	916	(141)

* 1987 preliminary

Source: S.A. Office of Crime Statistics. 1984-1987.

charges of the Offensive Behaviour categories (37.9 per cent in 1985 and 36 per cent in 1986). Non-Aboriginals appeared mainly on Driving Offences (19.9 per cent in1985 and 17.8 per cent in 1986) (table 12).

The main penalty given to Aboriginals in 1985 at Adelaide was a fine (53.3 per cent). This dropped slightly to 43.4 per cent in 1986. Non-Aboriginals mainly received 'Other' penalties which included CSOs, bonds, suspended driver's licences and so forth (table 13).

The average fine amount for both Aboriginals and non-Aboriginals has steadily risen over the past three years. In the first six months of 1984 the average fine that an Aboriginal had to pay was $32 at Adelaide Court and $80 by non-Aboriginals. This had increased to $108 and $144 respectively by the end of 1986. The indication from 1987 data is that the average fine amount will rise again (table 14).

Port Adelaide Court

A greater percentage of defendants at Port Adelaide Court are Aboriginal than at Adelaide Magistrates Court (8.8 per cent in 1985, 10.2 per cent in 1986). The main offence type (25 per cent to 30 per cent), was also Offensive Behaviour. There was an increase in the percentage of Aboriginals appearing for Offences Against the Person; from 10.4 per cent in 1985 to 15.8 per cent in 1986 (table 15).

Nearly half of the penalties given to Aboriginals were fines (49.0 per cent in 1985, 45.5 per cent in 1986), whereas 52.1 per cent of non-Aboriginals received 'Other' forms of penalty in 1985 and 30.2 per cent in 1986. There was an indication in the interim 1987 figures that more 'Other' forms of penalties may be being used for Aboriginals this year (table 16).

Although between 2 and 3 per cent of non-Aboriginals received imprisonment between 1985 and 1986, 14 and 17 per cent of Aboriginals received this type of penalty (table 16).

The average amount of fines rose for Aboriginals from $46 at the beginning of 1984 to $84 at the end of 1986, and from $81 to $106 for non-Aboriginals. Too few cases from 1987 have been examined to provide a good indication of more recent trends (table 14).

TABLE 15

OFFENCE GROUP BY RACE 1985-1986
PORT ADELAIDE COURT, SOUTH AUSTRALIA

Offence Group	1985				1986				1987 interim			
	Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Offences Against Person	26	10.4	247	9.5	32	15.8	207	11.6	1	4.8	29	7.0
Robbery	4	1.6	11	0.4	1	0.5	8	0.4	-	-	4	1.0
Sexual	-	-	16	0.6	1	0.5	19	1.1	-	-	2	0.5
Drugs	7	2.8	410	15.8	6	3.0	230	12.9	2	9.5	48	11.5
Fraud	1	0.4	77	3.0	1	0.5	42	2.4	-	-	13	3.1
Break & Enter	12	4.8	91	3.5	8	4.0	35	2.0	1	4.8	14	3.4
Theft of Vehicle	16	6.4	51	2.0	14	6.9	36	2.0	1	4.8	7	1.7
Shop Theft	8	3.2	390	15.0	8	4.0	269	15.1	1	4.8	52	12.5
Larceny	7	2.8	105	4.0	4	2.0	72	4.0	1	4.8	18	4.3
Unlawful Possession	6	2.4	88	3.4	6	3.0	60	3.4	1	4.8	12	2.9
Driving Offences	44	17.5	613	23.6	25	12.4	316	17.7	6	28.6	98	23.9
Possession of Gun	-	-	36	1.4	6	3.0	27	1.5	2	9.5	8	1.9
Property Damage	9	3.6	82	3.2	8	4.0	65	3.6	1	4.8	13	3.1
Offensive Behaviour	79	31.5	226	8.7	51	25.2	196	11.0	3	14.3	50	12.0
Offence Against Good Order	30	12.0	133	5.1	27	13.4	133	7.5	1	4.8	36	8.7
Restraint Order	1	0.4	15	0.6	4	2.0	65	3.6	-	-	12	2.9
Other	1	0.4	5	0.2	-	-	5	0.3	-	-	-	-
TOTAL	251	100%	2596	100%	202	100%	1785	100%	21	100%	416	100%

Source: Office of Crime Statistics, 1985-1987, Adelaide.

TABLE 16

PORT ADELAIDE COURT BY RACE AND PENALTY
1985-1987: SOUTH AUSTRALIA

PENALTY	1985				1986				1987			
	Aboriginal	%	Non Aboriginal	%	Aboriginal	%	Non Aboriginal	%	Aboriginal	%	Non Aboriginal	%
Fine	123	49.0	1040	40.1	92	45.5	745	41.7	8	38.1	159	38.2
Suspended Imprisonment	11	4.4	122	4.7	14	6.9	114	6.4	1	4.8	16	3.8
Imprisonment	37	14,7	81	3.1	35	17.3	45	2.5	5	23.8	17	4.1
Other (e.g. Bonds)	80	31.9	1353	52.1	61	30.2	881	49.4	7	33.8	224	53.8
TOTAL	251	100%	2596	100%	202	100%	1785	100%	21	100%	416	100%

Source: South Australian Office of Crime Statistics 1985-87

TABLE 17

OFFENCE GROUP BY RACE 1985-1986
OTHER COURTS, SOUTH AUSTRALIA

Offence Group	1985				1986				1987 interim			
	Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Offences Against Person	275	19.8	965	8.8	253	18.9	1045	9.2	52	22.0	161	8.9
Robbery	3	0.2	39	0.4	5	0.4	26	0.2	1	0.4	2	0.1
Sexual	7	0.5	70	0.6	10	0.7	112	1.0	1	0.4	12	0.7
Drugs	47	3.4	1883	17.1	29	2.2	1797	15.9	10	4.2	364	20.2
Fraud	7	0.5	363	3.3	12	0.9	305	2.7	2	0.8	30	1.7
Break & Enter	108	7.8	353	3.2	103	7.7	390	3.4	15	6.4	46	2.5
Theft of Vehicle	79	5.7	204	1.9	120	9.0	287	2.5	28	11.9	41	2.3
Shop Theft	19	1.4	1024	9.3	21	1.6	985	8.7	4	1.7	106	5.9
Larceny	62	4.5	837	7.6	62	4.6	925	8.2	7	3.0	140	7.8
Unlawful Possession	23	1.7	287	2.6	24	1.8	412	3.6	1	0.4	63	3.5
Driving Offences	171	12.3	2749	24.9	166	12.4	2582	22.8	29	12.3	458	25.4
Possession of Gun	16	1.2	163	1.5	31	2.3	206	1.8	11	4.7	32	1.8
Property Damage	110	7.9	481	4.4	111	8.3	586	5.2	13	5.5	98	5.4
Offensive Behaviour	351	25.3	949	8.6	239	17.8	887	7.8	43	18.2	149	8.3
Offence Against Good Order	104	7.5	524	4.8	132	9.9	635	5.6	19	8.1	83	4.6
Restraint Order	8	0.6	97	0.9	21	1.6	94	0.8	-	-	17	0.9
Other	-	-	39	0.4	-	-	38	0.3	-	-	3	0.2
TOTAL	1390	100%	11027	100%	1339	100%	11312	100%	236	100%	1805	100%

Source: Office of Crime Statistics, 1985-1987, Adelaide.

Other Courts, S.A.

Of defendants appearing at all other courts in the state 11.2 per cent were Aboriginal in 1985 and 10.6 per cent in 1986. Although Offensive Behaviour offences were common, nearly one fifth of Aboriginals appeared on charges relating to Offences Against the Person (19.8 per cent in 1985, 18.9 per cent in 1986) (table 17).

A fine was the most awarded penalty to Aboriginals in 1985 (45 per cent) but 'Other' penalty was more common in 1986 (40 per cent). A higher proportion of Aboriginals than non-Aboriginals received imprisonment, (1985 11.8 per cent of Aboriginals compared to 3.4 per cent non-Aboriginals and in 1986 16.4 per cent of Aboriginals compared to 4.0 per cent non-Aboriginals were imprisoned) (table 18).

The average fine amounts have increased for both Aboriginals and non-Aboriginals over the the two years. Aboriginals had to pay an average of $48 in January-June 1984 and $139 in July-December 1986. Preliminary results from 1987 show that this amount may decrease in the future (table 14) (South Australian Office of Crime Statistics, 1984-1987).

Summary of results

From the period of the intervention, October 1986 to May 1987, our collections showed that 166 Aboriginals and 4,471 non-Aboriginals received fines at the Port Adelaide Court - including all minor traffic offences. The comparative rates of individual fines imposed on Aboriginals to non-Aboriginals showed a general trend towards the decline, as mentioned earlier, from 5.4 per cent for October 1986, 3.6 per cent for November, 2.8 per cent for December, 3.0 per cent for January 1987, 2.7 per cent for March, 2.5 per cent for April and 2.4 per cent for May, with the unusual rate of 12.8 per cent for the month of February (table 11).

In November the Port Adelaide Clerk of the Court forwarded an Early Warning Notice to the Aboriginal Legal Rights Movement of six people who were about to default on their fines. The movement's field officer, Mr. Kevin Taylor, told Mr. Harris that five of these people were visited at their homes in order that the procedures for preventing default could be explained to them. Notification cards to call the ALRM were left for those who were not home at the time of the visit. The sixth person was sent a telegram to their residence at

TABLE 18

ALL OTHER COURTS BY RACE AND PENALTY
1985-1987: SOUTH AUSTRALIA

PENALTY	1985				1986				1987			
	Aboriginal	%	Non Aboriginal	%	Aboriginal	%	Non Aboriginal	%	Aboriginal	%	Non Aboriginal	%
Fine	625	45.0	4532	41.1	499	37.3	4816	42.6	92	39.0	822	45.5
Suspended Imprisonment	83	6.0	489	4.4	84	6.3	591	5.2	13	5.5	62	3.4
Imprisonment	164	11.8	378	3.4	220	16.4	447	4.0	39	16.5	69	3.8
Other (e.g. Bonds)	518	37.3	5628	51.0	535	40.0	5452	48.2	92	39.0	850	47.1
TOTAL	1390	100%	11027	100%	1338	100%	11306	100%	236	100%	1805	100%

Source: South Australian Office of Crime Statistics 1985-87

TABLE 19

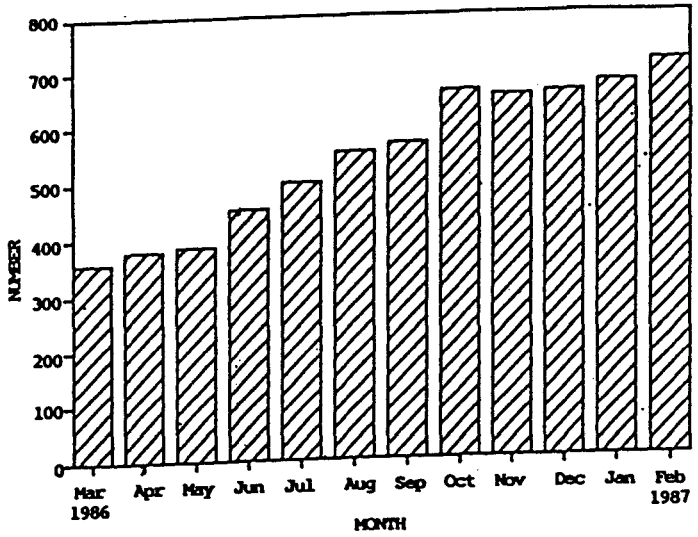
COMMUNITY SERVICE ORDERS AWARDED BY RACE AND COURT
SOUTH AUSTRALIA: JULY 1986-MAY 1987

	Adelaide Court			Port Adelaide Court			Other Courts		
	Abor.	Non-Abor.	Unknown	Abor.	Non-Abor.	Unknown	Abor.	Non-Abor.	Unknown
July '86		16			18		9	63	3
August	1	13	1	6	6		5	65	6
September		13	1		9		2	48	6
October	2	10	1	5	20		3	55	1
November	1	15		1	10		2	55	6
December		15			7		3	36	8
January '87		11			7	1	6	25	13
February		9	2		17		12	38	19
March		4			18	1	1	23	19
April		1			2			3	49
May									
Totals	(4)	(107)	(5)	(12)	(114)	(2)	(43)	(411)	(130)

Source: Department of Correctional Services, 1986-1987.

FIGURE 8

GROWTH OF CSO CASES FOR SOUTH AUSTRALIA: MARCH 1986 - FEBRUARY 1987.



Source: S.A. Department of Correctional Services, 1986-1987.

Port Lincoln. During his period of intervention Mr. Harris attempted to contact seven more people at their homes and sent out a follow-up letter (Appendix 3). Four of the people visited assured Mr. Harris that they would make arrangements for an extension or payment of their fines. None felt they needed any assistance in approaching the court to make these arrangements.

In both the case of those contacted by the ALRM and the Project Researcher the court received no response. The Clerk of the Court informed Mr. Harris that Aboriginals rarely pay off their fines, make any contribution on their fines or ask for an extension of time. The exercise of early warning intervention at the Port Adelaide Court clearly failed to change this pattern. Warrants for the arrest of those persons were issued. Mr. Harris noted that in his visits to Aboriginals the majority expressed feelings of anger and frustration, (in one case he was assaulted) and this was particularly true of those in the 25 to 45 year old age group, he said.

The researcher's data collections confirm that no extensions were granted by the Clerk of the Court to Aboriginals during the time of this study. Only two fines were paid in part, and ten fines were paid in full by Aboriginals between October and May, no warrant suspension orders were issued, and no orders to revoke suspension of warrant were issued for Aboriginals. In relation to the number of Aboriginals who received a fine during that period (159) only 1.2 per cent paid their fine in full and 6.2 per cent paid their fine in part - proof enough that the fining system for Aboriginals is not working.

On its March 1986 to February 1987 figures for the general community service order program the Department of Correctional Services can show a record growth of this program accommodating approximately 375 orders in March 1986 to over 700 in February 1987 (figure 8). Unfortunately, we must again report a poor response - this time on the part of the experimental court. Only eleven CSO orders were given for Aboriginals at the Port Adelaide Court between August and November 1986, up until April after that time no more records of CSO orders for Aboriginals have reached the Department of Correctional Services. The Adelaide Court ordered four CSO orders for Aboriginals between August and November 1986, and no more have been recorded since that time. A total of 43 CSOs were ordered for Aboriginals by all Other Courts in the state for that period. Not a good figure in relation to the high

TABLE 20

ORDER CATEGORY BY SEX AND ABORIGINALITY OF ALL NEW COMMUNITY CORRECTIONS CASES COMMENCED 1985-1986

	NON-ABORIGINAL			ABORIGINAL			UNKNOWN			TOTAL		
	M	F	T	M	F	T	M	F	T	M	F	T
PROBATION	690	320	1010	66	23	89	32	15	47	788	358	1146
PAROLE/LICENCE	281	17	278	52	—	52	12	—	12	325	17	342
COMMUNITY SERVICE	558	63	621	89	6	95	8	—	8	655	69	724
INTERSTATE ORDERS	96	27	123	12	3	15	10	4	14	118	34	162
SUPERVISED BAIL	18	5	23	5	—	6	10	2	12	33	7	40
OTHER ORDERS	9	2	11	—	—	—	—	—	—	9	2	11
TOTAL	1632	434	2066	224	32	256	72	21	93	1928	487	2415

Source: Department of Correctional Services, Annual Report, 1985-1986.

rate of imprisonment by fine default (table 19). For the year 1985 / 1986 the Department of Correctional Services reports a total of 95 community service orders for Aboriginals (89 for males and 6 for females) - 13 per cent of all CSO orders in the state (724: 655 males and 69 females). Probation was the most frequently used supervisory order for non-Aboriginals (a total of 1010), whereas this was even less frequently employed for Aboriginals (a total of 89) (table 20). We would suggest that the whole community corrections format be looked at again in regard to Aboriginal sentencing.

The results of our attitudinal survey among fifty police officers in the Port Adelaide area are interesting: 96 per cent of the officers did not believe that Aboriginals were 'the most disadvantaged group in Australia', 62 per cent claimed to have received some training in Aboriginal culture and issues and 46 per cent said they found this training informative enough; 56 per cent did not see any merit in employing Aboriginals throughout the mainstream of the Police Department. Although 78 per cent of the police officers were familiar with Aboriginal service agencies and organisations in their area only 30 per cent said they would consider liaising with any of these groups in regard to offending behaviour by Aboriginals, with the exception of the Aboriginal Legal Rights Movement (98 per cent); 70 per cent did not agree that the majority of Aboriginal offending in their area fell within the minor offence categories. In being asked to consider ways in which minor offending charges could be reduced, only 30 per cent nominated 'better police/Aboriginal communications', 8 per cent 'more informed policing on Aboriginal culture and needs', 6 per cent 'an increase in police counselling and warnings' and 36 per cent 'more recreational facilities and programs in the community'. On the other hand 88 per cent were in favour of 'a greater interest shown by the Aboriginal community towards their own people'. Only 26 per cent of the officers claimed to have had any social or recreational contact with Aboriginal people. Some were emphatic that they did not!

The most common themes recorded on the last question, which gave the officers the opportunity to make comments, were that Aboriginal people were treated better than other groups, that they neglected their children and had no respect for other people or property. Aboriginals needed to be 'taught right from wrong' and needed to be given basic 'education in the law', 'alcohol avoidance' and 'pride in themselves'. 'Police learning about Aboriginal culture does not help in the second

and third generation urban Aboriginals - who have also lost much of their traditional culture'. 'If Aboriginals were less hostile towards police, then police may be less hostile in certain situations'. 'Aboriginals seem to bait police and abuse them for no reason'. 'They have got to learn that they are not above the law'. These responses are probably representative of attitudes in the South Australian police force and likely of a significant proportion of white Australia (Appendix 6).

In summing up the feelings of police expressed to him during his project, Mr. Harris noted that:

> They appear to have limited understanding of the problems affecting Aboriginals. They are quick to say Aboriginals are in receipt of too much funding assistance. They claim they would like to have the benefits Aboriginals receive. My reasoning is that they want everything. Aboriginals would be content generally, to be accepted and treated as equals rather than to have land rights and more government money.

Although there is not room to discuss these issues further, it is clear from those comments made by Aboriginals about police (Appendix 5) and those made by police about Aboriginals that a stark background of mutual intolerance pervades the urban situation. Many of the problems and sentiments which are expressed here are not really cultural but, by a comparison with similar situations in Britain and the United States, purely racial issues.

Methods for implementing change is a strip of unworked ground in both theory and in practice. The functional and practical mechanisms which should facilitate innovation, and accompany legislative reform and intent are, in comparison to other forms of research quite unexplored. A recommendation for improved communications between the relevant criminal justice agencies in South Australia was made in 1984 in the Department of Correctional Services, fine default report. From the perspective of our intervention study, we can only confirm this need.

In establishing our own network of communication between correctional, court, police and community agencies we found that there were areas of misinformation, ignorance and contradiction within the system. Intense territoriality is always the first sign of insular departmentalisation. The exchange of information, the sharing of ideas and concerns and the action of joint problem-solving should not

threaten the integrity of each agency. But it does promise to expand the knowledge, improve the relations and flush out the grey areas of a system in which the participants share a professional role. On the whole, the researchers found the agencies and departments we spoke to to possess an abundance of goodwill, willingness for self-examination and ability to cope with observations and comments which were implicitly critical of them - particularly when these were presented in the context of problem-solving action. We feel that this goodwill could be tapped in any exercise for the examination of problems related to the criminal justice system, or in the implementation of change.

In addition to helping to tap this goodwill, and to raise consciousness of the nature of Aboriginal fine default, this study has also helped to pinpoint a number of problem areas within the system. The first and most obvious one is the unwillingness of most Aboriginal people to pay fines. An order of a fine for an Aboriginal is a defacto order of imprisonment, no matter how small the offence. On 4 November 1986 the Aboriginal Fine Default Study listed to the South Australian Attorney-General, Hon. C.J. Sumner, its findings to date, and made recommendations to be considered under the forthcoming Criminal Courts (Sentencing) Bill (1987). In this letter it urged that a special Aboriginal Community Service Order Program be set up for Aboriginal people in the metropolitan area; that the minimum forty hours of work be dropped to sixteen hours (two day's work) or twenty-four hours (three day's work) in order that small fines could be replaced under this order; that the criteria for suitability under the Offenders' Probation Act be reviewed in order that Aboriginals were not so readily disqualified from CSOs; and that the government seriously consider making the community service order a genuine sentencing option to magistrates (Appendix 7).

Although we cannot claim that the Aboriginal Fine Default study impacted upon its target court, at Port Adelaide, in the manner in which it would have liked to, we were able to identify some of the obstacles preventing this change in the system. We were also working in the shadow of forthcoming legislation which, had this already been passed, would have made our position more credible - particularly with the magistrates. Magistrates, themselves, stressed to us the need for workable law which would make it easier for them to give community service orders to Aboriginal offenders. Senior correctional officials

expressed frustration over the lack of response to proposals they have put to the Attorney-General's Department for the incorporation into the new sentencing bill, measures which would broaden the use of CSO, and for the setting up of a CSO fine default scheme. Some of these proposals, incorporated in the first draft of the new Criminal Law (Sentencing) Bill, were dropped in the later draft in May 1987.

The question of the under-employment of community corrections for Aboriginals is one which needs to be more courageously addressed as a problem of policy and practice within both the department and with the magistracy - this would be the preferable arena in which to come to terms with it. The high rates of Aboriginal imprisonment by fine default will continue until this issue of sentencing alternatives is taken seriously. While legal, its effect may well constitute an issue of human rights which, in the present climate of Australian race relations and widespread concerns about Aboriginal criminal justice, cannot be ignored.

The Criminal Law (Enforcement of Fines) Act, 1987 (read for the first time in April 1987 Appendix 8) could be seen as an interim measure to test the water before the sentencing bill was finalised. It has not gone so far as to make CSOs a direct sentencing option to magistrates, but it has introduced the more lengthy option of CSOs by fine default. Again we can see this as causing problems in the Aboriginal community. Hardship, of the person liable to pay the fine, must be demonstrated to the Clerk of the Court in order to gain permission to work off a fine by community service work. Unless some educative mechanism at the courts is in place - either by way of the Aboriginal Legal Rights Movement or by way of an Aboriginal court advisor (similar to the role performed by Mr. Harris during our study) - Aboriginal offenders may not use this opportunity open to them.

The Department of Correctional Services will also need to be properly equipped to take on the influx of fine defaulters into these programs which they anticipate will result from this reform. If this new policy for the conversion of fines into CSO orders becomes fully adopted and, the administrative and staffing arrangements to facilitate this change are put in place, this might be a breakthough in the problem of imprisonment for fine default - not just for Aboriginals but for the general population as well. But it will not solve the problem of default itself.

Court and legal rights officials from the Port Adelaide Court concluded at the end of our study that they had been made more aware of the problems Aboriginals were having with the system through their exchanges with Mr. Harris, and their observation of a role he performed in the education and information of Aboriginals of this system during the course of his intervention. Members of both the court staff and the ALRM said they could see a permanent role of an Aboriginal court advisor being created. Unfortunately, the ALRM, which would be best placed to perform this function, claimed to be already over-burdened with court defence related work.

Police, on the other hand, felt that the emphasis of this study upon Aboriginal fine default trivialised the number and seriousness of offences committed by Aboriginals - particularly in regard to offences against the person and property. Greater effort, they felt, should be directed towards the prevention and detection of these offences. A study might more properly look at the frequency of Aboriginal offending and the reasons why so many Aboriginals commit offences as the relevant factor of over-representation of Aboriginals in prison. The Port Adelaide sub-division particularly endorsed educational and preventative policing programs, specifically aimed at children and juveniles, as the areas for primary focus. We would certainly encourage these initiatives.

We feel our study has helped to develop an understanding of action-oriented research and has helped to raise consciousness in the justice system about Aboriginal fine default. It has identified some of the systemic obstacles and has stimulated (even provoked) a process of interdepartmental debate. While useful in throwing light on problem areas, intervention should not be seen to be an end in itself. Ultimately, it is the criminal justice agencies which must examine and respond to these issues which, no doubt, many feel we have only touched upon. We hope that this debate can be taken up and built upon in the future by justice agencies in South Australia.

Preventative action is always the preferable approach when it comes to the lives of people who offend, and whose children will offend unless shown another way. Any community-based action, such as those run from time to time by the police and other approaches similar to those employed by the Department of Community Welfare for juveniles, should emerge as our highest priority.

Observations:

. There were clear reservations among the Port Adelaide magistracy about the use of community service order programs for Aboriginal offenders from their area. This was partly attributed, they said, to the kind of Aboriginals they received and the subsequent poor record of these offenders on the local CSO program. The Port Adelaide police also drew to our attention the fact that a substantial proportion of the offending population which they were dealing with were transients - persons who had come to the area from Elizabeth and Salisbury, for instance, frequently for the purpose of drinking and entertainment. Such persons were more likely to breach their supervision order.

. The perceptions of some magistrates at the Port Adelaide Court of the success record of Aboriginals referred to the local community service order program were different than those of the correctional staff who managed that program. They assured us that Aboriginals referred to that program had had an acceptable to good record of success in completing the program.

. Court staff were most willing to provide early warning notices of potential fine defaulters and to negotiate payment by instalments arrangements for Aboriginals who approached them. This did not appear to be a very time consuming task and could possibly be continued. It was, however, noted that few Aboriginals approached the court for extensions.

. The provision of comprehensive background reports and sentencing option recommendations from legal counsel seemed, on the whole, a welcomed idea by the magistrates and could be established as part of regular procedure.

. Constant frustration and miscommunication between the ALRM and their clients appeared to exist. Aboriginals frequently complained that they received inadequate legal representation, although it was also admitted that the service was overstretched.

. In the Project Researcher's estimation, a significant proportion of those Aboriginals he spoke to would have been interested in a

community service order instead of a fine, particularly if it was on an Aboriginal program.

. The general consensus among Aboriginal offenders was that CSOs 'would be good for those who preferred them' but on the whole this option was infrequently available to them.

. The lack of familiarity with CSOs, and what they might involve in the way of personal commitment compared to the 'easy life' of prison, disinclined some Aboriginals from CSO programs.

. Some older Aboriginals felt that CSOs might help to reduce aimlessness and 'laziness' in younger Aboriginals and might even be constructive in teaching work skills.

. It was the unemployed younger men, 20-30 year olds, who expressed most frustration and hostility towards the criminal justice system.

. It was broadly asserted by Aboriginals that most of them couldn't afford to pay their fines or would not pay them as an act of retaliation towards the 'White System'.

. Aboriginal community groups appeared most willing to become involved in the establishment of CSO programs for Aboriginals, but should be given the courtesy of genuine, not token, involvement if this goodwill is to be maintained. Avenues for work are claimed by them to be both diverse and abundant. There is a sense of expectation in the Aboriginal community which should not be undervalued or allowed to wane.

. Aboriginals made a clear distinction between 'punishment' and 'treatment'. While most of them did not question the rightness of punishment for an offence, they did question the rightness of the kind of treatment they received. These criticisms were aimed at police, courts and 'the system' generally.

. There were constant allegations of dishonesty and brutality by

Aboriginals against 'certain police officers'. Experiences of ill-treatment appeared to have done considerable injury to black/white relations in general and to Aboriginal/police relations in particular.

. Many Aboriginals felt an overwhelming sense of intimidation within the criminal justice system. The superior air of magistrates, court staff and police made them 'feel less than human'. Minor offenders did not think this was fair in relation to the seriousness of their crime.

. We must report that the general condition of the relations between Aboriginal people and the South Australian criminal justice system seems one of acute alieniation. People will injure themselves and their families rather than pay a penny to the perceived 'White System'. This is not going to be an easy syndrome to break, short of calculated, unconditional, diversionary reform at the legislative level which ensures the rechannelling of minor offenders into different forms of sanctions other than fines.

. The view that there is 'a law for the rich and a law for the poor' is not one held by Aboriginals alone. Class and racial distinctions in the application of the law are both dangerous in fact and dangerous in theory, and should not be given opportunity to flourish. Judging by experiences in Britain and the United States, it is likely that issues of difference of race rather than difference of culture will emerge as central in the urban setting. Although performing an undeniably vital peacekeeping role we do not feel that the police force should carry the full burden for bringing peace to inter-group relations. Volunteer social groups, educational, sporting and recreational activities, youth programs, community groups and dispute mediation endeavours provide a fruitful soil for fostering understanding and mutual restraint.

. Aboriginals contended that they were over-policed and under-educated while police asserted that we were in danger of trivialising what was actually a serious state of recurrent offending. The latter stressed that there was an urgent need to change Aboriginal attitudes towards people and property through education and training.

. Pro-active methods of crime prevention, in both community policing and youth development activities, should emerge as central in any discussion of Aboriginal criminal justice.

. This study noted an undercurrent of antipathy between Aboriginal and non-Aboriginal society. The point of juncture of this antipathy is the Aboriginal recurrent offending population (which probably catches in its net a large number of people who should never be there), and arresting patrolmen. Australia's history of carnage of white against black is perceived by Aboriginals as being perpetrated by the justice system in a more respectable guise. This may sound melodramatic, and we have heard it all before, but unfortunately it is very real to those lives it directly affects (Appendix 5). The best way of dealing with this is to replace it with other kinds of memories of a more constructive kind. Despite their bad experiences many Aboriginal people are still prepared to put their confidence in genuine collaborative change.

. In the early part of this study we became aware of two conundrums confronting the Department of Correctional Services. The first, concerning the conflict between the department's objective to establish and successfully maintain the credibility of general community service programs and the objective of making this alternative available to Aboriginal offenders; and secondly, the need of the department to secure the co-operation and continued support of the Aboriginal community for a specialised Aboriginal Community Service Order Program and the department's own need to solve the various logistic and internal difficulties which the establishment of this program created. With the implementation of the Norwood program in January 1987 these two problems may be resolved.

. The magistrates and the researchers agreed that, while intervention might be helpful, ultimately more resources should go to programs of crime prevention. Children and juveniles needed government attention before offending records had been established. A recent drop in numbers of Aboriginals attending two local hotels which had been notorious for their brawls, and a drop in Aboriginal offending in the area was largely attributed to the relocation of the Aboriginal Community College at Port Adelaide.

Appendix I

'Policy Guideline' Department of Correctional Services, 1986

RE: COMMUNITY SERVICE ASSESSMENT GUIDELINES

The purpose of community service assessment is to provide the court with sufficient information to enable it to come to a judgement as to an offender's suitability to undertake community service.

The assessment should take into account all the relevant factors for and against an offender's suitability, and the following factors would be relevant as appropriate guidelines:-

1. Normally Unsuitable:

(a) Addicted to alcohol or drugs
(b) Guilty of sexual or serious violent offence
(c) Severely disturbed or mentally ill
(d) Offender with no fixed place of abode, or frequent change of address
(e) Require intensive casework or social work support.

2. Factors in Suitability/Motivation:

In assessing suitability, the stability of a potential worker is looked at together with his commitment, motivation and staying power. An offender is required to attend placement regularly and puntually. Supervision is firm, therefore he must have maximum stability - reliability to sustain his obligations from start to finish.

(a) Settled accommodation
(b) Pattern of employment - ability to sustain a work pattern
(c) Stability of - personal relationships
- family support and attitudes
(d) Offences - first offenders
- marked deceleration in the rate of offending
(e) Physical/Mental Health - should be generally such that the person is capable of being matched to available projects.

3. Special Categories of Consideration

(a) Single Parent Families - Time availability and adequate caring for children whilst parent is performing the order.

(b) Alcohol and Drugs - Heavy consumers of alcohol or users of drugs affects reliability to sustain an order.

(c) Employment - Where employment commitments do not allow them to complete their community service obligations, i.e. excessive long working hours, make it difficult for community service arrangements to be made.

(d) Outstanding Offences - Where intervening detention is likely to interrupt a community service order, i.e. outstanding warrants for apprehension, unpaid fines.

The above considerations are guidelines, and an indication of departmental policy. Reality is important, does the offender at least have a fighting chance of successfully completing a community service order?

Consultation and liaison with the community service officer with regard to suitability of the offender and availability of a suitable project is of the utmost importance, and indeed is compulsory.

Note: Community Service at present operates on Wednesday and Saturday only.

Appendix 2

EARY WARNING NOTICE

Aboriginal Fine Default Study

Aboriginal Legal Rights Movement,
124 North Terrace,
ADELAIDE. S.A. 5000

TO WHOM IT MAY CONCERN

Please find attached a list of persons fined for whom warrants are about to be issued.

Following our agreement in conjunction with your organisation to assist in the Aboriginal fine defaulters study, it would be in the best interest of those fined if they could be encouraged to pay or seek extension of time to pay before further consequences are incurred.

I trust your organisation will follow these up as soon as possible.

Clerk of Court
PORT ADELAIDE COURT

Appendix 3

OFFICE OF ABORIGINAL AFFAIRS

SOUTH AUSTRALIA

[redacted]
TELEPHONE 213 3495
[redacted]
OUR REF. OAA 10/27 YOUR REF.

21st April, 1987

Dear

I am working on a Project which aims to reduce the high numbers of Aboriginals being goaled for fine default in South Australia.

I have an arrangement with the Clerk of the Court, where the Clerk gives me notice of Aboriginal people who have been fined, and the dates that those people's fines are to be paid by.

Uusually when no-one pays their fine on time, a warrant is issued for their arrest. However, because of my arrangement with the Court at Pt. Adelaide, I am able to visit Aboriginal people to let them know that their fine is still outstanding.

After I have advised Aboriginal people in this way, the person will then need to contact the Clerk of the Court to arrange an extension of time to pay their fine.

If you have not made any arrangements to have your time extended, then I would urge you to do this as soon as you can before a warrant is issued.

If you would like any assistance in approaching the Clerk of Court at Pt. Adelaide, then I will be happy to help you in this.

I can be contacted on (213 3495)

Office of Aboriginal Affairs,
6th Floor, West Wing,
50 Grenfell street,
ADELAIDE. S.A. 5000

The best times to contact me in the Office are between 1.30 - 5.00 p.m., Monday to Friday.

Yours sincerely,

Michael Harris
PROJECT OFFICER
OFFICE OF ABORIGINAL AFFAIRS

Appendix 4

OFFICE OF ABORIGINAL AFFAIRS

SOUTH AUSTRALIA

ABORIGINAL FINE DEFAULT STUDY

A research project aimed at reducing the high numbers of Aboriginal people goaled for fine default in South Australia is being conducted at the Pt. Adelaide Court.

An Aboriginal Project Officer (Michael Harris) will be at Port Adelaide Court each day from 9.00 a.m. - 1.00 p.m.

Between 9.00 a.m. - 10.00 a.m. the Project Officer will introduce himself to Aboriginal people and if they have no objections, explain the Project in detail and how it is expected to benefit Aboriginal people.

The Project Officer is not at the Court to provide a Legal Aid Service.

The Project Officer's ultimate aim is to promote the use of alternative penalties other than fines or detention in discussions with Magistrates, and to further assist Aboriginal people by explaining the Project and how certain arrangements made with the Court can help Aboriginal people overcome the problem of defaulting (not paying fines).

The Project Officer will request Aboriginal people to fill out a small questionnaire asking basic questions about their income, financial commitments and ability to pay fines.

Once again people are reminded that if they have any objections to the Study or in particular being questioned, then they have the right not to participate.

However, you are urged to consider this Project, as every effort is being made to bring about changes in the following areas:

- Aboriginals are more than eight times the normal prison population.
- The Projects ultimate aim is to reduce those high numbers through a variety of actions during the course of this Project.
- Through extensive consultation with relevant departments and Aboriginal organisations develop appropriate Aboriginal Community Service Work Programmes and promote their use amongst Magistrates.
- Generally to be available on the ground to assist Aboriginal people at the Court by providing information about the Project and how our actions during the course of the Project can help them.

Once again you are reminded that this Project is to benefit Aboriginal offenders.

If you would like to know more about this Project and how it can help you, please contact Michael Harris, Project Officer, Office of Aboriginal Affairs, 6th Floor, West Wing, 50 Grenfell Street, Adelaide, Ph: 213 3494.

Appendix 5

Aboriginal Views at the Port Adelaide Court
Conversations by Michael Harris 1986-1987:

(Names and dates of these conversations have been omitted to preserve the anonymity of those interviewed. Initials have also been changed).

on Community Service Orders

I spoke with a person, whom I already knew and proceeded to inform him about the Aboriginal Fine Defaulters Study...I explained that a new Aboriginal Community Work Program had been initiated, and was administered from Norwood community Correction's District Office...The person showed genuine interest in this. He asked if there would be more programs like the Norwood project. I explained that this was dependent upon the Norwood project demonstrating some success...I suggested to the person that he should discuss with his lawyer the Norwood project and request him to make a formal submission on his behalf advocating for a CSO work order.

This person showed a keen interest at the availability of CSOs for Aboriginals and said this is something Nunga's have wanted for years. 'I personally would like to work off time on a community work program, on the condition that the work was in the Aboriginal community'.

I asked what he thought about doing CSOs as opposed to being fined. For his six offences he could total something like $1,500. He said that was alright as long as he gets time to pay. I said wouldn't you be better off on a work order. He said that if he wanted to go interstate or sleep in he couldn't do those things because he was bound to the community work order, to report for work so many hours a day. 'O.K. I know I will be out of pocket for a while, and I'm unemployed - my reasoning may sound strange to you but it suits me...Anyway if I get a fine I can always piss off if I get sick of paying it'.
I said, 'do you realise you are jeopardising yourself and your girlfriend who's pregnant? Have you considered how you may affect other people?'.
'Yes, but this is something I'm used to doing. Anyway, if I take off I would arrange for my girlfriend to meet me later.'
'It's none of my business', I said, 'but what if your girlfriend doesn't want to follow you around that way?'
'Well', he said, 'we'll see about that...you probably think I'm a bastard of a bloke'.
I said 'I don't think that at all, I do think you're being unreasonable, especially as there are others you are not considering. I know it's hard, especially for a lot of black fellas, but going the negative way is not going to help anybody, you're the one who stands to lose'.
He then said, 'You know you're O.K. I've never been lectured to by another koorie and sat there till they've finished. Usually if anybody tried to give me advice I just tell them to get f...d, but you got a way with words. I'll tell you what brother, if my lawyer turns up later, I will ask him to push for community service work. Thank you for talking to me'.

'I know for a fact that most Aboriginal prisoners would have liked the chance to have been given CSOs where they had been given fines instead. Aboriginal women prisoners need consideration too. A woman gets arrested for shoplifting, she gets a fine, she can't pay. She gets a warrant, gets arrested and gaoled for default. She may have children. I know of cases where this has happened. The police have come and arrested the mother with warrants. They take her regardless of the little children being left in the house alone. I'm not saying that this happens all the time, but I'm saying that I've witnessed it happen with certain police officers who have got it in for black fellas'. He said the information I provided was useful and while he was familiar with court process the information would assist those Aboriginal people who were unfamiliar and had a tendency to become easily intimidated by the authoritative air surrounding the court.

One man who appeared older than the others said that he had worked on CSOs in the country a few years ago and that it's not all that bad, it only keeps you out of the pubs and areas you'd probably be at otherwise and it's far better to have your money than have to pay it out on fines.

All three men were in their late 30's and agreed that CSOs for the younger Aboriginal males was important. 'A lot of the young guys today are very lazy', they said. 'A lot could be blamed on welfare and social security, because we believe it's made a lot of us soft. Young guys today think they're men if they're good fighters, but don't accept responsibility for their families and children'.

EW said that most Aboriginals he knew as offenders would have liked CSOs as opposed to fines. He said that he was aware that something was happening in regard to an Aboriginal CSO scheme, and that he had heard about this through his involvement as a volunteer with the Aboriginal Sobriety Group in 1985. 'Back then there was a lot of talk about developing a Community Work Scheme for Aboriginal offenders. I seemed to go quiet for a while and I understand that negotiations regarding this scheme seriously began again in 1986'. EW said that since the employment of an Aboriginal Liaison Officer in the Department of Correctional Services, this person had been involved in much of the discussion regarding the scheme. He said that the liaison officer had had a lot of discussions with Aboriginal prisoners and offenders, talking about health, recreation, education and skills programs. However, despite that person's efforts in translating prisoner's views into proposals to the Department it appeared that her submissions to the Department's hierarchy 'fell on deaf ears'. I said, without making any excuses, that it would be fair to say that the department has looked seriously at the problem of over-representation of Aboriginals in the prisons. It has entered into negotiations with representatives of the Aboriginal community with the intention of jointly formulating a suitable proposal which would accommodate the needs of Aboriginal offenders. Such a scheme is now available. Through the efforts of the Department of Correctional Services

and the Aboriginal community an Aboriginal Community Work Scheme was implemented on 20 January 1987. EW said, 'well that's a surprise, after all this time. Do you think it will work?'. I said I had a lot of faith in the scheme, mainly because of the enthusiams held by staff involved directly with the scheme. The scheme operates from the Norwood District Office of Community Corrections and pending its success, will be expanded into other District Office locations, metro and country. He said, 'Well I'm glad to hear about that'.

'I really hope something happens for nungas out of your work. Personally, I think I'll get gaoled over these new charges. I don't really think I'd like to do community work but that's not to say that others won't want to. I just hope you can do something for the people'. I explained that this was my aim. I said that I'm working with some other people who are not Aboriginal but very supportive of the need for change. Much of my assistance and support in this Project have been given by non-Aboriginal people. GR said this was good, 'but beware of them because they might be using you'. I said I didn't believe this to be the case, and that if I thought it was, I wouldn't continue with the project or I wouldn't have accepted the job in the first place.

JE is known to me personally, he said he was aware of this project, in fact he said quite a few nungas were aware that something is going on at Port Adelaide Court. He said, 'it's about time something was done to look at this problem. Most of my relations have or are being affected by heavy fines, and then having to be gaoled because they can't pay them. Community Work is a good idea. There are not a lot of nungas around who are offenders getting put on CSOs. I'll be O.K. myself because I'll be able to pay my fine if I receive one. I'm pretty scared about going to gaol, that's why I always pay my fines on time. I'm not shy so if I'm having any problems, I ring the Clerk of the Court myself and ask for an extension. A lot of nungas wouldn't bother, I guess that's the reason they usually end up in further trouble'.

on Fines

I spoke to WS outside of Court. He showed interest in my handout and was eager to hear more about how the study can help Aboriginals. He stated that he usually encountered problems paying fines on time and usually ended up being gaoled for fine default. The reasons for not paying were not because he couldn't afford to, but because other things took priority over things such as bills. He didn't mind doing time for default. It gave him the opportunity to recuperate from drinking and he received good food. Also there was the opportunity to catch up with old mates and relatives. His average times in default were usually only four - five days at the most at any one time. He said he would reconsider payment of fines if the amounts were very large, and where doing the time in default was longer than, say, two weeks. I asked whether he had considered how his absences from his family while in prison could have effect upon them. WS said there were no real problems with this as his de facto and two kids usually stayed at his mother's or with one of her friends. I said 'but the real impact could be upon the children who may,

over a period of observation, accept their father's actions and attitudes as acceptable and later develop similar patterns'. WS said he hadn't really thought of it like that, but now I've mentioned it, it was an issue for him to think about. WS supported the idea of Aboriginal community work programs. However, he had never been placed on one. 'Perhaps', he said, 'if I had been put on CSOs, then I wouldn't have had to do so much time in gaol on default. They (the courts) know Aboriginal people don't like paying fines and most are in positions where they really can't pay them, yet they keep on fining Aboriginal people'. I explained how we were trying to promote amongst magistrates the use of alternative penalties such as CSOs for Aboriginals or where fines cannot be avoided, to impose fines at the minimum level. I left WS and suggested that he get in touch with me if he wanted any further information.

EH said she felt the project was worthwhile and said she would read the handout. I asked her whether she would hasten to contact the Clerk of the Court regarding her fines. She said she would, and that she would pay a contribution when she received her next Social Security Benefit the following week.

'There are too many blacks in gaol for minor offences'.

'I feel a lot of Aboriginals do not know all the options available to them as they seem to all plead guilty, even if they are innocent of the charges, and get a fine'.

This particular lady was appearing as a result of a debt settlement. She explained that her case had been finalised and that the magistrate, after ascertaining her financial income and commitments, had ordered her to pay so much per fortnight from her supporting mother's benefit, a commitment she agreed to.

<u>on the Aboriginal Legal Rights Movement</u>

DR said the Aboriginal Legal Rights Movement was 'a farce, only a token institution. There's just no way in the world the ALRM can cope with servicing the Aboriginal people in South Australia. I didn't go through high school, but I know that there are too many nungas caught up in the system and ALRM just can't cope with them. They don't have enough lawyers, and the field officers they employ are all useless. They used to have a couple of good field officers a few years ago, but now they're hopeless. The guys in prison scream out for contact with ALRM and if they're lucky they may get to see someone. This is a problem in that guys who are in gaol on remand are waiting for their lawyers or a field officer to visit to take particulars. This rarely happens, the lawyer is too busy or is away sick or on holidays. When the guy has to go back to court the lawyer usually doesn't turn up, and if they do it's always late. This makes some magistrates angry, as they want to deal with the case, not to mention the offender, who would like to get it over with'.

This man was obviously distressed. I discovered that his case required witnesses. He said that ALRM had written to him last week requesting that he arrange with his witnesses to meet the

lawyer at ALRM. His key witness was in Darwin and he had rung the movement to explain this. The ALRM asserted that they had not received any contact by phone or by letter and that if they had they would have been able to make arrangements with police prosecutions to have the case put off for a later date for witnesses to appear...The person rang me at the office later to say that the police had given their evidence and that the case was adjourned for his witness to appear. He thanked me for my support and, in particular, for my information about the project and what we were attempting to achieve.

'I'm only feeling a bit pissed off because my bloody lawyer hasn't turned up yet. I've got six counts of serious driving, including two DUI - how can my lawyer act for me if I don't get a chance to speak with him before the case. I've already had two adjournments, so the magistrate will want to finalise the charges today'...I said I would check around...

I returned to the main courthouse and noticed an Aboriginal woman standing partly obscured by a column outside the police station. I introduced myself and asked if she was appearing. She answered that she was. However, she seemed confused. I asked if there were any problems. She said she was supposed to have appeared on Friday but had failed to because she said she was preoccupied looking for her handbag. There had also been some misunderstanding with her lawyer. I rang ALRM for her. The lawyer who was to have met her at the court was engaged in another case at Adelaide District Court. I spoke to another lawyer and explained the situation. He said he would get down as soon as possible.

As soon as I had stepped outside a group of Aboriginals converged on me. I was inundated with requests to follow up issues with ALRM on behalf of some, while others asked me if I could speak up for spouses and relatives that they had come to support in court. During my period of intervention at Port Adelaide Court this problem had almost become unbearable where Aboriginal defendants would repeatedly nominate me as representing them in the absence of ALRM, despite my repeated explanations that I was unable to perform that function. It was quite disturbing to be at the court where on occasions there are Aboriginal defendants who are obviously overwhelmed by just being there and have little understanding of how the system operates.

'ALRM lawyers have case loads which are far too heavy. I believe this prevents them from servicing the community in a way that they would perhaps like to'.

'Field officers are useless, they're like old women who behave like busy bodies and think they know everything. We've seen them at court and often you get the feeling that they are there because their job statement says they're to work with Aboriginal offenders. I would like to see some real black hearted Aboriginal care and concern from them'.

'ALRM field staff really need more legal training'.

'I think they all work together, you know, the police, the courts and lawyers and field officers. Sometimes the ALRM

make deals with the police about dropping a charge or something like that. They advise us it's better this way. Usually you end up with the raw end of the deal'.

'ALRM only deal with us because they have Aboriginal funding. In any other circumstances we would have probably little or no representation'.

on Police

'Sometimes I do things wrong, you know, such as stealing, break and enter, fighting, that's fine, and I don't mind the penalty that follows. What I don't like is all the bullshit charges the cops make up. Their constant harrassment of people like me only makes people more resentful of police. Since I've been getting harrassed, from the beginning of this year, I've spent a lot of time in gaol or police cells on remand. This has upset my de facto who is pregnant and the last I heard she doesn't want to see me. For all I know she could be with somebody else. Do you know what that does to a man's mind?' I said that he was not alone in this dilemma, but if he looked back over his years he was the one who made certain decisions to offend at times. Getting known to police at a young age, and also because you're Aboriginal, there is more likelihood of you being stopped by police for questioning.
He said, 'that's fine, but what I'm wild about is the way they put charges on you that they know you could not have possibly done. Anyway', he said, 'I'd prefer gaol now as I won't have a woman any more and I won't see my kid. If I'm out I'll probably go off my head'. I asked him to call me if he was interested in getting some counselling with his problems.

JM said, 'but it comes down to attitude, did you see Jesse Owens on TV last night? His life is typical of so many black Americans, and even some black Australians. Are you like Jesse Owens?'
'No, I'm Michael Harris. But that's not to say I haven't experienced situations similar to some of those faced by Jesse. If you looked closely at Jesse Owens' character you would have noticed that he was aiding his people's cause the best way he knew. Anyway, America is America. Would you like to be a black person in America?', I asked, 'and have to contend with the sort of problems they're experiencing?'.
'No', she said.
'Then I suggest that the best way we can deal with the problems that affect Aboriginals is to work in with the system, whether we like it or not. I quote Jesse Owens. "If we walk long enough and talk long enough, then we just might begin to understand one another". Remember, the system is bigger than you and I'.
JM said she agreed but she felt particularly cynical and angry at the system. I said I understood this. But if we can persuade the police to look closely at their own behaviour and methods of dealing with Aboriginals, if Aboriginal people in general are better informed of the law and its process and basically learn to live by the rules of this ruling society, then maybe we will make a significant impression upon those in positions of power to seriously consider the need for change.

RC said 'Do you believe it will work? I mean, do you really think whites want to help us?'
I said, 'perhaps not all non-Aboriginals, but it would be fair to say there are a lot of good non-Aboriginal people who are prepared to assist Aboriginals in a positive way, out of genuine concern. I think you're taking a dim view of labelling all whites because of some harsh treatment you've received from arresting police officers in the past'.
RC said, 'but that's how they judge us. When they see a black in the park drunk, that's how they see all of us'.
I said, 'if you're going to look to argue with police when you're being questioned then you're more likely to get on the wrong side of them. It's best not to give them any excuse to get rough'.
RC said, 'so what you're saying is that if I behave nicely and answer their questions properly, they'll be good to me'.
I said it would help.
'Well brother, thanks for your information. The last time I was picked up, I acted just like you said. For being a good boy, I got my arm twisted high up behind my back, while another punched me in the guts, then they hit me around the head with rolled up newspapers, that hurts as much as someone punching you, and doesn't leave any marks. See where my hair is uneven on one side, well I nearly had it all pulled out. It was pulled that hard, my scalp was bleeding. And you say "be nice"!'
I said that those sorts of things should have been reported.
RC said 'You know reporting police without witnesses is hopeless and in any case, they always believe the police in most cases. One day someone might retaliate to police treatment, like Rambo. How would the cops like that?'...
I asked RC if he wouldn't mind giving me a ring one afternoon at the Office. He said he would think about it. 'Regardless of how I feel', he said, 'I think you're on the right track and because you're a brother, I hope you can do something'.

TA expressed a keen interest in the study. He said that he was one of many who constantly had contact with the police ...it had become a routine part of his life...there were times when he actually got a kick out of a police confrontation.
'Some of them are real bastards. They think their uniform gives them the right to do as they please when it comes to blacks. I don't mind a good fight, but there's always a mob of cops and they also got guns'.
I said that the very thing he finds amusing was one of the main problems between Aboriginals and police. I asked whether he realised that he was setting himself up to be constantly harrassed by the police. One of the aims of this study was to improve relations between the police and the Aboriginal community. 'I think this can be achieved by working with them instead of against them - however the police needed to do the same'...
TA said, 'what we need is real good leaders who are respected by all people. We really don't have many Aboriginal people to look up to. I didn't. Most of the people I grew up with were all involved with the law as juveniles and later criminals. My uncles and older brothers and cousins taught me how to fight and that's all I've ever had to look up to. When you go to gaol and if you can't fight or you don't know anyone who can fight, you're stuffed. Young guys get raped in gaol by

other guys, and if they've got no one to look after them what can they do? The screws won't do anything until it's too late. Guys in gaol have got AIDS and you know the problems with that. I think gaol should only be for the very serious crimes'.

AW was frequently in and out of prison. He was unperturbed about his outstanding fines and maintained he will get gaoled when he next appeared in court...I asked him if the lifestyle he was living was what he wanted - trouble with the police, in and out of gaol or being constantly fined? AW said he didn't know any better. 'Anyway, I don't steal or fight like I used to when I was a teenager. It's just that I happen to always get sprung driving without a licence or I'm mouthing off at the police. Anyway, they always start it, calling us "black bastards" and things like that. A black can only take so much before he answers back...'
I asked AW whether he was interested in keeping out of gaol. He answered, 'no, because it doesn't hurt any, and shame is no longer a problem. If I was a murderer then perhaps I'd think differently about what my family and relatives thought about me'.
'Then there's no way you're going to pay your fines,' I asked. He replied quietly, 'no'.

DW is adamant he will not pay anything to the whites and that he is shooting through probably to Melbourne. 'If they catch up with me, good luck to 'em. I've been on the move since I was ten. I tried to do the right thing a couple of years ago, you know, hair cut, got a job, was doing alright. But the cops kept hassling me for nothing. If finally got sick of the hassles and one day took a swing at a cop. I missed by miles but they dragged me into the car and down to the station where they beat the shit out of me. I've got no respect for the law because it shows no respect for people like us. It seems to help you if you've got money or friends who can influence things for you. Anyway, gaol's not bad when you've been in a few times, you get used to the routine, at least you know where you stand. In prison we have a code of our own. You either live by it or else'.

'I was married to a white man, he was a hard working man and law abiding. Once when SD was young he got into trouble with some kids stealing. My husband went down to the police station and, as he was white, the police didn't know who he was at first. He told me later he was shocked by the way the police were treating SD and his two friends who were all eleven years at the time. The way the boys were being questioned is the way you would expect police to question a highly dangerous criminal'.

Court No. 1 was where an Aboriginal male was attending on a drink driving charge. After sitting through this hearing I was quite surprised to hear the outcome. Although evidence given by two police officers was conflicting the magistrate none-the-less found the defendant guilty and ordered him to attend a drink driving assessment clinic and he was to report back to court at a later date. His lawyer appealed to the magistrate for reconsideration. This was not granted.

I talked to these people (36) mostly in groups...Most expressed a keen interest in the study - approximately 70 per cent. Some - a minor proportion - said that nothing would change for Nunga's, no matter what was done. The Great White Hope rules and that ain't gonna change unless there's a revolution...One person said 'it's alright for you, you're employed in a good job, good income - things that affect us don't affect you the same way'.
'Yes, it's true I am employed, but you would be surprised at the number of times I get pulled over driving a car or questioned why I'm out in town late on a Friday or Saturday night. We all face the same problem of being approached by the police, regardless of our employment'.

SM agreed that such a study was necessary. 'For too long Aboriginals have been getting a raw deal. That's not to say that all Aboriginal people are angels. Some do deserve the punishments they receive.' She said that it was 'important that changes happen now as it seems that a lot of our young kids are going to progress through the adult criminal system. Positive changes that take place now will perhaps help those youngsters who will end up in gaol to adjust better'. She said that, 'police attitudes in general were very bad towards Aboriginals, not just at Port Adelaide, but most places I've been. We all know there are certain Aboriginals who are troublemakers and are known to the police. The police always seem to pick on these people. Until police start learning to treat Aboriginals like human beings there will always be conflict between the two'.

General Comments

I spoke to another Aboriginal male who was just hanging around the courthouse. I informed him of the project and he said I would need a lot of support in this. He asked me that when the study is completed and a report written, will the Powers-That-Be really take notice of it. He said he was an interstater and that he was aware of several areas in Aboriginal affairs in Victoria where committees has been set up or projects to look at various Aboriginal problems - 'everybody says there's a problem or something is wrong, but it always seems like forever before something positive happens. I don't think we are that much better off than we were thirty or forty years ago. At least we knew we weren't acceptable then and even though our people were treated badly we knew where we stood. Today people hide behind all sorts of cloaks, wolves in sheeps clothing. The worst thing is that many of our own people fail us and I think that's far worse than racism from white people'. As I had to leave, the young man said he would talk to more brothers and sisters about my project and what we were trying to do. He wished me luck and said, 'don't give up, no matter what. For every one black person that chucks in the towel or says "I can't cope" or whatever, that action affects all Aboriginals'.

TG asked, 'why do they need to have a research on these problems about Aboriginals in prison? Why don't the law just do the right thing where blackfellas are concerned? They know the problems, but I reckon that they cover them up by having little projects like yours, where everybody seems busy trying

to solve problems, but really they make more'.
I asked, 'do you think this study is worthless?'.
He said, 'no, but I think that when it's finished things will probably still be the same because whites are not going to make any exceptions for blacks regardless'. I said that this would not be the case. Many issues had been identified in the legal and judicial system which appeared to be having adverse effects in the treatment and rehabilitation of Aboriginal offenders and prisoners. This study will attempt to address these issues in conjunction with agencies and departments such as Correctional Services, police and Aboriginal community groups.
TG asked, 'will they listen to the things your study says?'.
I answered, 'that depends on how valid our information is and whether we are able to substantiate any claims we make from our fundings'...
He said, 'I only went to grade 7, but I know how the law works from experience and I can tell you that there's one law for the rich and one law for the poor, one law for the white and one law for blacks, it's as simple as that'.
I asked whether or not TG was aware that there were many non-Aboriginals who were affected in much the same way as Aboriginals when it came to law and justice.
He said, 'yes, but it's mostly the down and outers, the unemployed. Now and then they arrest a few big shots in government over business and take them to court. The media does a lot of coverage and everybody is given the impression that the law is not biased. If the law worked properly we wouldn't have crime like we have today. I'm referring to vicious crime like rape and bashings and murder. Some of them guys get treated better by the law than guys like me who might just steal a TV or something. What's more important when it comes to spending government money on rehabilitation? Are lives worth less than TV's or Videos and should they be less protected? You tell me who's crazy'... He supported the idea that CSOs for Aboriginals were probably the best solution. He believes that work as a penalty for Aboriginal offenders would benefit Aboriginals as it would eventually get them into a routine, as he feels too many are lazy.

I only spent five minutes with ES. He only wanted to argue with me regarding payment of fines. He challenged me to a fight because he said I was only working for the white man. He was very angry and threw an empty stubbie bottle at the car as I was driving off.

RJ was fined $20 to pay in one fortnight, on supporting mother's benefit. RJ had heard that this study was being done through a relative who works for ALRM. She said that as long as something positive comes out of the project then it will have been worthwhile. Although she supported the study she felt that we might be a little hopeful.

'I can tell you now, I did well in school in most subjects except reading and writing. I remember a time when my mum came to school at Maitland. She told the teacher I was having trouble with spelling and reading. The teacher said he would work out a program for me to help me. This never happened. I can remember in gaol on several occasions where other prisoners besides myself have asked for reading kits, you

know, those ones that help you to read and write correctly. We never got them. If they're unwilling to get a few simple books for us, then are they ever going to seriously look at making changes in the areas you're talking about! It's like trying to get blood from a stone'.

HD said that changes were needed in the present system. Until the special needs of Aboriginals were genuinely recognised these problems will remain with us all. Prisoners need more contact with Aboriginal service agencies. The prison system is not catering adequately for the needs of prisoners in general let alone blacks. Magistrates have a hard job, but they have to be prepared to want to change. 'Too many blacks are treated by magistrates as though they're less than human. That may be exaggerating, but that's how you feel inside yourself after you've been dealt with by police and the courts. The police have a responsibility to protect the community. The image of the policeman as your friend is gone. Cops are basically bastards these days. It's just a job to them...Today they're all mostly T.V. cops'.

SD's mother said she would pay her son's fine. She thought that the study was good, but pointed out that Aboriginal people generally need to be more accountable for their actions. 'I think that if the law worked properly in the first place and dealt with any offender without exception then they probably wouldn't have half the problems they have today', she said. 'Really, the law is weak and I think it encourages offending. I think that the white man's law is really ineffective for dealing with Aboriginals, especially juveniles. Our young kids take advantage of the slackness of the way Children's Aid Panels deal with them...At least you were dealt with immediately in traditional Aboriginal society. No adjournments, no remands, no bail, no excuses. Just the penalty for the offence'. Mrs. D. said that she believed Aboriginal offenders would respond more positively to rehabilitation if some of the tribal laws were applied to them for offences they commit.

Appendix 6

ABORIGINAL FINE DEFAULT PROJECT

ATTITUDE SURVEY

4/5/87

This questionnaire has been designed to obtain the views and attitudes of Police Patrol Officers, in the Western Region regarding their contact with Aborigines during the execution of their duties.

The expressed views of Police Officers will later be incorporated in the body of the final report, "The Aboriginal Fine Default Study", and all personnel participating in the survey will remain anonymous.

Please indicate with YES/NO in the boxes.
Some questions will ask for written views as well as an indication of YES/NO.

QUESTIONNAIRE

		TICK ONE		
		YES	NO	
1.	It has been stated that Aborigines are the most disadvantaged group in Australia. Do you agree with this view?	2	48	
2.	Are you more likely to approach an Aboriginal or group of Aboriginals on the street as opposed to any other cultural group?	16	34	
3.	In the event of questioning a traditional Aboriginal who may have difficulty in understanding English would you -			
	(A) Bring him or her into the Station for questioning?	31	12	7
	(B) Seek the services of an interpretor?	41	6	3
	(C) Seek assistance from the Aboriginal Legal Rights Movement?	49		1
	(D) Seek advice from a recognised Aboriginal organisation within the area?	27	16	7

		YES	NO	
4.	(A) Through the course of the Cadet training, did you engage in any studies, seminar or workshops on Aboriginal culture?	31	19	
	(B) If so, did you find these informative enough?	23	12	15
	(C) Do you think they could have been more comprehensive?	13	23	14
	(D) If you have been involved in Aboriginal cultural awareness programmes, would you say that this has provided you with a better understanding of Aborigines generally and the issues that affect them?	24	12	14
5.	Do you see any merit in employing more Aboriginals throughout the Police Department?	19	28	3
6.	(A) Are you familiar with any Aboriginal service agencies or organizations in your area?	39	11	
	(B) and if so, do you liaise with any of these groups with regard to offending behaviour by Aboriginals?	15	33	2
7.	The majority of Aboriginals in your area are charged with offences that fall within the minor category, would you agree?	14	35	1
8.	Do you think that any minor offence charges could be avoided through -			
	(A) Better Police/Aboriginal communications.	15	32	3
	(B) More informed policing on Aboriginal culture and needs.	4	43	3
	(C) An increase in Police counselling and warnings of offenders.	3	44	3
	(D) More recreational facilities and programmes in the community.	18	29	3
	(E) A greater interest shown by the Aboriginal community toward their own people.	44	6	

9.	Do you have contact with Aboriginal people other than through your work? If you do could you please write a few lines about your involvement.	13	27	10

10. In what areas of community support, recruitment, training and police practice, do you think Aboriginal Police Relations could be improved? Please indicate in writing.

AUSTRALIAN INSTITUTE OF CRIMINOLOGY

Director: Professor Richard W. Harding

APPENDIX 7

4 November 1986

The Hon. C.J. Sumner
Attorney-General
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Attorney-General

Following our meeting on 24 October 1986 I submit for your consideration the main points which have arisen from our discussion with members of the Adelaide criminal justice system in the course of our research for the Aboriginal Task Force, Justice and Consumer Affairs Committee, on the problems of Aboriginal fine default and the use of community service orders for Aboriginals.

- Only small numbers of Aboriginals are being placed on the general community service order programs.

- Over a two year period, and particularly as a result of the efforts of the Aboriginal liaison officer, Ms Debby Rose between June 1984 - October 1986, Aboriginal community groups have been consulted by the Department of Correctional Services on the matter of establishing an Aboriginal community service order program.

- Having secured the interest and willingness of Aboriginal community groups to participate in this program, the Aboriginal CSO program has met with delays in its implementation. The September 1986 starting date has now been moved to December 1986. In the meantime, some considerable disillusionment has set in among the participatory Aboriginal groups and Ms Rose has withdrawn from the Department as she feels she has been unable to honour the commitments she made to the Aboriginal community, on behalf of the Department.

- The Aboriginal community groups have interpreted these delays as procrastination, even obstructionism, on the part of the Department of Correctional Services. To them it appears that the Department got 'cold feet' over the project once the

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Aboriginal community groups 'wanted to get too involved in the running of this program'. The Aboriginal community also wanted to see Aboriginal supervisors hired to run the work groups on the Aboriginal CSO program. They were uncertain whether the Department shared this wish.

- Under the present Aboriginal CSO proposal, yet to be established, it is intended that this program be made available to Aboriginals in the metropolitan area. A pick-up service is to be provided to the workers at the Wakefield Street address of the Aboriginal Sobriety Group Centre. We have asked whether this pick-up service could be routed round the surrounding court districts, in order to make this special program available to neighbouring areas (such as Port Adelaide).

- The management of the Department of Correctional Services explained that the delays in the launching of the Aboriginal Community Service program are a result of insufficient staffing resources to meet its needs: industrial disputes within the Department and already overburdened CSO officers under the general program in the districts. They, nonetheless, assured us that they are keen to see the Aboriginal CSO program installed and have developed a plan for such a scheme which should cater for both enculturated Aboriginals and those of more traditional background. Some negative attitudes towards the special program or, to special consideration of Aboriginal offenders under this program, exist among some of the correctional staff, they said.

- Correctional staff supportive of the Aboriginal CSO program feel that things have not progressed as swiftly as they would have liked for Aboriginal offender recruitment. The co-ordinator of the Adelaide metropolitan CSO Project, Mr Paul Kasapidis, said that Aboriginal offenders he currently had on his work program had been 'no problem', and that he was keen to see the scheme utilised for more Aboriginals. Mr Kasapidis said he would be willing to set up and run the special Aboriginal CSO program for the Department if his present responsibilities were transferred elsewhere. He said he would be willing to administer the project until an Aboriginal co-ordinator was trained to take his place.

- Magistrates said they were aware of the CSO program but expressed a 'discomfort' with ordering CSO's for Aboriginals. There were two reasons for this discomfort. First, legislation specified a minimum of forty hours of work for CSO's, whereas a large number of Aboriginal offences were minor in nature - frequently resulting in small fines in the order of $70 - $250. They agreed that if the minimum hours for CSO's were dropped to sixteen hours (two days' work) or twenty-four hours (three days' work) many more could be

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fitted into this category of sentence. Under the present legislation, and that proposed in the Criminal Courts (Sentencing) Bill (1986) where forty hours remains the minimum, one will end up with the situation of having middle-range offenders being put on CSO's, while minor offenders are sent to gaol (on fine default). The cost of keeping offenders in prison for minor offences was seen as a 'ludicrous' proposition by Chief Magistrate Mr N. Manos - particularly as some Aboriginals saw this as 'more of a holiday than a punishment'. Magistrates felt that CSO's should be made available to magistrates as a minor sentencing option as well.

- Secondly, under Section 4 of the Offenders Probation Act, the 'character, antecedents, age, health or mental condition of the person charged' tended to disqualify most Aboriginals from CSO's. In those instances, when magistrates sought pre-sentence assessments on the offender's suitability for CSO's, Aboriginals were usually disqualified. The policy guidelines and practices of the Department of Corrective Services clearly exclude any offender with a history of alcohol addiction and violence of any kind. Mr Crammond, questioned the purpose of these criteria of 'suitability'. It was generally admitted throughout (courts and corrections) that there was an 'over-protectiveness' of the CSO program on the part of the Department of Correctional Services. While this protectiveness might be well placed - intended to protect both the public from high-risk offenders and the program from failure or disrepute - the cumulative 'presumption' that Aboriginal offenders would fail to perform, or would be high-risk candidates, severely prejudiced their access to this program. Conventional orders of fines and imprisonment, therefore, have remained the norm in Aboriginal sentencing. More imaginative administration of (a) special programs for Aboriginal offenders and (b) low-risk community service job situations for high-risk offenders was called for.

- There was a general agreement that CSO's should be used more for Aboriginal offenders, in place of fines and, certainly, in the place of imprisonment as a result of fine default.

- The possibility of a CSO scheme being established as a program specifically for fine defaulters, was under consideration at the Department of Correctional Services. The problem seen here, however, was the extra paperwork and use of court time this would generate in the reprocessing of fine defaulters. Magistrates stressed that they would like to see the legislation in place which would make community service orders a 'genuine option' to conventional sanctions - provided the administration of these programs could inspire their confidence, and that of the correctional staff and the general public.

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- In the opinion of Aboriginal community groups, delays in implementing an Aboriginal CSO's had had an adverse effect upon Aboriginal community confidence in, and enthusiasm for, the programs. They were frustrated at the lack of suitable alternatives for Aboriginal offenders and at the apparent hindering of the 'good ideas and initiatives' of some people within Correctional Services by other correctional staff who were 'indifferent' about special programs for Aboriginals.

- There was a strong assertion from the Aboriginal community groups that they should be allowed to play not only a 'consultative', but also an 'active role' in the development and running of CSO programs for Aboriginal offenders.

- Some Aboriginal offenders were said to be 'incensed' at the thought of working off penalties by doing CSOs for the non-Aboriginal community - while the Aboriginal community was clearly in need. Other Aboriginal offenders were 'not opposed' to working in the general program.

- Despite the delays Aboriginal community groups say they are still keen in participating in CSO programs and that there was abundant work in the community for Aboriginal offenders under the general scheme. They asked why they are not already being used, as non-Aboriginal community groups have been, in the existing program.

- Aboriginal offenders and community groups also expressed a preparedness to accept non-Aboriginal offenders on Aboriginal programs (where they were established).

- In summary, it would appear desirable that the Criminal Courts (Sentencing) Bill be amended to ensure that CSO's become a genuine sentencing option for minor offenders. By the Department of Correctional Services' rule-of-thumb of a $50 fine equating eight hours of CSO labour, the minimum should be set more realistically at sixteen hours, or two days labour being equivalent to a $100 fine.

- Clearly, were such a program to be practised as a major option it would result in a rapid and significant reduction in the prison population. The industrial and long-term administrative implications of such a development need careful consideration.

I hope these observations prove useful. Enclosed is an outline of our study project for general circulation.

Yours sincerely

Kayleen Hazlehurst
Senior Research Officer

HOUSE OF ASSEMBLY

[As laid on the table and read a first time, 1 April 1987]

[Prepared by the Parliamentary Counsel]

1987

****

A BILL FOR **No. 167**

An Act to amend the law relating to the enforcement of fines and other monetary orders made by courts in the exercise of criminal jurisdiction; to amend the Criminal Law Consolidation Act, 1934 and the Justices Act, 1921; and for other purposes.

[ ]

The Parliament of South Australia enacts as follows:

Short title.

1. This Act may be cited as the "Criminal Law (Enforcement of Fines) Act, 1987".

Commencement.

2. (1) This Act will come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing the day on which this Act is to come into operation, suspend specified provisions of this Act until a subsequent day fixed in the proclamation or a day to be fixed by subsequent proclamation.

Interpretation.

3. In this Act—

"business day" means any day except a Saturday, Sunday or public holiday:

"court" means—

(a) the Supreme Court;

(b) a District Criminal Court;

or

(c) a court of summary jurisdiction:

"the Director" means the Executive Director, Department of Correctional Services:

"fine" means a monetary sum, or the aggregate of a number of monetary sums, that a person is ordered to pay on being convicted, or adjudged guilty, of an offence or on estreatment of a recognizance and, where such a sum has been partially paid, includes the outstanding balance of that sum but does not include

a levy imposed under the Criminal Injuries Compensation Act, 1978:

"the proper officer" means—

(a) in relation to the Supreme Court or a District Criminal Court—the Sheriff;

(b) in relation to a court of summary jurisdiction—the clerk of the court.

Imprisonment in default of payment of fines

4. Where a term of imprisonment is to be fixed for the enforcement, or in default of payment, of a fine, the term must be fixed subject to the following limits:

(a) if the amount of the fine does not exceed $50—the term of imprisonment must not exceed one day;

(b) if the amount of the fine exceeds $50—the term of imprisonment must not exceed a period calculated on the basis on one day's imprisonment for every multiple of $50 comprised in the amount of the fine with a further one day's imprisonment for any remainder left after division of the amount of the fine by $50;

(c) the term of imprisonment must not in any case exceed six months.

Application to work off fine by community service

5. (1) If the payment of a fine would cause severe hardship, the person liable to pay the fine may apply for permission to work off the fine by community service.

(2) An application under this section—

(a) must be made in writing to the proper officer of the court by which the fine was imposed;

and

(b) must include—

(i) a statement of the applicant's assets and liabilities;

(ii) a statement of the applicant's income and recurrent expenditure;

(iii) the prescribed information.

(3) The information contained in the application must be verified by statutory declaration.

(4) If the proper officer is satisfied that the payment of the fine would cause severe hardship to the applicant or his or her dependants, the proper officer must, within two business days after reaching that decision, refer the application to the Director.

(5) If a position for the applicant at a community service centre is currently available or will become available within a reasonable period, the Director may permit the applicant to enter into an undertaking in a form and in terms approved by the Director to perform community service.

(6) The undertaking must comply with the following provisions:

(a) the period of the community service will be determined as follows:

(i) if the amount of the fine is $100 or less—the period of community service will be eight hours;

(ii) if the amount of the fine exceeds $100—the period of community service will be calculated on the basis of eight hours' community service for each multiple of $100 comprised in the amount of the fine with a further eight hours' community service for any remainder after division of the amount of the fine by $100;

and

(b) the community service must be performed over a period not exceeding eighteen months.

(7) Where a person enters into an undertaking under this section—

(a) the Director must, within two business days of the date of the undertaking, file a copy of the undertaking with the proper officer of the court by which the fine was imposed;

and

(b) any process for enforcement of the fine will be suspended unless and until notice of the cancellation of the undertaking is filed under this section.

(8) If the proper officer of a court is not satisfied that payment of a fine would cause severe hardship to an applicant or his or her dependants, the proper officer must give the applicant written notice to that effect and the applicant may, within seven days after receiving the notice, apply to the court by which the fine was imposed for a review of the decision.

(9) If the court is of the opinion that the evidence supports a finding of severe hardship it may—

(a) reverse the proper officer's decision;

and

(b) give such incidental directions as the case may require,

(and no appeal will lie against a decision or direction of the court under this subsection).

(10) If a person fails to comply with the terms of an undertaking under this section, the Director may, by notice in writing to that person, cancel the undertaking.

(11) The Director must file a copy of the notice of cancellation with the proper officer of the court by which the fine was imposed together with a statement of the period of community service (if any) served by the applicant before the date of cancellation (and the period will be expressed in multiples of eight hours, so that if the period amounts to less than eight hours it will be ignored, as will any remainder of less than eight hours).

(12) Where a person completes the entire period of community service to be performed in pursuance of an undertaking, the Director must file a notice of that fact with the proper officer of the court by which the fine was imposed.

(13) Any notice to be given under this section may be given personally or by post.

(14) This section does not apply to a fine exceeding $2 000.

Reduction of fine by imprisonment or community service.

6. (1) If a person is imprisoned on default of payment of a fine, the amount of the fine is reduced by $50 or the balance of the fine (whichever is the lesser) for each day of imprisonment completed by the prisoner.

(2) If a person completes six months' imprisonment in default of payment of a fine, the fine is entirely extinguished.

(3) A person who is imprisoned solely for non-payment of a fine will be released from prison if the balance of the fine (in cash or a banker's cheque) is tendered to the superintendent of the prison.

(4) If a person performs community service in pursuance of an undertaking under this Act, the amount of the relevant fine is reduced by $100 or the balance of the fine (whichever is the lesser) for each eight hours' community service completed by that person.

(5) The Director will release a person from such an undertaking if the balance of the fine (in cash or a banker's cheque) is tendered to the Director.

(6) Notwithstanding the foregoing provisions, a person cannot diminish a civil liability by undergoing imprisonment or performing community service.

Regulations.

7. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) A provision of this Act may be amended by regulation for the purpose of altering a monetary amount specified in the provision.

(3) If a regulation made for the purpose of altering a monetary amount specified in this Act is disallowed, the text affected by the regulation is revived in the form in which it existed immediately before the amendment.

(4) A regulation may impose a fine not exceeding $2 000 for breach of or non-compliance with the regulation.

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