

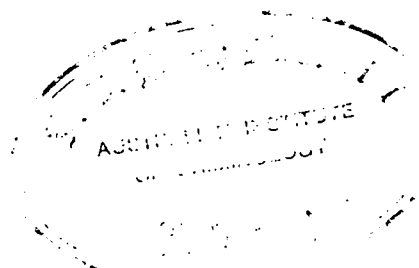
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THAT'S 'GARDIA'\* BUSINESS

An evaluation of the Aboriginal Justice of  
the Peace Scheme in Western Australia

by

ANNIE HODDINOTT



"This is a project supported by a grant from the  
Criminology Research Council. The views expressed  
are the responsibility of the author and are not  
necessarily those of the Council."

\*

GARDIA is an Aboriginal word used to describe  
'other Australians'.

"They are playing a game. They are playing  
at not playing a game. If I show them I  
see they are, I shall break the rules and  
they will punish me. I must play their  
game, of not seeing I see the game."

R.D. Laing, from Knots.

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## 1. SUMMARY

Since the proclamation of the Aboriginal Communities Act 1979, various Aboriginal communities in the north-west of Western Australia have been participating in the administration of justice within the framework of the Act. Basically, the Act makes provision for the independent and responsible management of judicial matters in these Aboriginal communities.

In 1984 an evaluation of the Aboriginal Justice of the Peace (JP) scheme was conducted. Fieldwork was carried out over a six month period in seven communities in the Kimberley region of Western Australia. The project was jointly funded by the Criminological Research Council of Australia and the Western Australia Prisons Department.

The Aboriginal JP scheme has developed serious difficulties since it began in 1980. This has been due to a number of factors. The cultural differences between Aboriginal and non-Aboriginal society have not been fully taken into account in the implementation of the JP scheme and conflict has been a result. This conflict is undermining the effectiveness of both Aboriginal and non-Aboriginal justice systems.

## 2. SUMMARY OF RECOMMENDATIONS

There are two options for action. They are:

2.1 Retain the Aboriginal JP scheme but amend the Aboriginal Communities Act, under the following conditions:

- Restrict the Aboriginal Communities Act to existing communities until the Act is amended.
- Extend the sanction options for Aboriginal JP's to include aspects of tribal Law.
- Adopt court procedures suited to Aboriginal social organisation.
- Aboriginal community courts to be wholly staffed by Aborigines.
- Aboriginal JP's to have the sole decision making power.
- On re-implementation of the Act, provide ongoing educational programs for JP's, offenders and community members.
- Subject the Aboriginal Communities Act and its application to regular reviews.

Two alternative options for amending the Act are proposed. The first, which is preferred, is more radical than the second.

2.1.1 Amend the Aboriginal Communities Act to encourage the use of tribal Law.

- Traditional arbitration to be the norm, with the provision for the communities to use the JP scheme as an optional avenue of arbitration.
- Aboriginal JP's to have the option of using either sanctions as prescribed by the Act or tribal sanctions.

2.1.2 Amend the Aboriginal JP scheme with provision for tribal offences, sanctions and procedures.

2.2 Abandon the JP scheme altogether so that the communities return to the mainstream of Australian law.

### 3. PREAMBLE

Aboriginal perceptions on the whole are dictated by their understanding of the past. For this paper to have any real value it is necessary to catch a glimpse of their philosophy because many problems Aborigines face today are directly linked to their perceptual values. Although the traditional way of life has drastically changed since the advent of the European settler, innate Aboriginal values have altered little.

To the traditional Australian Aborigine there was no beginning. The Dreaming always was, and is, a continuum of a state of being; vibrating in union with the cosmos. Aborigines believe that the Dreaming is filled with spirit beings who share the same psyche with man and his environment. Everything that exists in the present is a facet of, and an expression of the whole; a wheel within a wheel. According to the Aborigines the spirits have always slumbered in the Dreaming and stories abound of their creation.

One Aboriginal song-cycle that tells of the creation says that the spirits awakened and looked upon the earth. They saw that she was sleeping and had no essence. The spirits decided to breathe life into her womb. She was the mother, the nurturer of life.

During their travels on earth the spirits created rocks, water-holes, trees, animals and man. Into each of these creations they also breathed life and endowed separate psyches. To traditional Aboriginal people there was no separation from the rocks or other entities; each was an expression of the whole; a facet of the many faces of the mother.

Spirit resting places during the period of creation were entrusted into the care of Aboriginal people as a visible symbol of their belonging with the spirits and Dreaming. Aborigines were also entrusted with the Law which was a code of behaviour, and were advised that if they wanted to retain their spirituality they would observe the Law. To break the Law would be to lose the essence of life.

Traditional Aborigines adhered strictly to the Law as given to them from the Dreaming. If an Aborigine transgressed he could not plead ignorance. Breaches incurred sanctions according to the degree of the seriousness of the nature of the offence. Sanctions never altered. A certain punishment for a particular offence always applied.

Instruction into Aboriginal philosophy and the Law began as soon as a child was capable of understanding. The older an Aborigine became the further he was inducted into the Law. During initiation he was introduced to his areas of responsibility regarding the guardianship of sacred sites, the tribe, and his mother, the earth. Each aspect of daily life was lived according to the Law. There was a surety and



knowingness between Aboriginal people, their environment and the Dreaming. There was a sense of belonging; a deep spirituality transcending human understanding intricately woven into Aboriginal essence. (1)

The arrival of the Europeans to Australia signaled the end of a metaphysical philosophy; a philosophy refined to an existential one-ness with the earth. It was with a real sense of violation that the Aborigines watched the early settlers lop trees and clear the land; and, contrary to popular belief they resisted the invasion, in some cases quite strongly.

Numerous cases of Aboriginal resistance have been documented, and in the north-west of Western Australia pastoralists were subjected to guerilla warfare when clearing properties for fencing, as was seen at the battle of Gieki Gorge. Settlers retaliated by shooting Aborigines on sight. Thus began a conflict relationship between the races which has yet to be resolved and is reflected by the present land rights struggle.

Underlying the conflict relationship is an ideological difference. The ideology which mirrors European perceptions of the real world is basically oriented toward materialism and exploitation with a Judaic influence. Traditional Aboriginal ideology on the other hand is based on spiritualism and transcendentalism. These ideologies are antipodes apart.

Since European settlement in Australia, Aborigines have been denied access to the European real world by the Europeans themselves and by their own transcendentalism. As Stanner points out the Aborigines "...live unhappily somewhere in between". (2)

A hundred and fifty years of uneasy race relations in Western Australia has culminated in a recognition that European ideology and ethno-arrogance has been, and still is largely responsible for Aboriginal dislocation. The European may not always have given the Aborigines a 'fair go' but at least now the right questions are being asked.

#### 4. BACKGROUND

##### 4.1 Origins of the JP Scheme

The Aboriginal Justice of the Peace (JP) scheme was devised by Terry Syddall SM, who was the Magistrate at Broome in the Kimberley region of Western Australia during the 1970's.

While working in Broome Syddall expressed concern at the high rate of Aboriginal representation in courts and prisons. In the course of discussions with Aboriginal inmates at lock-ups and prisons, and with tribal elders, Syddall discovered that Aboriginal understanding of Australian law was minimal. (3)

Determined to redress the balance Syddall introduced Aboriginal advisors to the bench in Broome in 1971. He accepted advice on Aboriginal matters and in turn explained court procedures and points of law to defendants and advisors alike. (4)

In 1977 the then Attorney-General in Western Australia Mr Medcalf requested that Syddall conduct research into Aborigines and the law hoping to generate greater mutual understanding. Syddall held lengthy meetings with Aboriginal communities and subsequently suggested that Aborigines be appointed as Justices of the Peace to preside in courts in their own communities. It was decided to appoint Aboriginal JP's, Bench Clerks, and Probation Officers at two communities to host a pilot scheme. The framework in which the scheme was to operate was the Aboriginal Communities Act passed in 1979. (5)

##### 4.2 Provisions of the Aboriginal Communities Act 1979 (WA)

The pilot communities in which the scheme first operated were the Bidyadanga Aboriginal Community La Grange Incorporated at La Grange, and the Bardi Aborigines Association Incorporated at One Arm Point. Since Beagle Bay, Lombadina and Balgo Hills communities have been included.

The Act makes provision for the responsible management of the communities by appointed Councils. Council members have the authority to make and enforce by-laws on community lands.

A by-law can only be made by a unanimous vote of all Council members and only applies within community boundaries. All persons are bound by the by-laws whether they belong to the community or not. Community by-laws do not have the authority to override other statutory provisions. With one minor exception the by-laws which communities have adopted are those which were developed at the inception of the scheme.

The by-laws of the participating communities allow for regulation of such areas as:

- \* the admission of people and traffic to the community;
- \* traffic control on community land;
- \* preventing damage to flora and fauna;
- \* the maintenance of buildings on community lands;
- \* regulation of noise, conduct, and keeping of the peace;
- \* restricting the possession, use or supply of alcohol on community land;
- \* regulation of littering and rubbish dumping;
- \* regulation of the possession of, and use of firearms. (6)

In addition to these, the by-laws of Beagle Bay, Lombadina and Balgo communities include provision for the administrator of the community to authorise persons on legitimate business to enter and leave the administrative area without first consulting the Council. At La Grange and One Arm Point the authorisation remains at the discretion of the Council or their delegates.(7)

The by-laws also authorise a member of the police force to arrest or take proceedings against any person in breach of a by-law and remove any unauthorised person from community land. (8)

Item 17 of the community by-laws refers to customary or tribal Law in the following terms:

'It is a defence to a complaint of an offence against these by-laws to show that a defendant was acting under and excused by any custom of the community.' (9)

Under the Act JP's have the power to fine a person a maximum of \$100, impose up to three months imprisonment and order compensation of no more than \$250. Fines are paid to the community Council and are for the use of the community. (10) (See appendix 'E' for the Act and Appendix 'F' for an example of complete community by-laws.)

To facilitate the transition of Aborigines into the Australian legal framework Syddall designed a pamphlet in story form outlining court procedures, sanctions and particular sections of the Police Act and Criminal Code. A feature of the pamphlet was that it was written in simple English and illustrated ways of arriving at decisions. It was distributed among the JP's with a suggestion that they commit the information to memory just as a song-cycle is traditionally learned. (11)

Should a community desire to withdraw from the scheme they may do so. The Governor of Western Australia will declare by proclamation that the Act no longer applies to that particular community.

#### 4.3 Appointing Aboriginal personnel to the scheme

Previous discussions with Aboriginal communities in the Kimberley region had demonstrated to Syddall that it would be inappropriate to select JP's from the younger community members. Traditionally, Aboriginal people gain stature as they are initiated, acquire experience and grow older. Younger community members have no real stature in the community.

Most of the tribal members selected as JP's have a poor command of English. This poses a number of administrative problems which are overcome by selecting Bench Clerks from the younger, more educated ranks of the communities. (12)

Syddall and the Broome Clerk of Courts undertook the training of Bench Clerks in court procedures, basic rules of law, procedures involved in complaints, warrants, summonses and payment of fines and costs.

Honorary Probation officers were selected for their ability to re-educate young offenders. It was hoped that juveniles on probation would be redirected and find a new sense of tribal identity if guided by one of their own people. (13) All Probation Officers are gazetted officers.

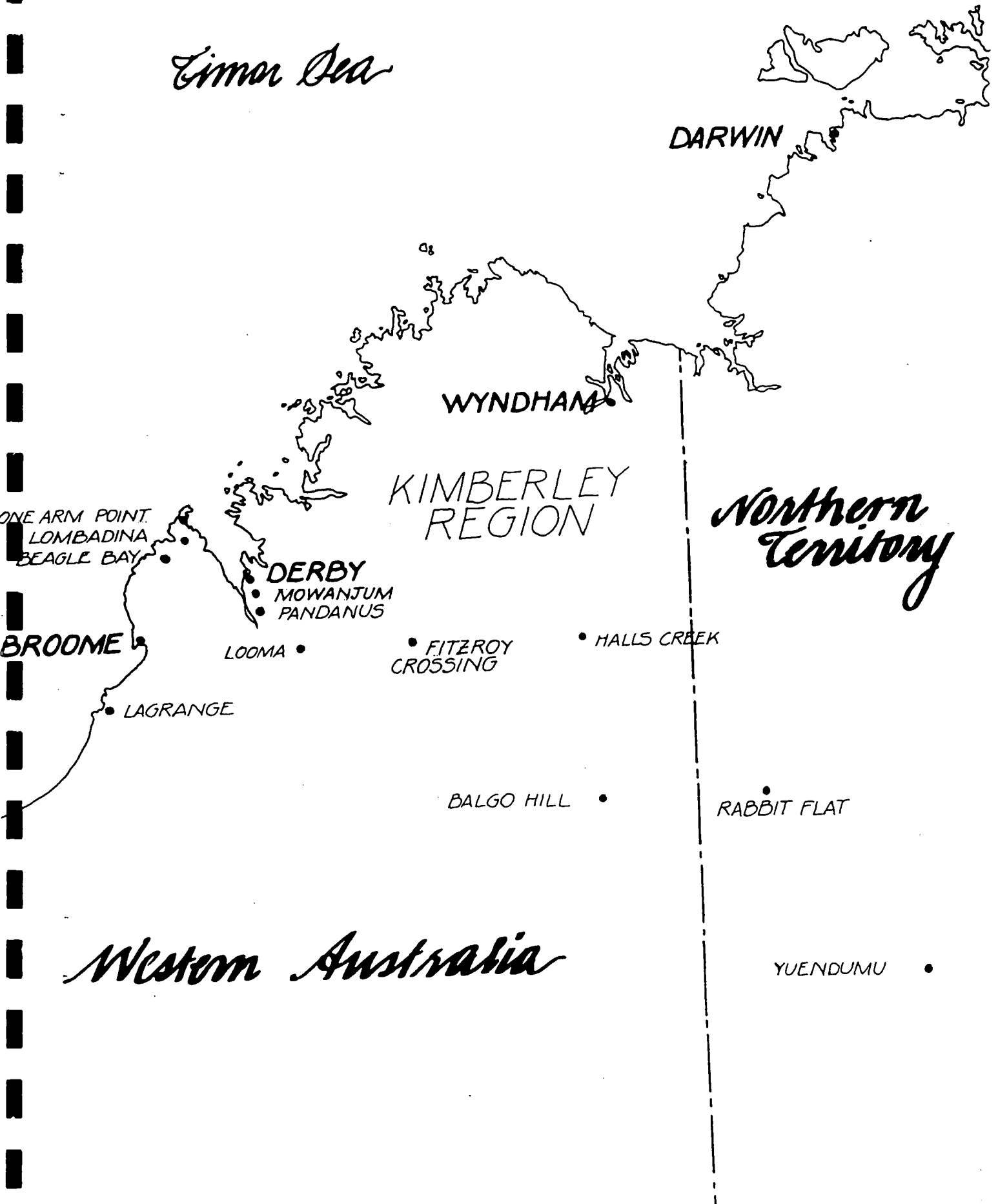
The pilot scheme appeared to be successful. By 1984 there were five communities in the Kimberley region operating under the Act. They were:

- 1) Bidyadanga Aboriginal Community at La Grange,  
178 kilometres south-west of Broome.  
Date of entry to scheme: 22.2.1980
- 2) Beagle Bay Aboriginal Council at Beagle Bay,  
117 kilometres north-east of Broome.  
Date of entry to scheme: 9.8.1982
- 3) Lombadina Aboriginal Community at Lombadina,  
195 kilometres north-east of Broome.  
Date of entry to scheme: 24.7.1982
- 4) Bardi Aboriginal Association at One Arm Point,  
230 kilometres north-east of Broome.  
Date of entry to scheme: 31.10.1981
- 5) The Balgo Hills Aboriginal Community at Balgo Hills,  
270 kilometres south of Halls Creek.  
Date of entry to scheme: 12.10.1982

(See Appendix 'D' for community profiles)

The location of these communities can be seen on the map of the Kimberley region of Western Australia shown on page 9.

An evaluation of the Aboriginal JP scheme was conducted through a research project for which the fieldwork was carried out in 1984. The project was funded jointly by the Criminology Research Council of Australia and the Western Australia Prisons Department.



*Timor Sea*

DARWIN

WYNDHAM

KIMBERLEY  
REGION

*Northern  
Territory*

ONE ARM POINT  
LOMBADINA  
BEAGLE BAY

DERBY  
MOWANJUM  
PANDANUS

BROOME

LOOMA

FITZROY  
CROSSING

HALLS CREEK

LAGRANGE

BALGO HILL

RABBIT FLAT

*Western Australia*

YUENDUMU

## 5. DESCRIPTION OF RESEARCH

### 5.1 Research objectives

The primary aim of the research project was to determine whether the JP scheme had reduced the rate of imprisonment of participating communities. In addition the project aimed to identify discrepancies between the concept and operation of the Act, and if the operation of the Act had caused changes in the social structure of the participating communities.

### 5.2 Non-participating communities

As outlined earlier five communities in the Kimberley region of Western Australia operate within the framework of the Aboriginal Communities Act. One of these is Balgo Hills which, due to time constraints was visited only once and not included in the evaluation.

Three non-participating communities were also examined in order to compare them with the participating communities. They were:

- 1) Pandanus Park Community at Pandanus Park, 54 kilometres west of Derby
- 2) Mowanjum Aboriginal Corporation at Mowanjum, 10 kilometres south-west of Derby
- 3) Looma Community at Looma, 120 kilometres south of Derby.

### 5.3 Research Methodology

The aims and methods of data collection for the three main sections of the research are described below.

#### 5.3.1 Section One

Evaluate the communities which use the JP scheme with regard to:

- a) effect on imprisonment rates;
- b) current use of imprisonment compared with other sanctions;
- c) trends in the types of offences for which people were imprisoned;

It was hypothesized that following the establishment of the Aboriginal JP scheme the use of imprisonment as a sanction would have declined.

In order to determine the effect of the Act on imprisonment rates two communities were selected for a more detailed evaluation. Based on demographic data provided by the

Australian Bureau of Statistics, two communities were chosen to act as the control and the experimental groups. The choice for the participating community was the Bidyadanga Aboriginal Community at La Grange (the experimental group); the control group was Looma Aboriginal Community Looma which is in the mainstream of Australian law.

The following data was collected for the communities at La Grange and Looma.

- The charge number;
- date charged;
- name of the offender;
- the offence, including the particular by-law broken;
- date of offence;
- date heard;
- plea entered;
- whether the offender had legal representation;
- the sanction;
- whether a J.P. or Magistrate presided;
- whether time to pay was granted;
- whether the offender was imprisoned on default.

Less detailed information was collected for the other participating and non-participating communities at Beagle Bay, Lombadina, One Arm Point, Pandanus Park and Mowanjum.

Data was collected from court records at the Broome and Derby courthouses and from police charge sheets. In all, data on 4,271 charges was collected for the seven communities for the period July 1, 1977 to June 30, 1984.

### 5.3.2 Section Two

Evaluate the understanding of the Australian judicial system and the JP scheme in the participating and non-participating communities.

The fieldwork for this section was carried out according to traditional anthropological participant-observation methods.

Letters were written to the communities notifying them of the proposed research and requesting permission to visit and talk to community council members at their convenience. Two communities replied. On arrival at Broome the researcher followed up the initial correspondence with telegrams and phone calls.

Following assistance from the National Aboriginal Conference member at Broome and the Department of Aboriginal Affairs at Derby, meetings were arranged to coincide with regular council meetings.

Meetings with council members were conducted informally. Initial meetings were with community council members only. There was a certain reserve among tribal elders at talking about such serious business as the 'Law' with a woman and a 'Gardia' at that. The researcher was tested on two occasions (14) to



ascertain her worthiness to participate in 'men's business'. Once rapport had been established the researcher was given permission to talk to other community members as desired.

At the first meetings with council members the researcher discussed the differences between Aboriginal and the wider Australian cultures and introduced the research topic. There were general discussions on the differences in sanctioning patterns between cultures followed by the researcher expressing concern at the problems many Aborigines face with the 'Gardia' law. The researcher solicited opinions from the Aboriginal viewpoint and drew comparisons where possible.

From the initial meetings the pattern for future meetings was established. The researcher always began meetings with a general discussion on a topic other than the research project. Conversations ranged from stories of the Dreaming to crocodile bites, to which 'country' the researcher was allowed to visit, to comparisons between social norms between the two cultures and the research topic. At some meetings the research was not discussed at all. At other meetings the council members were keen to discuss the issues of the project.

### 5.3.3 Section Three

Determine the effect which the operation of the JP scheme has had on traditional Aboriginal Law and culture.

The data gathering methods used for this section were the same as for Section Two.

## 6. DATA EVALUATION

### 6.1 Rate of imprisonment at La Grange and Looma

As described previously, the intention was to select two communities for comparison which would be as similar as possible except that one would be a participating community, the other not. The communities selected were La Grange and Looma.

La Grange and Looma communities are similar with respect to certain demographic measures such as size of population, age groups, marital status, education levels, distance from towns and commitment to tribal custom (verified by the N.A.C., Broome). But they are different in other respects which could affect the rate and pattern of offending. Two important factors which distinguish the two communities are the employment situation and the extent of the use of tribal arbitration.

Since the JP scheme began the community at La Grange has been involved with the Community Development Employment Program (CDEP). Instead of unemployment cheques being sent to individuals in the community a lump sum is paid to the community on a regular basis. Community members are employed on community land (e.g. building, assisting in the community store, stockmen, cleaners etc) and receive a wage based on the number of hours worked.

By comparison, the members of the Looma community receive social security payments and are not involved with CDEP. Community members do work in a voluntary capacity on their cattle station and in their community.

The impression one gains is that there is a larger proportion of people employed at La Grange than at Looma.

Another significant point is the use of tribal arbitration. The community members at Looma prefer to use tribal arbitration instead of requesting assistance from the police when minor misdemeanors occur. At La Grange the JP scheme is used more frequently and is interfering with many aspects of tribal life, including traditional arbitration. Consequently, it appears that a greater proportion of offences committed at La Grange are reported to the police than at Looma.

Because the two communities were found not to be strictly comparable, no firm conclusions can be drawn about the effect of the JP scheme on the rate of imprisonment. Even at La Grange, where a comparison before and after the scheme could be valid, the number of offenders imprisoned is too small to be significant. Rates of imprisonment are presented without assuming them to be comparable, for descriptive purposes and for comparison with the State rate of imprisonment.

Table 1: COMPARATIVE RATE OF IMPRISONMENT PER 100,000 POPULATION

Year (Mar-Feb)	La Grange	Looma	State (W.A)
77-78 (8 months)	195	134	94
78-79	324	15	102
79-80 *	369	175	117
80-81	551	181	116
81-82	160	337	107
82-83	137	226	110
83-84	344	108	110
84+ (4 months)	861	291	110
Mean	368	183	108
Stand Dev	241	103	7 (15)

\* The JP scheme began operating at La Grange on February 22, 1980, i.e. after this time period.

Note: The time periods are arranged to co-incide with the beginning of the JP scheme at La Grange in February, 1980. Thus each twelve month period begins in March of one year and ends in February of the next year, except for those years for which complete data is not available.

The rates of imprisonment for the two communities show considerable variation, due to the relatively small populations (La Grange 540, Looma 360). This wide variation in imprisonment rates means that a consistent trend cannot be demonstrated. Nevertheless, the average rate of imprisonment at La Grange, for the years 1977 to 1984, at 368 persons (per 100,000) is considerably higher than the average at Looma at 183. The rates of imprisonment for both communities are considerably higher than the State figure, confirming the well known fact that the rate of imprisonment of Aborigines is higher than the average rate.

Comparing the figures for La Grange before and after the JP scheme began, it is interesting to note the high imprisonment rate in the year following the introduction of the scheme. The available data does not, however, allow any firm conclusions about the effect of the scheme on the imprisonment rate to be drawn.

The apparent lower rate of imprisonment at Looma could be due to a factor which was mentioned earlier, namely the tendency to rely on tribal arbitration. Because Looma is so far from Derby, it is possible that offences do not come so readily to the attention of the police. Members of the community at Looma have confirmed that in most cases involving minor misdemeanors tribal arbitration is used.

Further monitoring of the rate of imprisonment is vital.

6.2 Use of imprisonment compared with other sanctions

There were a total of 524 charges at La Grange and 412 charges at Looma for the seven year period.

Tables 2 and 3 illustrate the number of charges per person at the two communities. 57% of individuals from La Grange and 48% at Looma had more than one charge. The high re-offending rate can also be illustrated by the fact that 14% of the total number of offenders at La Grange, and 16% at Looma had more than five charges each.

Table 2: NUMBER OF CHARGES PER INDIVIDUAL - LA GRANGE

NUMBER OF CHARGES	NUMBER OF PERSONS
1	67
2	30
3	14
4	11
5	7
6	5
7	4
8	4
9	2
10	2
11	1
12	2
15	2
23	1
27	1
33	1

Average charges per person: 3.4

Total charges: 524

Individuals: 154

Individuals with more 1 charge: 87 (56.5%) (16)

Table 3: NUMBER OF CHARGES PER INDIVIDUAL - LOOMA

NUMBER OF CHARGES	NUMBER OF PERSONS
1	70
2	18
3	15
4	3
5	9
6	3
7	3
8	2
9	3
10	1
13	1
14	1
15	1
16	1
18	1
19	1
26	1

Average charges per person: 3.14  
 Total charges: 412  
 Individuals: 134  
 Individuals with more 1 charge: 64 (47.8%)

The outcome of all charges is summarised in Tables 4 and 5 below:

Table 4: OUTCOME OF CHARGES - LA GRANGE (17)

Time Period	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84+	TOT.
<u>Outcome</u>									
Fine or Costs	27	19	19	48	49	42	71	86	3
Imprisonment	1	7	3	24	11	8	6	14	
Good Behaviour Bond	2	2	2	1	1	1	8	2	
Community Service Order	-	-	-	6	4	-	-	-	
Dismissed	2	8	5	2	1	1	1	-	
Withdrawn	2	-	1	18	3	-	3	-	
Other	1	-	3	-	-	-	9	-	
<b>TOTAL</b>	<b>35</b>	<b>36</b>	<b>33</b>	<b>99</b>	<b>69</b>	<b>52</b>	<b>98</b>	<b>102</b>	<b>5</b>

Table 5: OUTCOME OF CHARGES - LOOMA

Time Period	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84+	TOTAL
<b>Outcome</b>									
Fine or Costs	37	11	21	48	43	47	56	21	284
Imprisonment	14	2	4	9	7	9	23	7	75
Good Behaviour Bond	1	-	1	-	2	1	1	1	7
Community Service Order	-	-	-	-	-	-	-	-	-
Dismissed	-	-	2	4	10	13	3	6	48
Withdrawn	-	-	1	-	-	-	-	-	1
Other	1	1	-	2	-	1	2	-	7
<b>TOTAL</b>	<b>53</b>	<b>14</b>	<b>29</b>	<b>63</b>	<b>62</b>	<b>71</b>	<b>85</b>	<b>35</b>	<b>472</b>

Figure 1 illustrates the relative use of different sanctions before and after the date of the introduction of the JP scheme. The figure indicates that, of the total sanctions at La Grange, fines increased from 62% to 70%. In the data prior to the introduction of the scheme, imprisonment was used 10% of the time, after the scheme this increased to 15%.

For the same time periods the use of fines as a percentage of total sanctions decreased at Looma from 72% to 68%, and the use of imprisonment as a sanction also dropped from 21% to 17%. As before, the data available was not sufficient to enable firm conclusions to be drawn. Nevertheless, if the success of the JP scheme is to be judged by its ability to substantially reduce the imprisonment rate, then this scheme has not achieved that objective.

A number of reasons could be given for the apparent failure of the scheme to reduce the rate of imprisonment at La Grange. JP's at La Grange report that the sanctions imposed for transgressions committed on community lands are ineffective. They indicate they are trying to gain some sense of order by increasing the fines and using terms of imprisonment.

- There is no evidence to indicate why an apparent decrease in the use of fines and imprisonment has occurred at Looma.

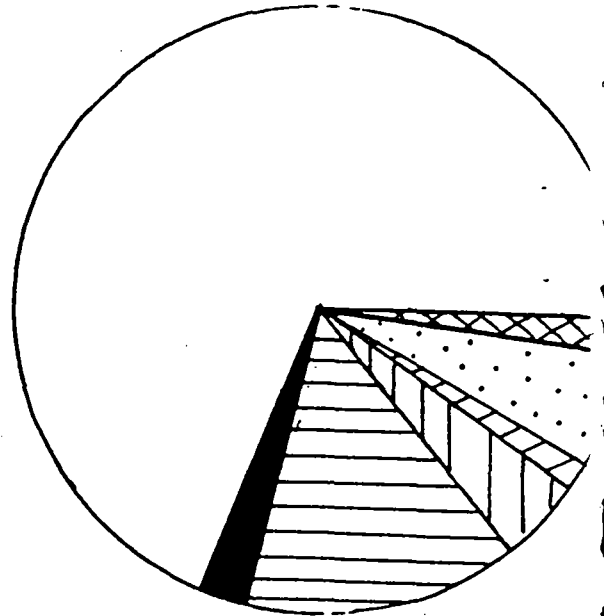
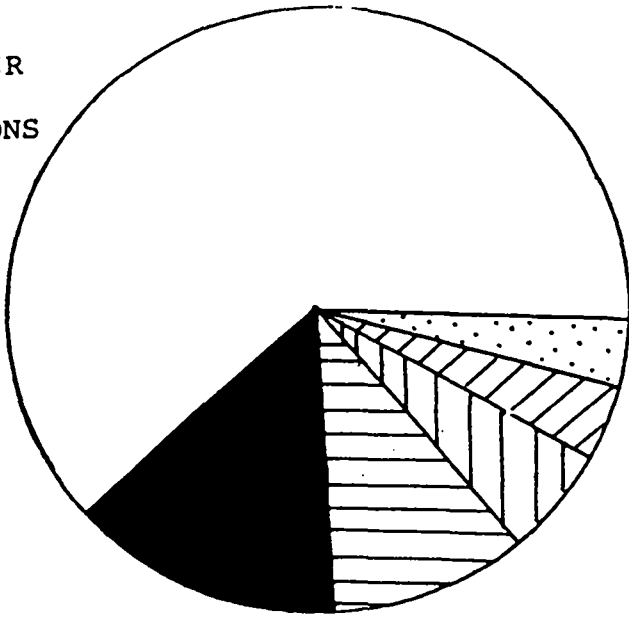
- At La Grange the percentage of cases withdrawn has increased from 3% to 6%, however the percentage of cases dismissed has decreased from 14% to 1%. By comparison there has been an increase in cases dismissed at Looma from 2% to 11%.

FIGURE 1

OUTCOME OF CHARGES - BEFORE  
LA GRANGE

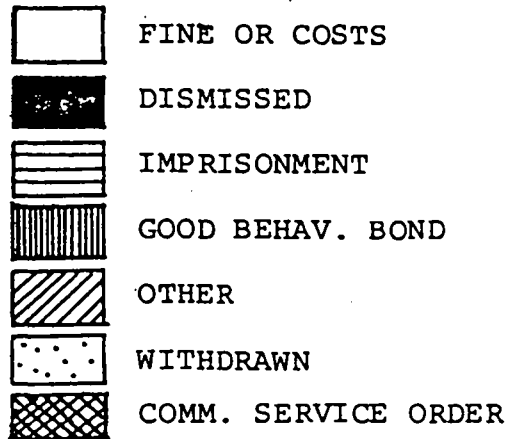
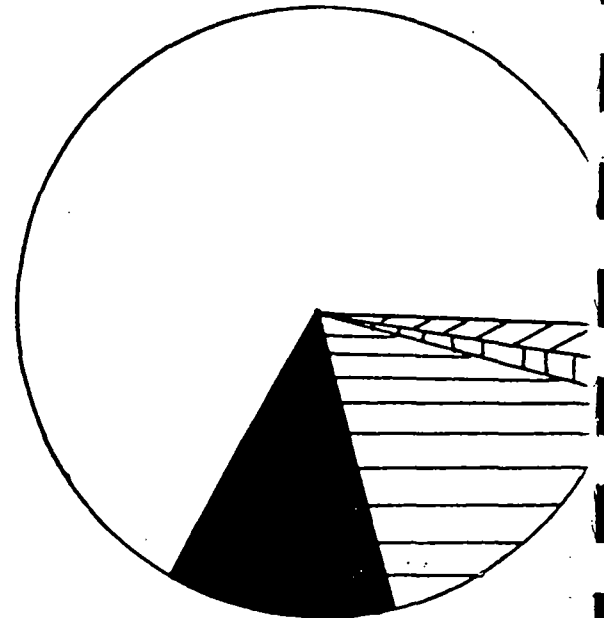
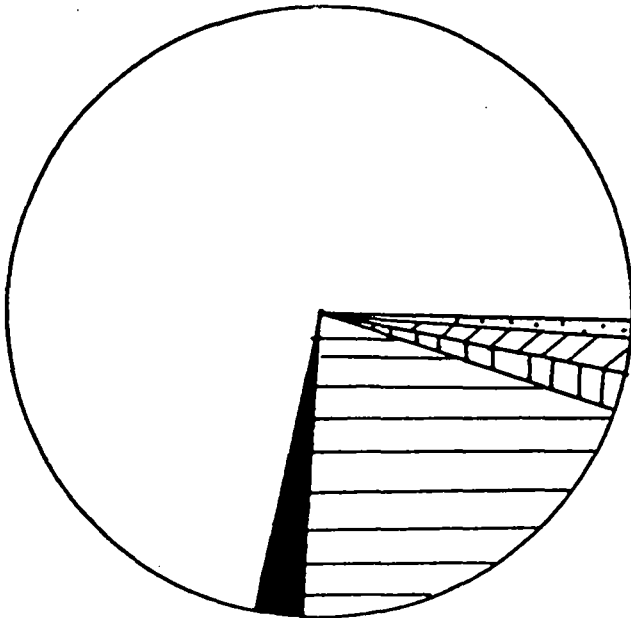
OUTCOME OF CHARGES - AFTER  
LA GRANGE

NUMBER  
OF  
PERSONS



OUTCOME OF CHARGES - BEFORE  
LOOMA

OUTCOME OF CHARGES - AFTER  
LOOMA



Given that Aboriginal JP's generally report that sanctions have little or no deterrent effect, the decrease in percentage of dismissals may indicate an attempt to adopt a hard line. A possible reason for the rise in dismissals of Looma offenders is that Magistrates and JP's themselves are beginning to feel that it is futile to even fine an Aboriginal offender for alcohol related offences.

Community Service Orders were not used as a sanction before the JP scheme began. Since the scheme began JP's at La Grange have handed down 10 C.S.O.'s in four years. Although the C.S.O. is available as a sanction at the Looma community, it has never been used.

The relatively minor use of C.S.O's as a sanction at the two communities is readily explained. Since C.S.O.'s are a foreign concept to Aboriginal JP's they are reluctant to use this method of sanctioning. Magistrates and JP's within the mainstream of Australian law are also reluctant to impose a C.S.O. on an Aboriginal offender for a number of reasons. Because most Aborigines in the Kimberley region are still nomadic and tribally oriented it would be almost impossible to police a C.S.O and there is still the general assumption that Aborigines will not work. (18)

The imprisonment rate can be affected indirectly by the extent to which defaulting of payment of fines occurs. Tables 6 and 7 shows the trend of fine defaulting for the two communities for the period before and after 1980. Before the JP scheme began the percentage of fines paid by La Grange offenders was 46%. Since the scheme began the percentage of fines paid has risen to 71%. Looma data also shows that the rate of payment of fines has risen from 43% to 58% during the same period indicating that factors other than the JP scheme may be operating.

Table 6: OUTCOME OF FINES - LA GRANGE

Time Period	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84+	TOTAL
Outcome									
Defaulted	19	11	4	12	7	6	20	29	108
Paid	7	8	13	32	39	34	51	54	238
Unknown	1	-	2	4	3	2	-	3	15
TOTAL	27	19	19	48	49	42	71	86	367



Table 7: OUTCOME OF FINES - LOOMA

Time Period	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84+	TOT
Defaulted	11	5	13	19	24	27	32	12	1
Paid	26	6	8	29	19	19	22	9	1
Unknown	-	-	-	-	-	1	2	-	
TOTAL	37	11	21	48	43	47	56	21	2

The average time taken to pay a fine was 10.9 days and the average days served in default of a fine was 9.2 days. (19)

6.3 Trends in types of offences for which imprisonment occurs

Tables 8 and 9 show the type and number of charges at the two communities.

Table 8: OFFENCES COMMITTED AT LA GRANGE (20)

Time Period	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84+	TOT
Good Order - Alcohol	25	17	12	1	-	-	1	33	
Good Order - Other	4	5	9	26	32	17	22	29	1
Aboriginal Communities Act	-	-	-	67	33	33	61	34	2
Offences Against Justice	-	1	-	-	-	1	1	-	
Traffic - Alcohol	-	1	1	-	-	-	-	-	
Traffic - Other	-	5	-	4	2	-	10	1	
Theft - Vehicle	1	1	2	-	-	-	-	-	
Theft - Other	-	-	4	-	-	-	-	-	
Other Property Offences	1	-	-	1	-	-	2	1	
Assault	2	6	3	-	1	1	1	4	
Other Against Person	-	-	-	-	1	-	-	-	
Sex Offences	-	-	-	-	-	-	-	-	
Homicide	2	-	1	-	-	-	-	-	
Firearm Offences	-	-	1	-	-	-	-	-	
Miscellaneous	-	-	-	-	-	-	-	-	
TOTAL	35	36	33	99	69	52	98	102	5

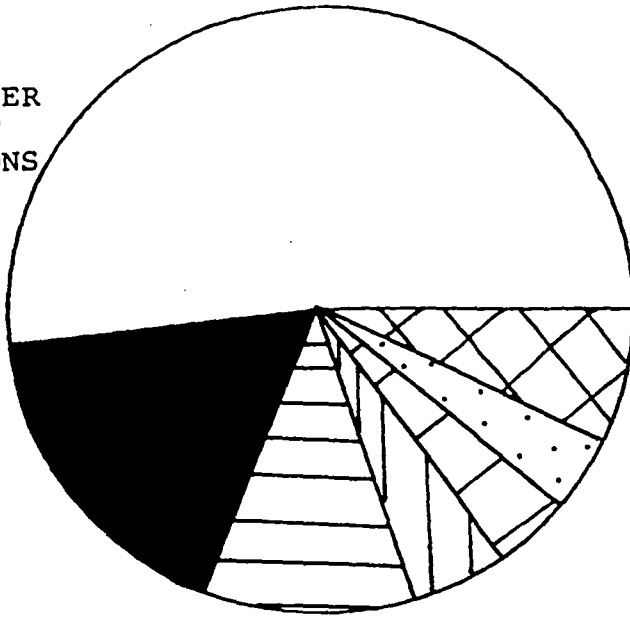
Table 9: OFFENCES COMMITTED AT LOOMA

Time Period	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84+	TOT
Offence									
Good Order - Alcohol	44	9	11	36	33	49	69	30	2
Good Order - Other	4	2	7	13	6	3	6	1	
Licensing Act	1	-	-	1	2	-	-	-	
Offences Against Justice	-	-	-	3	1	2	1	-	
Traffic - Alcohol	-	-	3	3	2	3	1	-	
Traffic - Other	-	-	4	4	10	6	2	1	
Theft - Vehicle	-	-	-	1	4	1	1	1	
Theft - Other	1	2	3	2	2	3	2	2	
Other Property Offences	-	-	-	-	-	1	1	-	
Assault	2	1	1	-	1	1	1	-	
Other Against Person	-	-	-	-	-	-	1	-	
Sex Offences	-	1	-	-	-	-	-	-	
Homicide	-	-	-	-	-	-	-	-	
Firearm Offences	-	-	-	-	-	2	-	-	
Miscellaneous	-	-	-	-	1	-	-	-	
TOTAL	53	14	29	63	62	71	85	35	4

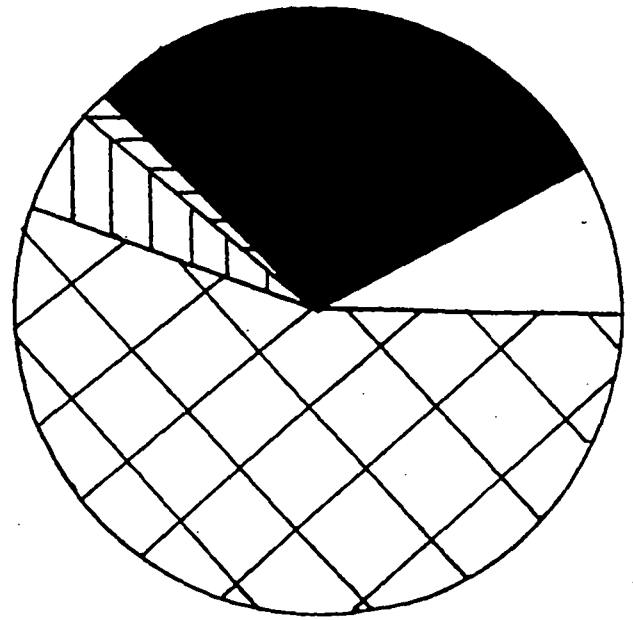
FIGURE 2

OFFENCES COMMITTED - BEFORE  
LA GRANGE

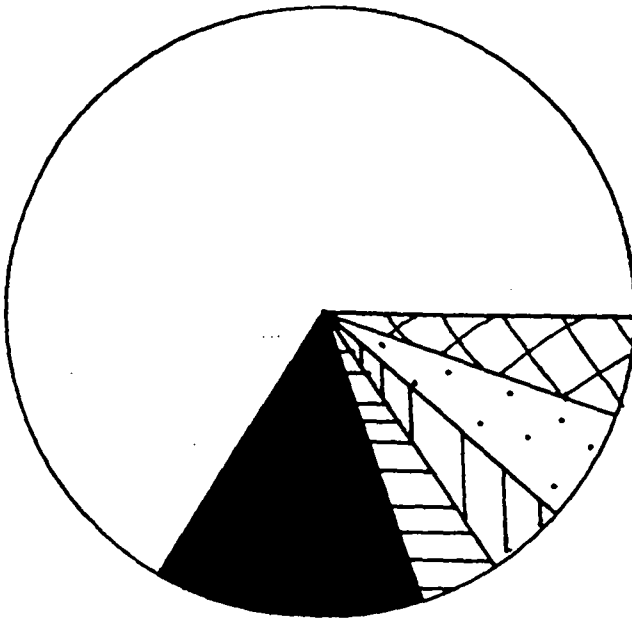
NUMBER  
OF  
PERSONS



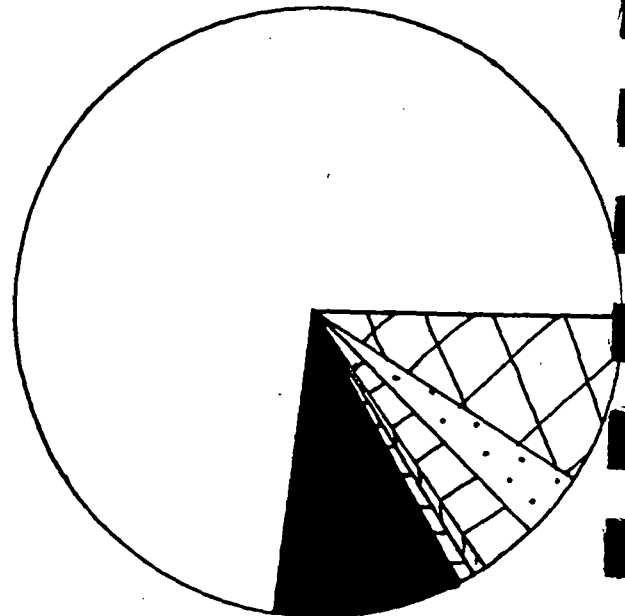
OFFENCES COMMITTED - AFTER  
LA GRANGE



OFFENCES COMMITTED - BEFORE  
LOOMA



OFFENCES COMMITTED - AFTER  
LOOMA



GOOD ORDER ALCO

GOOD ORDER OTHER

ASSAULT

TRAFFIC OTHER

THEFT CAR

THEFT OTHER

OTHER (INCLUDING AB COMM. ACT) 22

Figure 2 illustrates the percentage of different offences committed before and after the date of the introduction of the JP scheme.

Before the JP scheme began the majority of offences at La Grange (52%) were offences against good order. They were alcohol related and came under the Police Act. After the JP scheme began the majority of offences (54%) was against the Aboriginal Communities Act (e.g. possessing, supplying, and drinking alcohol on community land). The pattern of alcohol related offences has remained static but these offences are being recorded as breaches of the Aboriginal Communities Act instead of against the Police Act.

Looma offences against good order which are alcohol related (drunk and disorderly) make up the majority of offences (68%) and have not varied over the period studied.

The council members at all communities have said that drinking binges either in Broome, Derby, or on community lands have resulted in women and children being assaulted by their spouse/father on his arrival home. Many women have said they have had to flee with their children to prevent further abuse. (21) Child abuse appears to be an increasing problem for community members who have an imbibing spouse/father, and is leading to a serious breakdown in family units.

Serious offences for both communities (e.g. sex offences and homicide) make up an extremely low proportion of overall offences; 0.4% over the seven year period. The decrease in assault cases may have been influenced by an increasing use of private arbitration to settle disputes.

The overall percentage of traffic offences, including the unlawful use of motor vehicles and alcohol related traffic offences has decreased from 10% to 4% at La Grange. By comparison, Looma offences have increased from 7% to 15%.

The Aboriginal Communities Act has no provision for arrest for driving an unroadworthy vehicle or for not having a driver's licence on community lands. Aborigines at La Grange do not attach any importance to unroadworthy vehicles or unlicensed drivers on community lands. (22)

Members of the Looma community also tend to drive unroadworthy vehicles and do not have drivers' licences either. As they are within the jurisdiction of the mainstream of Australian law they are frequently apprehended by the police and charged.

Many tribal Aborigines feel that if they know how to drive a vehicle that should be enough evidence of competency. Many are unable to see why they require a piece of paper stating the obvious.

#### 6.4 Aggregate data from all communities

Some aggregate data from all the communities included in the project is given in this section to demonstrate that La Grange and Looma are not isolated cases.

Table 10 shows the high number of charges at Mowanjum over the seven year period. The rate of charges per person at that community is more than ten times all other communities except Pandanus Park. Most of the offences were alcohol related.

The very high offending rate at Mowanjum compared to the other communities can be attributed to a number of factors. The community is situated 10 kilometres from Derby, thus making alcohol more accessible. Although all members are from the same tribal group, they are not situated on their own tribal country. All other other communities except Pandanus Park are on their own country. There are virtually no employment opportunities, although the council has requested to be included in CDEP which could generate employment, raise the level of self esteem of community members and keep potential offenders occupied. (23)

Table 10: CHARGES PER PERSON PER YEAR FOR ALL COMMUNITIES

LOCATION	NUMBER OF CHARGES FOR 7 YEAR PERIOD	CHARGES PER PERSON PER YEAR (x100)
Beagle Bay	204	15
La Grange	524	14
Looma	412	16
Lombadina	127	15
Mowanjum	2742	196
One Arm Point	111	6
Pandanus Park	151	51

Table 11 summarises the frequency and type of offences committed for all communities. The total picture confirms the incidence of alcohol related offences which occurred at La Grange and Looma. 69% of all offences were alcohol related i.e. for drunkenness. Table 11 also shows that the majority of offences, as at La Grange and Looma, was of a minor nature.

Table 11: FREQUENCY OF OFFENCES COMMITTED AT ALL COMMUNITIES

OFFENCE GROUP	NUMBER (7 YEARS)	PERCENTAGE	
Good Order - Alcohol	2383	56	
Good Order - Other	710	17	
Ab Comm Act	450	11	
Assault	148	3	
Theft - Other	128	3	
Traffic - Other	126	3	
Justice	98	2	
Traffic - Alcohol	77	2	
Theft - Vehicle	56	1	
Property	46	1	
Firearms	21	1	
Robbery	6	0	
Other Against Person	6	0	
Homicide	3	0	
Fraud	3	0	
Miscellaneous	3	0	
Sex	2	0	
Unknown	5	0	
Total	4271	100	(24)

Table 12 summarises the outcome of charges for all communities during the period studied. The data confirms the La Grange and Looma finding that fines and imprisonment are the most frequent sanction for Aboriginal offenders, and that C.S.O's are not widely used.

Table 12: OUTCOME OF CHARGES FOR ALL COMMUNITIES

OUTCOME	NUMBER (7 YEARS)	PERCENTAGE	
Fine or Costs	3191	75	
Imprisoned	638	15	
Good Behaviour Bond	88	2	
Community Service Order	23	1	
Withdrawn	49	1	
Dismissed	215	5	
Other	67 *	1	
Total	4271	100	(25)

\* Outcome "Other" includes remand, bench warrant issued, etc.

Table 13 gives the outcome of all fines for all communities. This table shows that 52% of all fines are not paid.

Table 13: OUTCOME OF FINES - ALL COMMUNITIES

OUTCOME	NUMBER (7 YEARS)	PERCENTAGE
Fine Paid	1504	47
Defaulted	1644	52
Unknown	43	1
Total	3191	100 (26)

Other data, although not strictly relevant to the research topic is included in Appendix 'J' for interest.

## 7. UNDERSTANDING OF THE TWO JUDICIAL SYSTEMS

### 7.1 General discussion

The basic assumption of the law as it developed in the British system is that all citizens are equal before the law. Justice is linked with equality of treatment within the framework of legal proceedings.

The very fact that there are two laws operating in the Kimberley region contradicts the principles of justice namely equality of treatment. Traditional Aborigines know only one law, their own, yet they are also subject to the provisions of Australian law. Aborigines perceive their traditional justice system to be incompatible with the mainstream of Australian law.

When two cultural systems operate in a social structure, most people have a clear understanding of their own and a partial understanding of the other. Aboriginal people have had far more exposure to their own traditionally based culture and therefore it is not surprising that their understanding of the Australian justice system is often very limited. This lack of understanding is re-inforced by their poor command of English.

Australian law is traditionally based on the British legal system. The law is conceptualised in the English language, it is framed in the English language and legal proceedings take place in the English language. The English language, in the main, is a second language to traditionally oriented Aborigines. Aborigines are being pressured into a conflict situation when they are expected to dispense a foreign law in a foreign language.

Australian law is supposed to be applied equally in all situations to all Australians without fear or favour. Laws which are applied without discrimination are deemed to be the essence of justice. The apparent breakdown of this principle with regard to Aboriginal offenders in Australian courts engenders contempt for Australian justice among Aboriginal people.

An additional complication to the conflict between Australian and Aboriginal law has been the introduction of the JP scheme. Tribal Aborigines in the Kimberley region refer to Australian law and the JP scheme as 'public law'. The mainstream of Australian law is also seen to incorporate two sub-sections of law, one applying to Aborigines and the other applying to 'gardias'.

Most tribal Aborigines view 'public law' with a mixture of amusement, confusion and frustration. Some examples which illustrate the conflict between 'public law' and the 'old Law' (tribal Law) are given below.



## 7.2 Aborigines and 'public law'

The Council at Looma discussed the story of an Aboriginal man tried for murder. According to the Looma community one of their people was authorised to carry out a tribal killing thirty years ago. Many years later the same man was accused of a murder under 'public law'. During the trial the Aboriginal agreed that he had committed a murder. The confusion arose because the man was admitting to the tribal killing thirty years ago not the present offence. The man was found guilty for a murder the Council believed he did not commit. (27)

There is further possibility for miscarriage of justice since on certain occasions a killing may be sanctioned by an Aboriginal community. In such a case the authority to carry out the community will, i.e. perform the killing is delegated to a special individual. This authority is not recognised by 'public law' and the individual may be considered to have committed murder.

The individual chosen to carry out the killing is known as a 'featherfoot', a highly respected community member authorised to conduct tribal killings. A decision to terminate a life within a tribal community is not taken lightly. There is much discussion and soul searching before the authority is delegated.

Another example quoted by the Looma Council illustrates the discriminatory application of 'public law'. At drinking sessions at a hotel Derby white Australians generally conclude the evening equally drunk as the Aboriginal drinkers. Whereas the Aborigines are often arrested with being drunk and disorderly, the police advise less inebriated 'gardias' to take their drunk friends home. No charges are laid providing the request is complied with.

On observing the less drunk 'gardias' taking their friends home, Aborigines from Looma tried to adopt the same procedure at the next drinking session. When the police arrived an Aboriginal stepped out of the group of revellers and offered to drive his friends home. The police refused. When other Aborigines pointed out that they had observed the 'gardias' doing exactly this they were arrested for being drunk and disorderly, and for hindering the police in the course of their duty. (28)

Regardless of whether the police were justified on this occasion, there are many examples which Aborigines quote where there are apparent differences in the application of 'public law'. This engenders considerable resentment among Aborigines.

Syddall cites an example which is very pertinent. This relates to a peace keeping measure prescribed by tribal custom. If two tribally oriented Aboriginal men are fighting it is tribal custom for an Aboriginal woman to take off her clothes and

stand between them. It is considered insulting for either one of the Aboriginal men look at her naked. The fight usually stops as a result. However, if a policeman sees the naked woman he may arrest her for indecent exposure. (29)

Had the woman not removed her clothes she would have been breaking tribal law and been subject to tribal sanctions. In this instance the woman is in a no win situation. According to the 'gardia' law her behaviour is deemed to be indecent, although she is complying correctly with tribal custom. (30)

The Aboriginal Communities Act of 1979 was an attempt to reconcile the different systems of law. Unfortunately, because it is firmly based in the traditional Australian 'public law' it has only succeeded in adding to the confusion which Aborigines feel.

The principle flaw in the concept of the JP scheme has been the failure to recognise the degree of commitment which tribal Aborigines have to their 'old Law'. For Aboriginal communities to come to terms with the Australian legal system a different approach could have been more effective. Provision for Aborigines to practice their own Law should have been incorporated in the Act.

If non-participating Aboriginal communities considered participation in the JP scheme as it exists without any recognition of tribal Law, this would be an admission that the traditional way of life was becoming defunct. For those participating in the JP scheme the dichotomy in value systems is generating the same dysfunctional effect among Aborigines.

### 7.3 Aborigines in courts of 'public law'

As outlined earlier in this paper, many tribal Aborigines do not understand 'public law'. Lack of respect for this law makes it easy for Aborigines to condone using kinship relationships or other techniques to evade 'gardia' law.

Under the JP scheme, for an offence involving more than one offender, it is not automatic that all offenders will be charged for the offence. If a certain kinship relationship exists between the offender and the complainant, then the complainant may feel obliged not to lay the charge.

The 'what about' technique is another means Aborigines use to avoid charges. In this technique, which is used in many situations, the offender cites a similar case in which the complainant was involved in the past and escaped prosecution. The offender then argues that in the light of the complainant's previous misdemeanour the offender in this instance should also be allowed the same grace. Bearing in mind the Aboriginal concept of 'payback' and reciprocity obligations many offenders are relieved. (31)

Ignorance of the law and the language cause further problems. Aboriginal offenders have reported that they did not know with what they have been charged when they came to court. They have also said that in many cases they were still unaware of the charge even once a sanction was applied.

Tables 14 and 15 illustrates the tendency for Aboriginals to plead guilty, regardless of guilt, in order to get a quick decision. Because the normal sanctions, i.e. fine or imprisonment hold little deterrent value, Aborigines are not apprehensive about pleading guilty. Of all cases in the seven year period at La Grange, 92% pleaded guilty; over the same time period 98% at Looma pleaded guilty.

Table 14: PLEA - LA GRANGE (32)

Time Period	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84+	TOTAL
Plea									
Guilty	31	35	27	79	63	51	93	102	481
Not Guilty	1	1	2	12	5	-	2	-	23
Unknown	3	-	4	8	1	1	3	-	20
Total	35	36	33	99	69	52	98	102	524

Table 15: PLEA - LOOMA

Time Period	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84+	TOTAL
Plea									
Guilty	52	14	28	63	61	67	84	35	404
Not Guilty	1	-	-	-	-	2	1	-	4
Unknown	-	-	1	-	1	2	-	-	4
Total	53	14	29	63	62	71	85	35	412

The tendency to plead guilty is re-inforced by the fact that Aborigines have little idea of what would be required for a defence; they do not have the linguistic skills to present a defence, nor do they care much about the outcome. Offenders also feel powerless in the face of a legal structure which is not seen to be impartial.

This problem would be partially redressed if Aboriginal offenders had legal representation in the JP court. Offenders appearing in mainstream courts of law do have access to the Aboriginal Legal Service (ALS), however, it is reported that ALS is not encouraged to participate in community courts. (33)

Although the sanctions of 'public law' are regarded as an occupational hazard by Aborigines, the sanction of the 'old Law' still seem to be effective. Aboriginal JP's occasionally 'chide' offenders. This practice which involves public shaming is an aspect of the 'old Law', and seems to be more effective than a fine or imprisonment.

Among younger offenders in the Kimberleys, going to prison is becoming a status symbol. This has also happened among the Groote Islander Aborigines. Many offenders call prison 'the holiday camp' and see it as a means of escape from poverty, family disputes and/or tribal sanctions for offences against tribal custom. (34)

Offenders voice resentment at being sanctioned in community courts for drinking offences when Aboriginal JP's themselves are imbibing.

Archaeological evidence indicates that Aboriginal civilisation dates back for at least thirty three thousand years. Their concept of law and order and the administration of justice is therefore deeply ingrained. The imposition of a foreign legal system has been very disruptive to Aboriginal social organisation. The result of this has been a very high rate of offences and imprisonment, widespread contempt for 'public law' and a breakdown in the 'old Law' and way of life.

## 8. ADVERSE EFFECTS OF THE JP SCHEME ON TRADITIONAL LAW

The following sections gives an outline of Aboriginal social organisation, tribal arbitration and community courts and further highlights the difficulties in implementing a non-Aboriginal legal mechanism.

### 8.1 Aboriginal social organisation

Traditional Aboriginal society is divided into 'skin' sections which in turn define the kinship structure and social organisation. The structure is not limited to consanguinal and affinal lines but includes classificatory relationships as well.

An Aboriginal child is born into a 'skin' section, which may be divided into either four or eight categories depending on the tribal area. At La Grange there are four 'skin' sections namely, Burongu, Banaga, Baldjeri and Garimba. (See Appendix 'G' for a detailed explanation of Aboriginal 'skin' sections).

Relationships within the community are determined by the section to which one belongs. This method of identification ensures that an Aboriginal knows where he or she fits within their wider societal framework. The classification also dictates expectations, obligations, avoidance relationships and possible marriage partners.

Aboriginal kinship structure also determines accepted patterns of behaviour within the social organisation. Once kinship affiliations have been established defined interaction can take place. Among traditional Aborigines there is a number of behaviour patterns which often cause disharmony between Aborigines and the wider society. (35) (See Appendix 'H' for a more detailed illustration of Aboriginal behaviour patterns).

The differences between traditional arbitration methods and those of the wider society are adding to Aboriginal dysfunction.

### 8.2 Traditional tribal arbitration

'In the old days we had our tribal land and our Law. The kids as they grow up learn about the Law. So everybody knows about the Law. In Aboriginal way there is always 'proper way' of doing things. There are punishments for all offences. Each person knows what each offence against the Law carries. There are certain punishments for certain offences. Each man and woman knows this.' (36)

Traditionally, aboriginal arbitration procedures tended to involve the whole community, and a judgement was reached through community consensus. This is in stark contrast to the courts

in the mainstream of Australian law where the matter is dealt with in the court room and the judgement made by trained specialists.

When a transgression is committed by a tribal Aboriginal it is drawn to the attention of the elders by public harangueing. The complainant usually waits until there is a group of people within hearing distance and proceeds to talk loudly about the alleged offence. The defendant's family in turn justifies or denies the accusation. Tribal elders tend to listen to the debate from a discreet distance.

If the dispute is not settled at an individual level a community meeting is organised and usually results in community arbitration. The community meeting is set up according to tribal rules. Groups sit in a circle which is divided into the four 'skin' groups. Tribal elders sit in the middle of the circle. The complainant is asked to explain the problem. A committee of tribal elders is then selected to investigate the alleged offence and the meeting closes. The special committee collects any evidence and builds a case profile including events leading up to the alleged offence. The accused is not solicited for his or her version of the story.

When the evidence has been gathered the community is called to another meeting where all factors leading to the alleged offence and the nature of the offence are discussed. A delegated member of the offender's family is then asked to speak on behalf of the offender. Further discussion ensues and points of the case debated. Community consensus is reached and the case is either dismissed or a sanction imposed. The sanction is carried out immediately.

The sanction may be carried out by the offender's own family or group, or, if the offender has transgressed against another group, by that group. Punishment may take the form of running the gauntlet of a barrage of spears or boomerangs with the offender armed only with a shield. The offender is usually only speared once or beaten until it is felt that justice has been done. Following a sanction the offence is not referred to again and cannot be cited if a further transgression takes place unless it is directly related. (37a & b) (See Appendix 'I' for details of tribal offences and sanction patterns).

### 8.3 Aboriginal JP Community courts

Courts of the Aboriginal Communities Act are held on a rotating basis, approximately once every three weeks. Police lay charges either the day before or on the day of court.

Charges for offences committed on community land are entered into a charge book held in the administration block. On arrival the police examine the charge book, draw up complaint sheets, find the offender and lay the charge. The offender is informed when the court will be sitting and advised to attend.

Because police patrols operate on a rotating roster it may be up to three weeks before an offender is charged, and passions aroused over the incident have diminished. Therefore, when the offender appears in court the sanction is likely to be minimal. However, if an offence is committed the day before the patrol arrives anger may not have subsided which often results in a heavier penalty. (38)

Offenders due to appear in court start arriving around eight in the morning. They are not accompanied by family members and leave the court as soon as the sanction is dispensed. There is no audience in the gallery, only other offenders waiting to appear. The physical layout of Aboriginal community courts is similar to those within the mainstream of Australian law.

The court is called to order when the Aboriginal JP's and Magistrate arrive. Community courts very seldom sit unless the Magistrate is in attendance. The prosecuting police officer announces the court in session and calls the first defendant to the bench. The charge is read out and a plea entered. The Magistrate usually asks the defendant whether the charge is understood and the correct plea entered. The evidence is then presented by the prosecutor (one of the police officers). The defendant is then asked if he/she would like to say anything in his/her own defence. Few ever do. The JP's then discuss the case and reach a decision.

Depending on the 'skin' relationship between the JP and the defendant, a particular JP is nominated to dispense the sanction. The sanction usually involves 'chiding' as well as either a fine or imprisonment. The defendant is often asked whether time to pay is required and if so, a date is set to pay the fine. The defendant is then dismissed. The next case is called and the whole process is repeated. When all charges have been heard the court is dismissed.

Aboriginal Bench Clerks were not observed during hearings and Probation Officers were seldom called upon because probation is not seriously considered as an option.

The rest of the community is not involved as in the traditional model, either in examining the evidence or determining of guilt. The procedure also lacks validity from the traditional standpoint since there is often a considerable delay in the imposition of the sanction. (39)

#### 8.4 Two laws side by side

Traditionally oriented Aborigines believe that tribal sanctions are far more effective as a deterrent than the sanctions of 'public law'. For this and other perceived shortcomings with the Act, council members at Looma and Mowanjum communities express a firm refusal to consider participating in the scheme.

Both communities have indicated that they may be interested if tribal Law were recognized by the Act. Due recognition of the 'old Law' reinforced by 'public law' could increase the respect and adherence to both laws by all community members, particularly the younger members. It is further believed that the recognition of tribal Law would lead to a decrease in Aboriginal offending since the combined effect of the laws could act as a deterrent.

'Our young is afraid of our Law. He is not afraid of your law. The young man also knows we cannot use our Law against him so he is protected by your law - for which he has no respect.' (40)

Many traditional communities use tribal Law as a means of social control, but tend to not to practice openly for fear of retribution. Mowanjum elders have said 'If you can mix your law and our Law, your law will get respect, and our Law will get respect too.' (41) The general feeling among Aboriginal communities is that:

'The young ones come home and say they have a fine of dollars from the white mans' court. What is a fine? It is paper only. Does it teach a lesson? No. There is no discipline in white law - no lessons to be learned. If a man commits a serious crime in the white mans' law. The Court makes him 'sit down' in a room for a while (prison). The man is full (of food) and he has clothes. He has T.V., 'lations and pool-table there. Then the jailbird comes out. That's not a good law. It learns no discipline. It is not that way in our Law. It's not that easy.' (42)

Aboriginal JP's have suggested a tribal sanction which they believe would be more effective than imprisonment. If an offender appeared in court more than twice he or she could be sent to a neighbouring 'country' such as Strelley or Looma and be sentenced to a period of supervision as 'guests' of that tribal area. Following satisfactory completion of the sentence the offender could return home. This would be a form of temporary banishment.

There are a number of problems many Aboriginal JP's face which are associated with the Aboriginal Communities Act and its application.

#### 8.5 Problems associated with the Aboriginal Communities Act

The Aboriginal Communities Act was meant to provide an alternative method of applying law and order on Aboriginal communities whilst enabling them to retain a separate traditional reality. Syddall's idea of creating a localised system of law for Aboriginal communities to combine with, and compliment traditional law was not realised in practice.



An undesirable outcome has been that traditional patterns of authority have been displaced by the Act.

The Act deals with minor issues only and is seen to mock traditional values by its limited terms of reference, and by not including aspects of tribal Law.

Aboriginal JP's are not aware that they have the power to create new by-laws subject to Ministerial approval. And even if they were aware, Aboriginal JP's in the main would not know the procedure for altering or adding new by-laws.

The terminology in the Act is difficult to understand, and seen to be remote from Aboriginal reality.

The provisions and operation of the Act itself are not widely understood by Aborigines participating in the JP scheme.

The sanctions of the Act are ineffective. Aboriginal JP's feel they are paying lip service to a system which limits their options when sanctioning. As elders of their communities JP's have indicated they are losing credibility because they are associated with a legal system which cannot command respect.

Section 7.1 (g) of the Act dealing with the prohibition, restriction or supply of alcoholic liquor, is a major problem for Aboriginal Justices because of the alcohol permit scheme. (43)

#### 8.6 Problems associated with dispensing sanctions

Many Aboriginal JP's have indicated that before they became JP's they were unaware of the conflict which would be associated with their positions as JP's and tribal members. JP's accepted the office hoping that the community would gain greater sense of cohesion and be more acceptable to the wider society. Tribal elders did not anticipate that the reverse would be the result. (44)

One particular JP said:

'Every time I got to go to Court I get sick in my stomach. When I sentence my people I got to be easy - he my `lation (relation). It would be better to go back to one law for all people.' (45)

The conflict in value systems is compounded when Aboriginal JP's are torn between tribal law and the Aboriginal Communities Act. There are real dilemmas associated with deciding which offence is applicable to which law. There are some offences Aboriginal JP's feel that apply only to tribal law, and others, such as alcohol offences to the area of `public law'. An example of conflict is the case of assault between family members. Many JP's feel that tribal arbitration in this instance should apply and not involve outsiders.

Punishment under the Act does not necessarily exempt an offender from tribal retribution. This in turn often causes bitter feuding between family groups, and 'payback'.

JP's may be subject to 'payback' by the relatives of the offender and by other JP's who may belong to the offender's 'skin' group, and finally, by their own relations if one appears before them in Court. 'Payback' JP to JP is through covert manipulation. The rule is 'You go easy on my relations and I'll go easy on yours.' The net result is that both tribal law and 'public law' are being used, one system against the other, to the detriment of both.

The JP's at La Grange and One Arm Point have been participating in the JP scheme since 1980. Many have indicated they are dissatisfied with the lack of autonomy they have when the court is in session, since a non-Aboriginal Magistrate is nearly always present. They feel that they are only advisors to the court. There are two possible reasons for this. Even after five years, Aboriginal JP's may not yet have the competency to preside without a Magistrate in attendance. Alternatively, paternalism on the part of the administrators of the scheme has denied Aboriginal JP's their rightful autonomy.

The Beagle Bay Aboriginal community is, in some ways an exception to the general flawed operation of the JP Scheme. Although the community does not practice tribal custom there is a strong sense of community cohesion and re-identification as Aboriginal. Following a period of strong missionary influence tribal practices ceased but the 'back to the land' movement of the 1980's has attracted many Aborigines to Beagle Bay to form a new community. Many Aborigines living at Beagle Bay have a reasonable command of the English language and a fair understanding of Australian law. Because Beagle Bay is attracting more sophisticated Aborigines to the community a new feeling of Aboriginality has been generated. The JP scheme has added to that new sense of community identity and JP's have few problems applying the Aboriginal Communities Act. (46)

## 9. CONCLUSION AND RECOMMENDATIONS

As early as 1939 the inadequacy of the Australian legal system as it applied to Aborigines in Western Australia was recognised. An attempt was made to offset the inadequacies by providing Courts of Native Affairs on an ad hoc basis. The objective of these courts was to take into account tribal custom when considering offences committed by Aborigines against other Aborigines. Aboriginal elders advised the court if the offence was an infringement of tribal Law and would endorse tribal punishment. The court then sanctioned accordingly.

The Aboriginal JP scheme in Western Australia, within its conceptual framework was a promising ideal for Aborigines to administer Australian justice in their own communities. In practice many difficulties have become apparent which seriously undermine the validity of the scheme.

An implicit objective of the Act was to strengthen tribal custom through engendering a greater sense of community identity. In fact the Act makes only token acknowledgement of tribal custom in Item 17 which states that a defendant may use tribal custom as a defence for an alleged offence.

Owing to the differences between the Aboriginal and wider Australian culture, the imposition of the Act on Aboriginal communities has undermined the effectiveness and authority of both systems of justice. The sanctions of the Act are particularly inappropriate and provide little or no deterrence for Aboriginal offenders.

Rather than strengthening Aboriginal culture the JP scheme is contributing to its demise. The contents of the Act, and its operation in practice are adding to Aboriginal dislocation.

The JP scheme has developed serious difficulties at La Grange, Lombadina, One Arm Point and Balgo Hills. Owing to unique circumstances, the scheme appears to be successful at Beagle Bay.

The Aboriginal Communities Act as it was designed should not be applied across the board without taking into account the level of community acculturation and the degree of committal a community may have to its own culture.

When considering the fate of the JP scheme there are a number of options could can be exercised. Two are suggested.

### 9.1 Retain the Aboriginal Communities Act with modification

It cannot be stressed too strongly that the Aboriginal Communities Act and the JP scheme in its existing format is having serious detrimental effects on Aboriginal communities.

If the concept of a JP scheme is to be retained the following conditions should be observed:

- 9.1.1 The Aboriginal Communities Act in its existing form should not be extended to other communities until the Act has been amended.
- 9.1.2 The Act should be amended to extend the sanction options for Aboriginal JP's to include aspects of tribal Law. In recognising tribal Law Aboriginal JP's may be able to salvage their credibility as JP's and tribal elders and, regenerate respect for and adherence to both laws.
- 9.1.3 Sanction options available to Aboriginal JP's under the Act should be increased to add validity and clout.
- 9.1.4 Court procedures more suited to Aboriginal social organisation should be adopted. Courts should be wholly staffed by Aborigines with Aboriginal JP's having sole decision making powers.
- 9.1.5 Ongoing educational programs should be provided for Aboriginal JP's, offenders and community members alike.
- 9.1.6 The Aboriginal Communities Act should be closely monitored and subject to regular reviews.

Two alternative options for amending the Act are proposed. The first, which is preferred, is more radical than the second.

- 9.2 Amend the Aboriginal Communities Act to encourage the use of tribal Law. The Aboriginal Communities Act should make the use of tribal Law the norm with the JP Scheme as an optional avenue of arbitration.

Within this framework Aboriginal JP's should have the option of using either tribal sanctions or those prescribed by the Act. This option would alleviate the conflict Aboriginal JP's face when trying to decide which offence is applicable to which law.

- 9.3 If the first option is considered too radical it is suggested that the Aboriginal Communities Act be rewritten to include provisions for tribal Law and, allow the operation of the Act to follow traditional arbitration methods with greater autonomy for Aboriginal JP's.
- 9.4 Abandon the JP scheme altogether

Alternatively, the JP scheme could be abandoned altogether so that the communities return to the mainstream of Australian law.

10.        ENDNOTES

- 1        Stanner W.E.H. (1979) White Man Got No Dreaming,  
A.N.U. Press, Canberra, chapter 1
- 2        Stanner op cit, p36
- 3        Syddall T (1984) "Aborigines and The Courts 1" in  
Aborigines and Criminal Justice, (edited by: Bruce  
Swanton), Proceedings - Training Project No: 27/1/5,  
Australian Institute of Criminology, Canberra, p133
- 4        Syddall op cit, p137
- 5a       Syddall ibid p138
- 5b       SYDDALL T (1984) "Aborigines and the Courts 2" in  
Aborigines and Criminal Justice, (edited by: Bruce  
Swanton), Proceedings - Training Project NO: 27/1/5,  
Australian Institute of Criminology, Canberra, p154
- 6        "The Bidyadanga Aboriginal Community La Grange  
Incorporated By-Laws", Government Gazette, 15 February,  
1980, Government Printer, Perth, p 462
- 7        "Lombadina Community Incorporated By-Laws"(1982)  
Government Gazette, 4 June 1982, Government Printer,  
Perth, p 1768
- 8        The Aboriginal Communities Act No: 8 of 1979 Govern-  
ment Printer, Perth, p 5
- 9        "The Bidyadanga By-Laws" op cit, p463
- 10       The Aboriginal Communities Act, op cit, p 6
- 11       Syddall "Aborigines and the Courts 2" op cit p163
- 12       Syddall "Aborigines and the Courts 1", ibid p139
- 13       Syddall "Aborigines and the Courts 2", ibid p155ff
- 14       A community member at Looma had been suspended  
from driving a vehicle for a year. He had  
subsequently been seen driving a car. When  
challenged by the police the offender ran away.  
A warrant had been issued for his arrest.

Every time the police arrived at Looma to arrest  
the offender he ran into the surrounding scrub.  
This had been going on for a number of months  
when the researcher arrived.

The first test took the form of obtaining information about the offender from the police at Derby without the police becoming suspicious. The researcher was requested to return to Looma the same day with the information.

The second test involved predicting the length of sentence the same community member would get if he surrendered himself to the police voluntarily. The offender had told the council at Looma that he would be sentenced to approximately one years imprisonment.

In this instance the researcher was asked to return to Derby and find out if firstly, the offender could be dealt with by the community who guaranteed to confine the offender to Looma for any period stipulated by the police. If this was not possible, to try and find out if there was any way the likely sentence could be reduced.

Subsequently, the researcher informed the Looma council that the police had said that if the offender surrendered voluntarily they would try to obtain a reduction in sentence from twelve to four months. The offender surrendered himself to the police, and fortunately for the researcher, he got four months.

- 15 Data collected from Broome and Derby courthouses, and police charge sheets for the period 1977 - 1984
- 16 op cit
- 17 ibid
- 18 ibid
- 19 ibid
- 20 ibid
- 21 Interview with Maureen Angus J.P. at One Arm Point on 2 November, 1984.
- 22 Interview with Jack Malardy J.P. at La Grange on 2 August, 1984.
- 23 Meeting with tribal elders and Council members at Mowanjum community via Derby on 4 December, 1984.
- 24 Data collected ibid
- 25 Data collected ibid
- 26 Data collected ibid

- 27 Meeting with Council members and tribal elders at Looma on 29 October, 1984.
- 28 ibid.
- 29 Syddall T Aborigines and the Courts 1, ibid, p 135.
- 30 Meeting with Looma Council members at Looma on 29 October, 1984.
- 31 Meetings with Council members and tribal elders at One Arm Point on 29 November, 1984; Mowanjum on 4 December, 1984; and, La Grange on 16 November, 1984.
- 32 Data collected ibid
- 33 Interviews with Steven McCliver and Jane Chrisford, Aboriginal Legal Service, Perth and Derby on 21 August and 8 November, 1984.
- 34 Interview with Jack Malardy J.P. at La Grange on 2 August, 1984 and Council and community members on 16 November, 1984; interview with Council members and tribal elders at Mowanjum on 4 December, 1984.
- 35 Berndt R.M. & C.H. (1964/82) The World of the First Australians, Angus & Robertson, Sydney, p48.
- 36 Meeting with Mowanjum, 4 December, ibid
- 37a Meeting with Council members and tribal elders at La Grange on 16 November, 1984.
- 37b Berndt & Berndt ibid, chapter 10.
- 38 Meetings with Council members and tribal elders at One Arm Point on 2 November, 1984 and La Grange on 2 August, 1984.
- 39 Hoddinott A (1984) unpublished fieldnotes July/December.
- 40 Meeting with Council and community members at La Grange on 16 November 1984.
- 41 op cit.
- 42 ibid.
- 43 Alcohol permits are available at Beagle Bay and One Arm Point and are granted to persons the council believes is capable of responsible drinking habits.
- The Lombadina community previously had a canteen where alcohol was sold in limited quantities. Due to in-faction fighting between community members, the canteen was closed and alcohol banned.

The permits are in direct conflict with the concept of 'dry' communities to which all the communities examined subscribed.

44 Meetings with Council members and tribal elders at La Grange on 2 August and 16 November 1984; Looma on 13 August and 20 October, 1984; One Arm Point on 2 December, 1984; and, Peter Yu J.P. on 16 July, 1984.

45 Meeting with Jack Malardy, 2 August, ibid



11. APPENDICES

11.1 APPENDIX 'A'

CONSULTANTS

- 1) Professor R. Berndt      Emeritus Professor  
                                 Department of Anthropology  
                                 University of Western Australia
- 2) Dr W. Christensen      Senior Lecturer  
                                 Department of Anthropology  
                                 Western Australian Institute of  
                                 Technology
- 3) Mr T. Syddall MBE      Stipendary Magistrate  
                                 Central Law Courts
- 4) Mr G. McDonald      Deputy Commissioner  
                                 Aboriginal Land Inquiry
- 5) Mr B. Easton      Deputy Commissioner  
                                 Aboriginal Affairs Planning Authority
- 6) Mrs K Hazlehurst      Senior Research Officer  
                                 Australian Institute of Criminology

11.2 APPENDIX 'B'

ABORIGINAL JP PERSONNEL as at April 9, 1985

Justices of the Peace

Bidyadanga Aboriginal Community La Grange Incorporated - La Grange:

Jack MALARDY

John DODO

Merridoo WOLBADI

Angelina WILRIDGE

Beagle Bay Aboriginal Community Incorporated - Beagle Bay:

Keith KITCHENER

Paul COX

Lombadina Community Incorporated - Lombadina:

Sandy PADDY

Basil SIBOSADO

The Bardi Aborigines Association Incorporated - One Arm Point

Charles D'ANTOINE

Maureen ANGUS

Aubry TIGAN

John ANGUS

Balgo Hills Aboriginal Community Incorporated - Balgo Hills

Brandy

Sunfly

Bill LARRY

There are no Justices of the Peace at Pandanus Park, Mowanjum or Looma communities.

Bench Clerks

Bidyadanga Aboriginal Community La Grange Incorporated

Julie BANGU

There are no Bench Clerks at any of the other communities.

Probation Officers

Bidyadanga Aboriginal Community La Grange Incorporated

Jack MALARDY

John DODO

Meridoo WOLBADI

Beagle Bay Aboriginal Community Incorporated

Basil SIBOSADO

Mowanium Aboriginal Corporation

Dutchie BOOMGOOT

Wilfred GOOMACK

Watty NGERDU

There are no Probation Officers at any of the other communities.

There are two honorary Rangers at Beagle Bay who maintain law and order. All the Probation Officers are gazetted Officers.

11.3 APPENDIX 'C'

COMMUNITY COUNCIL MEMBERS as at 9 April, 1985

Bidyadanga Aboriginal Community La Grange Incorporated

Chairman:	Jack Malardy
Vice chairman:	John Dodo
Councillors:	Campbell Yanawana
	Kimberley Brolga
	Edna Hopiga
	Julie Bangu
	Metji Yalawa
	Meridoo Wolbadi
	Aubrey

Looma Aboriginal Community Incorporated

Chairman:	Bob Murray
Councillors:	Sandy Spinks
	Fabian Waddy
	Tammy Wandogy
	Charlie Yanbarr
	Barney Jiley
	Jimmy Nerima
	Frank Kirkby

Council members at other communities supplied on request.

11.4 APPENDIX 'D'

Brief description of communities

The Bidyadanga Aboriginal community are tribally oriented and still live in their traditional 'country'. They have four other dislocated Aboriginal tribes living at La Grange as permanent guests. The community at One Arm Point is tribally oriented and was originally from Sunday Island, and associated with a protestant mission. They were relocated when the mission closed down, and eventually settled at One Arm Point. The area of land the Bardi people occupy was donated to them by the Lombadina community. The community at Lombadina still live in their traditional 'country' and although they are tribally oriented they are heavily influenced by the catholic mission there. The community at Beagle Bay are a mixture of Aboriginal people who joined together and established a community hoping to generate a new sense of Aboriginality. The Beagle Bay community does not practice tribal custom.

The Looma community are very tribally oriented and were originally from around the Fitzroy area and upper region of the Great Sandy Desert. They relocated and settled at Looma which is part of their Dreaming 'country'. The Mowanjum community are tribally oriented and was originally relocated from Pantijan, north-east of Derby to a site some 15 kilometres from Derby. They have since been relocated to their present site 10 kilometres from Derby. Pandanus Park are a group of tribally oriented people originally from around the Derby area who started an orchard some 50 kilometres west of Derby.

Statistical data of La Grange and Looma

Population figures

Years	<u>La Grange</u>			<u>Looma</u>		
	M	F	T	M	F	T
1977/78	230	224	450	156	133	289
1978/79	223	222	445	181	185	366
1979/80	221	220	441	183	187	370
1980/81	232	234	466	180	182	362
1981/82	245	254	499	185	189	374
1982/83	211	211	422	204	159	363
1983/84	275	265	540	180	180	360

Population figures obtained from the Aboriginal Affairs Planning Authority Annual Reports, 1977-1984.

Average age by sex

<u>Community</u>		<u>Male</u>	<u>Female</u>	<u>Average</u>
La Grange	(years)	25	28	26
Looma		24	26	25

Average age by males and females

<u>Age</u>		<u>La Grange</u>		<u>Looma</u>	
		<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>
0-9	(number)	26	20	37	20
10-14		12	9	18	14
15-19		9	6	6	12
20-24		14	7	10	15
25-29		4	6	9	10
30-34		7	3	3	7
35-39		3	4	2	3
40-49		8	11	10	9
50-59		7	8	9	8
60-69		9	7	10	6
70 and over		1	2	4	2

Marital status by community

	<u>La Grange</u>	<u>Looma</u>
Never married - under 15 years	37	39
Never married - over 15 years	18	15
Now married	40	44
Divorced	1	-
Widowed	4	3

Age left school by community

		<u>13/14</u>	<u>15/16</u>	<u>17/18</u>	<u>19/over</u>	<u>Never attended</u>	<u>Not stated</u>
La Grange	%	15	18	5	1	51	10
Looma		15	3	3		39	40

Level of qualifications by community

There are no qualified persons living at La Grange or Looma at the time of writing this paper.

Religion by community

		<u>Catholic</u>	<u>Other Christian</u>	<u>Other</u>	<u>Not stated</u>
La Grange	%	62		32	6
Looma		7	47	3	43

Proficiency in English

		<u>Uses only English</u>	<u>Uses other languages.....</u>				
			<u>Very well</u>	<u>Well</u>	<u>Not well</u>	<u>Not at all</u>	<u>Not stated</u>
La Grange	%	2	19	41	33	4	1
Looma		7	26	26	40		1

Individual income annual and weekly by community

		<u>La Grange</u>	<u>Looma</u>
None	%	7	6
\$100-\$999 -annual		3	3
(\$1.00-\$18.00) - weekly			
\$1000-\$2000		13	8
(\$19.00-\$38.00)			
\$2001-\$3000		14	3
(\$39.00-\$58.00)			
\$3001-\$4000		22	16
(\$59.99-\$77.00)			
\$4001-\$6000		23	28
(\$78.00-\$115.00)			
\$6001-\$8000.00)		10	19
(\$116.00-\$154.00)			
\$12000.00-\$15000.00		4	
(\$232.00-\$288.00)			
Over \$18000.00			1
Not stated		4	16

NOTE: Statistical data on the Aboriginal population can only be described as approximate. The data is subject to unspecified errors owing to data collection difficulty.

Data collected from 1981 general Census, Bureau of Statistics, Perth.

Any inaccuracies in addition of percentages is due to rounding.

### Employment

The community at La Grange are recipients of the Community Development Employment Program (CDEP) and as participants are gainfully employed in jobs such as as stockmen, builders, office staff, shop assistants, and cleaners.

The community at Looma are recipients of social security and unemployment benefits however, some community members are working as stockmen on Mt. Anderson station. Looma community have requested to be included in the CDEP scheme.

### Lands leased by La Grange and Looma communities

#### Bidyadanga Aboriginal Community La Grange Inc

<u>Location</u>	<u>Area (hectares)</u>	<u>Comment</u>
La Grange	291	Leased to the Pious Society of Missions, expiring 1/12/2059. The Bidyadanga community established in this reserve.
Frazer Downs	86,043	Leased by Quimbeena Pastoral Company on behalf of the Bidyadanga community.
Injudinah	1618	Leased by Quimbeena Pastoral Company on behalf of the Bidyadanga community.

#### Looma Aboriginal Community Inc

Liveringa	5750	Leased to the Looma community in 1976.
Mt. Anderson Station	94,435	Leased to the Looma community in 1984.



WESTERN AUSTRALIA.  

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## ABORIGINAL COMMUNITIES.

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No. 8 of 1979.

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AN ACT to assist certain Aboriginal communities to manage and control their community lands and for related purposes.

[Assented to 17th May, 1979.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Aboriginal Communities Act, 1979*. Short title.

2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

84407—5500

Interpre-  
tation.

3. In this Act—

“Aboriginal community” means a community or association wholly or principally composed of persons who are of Aboriginal descent within the meaning of the Aboriginal Affairs Planning Authority Act, 1972;

“section” means section of this Act;

“the council” in relation to a community means the council of management or other governing body of that community.

Communi-  
ties to which  
this Act  
applies.

4. (1) Subject to section 5, this Act applies to—

(a) the Aboriginal communities incorporated as the Bidyadanga Aboriginal Community La Grange Incorporated and the Bardi Aborigines Association Inc.; and

(b) any incorporated Aboriginal community that the Governor, on the advice of the Minister, declares by proclamation to be a community to which this Act applies.

(2) The Minister may advise the Governor to make a declaration under paragraph (b) of subsection (1) of this section in relation to an Aboriginal community if the Minister is of the opinion—

(a) that there are provisions in the constitution or rules of the community under which the council of the community will have to consult with the members of the community and take proper account of their views before making, amending or revoking by-laws pursuant to this Act;

(b) that the provisions mentioned in paragraph (a) of this subsection will be complied with by the council of the community; and

(c) that in all other respects the community is one to which the application of this Act would be appropriate.

5. (1) Notwithstanding section 4, this Act shall cease to apply to a community if the Governor, on the advice of the Minister, declares by proclamation that the community is no longer a community to which this Act applies.

Governor may declare that Act no longer applies to a community.

(2) The Minister may advise the Governor to make a declaration under subsection (1) of this section in relation to a community if the Minister is of the opinion—

- (a) that neither the constitution nor the rules of the community contain provisions under which the council of the community has to consult with the members of the community and take proper account of their views before making, amending or revoking by-laws pursuant to this Act;
- (b) that provisions of the kind mentioned in paragraph (a) of this subsection contained in the constitution or rules of the community are not being satisfactorily complied with by the council of the community; or
- (c) that, for any other reason, the application of this Act to the community is no longer appropriate.

(3) Upon the making of a declaration under subsection (1) of this section in relation to a community any by-laws made by the community under this Act shall, by force of that declaration, be revoked.

6. (1) For the purposes of this Act the community lands of a community to which this Act applies shall be the lands declared by the Governor by proclamation to be the community lands of that community.

Community lands.

(2) The Governor may by subsequent proclamation amend a proclamation made under subsection (1) of this section by altering a description of

community lands contained in that proclamation for either or both of the following purposes, that is to say—

- (a) adding any lands to or excising any lands from those community lands; or
- (b) redescribing those community lands in a more precise or more informative manner.

**By-laws.**

7. (1) The council of a community to which this Act applies may make by-laws relating to the community lands of the community for or with respect to—

- (a) the prohibition or regulation of the admission of persons, vehicles, and animals to the community lands or a part of the community lands;
- (b) the prohibition or regulation of the use of vehicles on the community lands, including provisions as to speed, manner of driving, class of vehicles, routes, entrances and exits, one-way traffic, noise, parking or standing, the removal of vehicles by a person authorized under the by-laws, and for the control of traffic generally;
- (c) the prevention of damage to or interference with the grounds of the community lands and the trees, shrubs, bushes, flowers, gardens and lawns on or in those lands;
- (d) the use, safety and preservation of buildings, structures, erections, fixtures, fittings and chattels on the community lands;
- (e) the regulation of the conduct of meetings and the interruption of meetings by noise, unseemly behaviour or other means;
- (f) the prohibition of nuisances, or any offensive, indecent or improper act, or disorderly conduct, language or behaviour;
- (g) the prohibition, restriction or regulation of the possession, use or supply of alcoholic liquor or deleterious substances;

- (h) the prohibition or regulation of the possession or use of firearms or other offensive weapons or of dangerous materials;
- (i) the depositing of rubbish and the leaving of litter on community lands;
- (j) the prohibition of the obstruction of any person acting in the execution of his duty under the by-laws or in the exercise and enjoyment by him of any lawful activity on the community lands;
- (k) the prescribing of any other matter that it is necessary or convenient to prescribe for the purpose of securing decency, order and good conduct on the community lands.

(2) By-laws made by the council of a community under subsection (1) of this section—

- (a) may empower a member of the police force—
  - (i) to apprehend any persons guilty of a breach of any by-law and to remove such a person from the community lands;
  - (ii) to remove any vehicle, animal or other thing from the community lands;
  - (iii) to request the name and address of any other person who, in the reasonable belief of the member of the police force, is on the community lands in breach of any by-law or has committed a breach of a by-law;
  - (iv) to take proceedings for any breach of a by-law; and
  - (v) generally to enforce the provisions of the by-laws;
- (b) may be limited in their application to time, place or circumstance;

- (c) may provide that any act or thing shall be done subject to the approval or to the satisfaction of the council or a specified person or class of persons and may confer a discretionary authority on the council or a specified person or class of persons;
- (d) may impose as the penalty for a breach of a by-law a fine, or a term of imprisonment, or both, but no fine so imposed shall exceed one hundred dollars and no term of imprisonment so imposed shall exceed three months;
- (e) may empower a court to order a person to pay compensation not exceeding two hundred and fifty dollars to the community or another person where the court has convicted him under the by-laws of an offence and, in the course of committing that offence, he has caused damage to property of the community or that other person.

(3) Nothing in this Act affects the power of a community or its council to make other by-laws, rules or regulations under and in accordance with the constitution of the community.

Procedure  
for making  
by-laws.

8. (1) The provisions of the Interpretation Act, 1918 apply in respect of by-laws made, and the making of by-laws, under this Act.

(2) By-laws shall be made by resolution passed by an absolute majority of all the persons for the time being holding office as members of the council of a community and, when so made, shall be—

- (a) sealed with the common seal of the community;
- (b) delivered to the Minister.

(3) If the Minister is satisfied that the by-laws are necessary and desirable he shall submit them to the Governor for his approval.

(4) If the Governor approves of the by-laws the Minister shall cause them to be published in the *Government Gazette* and to be laid before both Houses of Parliament as required by section 36 of the Interpretation Act, 1918.

(5) The production of a copy of a by-law under the official seal of a community, or of a copy of the *Government Gazette* purporting to contain a reprint or copy of a by-law, shall in all proceedings be sufficient evidence of the by-law.

9. (1) By-laws made by the council of a community apply only within the boundaries of the community lands of the community but apply to all persons within those boundaries whether members of the community or not.

Application  
of by-laws.

(2) In proceedings for any contravention of a by-law made by the council of a community the allegation in the complaint that any place was within the boundaries of the community lands of the community shall be sufficient evidence of the fact alleged in the absence of proof to the contrary.

10. The complaint in respect of an offence against a by-law shall be made within six months after the offence thereby charged was committed.

Time limit  
on  
proceedings  
for  
offences.

11. Subject to the Child Welfare Act, 1947, proceedings for any offence against a by-law shall be dealt with summarily under and in accordance with the Justices Act, 1902.

Procedure.

12. All pecuniary penalties recovered in respect of any breach of a by-law made by the council of a community shall, notwithstanding anything to the contrary contained in the Fines and Penalties Appropriation Act, 1909 or any other Act, be appropriated and paid to the council for the use of the community.

Appropriation  
of  
fines.

Effect of  
by-laws in  
relation to  
other laws.

13. (1) No by-law takes away or restricts any liability, civil or criminal, arising under any other statutory provision or at common law.

(2) No by-law shall render unlawful any act done by a person lawfully acting in pursuance of a power, duty or function conferred or imposed by or under any other statutory provision or in the exercise of any right conferred by or under any other statutory provision.

(3) In this section "statutory provision" means a provision of any other Act or of a regulation, by-law or rule in force under any other Act.



## ABORIGINAL COMMUNITIES ACT, 1979

The Bidyadanga Aboriginal Community La Grange Incorporated  
By-laws

## PART A - GENERAL

1. These By-laws shall be called the Bidyadanga Aboriginal Community La Grange Incorporated By-laws and shall come into Operation when approved by the Governor and published in the Government Gazette.
2. In these By-laws-
  - "The Act" means The Aboriginal Communities Act, 1979.
  - "Community" means the Bidyadanga Aboriginal Community La Grange Incorporated.
  - "Community Land" means that land declared by the Governor under section 6 of the Aboriginal Communities Act, 1979, to be the community lands of the Bidyadanga Aboriginal Community La Grange Incorporated.
  - "Member of the Community" means a member for the time being of the Bidyadanga Aboriginal Community La Grange Incorporated. Whether a person is or is not a member for the time being of the Bidyadanga Community is a question of fact to be determined according to the customs of the Bidyadanga Community.
  - "The Council" means the council of management of the Community.
3. These By-laws shall apply-
  - (a) On all community land; and
  - (b) to all persons on community land.

## PART B - LAND

4. (1) Except as provided in any Act or Regulation to the contrary, no person other than a member of the community shall come onto community land or remain on community land without the prior permission of the Council which may, in its discretion, grant permission subject to such terms and conditions and restrictions as it sees fit, or refuse permission.
  - (2) The permission referred to in paragraph (1) of this Clause may be given verbally or in writing and may be revoked by the Council at any time.
5. Except as provided in any Act or Regulation to the contrary any person who comes onto community land without permission of the Council or who, having been given permission on terms and conditions to come onto community land, breaks a term or condition of that permission commits an offence.
6. (1) Subject to the provision of any Act or Regulation to the contrary-
  - (a) The Council may place signs on community land for the purpose of prohibiting entry to the part of the land on which the sign is placed or to such part of the community land indicated by the inscription on the sign.

- (b) An inscription on such a sign operates and has effect according to its tenor and any person who fails to obey the directions on the inscription on such sign commits an offence.

7. Any person who, being in the home occupied by another and upon being directed by the occupier to leave refuses so to leave commits an offence against these by-laws.

#### PART C - TRAFFIC

8. (1) The Council may place signs called "Traffic Signs" on community land for the purpose of prohibiting, regulating, guiding or directing vehicle traffic. Provided that no prohibition, regulation, guidance, or direction shall be contrary to any statutory provision as defined in section 13 of the Act.

(2) An inscription on a traffic sign operates and has effect according to its tenor and any person who fails to obey the directions on the inscription on such sign commits an offence.

(3) No person shall drive a vehicle on community land in a careless or dangerous manner.

#### PART D - THE REGULATION OF OTHER MATTERS

9. No person shall maliciously damage any planted tree, bush, flower, lawn, building, structure, vehicle or other thing.

10. No person shall, except in rubbish bins or areas set aside by the Council for leave rubbish, leave rubbish or litter on community land.

11. No person shall cause a disturbance or annoyance to other persons by using abusive language or fighting or by any other offensive or disorderly behaviour.

12. No person shall interrupt any meeting of the Council or Community or any customary meeting by noise or by any other disorderly or offensive behaviour.

13. (1) No person shall bring alcohol onto community land without permission of the Council.

(2) The Council may, in its discretion and subject to such terms, conditions and restrictions as it sees fit, permit any person to bring, possess, use or supply alcohol on community land.

(3) In exercising its discretion under paragraph (2) of this Clause, the Council shall have regard to the welfare of the Community as the paramount consideration.

(4) The permission referred to in paragraph (2) of this Clause may be given verbally or in writing and may be revoked by the Council at any time.

14. Any person who brings, possesses or uses alcohol on community land without the permission of the Council, or who supplies it to others on community land without the permission of the Council, or who, having been given permission in relation thereto subject to terms and conditions breaks such terms or conditions commits an offence.

15. A member of the police force may-

1. (a) Take proceedings against any person for a breach of these By-laws.
- (b) Where any person has committed or is committing an offence against these By-laws and it appears likely that injury to persons or damage to property will be caused by that person, apprehend and remove that person from community land for a period not longer than 24 hours or until a Court is convened to deal with the person according to law, whichever is the earlier.
2. Subject to the Child Welfare Act, 1947, proceedings for an offence against a By-law shall be commenced by way of complaint and summons under and in accordance with the Justices Act, 1902 and shall be commenced within six months after the offence was committed.

16. (1) Any person who breaks any of these By-laws is guilty of an offence and is liable to a fine or a term of imprisonment or both, but no fine so imposed shall exceed one hundred dollars and no term of imprisonment so imposed shall exceed three months.

(2) In addition to the penalties provided under paragraph (1) of this Clause, the Court may order any person convicted of an offence under these By-laws to pay compensation not greater than two hundred and fifty dollars to the Community or other person where, in the course of committing the offence, the person convicted has caused damage to property of the Community or of that other person.

17. It is a defence to a complaint of an offence against these By-laws to show that the defendant was acting under and excused by any custom of the community.

Dated this 19th day of October, 1979.

The Common Seal of the Bidyadanga  
Aboriginal Community La Grange  
Incorporated was hereunto affixed  
pursuant to a resolution of and  
by authority of the Council of  
Management in the presence of-

[L.S.]

MATTHEW YANAWANA,  
Secretary,  
JACK MULARDY, J.P.  
JOHN DODO, J.P.  
MERRIDOO WOLBADI, J.P.  
PADDY JADAI,  
Members of the Council  
of Management

---

Recommended-

IAN MEDCALF,

11.7 APPENDIX 'G'

Berndt explains the mechanics of the La Grange kinship structure as follows:

```

A ----> BANAGA      =      BURONGU <---- B
  |
  |
C ----> GARIMBA     =      BALDJERI <---- D
  |
  |

```

Key:

- 1) " If A, a BANAGA man, marries B, a BURONGU woman, then the children will be BALDJERI, D;
- 2) A's mother is C;
- 3) B's mother is D;
- 4) A's father is D;
- 5) B's father is C;

The father's section is not significant in regard to descent. The ideal is that A marries B; but, an alternative choice may be that C marries B, and then generation levels may be out of alignment. The important point is that the division be retained between A and C, and between B and D. Marriage would not normally take place between the two sections making up one moiety: that is, between B and D and A and C.

Also significant is the distribution of kin among the four sections.

Using the above example:

- ```

A      -* includes the person himself
        * his siblings
        * his father's father
        * his mother's mother
        * wife's mother's father
        * son's son and daughter
B      -* includes his wife
        * his wife's siblings
        * his cross cousins
D      -* includes his own children
        * his father
        * his father's siblings
        * his wife's mother
C      -* includes his mother
        * his mother's siblings
        * B's father
        * D's husband or wife as the case may be."

```

Reference: Berndt RM and CH (1964/82) The World of the First Australians, Angus & Robertson, Sydney, p48.

11.8 APPENDIX 'H'

Examples of some behaviour patterns among Aborigines, depending on whether they calculate their kinship through patrilineal or matrilineal lines are:

- Deference relationships -applies to status within a community such as between:  
Father - son  
Uncle - nephew  
Older - younger siblings
- Restraint relationships -these are measures of respect, deference and obedience. They are exemplified by restrictions in touching, joking, sitting together, visiting one another's campsite, and looking directly at one another during conversation. A man's behaviour toward most adult consanguinal kin is one of restraint.
- Avoidance relationships -total avoidance of a mother-in-law and son-in-law or potential son-in-law.
- Reciprocity relationships -a form of obligation applying in varying degrees to certain kin. Also applies to bestowal of women in marriage be the gift of a woman be at birth or later on in life.
- Joking relationships -this occurs between same-sex relatives which involves noisy mocking abuse usually sexual in connotation, and is beneficial in terms of creating amusement among relatives
- Personal names -personal names are never used and reluctantly given on request. Many Aborigines in Australia have 'Gardia' names as well as an Aboriginal name. Aborigines believe their name is part of their soul's essence. To divulge his personal name would be to violate his person and in turn, become vulnerable to possible sorcery.

Reference: Berndt RM & CH (1964/82) in The World of the First Australians, Angus & Robertson, Sydney, chaps 2&3.

11.9 APPENDIX 'I'

Tribal offences and sanctions

Tribal offences and sanctions are limited in type and apply as follows:

Offences of commission

Sanctions

- |    |                                                                                                    |                                                |
|----|----------------------------------------------------------------------------------------------------|------------------------------------------------|
| 1. | Unauthorized homicide.                                                                             | a) Death caused by human sorcery.              |
|    |                                                                                                    | b) Death caused by physical attack.            |
|    |                                                                                                    | c) Illness caused by human sorcery.            |
| 2. | Sacrilege - possession of secret/sacred objects & observation of secret/sacred ceremonial rituals. | a) Death caused by non-human agency.           |
|    |                                                                                                    | b) Death caused by physical attack.            |
|    |                                                                                                    | c) Insanity caused by non-human agency.        |
| 3. | Unauthorized sorcery.                                                                              | a) Illness caused by human sorcery.            |
|    |                                                                                                    | b) Death caused by physical attack.            |
|    |                                                                                                    | c) Death by human sorcery.                     |
| 4. | Incest.                                                                                            | a) Death by spear, or knife.                   |
|    |                                                                                                    | b) Battery by a club or boomerang.             |
| 5. | Co-habiting with the wrong 'skin.'                                                                 | a) Illness caused by human sorcery.            |
|    |                                                                                                    | b) Wounding with spear or knife.               |
| 6. | Abduction or enticement of women.                                                                  | a) Illness caused by human sorcery.            |
|    |                                                                                                    | b) Wounding by spear knife, club or boomerang. |

- |     |                                                     |                                                                                        |
|-----|-----------------------------------------------------|----------------------------------------------------------------------------------------|
| 7.  | Adultery with anothers wife and/or potential wife.  | a) Illness caused by human sorcery.<br>b) Wounding by spear, knife, club or boomerang. |
| 8.  | Unauthorized physical assault.                      | a) Wounding by spear, knife, club or boomerang.                                        |
| 9.  | Usurping ritual rights or privileges.               | a) Wounding by spear, knife, club or boomerang.                                        |
| 10. | Theft and destruction of anothers property.         | a) Wounding by spear, knife, club or boomerang.                                        |
| 11. | Insulting, including swearing and genital exposure. | a) Wounding by club or boomerang.                                                      |

Offences of omission

Sanction

- |    |                                                  |                                                                          |
|----|--------------------------------------------------|--------------------------------------------------------------------------|
| 1. | Physical neglect of certain relatives.           | a) Illness caused by human sorcery.<br>b) Wounding by club or boomerang. |
| 2. | Refusal to make gifts to certain kin.            | a) Illness caused by human sorcery.<br>b) Wounding by club or boomerang. |
| 3. | Refusal to fulfill obligatory educational roles. | a) Illness caused by human sorcery.<br>b) Wounding by club or boomerang. |

Oral abuse accompanies all punishments and ridicule is directed at offences of omission.

References: Berndt RM & CH (1964/82) in The World of the First Australians', Angus & Robertson, Sydney, chap 10.  
Meggitt MJ (1962) in Desert People, Angus & Robertson, Sydney, pp256-258.



11.10 APPENDIX 'J'

Figure 3 indicates the income derived from fines since the JP scheme began. Income derived from fines since the scheme began at La Grange is paid to the community as a whole. The income collected from fines at La Grange increased from less than \$500 per annum to around \$2,700 per annum since the Justice of the Peace began. The random pattern of dollar collection figures for Looma are unclear in that there was a massive increase in dollar collection during 1980/81 and a resumed slump in the random dollar collection pattern after that 1981. It should be noted that the 1977 figures are for an eight month period and the 1984 figures are for a four month period.

Figure 3 TOTAL VALUE FINES PAID - 1984 \$'s

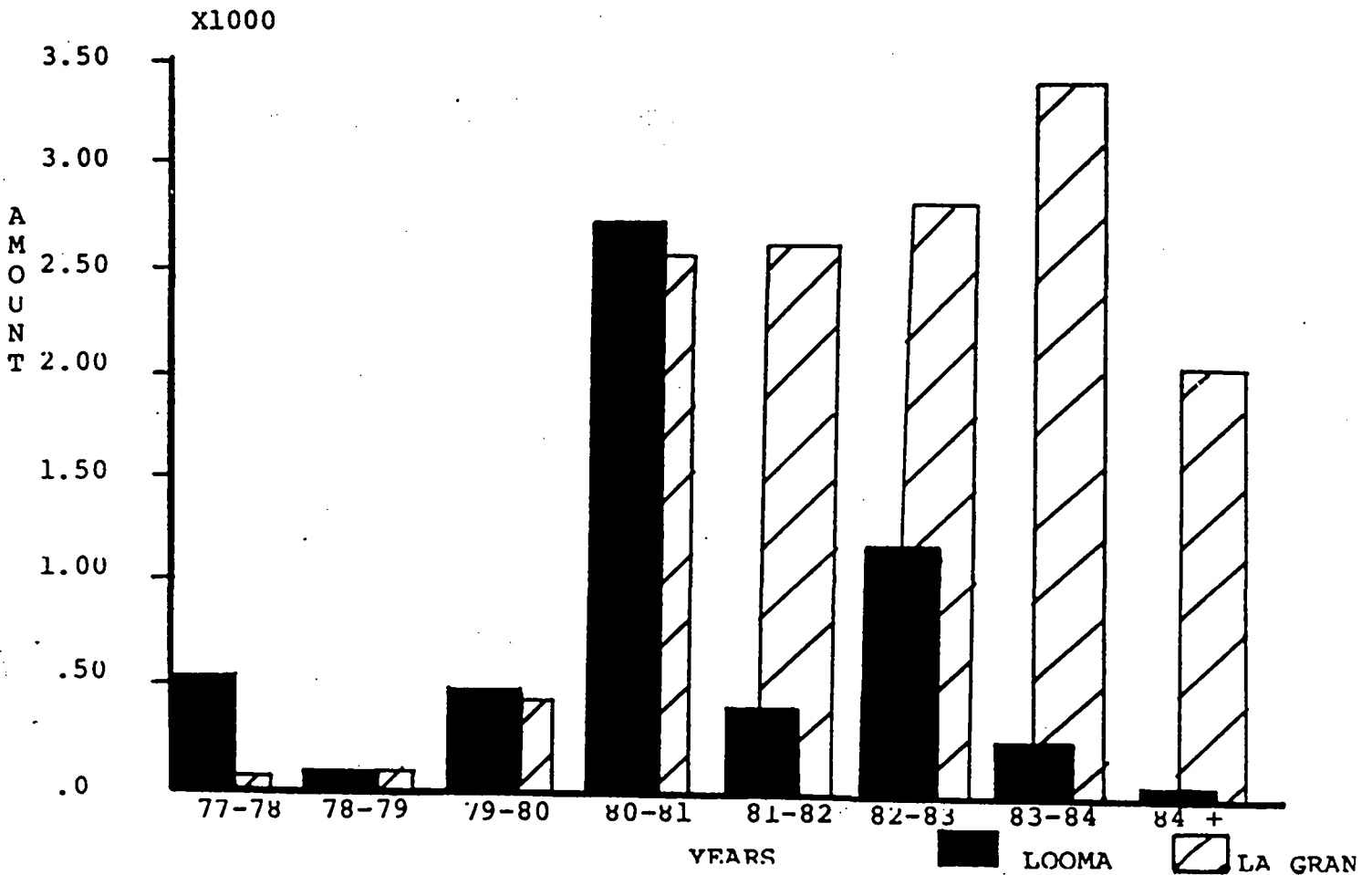
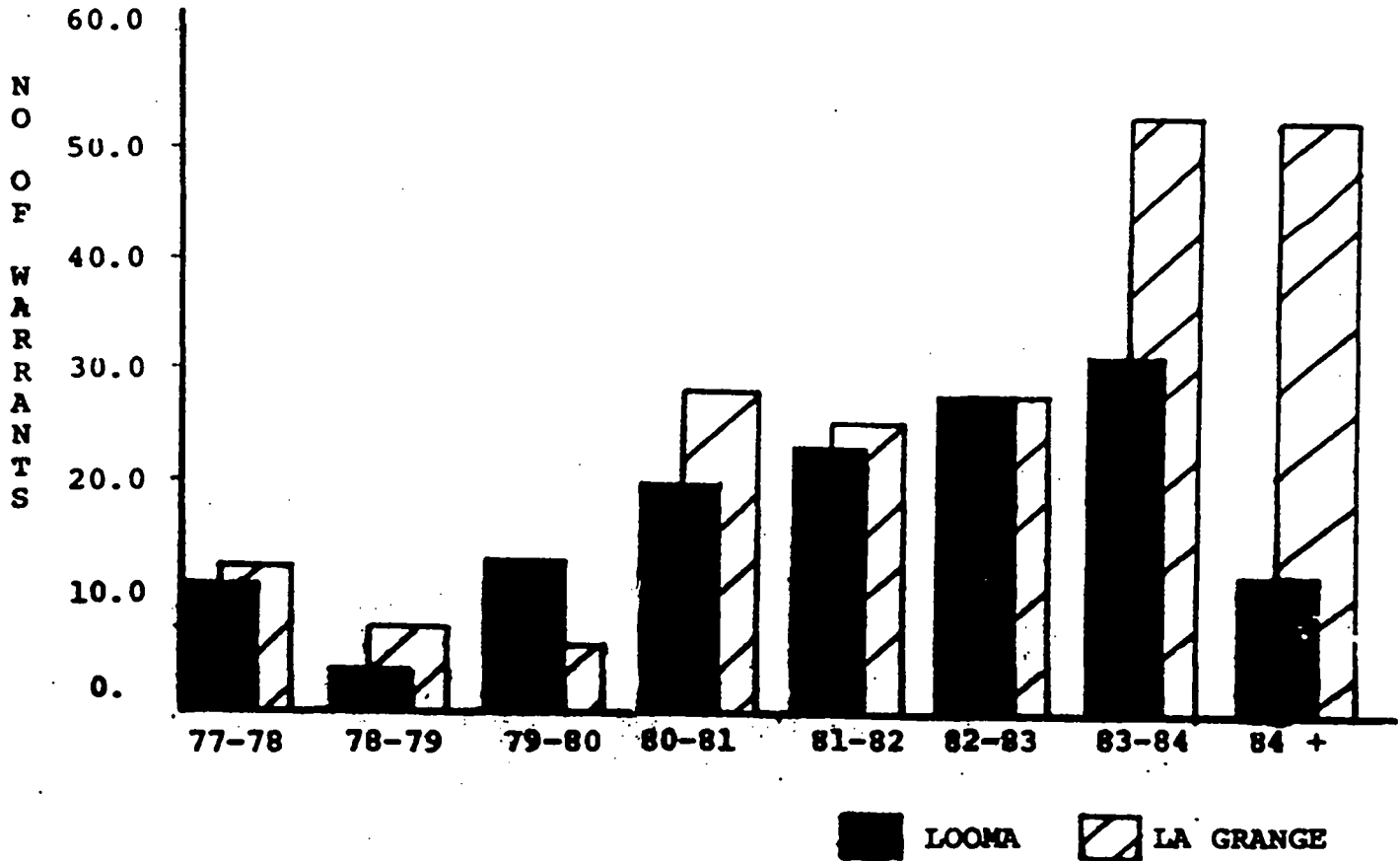


Figure 4 shows the total number of warrants issued for La Grange and Looma over the seven year period. The total number of warrants issued for La Grange over the seven year period was 218. At an estimated cost in 1984 dollars of approximately \$13.50 per warrant the cost of issuing these warrants was \$2,943.00. The total number of warrants issued for Looma over the same period was 145. Using the same cost calculation, the cost of issuing these warrants was \$1,957.50.

Figure 4

WARRANTS ISSUED



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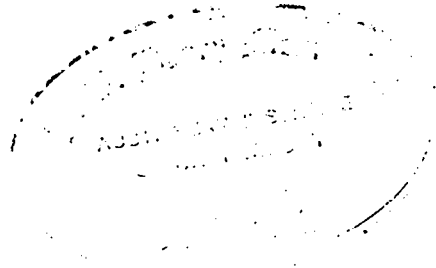
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