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PREFACE

DURING RECENT DECADES THERE HAS BEEN A MARKED INCREASE IN INTEREST and discussion about Aboriginal rights and welfare. Much of this discussion has centred around legal issues and as Australian society has become more concerned, so the Australian Institute of Criminology has responded by giving a high priority to Aboriginal Justice Issues.

The Australian Institute of Criminology held this conference in June 1992. The conference was planned, in part, in response to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody. The aim of the conference was to indentify solutions to the problems associated with Aboriginal people and the criminal justice system, particularly focussing on Aboriginal perspectives. The program presented an overview of many issues including self-determination, community crime prevention, indigenous women and the law, juvenile justice, Aboriginal/police relations, corrections and the judiciary. The conference attracted around 500 participants, most of whom were Aboriginal, and provided an opportunity for Aboriginal and Torres Strait Islander people to share experiences and strategies for overcoming problems in their communities.

The papers in this volume are divided into several broad sections: Community Crime Prevention; Aboriginal/Police Relations; Juvenile Justice; The Judiciary; Aboriginal Women and the Law; and Corrections. The papers are followed by recommendations from the conference.

In his opening address, Rob Hulls draws on his experience with the Aboriginal and Torres Strait Islander Legal Service to highlight the urgent need for the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody which concern law and justice and the wider issues of economic and social disadvantage. He raises the question of the appropriateness of the application of the white criminal justice system to Aboriginal and Torres Strait Islander communities.

Michael Mansell takes this idea further in his paper, "Law Reform and the Road to Independence". He sees self-determination as the essential determinant of justice for indigenous people. Mansell puts forward the Aboriginal Provisional Government's model for Aboriginal independence and emphasises the need for the legal system to be examined in the context of the overall relationship that Australia has with Aboriginal people.

Crime Prevention

In the section on crime prevention the contributors examine successful community crime prevention strategies. In the following papers the importance of community input is emphasised as central to success.

Barbara Miller demonstrates how a diverse community in North Queensland turned around its experience of violence to establish positive programs which have enhanced the life of the community and contributed to crime prevention. Paul Memmott shows how a project which is conceived and driven by Aboriginal elders is working towards agreed upon styles of preferred social behaviour in Alice Springs. The importance of indigenous workers in the field is stressed by Rebecca Tonkin as an important determinant for the success and acceptance of crime prevention strategies in Aboriginal communities in South Australia. Marg O'Donnell describes how mediation techniques are being practised to resolve disputes in Aboriginal communities, with special reference to Deed of Grant in Trust (DOGIT) communities. The challenge of such schemes is to provide a service which is seen to be relevant to the needs of the community, whilst being able to integrate traditional decision-making and styles of agreement within a new approach to conflict resolution.

Aboriginal/Police Relations

Aboriginal/police relations have received increasing attention in recent years, largely because they have been characterised by conflict. The three papers in this section describe positive changes that can be made to improve the ways in which Aboriginal people and the police interact.

Terry Tyler outlines the community policing strategies that the Queensland Police are implementing in the wake of the *Fitzgerald Report* to improve relations between the police and the Aboriginal and Torres Strait Islander community. Some of these strategies include wider consultation through consultative committees and recruitment of Aboriginal staff to the police force. In the paper that follows Cherie Imlah demonstrates how attitudes of police can be changed, and understanding enhanced through the Queensland Police Recruit Training Program. Finally, Dave Curtis describes a scheme, the Julalikari Night Patrol, in which community volunteers patrol the town and camps at night to settle disputes before they develop and to assist in communication between the police and the community.

Juvenile Justice

The papers in the section on juveniles explore some of the issues regarding young Aboriginal offenders.

Chris Sidoti discusses the over-representation of Aboriginal juvenile offenders in juvenile detention centres and the implications that this will have for over-representation of Aboriginal people in the adult justice system. He

outlines inconsistent state objectives and practices in juvenile justice and calls for a national approach to these issues.

The ways in which patterns of over-representation of Aboriginal young offenders can be changed are illustrated by Evelyn Crawford-Maher in her description of rehabilitation and diversionary programs developed through community consultation.

Allan Carter examines the factors contributing to offending amongst Aboriginal youth in a remote community and the strategies that were devised through consultation to alleviate the problems and provide justice for the community and the offenders.

The Judiciary

The judiciary is examined critically in this section.

Chris Cunneen raises a number of questions about the judiciary in his paper, "Judicial Racism". Through citing numerous examples of racist comments and judgments Cunneen demonstrates that the judiciary has been racist and continues to display racist attitudes in its interactions with Aboriginal people.

In the same vein Kathryn Pirie and Sheryl Cornack question the manner in which the charges of obscene language are applied to Aboriginal people in Queensland under Section 7 of the *Vagrants, Gaming and Other Offences Act 1931*. The writers suggest that there are solutions other than arrest and incarceration for problems which involve public order, and they call on police to use "caution, circumspection and common sense in their dealings with Aboriginal people".

Lionel Fraser outlines a scheme for employing Aboriginal assistants within the court to provide a more just environment in which criminal cases which involve Aboriginal people can be heard.

Through the account of his experience as a circuit magistrate Garry Hiskey provides some insight into the workings of the magistrates' courts in the Pitjantjatjara Lands of South Australia. He highlights the importance of flexibility, sensitivity and appreciation of cultural requirements in court procedure and his analysis of court files identifies some of the major issues for the courts and for Aboriginal people in this area.

Aboriginal Women and the Law

The issues which confront Aboriginal women, who face both racism and sexism, are examined in the paper by Joanne Selfe and Carol Thomas. Through the Aboriginal Women and the Law Project Aboriginal women in New South Wales have identified a number of issues which are of concern, including access to justice and cultural inappropriateness of the justice system. The dearth of information highlights the need for more research in this area.

In her paper Esther Alvares describes how a community worked together to provide support and safety for women in Bourke who were suffering domestic

violence. The paper demonstrates the effectiveness of community initiatives for community problems.

Corrections

The section regarding corrections emphasises the importance of community consultation and culturally relevant programs for Aboriginal and Torres Strait Islander prisoners. In order to divert Aboriginal offenders from imprisonment and to increase the success of prisoners on parole Reg Blow outlines a proposal for the Dooligar Justice Centre in Victoria where the aim is to introduce culturally relevant programs. Angela Musumeci describes the changes that the Queensland Corrective Services Commission have made in remote Aboriginal communities.

The Media

In the final paper Diana Plater provides guidelines for Aboriginal people to gain access to the media in order to overcome widespread negative stereotypes of Aboriginal society and use the media to advantage.

Recommendations

The recommendations which appear at the end of this collection of papers were formulated by the participants of workshops at the end of the conference. The recommendations are far reaching and relate to sovereignty, indigenous women, juvenile justice, policing in Aboriginal communities, corrections and the courts. The recommendations illustrate the changes that Aboriginal and Torres Strait Islander people wish to make to the criminal justice system.

Shortly after the conference concluded, copies of all of the recommendations were forwarded by the Institute to all the Ministers in the Commonwealth, State and Territory level whose portfolios are relevant to the issues raised. Several ministers subsequently expressed their interest and support in principle for the recommendations.

Solutions to the issues raised in these papers range from wider consultation with Aboriginal and Islander people and education of white Australians, to self-determination. However, the theme throughout all the papers is that white Australian society and the Australian criminal justice system needs to reflect upon and address its own attitudes, behaviours and practices before there can be justice for Aboriginal and Torres Strait Islander people.

Sandra McKillop
September 1993

OPENING ADDRESS

Rob Hulls

BEFORE BEING ELECTED TO THE FEDERAL PARLIAMENT, I SPENT FIVE YEARS in Mount Isa as the solicitor retained by the Aboriginal and Torres Strait Islander Legal Service. This service covers a large area north to Mornington Island, south to Birdsville, east to Julia Creek and west to the Territory border.

As a solicitor retained by the Aboriginal Legal Service I heard the individual life stories of many clients: whole families who had died of introduced diseases such as measles; children hiding in caves for weeks at a time to avoid being taken from their families; the exploitation of Aboriginal stock workers who were paid nothing for developing the cattle industry in the north, and tragic abuse and rape of Aboriginal and Torres Strait Islander women. Just about every client had a family history involving early death and great suffering. Clearly there has been a tragic lack of justice in relation to all aspects of the relationship between Aboriginal and Torres Strait Islander people and white Australia.

The Royal Commission into Aboriginal Deaths in Custody recognised that it is this history of suffering, much of it very recent, that is the primary cause of the current disadvantaged position of Aboriginal and Torres Strait Islander people.

Many of the families and friends of those whose deaths were investigated by the Commission are upset and angry that the Commission did not find any death to be the result of deliberate unlawful violence or brutality. This finding is difficult to accept, however, as the Minister said in his Ministerial Statement announcing the Government's response to the Report—the Commission made a finding of much deeper, long-term significance.

> Those who died were not victims of isolated acts of violence or brutality. Rather they were victims of entrenched and institutionalised racism and discrimination. Their deaths were the tragic consequence of two centuries of dispossession, dispersal and appalling disadvantage. (House of Representatives Hansard, 31 March 1992, p. 1472).

The Royal Commission identified and examined the factors which combined to explain the level of disadvantage, both economic and social, suffered by many Aboriginal and Torres Strait Islander people in Australia today, which has resulted in the over-representation of Aboriginal people in prisons and in police custody. It has focussed national and international

attention on the tragedy of Aboriginal deaths in custody and a level of institutional racism that should be the shame of all Australians. One of the most telling statistics to come out of the Royal Commission is the fact that Aboriginal and Torres Strait Islander people are the most gaoled people per head of population in the world. This is a damning indictment of our justice system.

The Federal Government has supported 338 of the 339 recommendations of the Royal Commission and last month announced a $150m package over five years to implement the first stage recommendations relating to law and justice issues, prevention of alcohol and substance abuse, and the monitoring of the implementation of agreed recommendations.

Included in this paper are some of the author's experiences with the Aboriginal and Torres Strait Islander legal service in Mount Isa that highlight the need for the Commission's urgent implementation of recommendations concerning law and justice, and wider issues of economic and social disadvantage. Now at last the will is there at the political level to provide the funds necessary for Aboriginal and Islander people to take control and address law and justice issues in their own communities.

The British Criminal Justice System and Aboriginal and Torres Strait Islander Communities

It is impossible to avoid questioning the validity of the imposition of the British criminal justice system on Aboriginal and Torres Strait Islander communities in the first place. The criminal law may appear to function "justly" in Canberra for example, but too often it becomes dysfunctional in remote Aboriginal and Torres Strait Islander communities leading to situations that are far from "just".

The "Gulf circuit" happened once a month and supposedly took justice to Mornington Island, Normanton and Burketown on a small charter flight. Until recently, Aboriginal defendants from Doomadgee, a town of about 1000 people, had to attend court in Burketown. This often meant a two-hour ride in the back of a police utility truck down a corrugated and dusty track. Burketown's population is well under 200. After court, the clients who were lucky enough not to be imprisoned were left to find their own way back to Doomadgee while the police vehicle drove back empty.

On my initial Gulf trip, "the travelling justice show" landed first at Mornington Island. The charter flight carried the magistrate, the prosecuting police sergeant and me. It would have been difficult to convince people watching this group land at the Mornington Island airstrip and clamber, sweating, into the waiting police vehicle which took us to court, that we were not all the best of mates.

The question of our independence, as three white men, arriving in a community where everyone was black except the police, the teachers, the nurses and the shire clerk, became even more unconvincing once we got to the courthouse, (and I use that term very loosely because it was simply the Mornington Island police station with a desk moved to another position.).

My independent role in the proceedings became a little clearer once I was down interviewing my clients under the tree outside the police station. The police called this tree the "guilty tree" because they believed that everyone who sat under it was obviously guilty. With temperatures around 42^{o}C, this was not exactly the ideal arrangement for client interviews. Furthermore, it did not help having the magistrate pacing up and down the police station verandah with the prosecutor, suggesting that I hurry up as it was nearly lunchtime.

Often clients would make allegations of police brutality, brutality that actually took place in the police station—in fact, in the same room that was now the courthouse, supposedly dispensing independent justice. Sometimes the policeman against whom the allegation was made would be acting as the court orderly.

It was a bewildering experience for most of the clients, made even more difficult by the fact that many spoke English as a second language. I doubt that any of my clients would have seen the magistrate to be impartial and independent from the police.

Many of my clients also had difficulty coming to terms with the concept of judgment by your peers being the cornerstone of our justice system. Again this was, and is perfectly understandable. If an Aboriginal or Torres Strait Islander client chose to go to trial before a higher court, or was committed for trial, that trial took place in Mount Isa. More often than not the client had no way of getting there and was brought down under a warrant of arrest. This prejudiced the defendant from the outset.

I do not recall ever having an Aboriginal person on a jury for the trial of an Aboriginal person in the five years, that I was with the Aboriginal Legal Service.

Juries are drawn from those residents who live within a radius of 10 to 13 km from the post office in the town where the district court sits. The demographic profile of the citizens living in the shadow of the lead smelter in Mount Isa is profoundly different from that of people living near the post office agency at, for example, Doomadgee or Mornington Island.

Invariably Aboriginal and Torres Strait Islander defendants in north west Queensland were defended by a white lawyer and prosecuted by a white police officer or barrister, judged by twelve white urban dwellers or a white magistrate or judge, in a courtroom of white officials. The formalities and jargon of the courtroom are difficult enough for any defendant to fathom, and deliberately so, let alone a juvenile who has been flown down from Mornington Island for the first time.

On one occasion I was acting for an Aboriginal client in a civil matter about a car accident. We had an eye witness to the accident that gave us a watertight case. Our witness was an Aboriginal man from the Camooweal area. I spoke to him briefly before he went into court to give evidence explaining that he just had to tell the court what he saw when the accident happened. When he was called to give evidence he walked up to the witness box, saw all white faces looking at him, turned to the magistrate and said, "I plead guilty, Sir".

Commissioner Johnston QC was understating the case when he said in volume 4 of the *National Report* that

> Genuine differences, bewilderment and alienation from the rules and administration of the non-Aboriginal legal system do exist. This has great implications for the achievement of justice and the attainment of order in the broadest sense (Royal Commission into Aboriginal Deaths in Custody 1991a, p. 98).

Cultural differences and alienation add up to make the criminal justice system far less just for Aboriginal people.

An extreme case of the absolute failure of the justice system was the gaoling of Kelvin Condren, a young Aboriginal man, for a crime he did not commit in circumstances that are possibly as outrageous as those endured by Lindy Chamberlain.

Kelvin Condren was convicted of the murder of a woman in Mount Isa and received a life sentence. At the time, evidence was in fact available that a man in gaol in Darwin had confessed to the murder and that Kelvin was in police custody at the time of the offence. After years of lobbying by his family, solicitors and friends, Kelvin was finally released from Stuart Creek gaol in Townsville. He had been in gaol for some seven years for a crime he did not commit.

Kelvin was a victim of institutional racism, of the underlying racism of the police, the courts, the media and the community at large. He was a victim of entrenched underlying racist attitudes in much the same way that Lindy Chamberlain was the victim of underlying sexist attitudes.

Each death in custody investigated by the Royal Commission represented a tragic failure of the criminal justice system. In about 1987 I acted for the family of a man who died in police custody at Doomadgee, Alistair Riversleigh (the author notes in passing that his family have no objection to the speaking of his name). Riversleigh hanged himself in police custody after he displayed an apparent intention to hang himself with a garden hose in his own home. He was arrested and put in the lockup for his own protection by two Aboriginal community policemen and was then left unsupervised in the watch-house. Those community police had not received any formal training in policing. The report says:

> It should have been readily apparent to a trained police officer that a person in Riversleigh's emotional state who had already threatened to commit suicide was at risk of harming himself. The possibility of this potential being realised should have been even more apparent following the publicity given to three hangings in the Yarrabah Watch-house in the three and half months immediately preceding Riversleigh's death. The fact that the two Aboriginal policemen did not appreciate that Riversleigh was at risk of harming himself can in no way be regarded as a personal criticism of them but rather as an indictment on the system which allowed untrained and unsupervised Aboriginal policemen to perform police duties. Had the police at Doomadgee been properly trained and supervised, Riversleigh's death should not have occurred (Royal Commission into Aboriginal Deaths in Custody 1991b, p. 21).

Despite these comments and, indeed, the many specific recommendations of the Commission to address this issue, deaths such as Alistair's are still occurring.

On Mornington Island last year a young man died in the watch-house in circumstances that could have been avoided had the Queensland police concerned implemented the interim recommendations of the Commission, including recommendations to provide formal training for Aboriginal police and regular adequate checks of people in custody. At the Inquest it came out that not one of the State police officers involved had read a word of the Interim Reports of the Royal Commission.

In April this year at the inquest into the death of a young man who died at Lotus Glen prison near Mareeba, evidence revealed a similar absence of knowledge by the custodians of the contents or recommendations of the issues raised by the Royal Commission.

Every day, both in court and out of court, my experiences in north west Queensland made it painfully clear that justice did not work the same way for Aboriginal and Torres Strait Islander people as it did for non-Aboriginal people.

Slowly things are changing:

- The appropriateness of the application of much of the white criminal justice system in Aboriginal and Torres Strait Islander communities is at least on the agenda as a result of a Royal Commission recommendation urging governments to report on the progress of a reference by the Australian Law Reform Commission (ALRC) into the recognition of Aboriginal customary law.

- The Magistrates' Court now flies into Doomadgee saving clients a bumpy ride and an impossible walk back from Burketown.

- Court on Mornington Island is now held in the Shire hall and not the police station. It seems that the defence and the prosecution no longer fly around the Gulf on the same plane, and have not done so for some time.

- The Queensland State Government is currently reviewing aspects of the process used to select jurors.

- Kelvin Condren has been freed and is applying for compensation.

However, Aboriginal and Torres Strait Islander people are still dying in custody in circumstances that could have been avoided had the recommendations of the Royal Commission been implemented.

This conference provides a well needed opportunity for people involved in issues of Aboriginal justice to get together and get the momentum going.

The Federal government has committed the funds to implement a $150m package of reforms. While that is a commitment I am proud of, and I would like to see more of the same from the States, what we need now is the will at

the political and general community level to see the implementation process through, and urgently.

One aspect of the response by governments to the Royal Commission is the decision to fund the recommendations relating to Aboriginal legal services. A total of $50.4m has been made available to Aboriginal legal services throughout Australia over the next five years to allow the services to fulfil 27 recommendations of the Royal Commission relating to their work.

The governments' responses specifically identify the important continuing role of the services in law reform issues—or a role which has remained largely unfulfilled because of the lack of resources. Similarly, there will be provision for the continuing role of Aboriginal legal services in representing families of deceased persons.

Just as important, if not more important than these initiatives are the recommendations concerning cultural awareness training for judges, judicial officers and court staff; a national education legal service field officer training course; community education and training programs for Aboriginal and Torres Strait Islander workers; the establishment of an Aboriginal interpreter accreditation program; and in-service training for police about Aboriginal Australia.

Three-quarters of the $150m funding made available in the first round will be channelled to community controlled Aboriginal and Torres Strait Islander organisations through ATSIC and is testimony to the Government's commitment to ATSIC as the vehicle for Aboriginal and Torres Strait Islander empowerment and self-determination.

A second package of measures dealing with young people, education, employment and economic development will hopefully be announced by the Minister shortly. It has not been easy extracting money from the Treasury in the midst of a recession and with unemployment running at over 10 per cent. But the Federal Government is committed to funding the implementation of the recommendations of the Royal Commission. It is a shame that some of the state governments involved in the process have not been so forthcoming. It is also a shame that things like the question of superannuation for Community Development Employment Project (CDEP) workers has not been addressed in the current debate on the issue so far, although I have put it on the agenda. If we really want to ensure that our ageing population is financially secure in retirement, then those Aboriginal and Torres Strait Islander workers employed under CDEP should also be entitled to adequate superannuation.

Government Initiatives

One of the strong recommendations of the Royal Commission was that police jurisdictions would greatly benefit from the exchange of experiences at a national conference, involving Aboriginal community leaders and police, on Aboriginal/police relations.

Conferences such as this provide crucial opportunities for people who care about the future of the Aboriginal community in Australia to meet together and share their experiences and ideas.

I am sure that everyone here at this conference will benefit from the opportunity over the next three days to exchange ideas about how we can create a future where there is "justice" for Aboriginal and Torres Strait Islander people.

References

Royal Commission into Aboriginal Deaths in Custody 1991a, *National Report,* vol. 4, (Commissioner E. Johnston), AGPS, Canberra.

---------- 1991b, *National Report, Regional Report of Inquiry in Queensland,* (Commissioner L.F. Wyvill), AGPS, Canberra.

LAW REFORM AND THE ROAD TO INDEPENDENCE

Michael Mansell

> . . . *the most crucial* [prerequisite
> to empowering Aboriginal people]
> *is the desire and capacity of Aboriginal people*
> *to put an end to their disadvantaged situation*
> *and to take control of their own lives.*
> *There is no other way . . .*
> (Royal Commission into Aboriginal Deaths in Custody,1991, para 1.7.9).

Fundamental Change

ALTHOUGH JUSTICE FOR ABORIGINAL PEOPLE HAS BEEN A LONG TIME coming, and is still yet to come, there has always been a section of the Australian community calling for improvement. In turn, there has always been pressure on the authorities to find the solutions, prompting the observation that Aboriginal people must surely be one of the most investigated peoples in the world. Reforms have been agonisingly slow, but steady. They have been instigated by people with good intent, although perhaps lacking in foresight. It is easy, with the wisdom of hindsight, to look back on these efforts and denounce them for being paternalistic, opportunistic and in many instances, downright racist.

A look at just two such reforms can help to make the point. In its day the 1967 referendum gave Aboriginal people the right to be counted and to vote. It was undoubtedly seen as a momentous victory for providing the impetus for improving the circumstances of Aboriginal people, as unquestionably it did. It brought the Federal Government into the play, and as a result the social welfare needs of Aboriginal people were improved. Yet the repercussions of the referendum have returned to haunt that section of the Aboriginal movement wanting to build on that improvement by removing the dependency of Aboriginal people on the Australian government. Because

the referendum installed Aboriginal people as "Australians",[1] it firmly provided both the legislative and moral grounds for closing the door on any Aboriginal moves for self-government. The government moved quickly by introducing further legislation relating to the status of Aboriginal people. It has since relied on the dishonourable argument that as Aboriginal people had pushed for the 1967 referendum, they were now bound by its consequences, including any change in their status.

Although the 1984 amendment to the *Electoral Act* making it compulsory for Aboriginal people on the electoral rolls to vote, was not quite as far reaching as was the 1967 referendum, it was undoubtedly more opportunistic—it was introduced to help the Australian Labor Party come into office by coercing Aboriginal people to vote, anticipating that they would prefer Labor to the others. The Act has now become a notorious political weapon in the Federal Government's armoury, allowing for its civil service to coerce Aboriginal people into participating in the white political structure for fear of being prosecuted for not voting. Aboriginal people are then damned if they do, and damned if they don't.

Taking these two reforms as an illustration, they show that unless each step toward positive change is part of the greater plan to allow Aboriginal people to run their own agenda, they will at best add confusion to the issues and at worst make for greater difficulties in giving complete control back to Aboriginal people.

The Law Reform Commission's report on Aboriginal customary law, completed prior to the beginning of the inception of the Royal Commission into Aboriginal Deaths in Custody and which has gathered dust on the government's shelves ever since, took up this point when considering the response of the law to the substantive needs of Aboriginal people :

> Recognition of Aboriginal customary laws by the general law has continued to be erratic, uncoordinated and incomplete . . . It is true that such recognition [where it does occur] tends to be limited and to represent specific response to particular situations or need. (Law Reform Commission 1986, vol. 1, no. 31, para. 85).

Those comments clearly apply beyond the corridors of the law courts. Having critically analysed the historical abuse of Aboriginal self-determination by government, the Royal Commission insisted that the implementation of its recommendations was entirely dependent upon governments negotiating a final settlement with Aboriginal people, an approach it saw as ". . . the fundamental question without which policies cannot succeed" (*National Report*, vol. 1, para. 1.10.10).

As if to hammer home this point to government the Royal Commission, when dealing with the history of Aboriginal people since the invasion, lashed out more pointedly:

"Aboriginal people have a unique history of being ordered, controlled and monitored by the State" (*National Report*, vol. 1, para. 1.4.6) and very relevantly noted:

> starting with dispossession from their land and proceeding to almost every aspect of their life. . . Aboriginal people were made dependent upon non-Aboriginal

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1. Aboriginal people were deemed to be mere citizens under the common law. However, this appears to have arisen seriously in the courts only when the courts were protecting white gains against Aboriginal needs. The courts in fact, have shown great leadership in being strongly pro-white on some fundamental questions.

> people. Gradually many of them lost their capacity for independent action, and their communities likewise. With loss of independence goes a loss of self esteem. (*National Report*, vol. 1, para. 1.4.6).

Interference with a people by another on such a wide and fundamental scale requires a good deal more than the tokenistic and paternalistic style of assistance given to Aboriginal people to date. By inference, the Royal Commission lacked confidence in governments to approach the task on the right basis and accordingly laid down the 339 recommendations, tactically giving governments little scope for ignoring the report.

The recommendations need to be read in conjunction with the introductory remarks made in the final report. For it is there that the essence of the Royal Commission's well thought out conclusions are contained. It states:

> But running through all of the proposals that are made for the elimination of these disadvantages is the proposition that Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-Aboriginal society and that the disadvantage is the product of that domination. The thrust of this report is that the elimination of disadvantage requires an end of domination and empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands. (*National Report*, vol. 1, para. 1.7.6).

Hence the Commission calls on governments to give up their control over Aboriginal people by withdrawing and conceding jurisdiction over Aboriginal lands, and its people, thus allowing Aboriginal people to begin the process of redeveloping and re-establishing structures appropriate to their future needs. It then provides 339 interim steps as a basis for transferring control back to Aboriginal people.

Empowering Aboriginal People

Relying on Aboriginal self-determination as the foundation for its policy direction, the Commission, consistent with that philosophy, stopped short of spelling out what it saw as the end result. It appears that the Commission did not want to be seen as pre-empting that decision which it obviously saw belonged to Aboriginal people alone. If this is so, then the approach of the Commission toward implementation of its recommendations takes on just as much importance as the recommendations themselves. For it would mean that unless Aboriginal people decide themselves what they wish the future to hold for them, then government policies will be seen as being imposed and therefore not endorsed by the Commission.

Model for debate

The Aboriginal Provisional Government has as its platform, the demand that enough territory in this country be returned to Aboriginal people sufficient for their needs as a nation of people. More particularly, those lands commonly referred to as crown lands would essentially form the basis of the territory over which Aboriginal people would exercise their own form of government. Other lands currently classed as private land; or land in such proximity to land under the control of Aboriginal people that it would be senseless to exclude it; or land with significance to the Aboriginal people, would conclude the territorial boundary. The Federal Government's refusal to meet with the Provisional Government infers a rejection of this model.

The Commission, whilst limiting what it regards as sufficient territory for self-determination, nevertheless gave qualified endorsement of the Aboriginal Provisional

Government proposal in its call for governments to comprehensively address the land needs of Aboriginal people by "restoring unalienated Crown land. . . on the basis of cultural, historical and/or traditional association", (Recommendation 334) or where that was not sufficient, to provide ". . . an accelerated process for the granting of land title **based on need**" [Author's emphasis] (Recommendation 335).

The local level

Notwithstanding the extent to which Aboriginal people have had to endure the domination and intrusion into their local communities by whites, the ongoing existence of these communities is testimony to their resilience (which can be relied on) and ability to hold onto their various forms of community organisation. As the Law Reform Commission (1986) found—

> In many, if not all, Aboriginal communities there exist methods for social control and the resolution of disputes...In some localities reliance is placed on the accepted authority of older men and women, and there are long established procedures for resolving dispute (Vol. 2, para 692).

Even allowing for variation on the different communities, it would take little effort or imagination to have community control mechanisms firmly in place.

Raising an economy

Government revenue and expenditure figures show that approximately $2,000m, covers all essential living costs, including special programs, for Aboriginal people. The same source suggests that an Aboriginal Government would have $6,196m available to distribute amongst its people, or putting it another way, three times more to spend on Aboriginal people than do white governments!

Annual government revenue figures suggest that approximately $700m is set aside for the welfare needs of Aboriginal people, not including other costs such as pension and unemployment figures. Those same figures show a total expenditure of $10,300m is allocated to these other costs for general

distribution, making fairly safe the estimate of $1,000m of this being distributed to Aboriginal people. To ensure that there is no under-estimation of any other unknown costs, rounding off the total amount at $2,000m as an amount to cover all current costs to keep Aboriginal people alive would be appropriate.

The 1986 census shows that 33 per cent of the Aboriginal population is in the rural community, 42 per cent in towns of less than 100,000 people, and the remainder live in the urban areas.

Government revenue raised from mineral royalties in rural areas amounted to $788m. Add to that a mere 10 per cent of revenue raised from property income ($7,581m) and only another quarter of the Aboriginal budgetary requirements need be found. Government revenue is boosted by both company and individual income tax to the tune of $93,000m a year, at least 5 per cent of which ($4,650m) must derive from Aboriginal territory, giving an Aboriginal Government access to no less than $6,196m annually.

The issue here is not so much whether Aboriginal people ought to rely on existing revenue raising mechanisms when forging their own independence, but that there seems ample scope for the development of an economically sustainable Aboriginal Nation based on available figures.

Law and order

Aboriginal political and economic independence are likely to take place only when whites give up their belief of having the divine right to maintain their control over Aboriginal people. One of the best indicators of a shift will be the withdrawal of claims of legal jurisdiction, whether made gradually or with haste, allowing for community control at that most basic but critical level.

Perhaps more than any other people in the world, Aboriginal people are deserving of a break from a legal regime which has so systematically terrorised and demoralised them. The Aboriginal Provisional Government has laid out a program to transfer jurisdiction back to Aboriginal communities as follows:

1. *Immediately identifying and separating those areas which fall into one of three categories¾*

   (a) lands likely to be returned which are currently occupied by an Aboriginal community ;

   (b) lands likely to be returned but which are not occupied by an Aboriginal community;

   (c) areas of occupation by Aboriginal communities but which are not likely to be returned.

2. *Providing a timetable for both the application of Aboriginal law (in whatever form), enforced by the Aboriginal community over category (a) lands.* This process would be coincidental with the removal of white jurisdiction as we know it. The time frame for this process should be limited to five years. This proposal is subject to each local community's desire.

3. *Providing a timetable for the changeover of jurisdiction from whites to Aboriginal people for category (b) lands, allowing sufficient time for Aboriginal people to determine who are the appropriate custodians.* Again,

and subject to local desire, the process should have a maximum five year cut-off date.

4. *Category (c) lands will generally concern urban situations which will remain the province of the white legal system*. Accepting the principle that Aboriginal people residing within these areas cannot expect to carry their laws upon their shoulders, conversely the deprived circumstances of Aboriginal people living in that environment should mitigate against the rigidity of the application of the white laws.

The Commission's recommendations for reducing the impact of white laws in this situation through diversionary mechanisms are important. The Commission supports :

(a) the decriminalisation of a number of petty offences, and a greater reliance on community service orders ;

(b) educating police to protect Aboriginal people from racial taunts and physical abuse;

(c) the reliance on work, training and education programs as an alternative to Aboriginal youth inevitably being scarred by early contact with police and the criminal justice system.

One other advantage of Aboriginal independence is the reshaping of the basis upon which greater lenience towards Aboriginal people living in the cities is given by the law. At present the call for change is founded only on compassion, placing Aboriginal people in the "beggar" category. With the advent of an independent Aboriginal Nation within which many whites would desire to live, the call for some softening of punishment of ex-patriots becomes reciprocal, and thus provides the organisations in the cities and towns with a sound bargaining position.

Detailing the structures possibly operating under an Aboriginal Nation are not entirely necessary when debating the merits of independence for Aboriginal people. Unfortunately those who oppose such development have a tendency to seize on anything to aid their cause, including the failure to put forward an outline of the practical steps and structures involved in the process. It is with that in mind that some attempt has been made here to remove that temptation.

Conclusion

Reform of the legal system without a thorough re-examination of the overall relationship Australia has with Aboriginal people would be just another meaningless exercise in self-gratification. The Royal Commission was firmly

of this view. In the response to the Commission, the Federal Government stated very positively that the Australian Government's goal "...is to create the means by which Aboriginal and Torres Strait Islander people can take control over their own lives" *(Overview of the Response by Governments to the Royal Commission 1992,* p. 19).

However, the Government then very disappointingly qualified this by stating that: "This involves a renewed commitment to existing policy" (Ibid), which is to promote the Aboriginal Torres Strait Islander Commission, provide for better education and push ahead with reconciliation. In short, more of the same. Perhaps it was this response that was anticipated by the Commission when it ominously quipped—

> Every step of the way is based on an assumption of superiority and every new step is a further entrenchment of that assumption (ibid p. 8).

What is clear is that leadership in this area will not come from governments. They will respond to the pressures exerted by Aboriginal people and our supporters who ever so quickly need to come to grips with the real issue to be put on the table.

To expect Aboriginal people to be "empowered" and to have control of our own destiny whilst leaving control of the political, economic and legal structures (which affect our ability to become empowered) in the hands of white governments, is incredibly naive. Promotion of "reconciliation" will be at the expense of action to immediately move towards real self-determination. If the hold on government moves towards Aboriginal sovereignty is because of disbelief that that is what Aboriginal people want, then they should undertake a referendum of Aboriginal people only, and commit themselves to standing by the outcome.

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A COMMUNITY DEVELOPMENT APPROACH TO CRIME PREVENTION IN ABORIGINAL COMMUNITIES

Barbara Miller

THIS PAPER EXAMINES A CASE STUDY OF A NORTH QUEENSLAND Aboriginal community which is trying to come to grips with a number of problems threatening its social order. In response to community unrest and high levels of juvenile offending, the council closed its canteen in April 1991. However the sly grog trade increased. Later in the year, in response to growing community violence, the government told the school's thirteen state teachers they could leave Aurukun if they felt unsafe. The eight who took up the offer have not been replaced.

The council and the government agreed to send in a task force or support group of three people to devise recommendations to deal with the situation. John Adams, Phil Venables and the author of this paper became the support group. A community development approach was taken because of a firm belief that the community itself had the answers to the problems and that unless solutions were generated by the community, it would not own these solutions and not have the will to make them successful.

The Community

A fundamental issue, however, was that this community had a large number of clan groups and their culture was still strong, so the settlement could not be treated as a single community. People in this community identify with family, clan and regional ceremonial associations. The church, with government support, created an artificial community and this is a major clue for present tension within the settlement.

In talking of community development, the concept of community needs to be defined. Our approach was to have discussions with all the major clan groups, and families in the settlement, as well as community organisations like the women's clan group, and the church group, the Aboriginal Shire

Council, the Aboriginal company—Aurukun Community Inc, and government representatives—teachers, nurses and police. We also made out-station or homeland visits.

After a one-week visit in September 1991 a letter was sent to the community outlining the preliminary findings. In October another week's visit was made for extensive consultations with the people in their natural groupings. A draft report was prepared and in November another visit was made to gain feedback on the draft report. The people chose their own language name for the report and decided to go to Brisbane to present it themselves to government in December 1991, which demonstrated community ownership of the report. A number of government ministers including the Deputy Premier decided to visit Aurukun especially after further trouble erupted. Uncontrolled juvenile violence including vandalism and break and enters in January 1992 resulted in six council workers going on strike. In February about forty rioters, mainly juveniles, caused some residents to fear for their safety. Alcohol was not involved but family feuding is believed to be partly responsible. This increased the government's commitment to respond to the demands of the Aurukun people. The Aurukun Council has done a tremendous job under a great deal of pressure and is happy to share power and responsibility with clan leaders.

Some representatives of government departments on the community felt left out because they thought we were a government appointed team who should have been acting on their behalf rather than promoting Aboriginal views. Tension in the settlement arose from the fact that the roles of various government departments and the Aboriginal Council were not clearly defined and a situation of unmet expectations had arisen on both sides. Role clarification was needed.

The report entitled *Woyan Min Uwamp Aak Ngulakana* or *Finding the Right Road Ahead* pointed out that divisions within the community are often viewed by outsiders as a breakdown of law and order and social cohesion. In reality, they are part of the order of social organisation at Aurukun. Even though conflict and hostility might be heightened by excessive alcohol consumption and associated violence, the origins of the social divisions are historically and culturally based (Adams et al. 1991, p. 26).

Crime Prevention

Efforts at crime prevention or any service delivery must work within theoretical social structures to be effective. Conflict between some groups existed before the mission was established at Aurukun and is basic to their relationship. The clan or land owning group is the primary focus of spiritual and social identity at Aurukun and there are over thirty clans.

Added to this artificial community is a situation of overcrowding, lack of community amenities and alcohol. It is no wonder that long-standing hostilities between family and clan groups are played out in ways outsiders see as a crime, involving community breakdown or law and order crises.

The usual approach to crime is to treat its results through rehabilitation-community service orders, alcohol treatment centres, victim support groups, male perpetrator groups and so on, all of which are important. However, it is also important to take a primary prevention approach to find the social and personal causes of crime. It is important not just to aim at stopping negative incidents but to promote good things happening in the community to promote harmony, wellness and

healing on all levels: physical, mental, spiritual, cultural, social, economic and political.

> Desire + Ability + Opportunity = Realising Our Vision
>
> to realise our visions, we have to make a choice to pursue our vision—and then act on that choice (Hazlehurst 1990, p. 3)

Hazlehurst suggests that crime prevention proceed by three avenues.

- Remove people's desire to commit crime through personal growth and providing alternatives, for example recreation for bored youth.
- Remove their ability to commit crime via gaol.
- Remove their opportunity by locking buildings, community policing, neighbourhood watch, women's shelters and so on (situational crime prevention).

However, while it is important to have a vision of the future, we want Aboriginal people at places like Aurukun to look more to their past and to their cultural traditions for inspiration and guidance and this strength needs to be utilised by them in developing crime prevention programs. Implicit in Hazelhurst's position is that individual factors are the most salient in the commission of crime and therefore a personal development approach would be the best way to prevent crime. Her emphasis on environmental manipulation similarly tends to ignore the social and structural causes of crime.

Unless Aboriginal people regain their land, which is their spiritual force and key to economic sufficiency, and unless they are empowered to regain control over their communities (that is self-government) Aboriginal people will be over-represented in the lower socioeconomic group and be at more risk of committing crime. There is a resistance by Aboriginal people to conforming and obeying the laws of white Australian society when they do not have a stake in it. Marginalised by disadvantage and discrimination, they have little commitment to white society's goals and methods.

The structured use of violence as a means of social control in Murri communities prior to colonisation has eroded under the impact of colonisation to produce the current high rate of crimes of violence in Murri communities (*see* Miller l992).

Disputes used to be sorted out in public with blockers to control the level of violence. However, with the advent of alcohol and European law and order, this process has been interfered with. The aggression of the colonisers which included murder, rape, castration, poisoning waterholes and lacing flour with arsenic has led to feelings of anger, powerlessness and aggression. This aggression has been displaced to other Aboriginal people through homicide, assault, domestic violence and child abuse.

While the author's work has focused on socio-historical and inter-cultural factors as more salient, it is necessary to take cognisance of individual factors.

Personal Violence

To understand Aboriginal personal violence, it is necessary to take a functional, eco-cultural view on Aboriginal intra-cultural aggression and violence and to focus on

socialisation, structural variables and parenting style factors such as compensatory machoism (an attitude that boys can develop in absent father households); a view of the environment as sentencing due to discrimination; availability of aggressive models; earned helplessness and lack of perceived control over the environment; the development of aggressive habits and beliefs, poor self-esteem; psychological reactive and confrontational coping mechanisms all contribute in varying ways to Aboriginal intra-cultural aggression and violence. Socialisation of Aboriginal children, in particular boys, in a colonised discriminatory environment has led to the above individual factors interacting with frustration and conflict to cause aggression and violence (Miller l992, p. 314).

Hazlehurst has further suggested the formation of community crime prevention groups which would undergo teamwork training, survey their community resources, gather statistics, target the crimes to be dealt with and target the group to be reached.

Establishing goals, action planning, implementation and evaluation should be discussed. Planning action revolves around finding out why the target group commits crime, for example, youth may be bored and find other ways they can deal with their boredom through learning traditional dance. Opportunities to reduce crime are also decreased by installing lights around the store. This approach which is similar to the Community Approach to Drug Abuse and Prevention Project (CADAP) has successfully been operating at Weipa Napranum under the guidance of Jean Jans. The action group was formed about two years ago and there has been a decrease in domestic violence and youth offending in the community.

Applying such a model to Aurukun, however, would have its problems unless at least two community justice committees were formed. There is one basic social division between "top-end" and "bottom-end" between inland and coasts or eastern and western peoples respectively. However, more than two committees may have to be formed as major groupings exist regionally around river systems or between north and south, or by nearness of land to the township. Although the strength of the community development approach is that people own their problems and own their solutions and it is empowering, the way of involving people must be culturally appropriate and this needs to be negotiated with people rather than assumed.

An Integrated Community Development Approach

The Aboriginal Coordinating Council (ACC) followed an integrated community development approach to crime prevention dealing with personal, social and political factors, prevention, treatment and rehabilitation.

One of the important elements of this approach was setting up mediation or alternative dispute resolution training for local Aboriginal people living on communities, as this approach is an empowering one where mediators are neutral third parties who aid disputants to work solutions to which both or all parties can agree. This means they are more likely to abide by agreements, mediation can be used to prevent the occurrence of crimes and it can also be used as a sentencing option of community courts. Victims and offenders may work out reparation or restitution agreements. Care must be taken once again to work within appropriate community structures and bolster rather than weaken traditional modes of dispute resolution. Aurukun people, for example, have been keen for some time to have local people trained as mediators, but decided that tensions were such that they preferred to have outside mediators for some time who would be more able to be neutral. Their own people could be trained later.

The people of Aurukun say the right road ahead is for the government to support their homeland movement. There are already twelve main out stations or homelands and another nine that are occupied from time to time. These people have moved out of the township back to their own traditional lands and homelands have two-way radios, access to tractors for transport and are supplied with provisions by light plane. They are well serviced by their own company which is run by the various clan leaders. However, basically they live off the land and live in basic shelters made of bush timber and tarpaulins.

No alcohol is allowed on these homelands and no crimes are committed because people live in their traditional social groupings and the traditional social controls operate well. The people believe this is the answer. However, there will probably always be some people still living in Aurukun because there are more amenities there and people are used to settlement life, so crime prevention strategies need to be developed for the township. Government agencies need to change their strategies and priorities to provide health, education, housing and infrastructure services to these homelands. Also government agencies need to negotiate with appropriate family and clan leaders about the how, when, where and why these services will be provided.

The truancy rate at the Aurukun school was so high that attendance rates have been as low as 6 per cent. Children cannot sit in the same classroom because of inter-clan differences. Schooling is not working because:

- elders and parents have little say over the running of the school;
- the school is structured in such a way that it is culturally unworkable because it assumes the cooperation of socially incompatible groups; and
- children on homeland centres receive no schooling.

The Education Department needs to negotiate with each of the major family groupings at Aurukun to establish the most suitable structures for group schools and the content and method of schooling to which families are committed.

Because of the desire of the Aurukun people for greater community control of health services, the *Finding the Right Road Ahead Report* recommended the establishment of a local Aurukun Health Authority, to be formally reorganised and placed within the new Regional Health Authority structure. The powers and responsibilities of such a group need to be negotiated but should include establishing local health policy, employment of nursing staff, provision of health services to homeland centres and training Aboriginal health workers.

Aurukun people want to employ a community development worker to work with clan and family groups around alcohol issues. In a submission to the Alcohol Audit Committee, the Aurukun Council requested legislative changes to give greater community control over alcohol including requests for the council to operate a permit system for people wishing to bring alcohol into Aurukun and for more effective policing of the sly grog trade.

The Council also wants to be able to declare alcohol free areas on homelands and in the township. Aurukun people have requested the Department of Family Services and Aboriginal and Islander Affairs to provide services to deal with child abuse and neglect and juvenile offending. However this statutory service should be used to empower the decisions of families, not override them. Cooperation occurring between the Corrective Services Commission and Aurukun on the sending of youth offenders to Wathaniin homeland centre for rehabilitation. Further community consultations

need to occur as to the extent that customary law should be recognised by the European legal structure at Aurukun, and Shire Council by-laws need to be reframed so that they are culturally appropriate not framed in legalise. Irrelevant provisions are cut out and provisions are inserted relating to community control of social issues. The Aboriginal Coordinating Council has been trying to work on both of these issues without specific funding for that purpose. A number of clan leaders who are Uniting Church members have formed a group called Woyan Min to work with the youth and it is closely liaising with Corrective Services Commission regarding cooperation with community service orders.

Conclusion

The Aurukun people have the cultural strength to find the "right road ahead" and need to be supported to do so by government agencies who treat them as equals, as partners, not as part of the white man's burden. A community development approach to crime prevention means that the people themselves create their vision for the future based on their strengths and continuing traditions. White Australia needs to support that process as much as possible given a situation of internal colonialism and ethnocentrism that is embedded in the Australian way of life. In the long term we need to go beyond crime prevention in creating whole, healing, just, harmonious communities within black Australia, within white Australia, and black and white Australia.

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CRIME PREVENTION STRATEGY FOR ABORIGINAL COMMUNITIES

Rebecca Tonkin

Crime Prevention Strategy

AUSTRALIAN LEGAL AND BUREAUCRATIC SYSTEMS ARE ALIEN TO Aboriginal culture, practices and priorities. This in part explains the lack of Aboriginal participation in those systems. In Aboriginal communities issues are defined differently, and not particularised in the same way that they are in the broader community. For example, in the wider community, breaking, entering and larceny are high priorities, whereas the issue of violence, and particularly domestic violence, may have the highest priority in the Aboriginal community. This difference indicates a conceptual divide.

In the wider non-Aboriginal community, the focus is on events which may be symptoms rather than causes, for example, punishing car theft rather than addressing the needs of unemployed youth, disenfranchised from the consumer society. In the Aboriginal community, the focus is holistic and specific events cannot be separated from the whole of culture and community.

This conceptual difference is conveyed strikingly in the terminology used by the non-Aboriginal and Aboriginal communities. For the non-Aboriginal community, programs focus on "crime prevention". Yet, for the Aboriginal community, "crime prevention" is not a meaningful concept. This is no lack of awareness or concern on their part. For Aboriginal Australians, the word "crime" is too closely associated with all of the following: the police, who are seen as the perpetrators of black deaths in custody, and the symbol of oppression; the realities of 200 years of dispossession; the heritage of colonial violence. To talk about crime *prevention* with Aboriginal communities would automatically sabotage any chance of success. Yet the issue of preventive *measures* stands.

Development of culturally appropriate methodologies is critical. Style, approach, appreciation and trust are central to community consultation

processes. Working with the community means acknowledging being on its land, recognising its elders and the importance of its history. Developing programs means interacting in culturally appropriate ways instead of imposing non-Aboriginal style. Language and style of interaction are critical for any success.

For Aboriginal people, the manner of sharing information is cultural. As Irruluma Guruluwini Enemburu (1989) and Dianne Eades (1990), amongst many others, have stated, Aboriginal style and ways of eliciting information are totally different from those of non-Aboriginal people.

You see two people can speak exactly the same words with the same grammar, but if their cultures are different then they cannot have the same meaning. Because the way people interpret each other speaking is not just a matter of words and grammar, it is all tied up with the way people relate to each other, the way people act and think about the world—in other words, their culture (Eades 1990).

Language and style are central to meaning. Also, policy needs to be translated into language that has meaning for Aboriginal people.

All this has profound repercussions for anyone working with Aboriginal communities, wishing to access and understand them.

The primary and fundamental aim of developing and implementing the Crime Prevention Strategy, which focuses on addressing underlying causes of crime in the Aboriginal community, must be driven by the following principles:

- self-determination for Aboriginal communities
- Aboriginal communities taking responsibility for identifying and addressing their own issues
- maintenance of traditional cultural values
- understanding of the relationships between Aboriginal and non-Aboriginal societies

These principles need to take priority in the implementation of the Crime Prevention Strategy for Aboriginal communities, over and above existing vehicles (such as the Together Against Crime Program—*see* next section) for addressing crime in the general society.

Background

Discussions held between State Aboriginal Affairs and the Crime Prevention Unit during 1990 identified that many Aboriginal communities have difficulty in developing programs which conform to the South Australian Crime Prevention Strategy, and in gaining access to crime prevention funds to implement programs. It was suggested that guidelines should be drawn up to enable Aboriginal communities to identify the crime prevention issues that most concern them and to develop proposals to address those issues within their communities. Aboriginal participation in all stages of the process would be critical.

The Aboriginal Program Crime Prevention Strategy in the Attorney-General's Department, South Australia, was established in January 1992. The strategy was foreshadowed in 1991 by the State Minister for Aboriginal Affairs, The Hon. Mike Rann, as the South Australian response to the proposal:

> That the Commonwealth Government match the financial commitment of the State Government in establishing Crime Prevention Strategies in Aboriginal Communities. (Rann 1991).

The South Australian Government's 1991 crime prevention proposal stated the following:

> The South Australian Government recognised that community involvement is crucial to reducing crime and in 1988 established its Crime Prevention Strategy to provide funding and support to a broad range of programs and activities which have crime prevention outcomes. Recognising the need for Aboriginal communities to undertake appropriate crime prevention initiatives, the Crime Prevention Unit of the Attorney-General's Department has earmarked $1 million (over three years) of their funds to ensure Aboriginal access to Crime Prevention funding strategies. (Rann 1991).

The position of an Aboriginal Project Officer was created to assist the Crime Prevention Unit and Aboriginal communities implementing the Strategy.

The basic philosophy of the Crime Prevention Strategy is that crime prevention is a whole community concern. The aims of the program are as follows:

- To facilitate the participation of Aboriginal people in crime prevention programs.
- To improve the "quality of life" for Aboriginal people.

The Program

The Aboriginal Program of the Crime Prevention Strategy is being developed through the following approaches: Local Community Committees, Aboriginal Community Committees, and Aboriginal Special Projects.

n *Local Community Committees—Together Against Crime (TAC).* At least two Aboriginal representatives will be members of local TAC committees. These representatives may be:

nominated by the Aboriginal community or

after consultations, nominated by the Project Officer providing they have community endorsement

- *Aboriginal Community Committees*

  Aboriginal Community Organisations, which may already have a law and justice committee, nominate two representatives to give feedback from their community committee to the local TAC committee.

  Where a local TAC committee does not exist, the project officer will consult with the community council and community to discuss what is appropriate for that community.

- *Aboriginal Special Projects*

  The Crime Prevention Unit provides funding to pre-existing programs which are seen as having crime preventive outcomes, for example the Aboriginal Community Affairs Panel (ACAP) in Port Augusta has developed a Law and Justice Plan with funds from the Crime Prevention Unit.

In some cases it may be necessary to employ an appropriate Aboriginal person from the community to consult with the community and to record the issues that are the community's concerns. The Aboriginal person then works with the non-Aboriginal project officer to ensure that the Aboriginal issues are incorporated in the plan.

Together Against Crime Committees: SA Crime Prevention Strategy

The Crime Prevention Unit of the Attorney-General's Department has been involved in the development of local crime prevention committees. These committees undertake a planning process with assistance from the Crime Prevention Unit, to develop a crime prevention plan for their area. Membership of the committees vary, although they generally include but are not restricted to: Family and Community Services, local Councils, local service providers, Neighbourhood Watch and the police.

The development of a committee and its crime prevention plan fall into three stages.

- *Early development*

  The Crime Prevention Unit works intensively in the local area to identify potential participants, and inform them of the approach involved in the development of a crime prevention plan. When the committee has formed, and has undertaken certain decisions relating to its operation, the committee presents a submission to the Minister for Crime Prevention on funding for a project officer for that local area. The time involved for this first stage of the process varies; however, once the committee has been formed, it is usually a matter of only a month or two until such time as a project officer is employed.

- *Employment of a project officer*

  With the employment of a local project officer, the committee is able to undertake a research/development phase. The project officer (who is generally employed for three to four months full-time, or six months part-time) gathers relevant data on crime and perceived crime problems in the area. Information is provided through the Office of Crime Statistics, the Crime mapping system and other sources. Using this information, the project officer examines various strategies to address the problems identified, and engages in a community consultation process on the strategies. Finally, a crime prevention plan is presented to the Minister for Crime Prevention for funding over a two-year period.

- *Crime prevention plan*

  With the endorsement of the crime prevention plan by the committee and the Minister, the committee undertakes the implementation of its plan over a two-year period. In the areas where agreements for funding of the crime prevention plans have been negotiated, an officer has been employed for the length of the Project to coordinate and manage the implementation process.

  There are twenty-two Together Against Crime (TAC) Committees throughout South Australia. The twenty two TACs are defined by local government boundaries and are located in:

  - Adelaide
  - Ceduna
  - Coober Pedy
  - Elizabeth/Munno Para
  - Enfield A
  - Gawler
  - Henley-Grange/Brighton/Glenelg
  - Hindmarsh
  - Mount Gambier
  - Murray Bridge
  - Noarlunga
  - The Parks (Enfield B)
  - Port Adelaide
  - Port Pirie
  - Port Augusta
  - Port Lincoln
  - Riverland area
  - Salisbury
  - Stirling/Mt Barker
  - Tea Tree Gully
  - Woodville
  - Whyalla

Aboriginal Communities and TAC Committees

While in some communities Aboriginal representation existed on the relevant TAC committee prior to the establishment of the position of the Aboriginal Project Officer, participation by those representatives was sporadic. This was due to a range of reasons.

Priorities for Aboriginal people are different from those of the wider community. Aboriginal people feel frustrated at not being listened to, heard, or consulted. The Aboriginal community wants a reconciliation model for working with the broader

community on shared issues but there is a cultural gap in understanding the Anglo-Saxon justice system. The culturally diverse methods of non-Aboriginal Australians for eliciting information are intimidating for Aboriginal Australians. Confusion, alienation and an inability to participate in TAC planning and discussions are the results.

Overall focus has been on such areas as alcohol abuse, property protection and on car theft without an examination of "why". For Nungas, this concentration on events rather than on social justice is meaningless. This style inevitably alienates.

Individuals who are not truly representative of a given Aboriginal community act as a barrier to that community's involvement on the TAC.

Often the power-brokers of a community may not be in touch with the ordinary people, thereby servicing the minority of people with the loudest voices and depriving the ordinary people of access to program.

The Anglo-Saxon style of meeting procedures and of identifying single individuals as representatives, is inappropriate to Aboriginal culture.

Aboriginal Project Officer, Attorney-General's Department

One of the major tasks of the Aboriginal Project Officer in the Crime Prevention Program is to develop culturally appropriate styles for Aboriginal participation in TACs. It would be easy to list the job specifications of this position. But what is much more relevant to share is the appropriate way of doing things.

Aboriginal culture and priorities determine role definition, style and activities in accessing communities and administering the program. The question is that of ownership by Aboriginal people.

An Aboriginal Project Officer may visit and interact with a community on three to five occasions before any talk of "crime prevention". During those visits, the talk is about the kids and the relations. People reminisce about families, events and places, about what has happened in those places and in their community; problems, fears, anxieties, troubles and hopes; and about the community's plans, who's doing what and the politics of their concerns. Establishing one's credentials and building trust are essential first steps. This is, of course, true in any society. But in Aboriginal society, with the history of disillusionment and broken promises, particularly by government agencies, this requires a "softly, softly" approach. In addition, many subjects are taboo and cannot be approached directly. Gender differences in the community, women's and men's business, elders' business, and factional disputes, may all impose constraints on information. However, through the language and Aboriginal style of sharing, information can be elicited without either direct reference to the taboo areas or to "crime prevention".

The process is, therefore, laborious—given the fact that one needs to access a community and then develop a consultative process by working from the grassroots people up to the power brokers and not from the top, down.

The project officer

The project officer identifies key Aboriginal people of a particular area and telephones these key people, rather than sending written information. The officer then introduces the program, its connection with the Royal Commission, their community's priorities, and discusses the project officer's role.

The key people then nominate the time, date and place for the project officer's visit for community consultations. Other Aboriginal agencies and groups of that area are informed of the visit to the community, to ensure that a broad spectrum of views is heard.

A series of visits then occurs. From that consultative process, the length and degree of which varies between and within communities, the community's concerns are identified.

Consultations with appropriate agencies which may include, Health, Housing, Legal Rights, Police and Family and Community Services are also held.

Criteria for TAC membership

During the visit to the community as arranged, the following criteria are used to determine who will represent that community on the TAC committee:

- the representatives will be Aboriginal;
- the person concerned feels comfortable representing his/her community;
- the representative will work for the community's interest, and not factional agendas; and
- the representatives will be directed by the Aboriginal community.

Having held such consultations, the community concerns are communicated to the local TAC project officer who will follow up in that community with further workshops. Such workshops are designed to inform the TAC project officer of the community's wishes.

The TAC project officer will then take the information back to the TAC committee for endorsement and incorporation in the TAC strategies.

Results

Since January 1992, the author has consulted with twelve communities throughout South Australia. Of these, three have a particularly high Aboriginal population and a history of high Aboriginal criminal justice involvement. The high crime rate per local population was a factor in focussing on those three communities. The three approaches of the program: Local Community Committees (TACs), Aboriginal Community Committees and Aboriginal Special Projects are present in the work with these three communities. They are referred to here as Towns A, B and C and the brief summary of my consultations to date follows.

Town A

Town A has an Aboriginal population of approximately 4,000 people of which about 150 reside on the out of town Aboriginal community area. There are also about 2,000 non-Aboriginal residents. In addition to the permanent residents, Town A is, from time to time, subject to an influx of transient Aboriginal people from the north west.

In Town A, a TAC committee, with equal Aboriginal and non-Aboriginal representatives, has been established. The Aboriginal community is participating in

the TAC. The TAC has identified the issues that need addressing within the whole Town A community.

The TAC's approach is focussing on the whole community, not on "Aboriginal problems". The above has been achieved over four visits of one week's length spread over four months as well as numerous telephone conversations. The TAC is now in the process of employing a project officer. The Town A experience is now being used as a model of Aboriginal and non-Aboriginal residents working together for their whole community.

Town B

Town B is a small rural town of about 3,000 non-Aboriginal people and 1,000 Aboriginal people. There are at least three distinct groups in the Aboriginal population. These Aboriginal people were forcibly moved from their tribal lands as a result of the closing of the Reserve in the early 1950s. The pain of this dislocation is still very real.

In Town B, the non-Aboriginal project officer had difficulties accessing the Aboriginal community. The author consulted with the Aboriginal and non-Aboriginal community. The initial information so gained required follow up field work. That preliminary work helped initiate effective Aboriginal participation in the TAC. An Aboriginal project officer was needed to continue the initial field work, to identify the issues and have those issues incorporated into the TAC Strategy, and work with the non-Aboriginal project officer. The Aboriginal project officer has now been appointed (mid June 1992). The above processes have been achieved with five visits of three to five days each over four months, and by numerous telephone conversations.

Town C

Town C provides a contrast to Towns A and B. It has a population of approximately 12,000 of which 1,500 are Aboriginal people. It is a prosperous, clean, quiet, rather genteel area. Aboriginal people living in Town C have come "from the west", there being no descendants of the original Aboriginal owners in the area.

Prior to 1992, the local Aboriginal organisation had initiated steps towards setting up a TAC in this town. A Law and Justice Committee had

been in operation in this Aboriginal organisation for two years, had identified needs and run programs. In 1990, the Aboriginal organisation approached the Attorney-General's Department for assistance in the development of Town C's crime prevention plan. A local steering committee was formed with Aboriginal input and representation. The author's role has been to ensure that the Aboriginal community is represented by Aboriginal people according to the criteria listed, and to assess funding requests for Aboriginal Special Projects. This has been achieved during two, two-day visits over two months and with numerous telephone conversations.

There are problems associated with these as with any programs, for example, ensuring that Aboriginal communities are represented by Aboriginal people, and that plans are implemented according to the criteria of meeting the needs of the Aboriginal community.

Conclusion

Because Aboriginal culture is the keystone of this program, not white bureaucracy, Aboriginal people are taking control in their communities. The work is being done by the people at the grassroots level. Aboriginal models of participation are being used rather than the Anglo-Saxon style which "depended on notions of free elections, universal suffrage, public debate, decisions based on majority vote, and other notions alien to Aboriginal procedures of decision-making and governance" (Williams 1987, page 231). The emphasis is on developing opportunities and leadership for Aboriginal people. It is also based on utilising existing resources and coordination of agencies rather than on concentration of funding for quick fix programs. This gives both greater effectiveness and ongoing long-term success. Unrealistic expectations are not being placed on Aboriginal communities because of their involvement in the crime prevention strategy process from start to finish. Trust in and understanding of, the consultative processes between Aboriginal and non-Aboriginal Australians is beginning. The preference for a reconciliatory process that many Aboriginal communities have expressed is starting to be realised. The result is the beginning of an educative process for non-Aboriginal and Aboriginal Australians.

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MEDIATION WITHIN ABORIGINAL COMMUNITIES: ISSUES AND CHALLENGES

Marg O'Donnell

THE COMMUNITY JUSTICE PROGRAM WITHIN THE DEPARTMENT OF THE Attorney-General in Queensland is attempting to provide resources, services and ideas to Aboriginal people, particularly those on Deed of Grant in Trust (DOGIT) communities to enable them to manage their own disputes in a creative and powerful way. In doing so, the Community Justice Program is mindful of the need for ongoing consultation and liaison with Aboriginal and Torres Strait Islander people and communities. The preservation of functional, existing dispute resolution structures is also perceived to be of paramount importance as care is taken not to introduce yet another "solution" which communities neither want nor find relevant.

The Community Justice Program (CJP), an initiative of the Attorney-General of Queensland, the Honourable Dean Wells, opened its doors for business in Brisbane on 1 July 1990. Its brief was to provide a dispute resolution service to the State, firstly in the south-east corner, and then to extend gradually to all major provincial cities which would, in turn, service the surrounding regions. It has now been operating for two years.

A service is provided to the entire south-east region, from Gympie to the New South Wales border, west to Toowoomba and the Darling Downs, Townsville and Mount Isa. Since opening, approximately 450 mediation sessions have been held. Settlement has occurred in around 85 per cent of these cases. The types of disputes which have presented include the traditional disputes brought to Neighbourhood Justice Centres in Australia and overseas, that is disputes between neighbours, family members, co-workers, landlords and tenants, residents groups and local authorities.

There is currently a panel of around 120 accredited mediators. These are people from all walks of life, ages, ethnic backgrounds. Seven of these accredited mediators are of Aboriginal or Torres Strait Islander descent. All have undertaken and passed a seventy-two hour skills development training course.

The Community Justice Program in Queensland is pioneering several innovative fields of practice in Australia. Two of these are the Crime Reparation Program and the Police Complaints Mediation Initiative. Both of these pilot projects, if implemented throughout the State, will have an enormous impact on the administration of justice on Aboriginal communities.

The Crime Reparation Program

The Crime Reparation Program, currently being trialled at the Beenleigh Magistrates Court, provides a voluntary opportunity, after conviction and before sentencing, for adult and juvenile offenders to come together to discuss the offence which has occurred and to provide an opportunity for the victim and offender to participate in the determination of mutually acceptable reparation for the victim, thus personalising the criminal justice processes for both victims and offenders.

To date, the pilot has targeted non-habitual adult offenders and repeat juvenile offenders who plead guilty to property offences, for example, break and enter, vandalism or minor theft. What is said at mediation is confidential, but parties sign a waiver which enables the CJP to provide a copy of the agreement reached to a Community Corrections Officer who reports to the court. The Magistrate may then choose to take the outcomes of the mediation into account in sentencing offenders.

There are other points in the process of contact between the offender and the criminal justice system where mediation is being considered. For example, it could be used prior to charging as a diversionary option, as a sentencing option, as a condition of a parole order, or it could be used post-sentencing as part of a correctional strategy, either during probation or a term of imprisonment in cases of more serious crimes.

The Police Complaints Mediation Initiative

The Police Complaints Mediation Initiative is also a pilot program which followed discussions and agreement between the CJP, the Criminal Justice Commission and the Queensland Police Service to mediate in complaints of a minor nature against police and other public officials.

Development Of An Aboriginal Focus

In early 1990 the Aboriginal Coordinating Council in Cairns approached the Attorney-General seeking assistance in developing a mediation service for Aboriginal communities. Visits were made to the Aurukun and Yarrabah communities with Barbara Miller from the Aboriginal Coordinating Council to gauge interest in the concept. Despite support for the concept from within the CJP, the decision was made at that time to direct the energies of the yet to open program to the provision of alternative dispute resolution services in the Brisbane and south-east corner.

In March/April 1991 an approach was made to the CJP via the office of Rob Hulls, MHR, Federal Member for Kennedy, for the service to contact the Doomadgee community. The people of Doomadgee were at that time experiencing a good deal of upheaval and adverse public exposure relating to the management of alcohol and the levels of violence on their community.

After seeking permission from all major groups (the women, the Council, and so on) within Doomadgee, consultation with the Aboriginal Coordinating Council staff and attending a full Aboriginal Coordinating Council meeting, a team of three mediators (two white, one black) flew to Doomadgee and began a five to six-day process of meeting separately and then in groups together with the wider communities to assist them to identify their major concerns, discuss them fully and establish priorities for the way forward. The role of the mediators was to act as a neutral, third party, willing to preserve the confidentiality of the issues and able to encourage all

parties to speak fully and constructively to each other about past concerns and future options and directions.

Feedback from sections of the Doomadgee people has indicated that they achieved positive outcomes and found this process of dispute resolution empowering for themselves as a community and also as individuals. The Doomadgee people have since re-enacted some of that settlement process for a video which the CJP has just produced about Aboriginal mediation.

Since then, Community Justice Program mediators have been asked to assist in the settlement of disputes or the facilitation of issues in the following cases:

August 1991

Facilitation of a three-day meeting convened by the Queensland Department of Family Services and Aboriginal and Islander Affairs with representatives from a number of Aboriginal and Islander communities and organisations, and relevant government and community based organisations, to develop a strategy for Caring for Returned Human Remains and Burial Artefacts.

14-17 October 1991

Mediation/facilitation with the Palm Island community representatives to formulate a response to community problems and establish appropriate community laws.

December 1991

Mediation with members of the Aboriginal community at Mount Isa.

9-11 March 1992

Mediation on Darnley Island of a dispute between two members of the community which had been escalating over a period of years and which had spread to the stage where it involved other family and community members.

Darnley Island Dispute

To give some idea of how the mediation process works when CJP mediators visit communities, the following excerpt from the report of Alex Ackfun, Project Officer with the Program is included.

The dispute was essentially between two family members surrounding issues of the "old ways" versus the "new ways". The content of the mediation session is confidential and cannot be discussed. The session took place over a three-day period.

Prior to the visit to Darnley, we had to establish that the disputing parties were ready to attend mediation. A lot of ground work was done on this aspect in consultations with the parties and Island Community Council. The Council itself had an interest in the matter because it could see the dispute disrupting the harmony of the island and its administrative operations.

Even though the dispute on its face value appeared to involve two family members, it soon became clear the decisions they made in their negotiations would affect the whole social fabric of the community.

Arriving at the Island, we took some care to visit the two parties separately and in their own homes. Here the steps of the mediation process were explained to each party and care was taken to provide identical information to both.

The mediators assisted the parties to decide on the manner in which proceedings would commence, for example what time, where, who could attend and speak at the mediation session. Both agreed that anyone in the community could speak. Some ground rules were also established, for example allowing the other to speak uninterrupted so concerns could be heard, following a set number of steps in the mediation session.

This process saw the mediators walk from one party's house to the other to finalise proceedings for the next day. It was decided by the parties to hold their mediation session as a public meeting at the Council Chambers.

The building of trust in the mediators and the process was in effect taking place. This was a conscious effort on the part of the mediators.

The session from then proceeded as a normal mediation would, with parties in exploration talking about the past, but encouraged by the mediators to look at options for the future. Some care had to be taken to reaffirm the role of the CJP mediators—that the parties themselves would be working out solutions and options for themselves—the mediators would assist them in doing this—no conditions were to be imposed on them by the CJP.

At the end of the second day, the options worked out by the parties were prepared and delivered to each of the parties in their homes. Mediators clarified and acknowledged progress made by the parties.

The list of options also allowed them to discuss these with other members of their family. Here the mediators recognised other stakeholders needed to be consulted by the parties to give the process a chance of success.

On the third day the parties were encouraged to focus on the future. A restating of the role of the CJP and the fact that we were not going to solve the dispute for the parties was also necessary.

A number of positive items were gained from the Darnley experience. They can be reflected in any other mediation outcome if handled successfully. These positives were:

- an opportunity for parties to air concerns and be heard;
- some understanding of the other's concerns;
- the adoption of a manageable plan of action;
- the achievement of some acceptable outcomes;
- the regaining/maintaining of respect by the parties;
- an understanding of the mediation process; and
- a new way to resolve differences.

The Darnley Island mediation provided reinforcement of the rewards possible using conflict resolution processes. Similar rewards have been encountered on other communities where the CJP has intervened.

As well as this "on the ground" experience, staff of the CJP met with the Legislative Review Committee and prepared documentation (Legislative Review Committee 1991) for discussion regarding the introduction of mediation services on DOGIT communities. Subsequently, alternative dispute resolution mechanisms were recommended for Aboriginal and Torres Strait Islander communities in the final report on the Inquiry into the Legislation Relating to the Management of Aboriginal and Torres Strait Islander Communities in Queensland by the Legislative Review Committee (1991).

Aboriginal Mediation Initiative

As a result of this growing interest in alternative dispute resolution services within the Aboriginal community, special funding for the 1991-92 and 1992-93 financial years was allocated by the Attorney-General to the Alternative Dispute Resolution Division Community Justice Program. The funding was provided so that a special focus could be made on the development of Aboriginal mediation initiatives, including the provision of services while emphasising the training of Aboriginal people in mediation skills.

A Project Officer, Alex Ackfun, was appointed to develop this process. A decision was made to target DOGIT communities. Initially, the brief was broad and consultation was to be an inherent part of the process. There were three guiding assumptions:

- The project needs to be developed in consultation with individual communities. It cannot be imposed. We are aware that arrangements to introduce formal alternative dispute resolution services in DOGIT communities must reflect local perceptions of justice.
- We need to avoid undermining traditional dispute processing mechanisms which are in place to varying extents in different communities.
- We are aware of the complexities regarding management and resolution of conflict in the communities and the need to develop a comprehensive and coherent set of interlocking strategies, of which mediation is only one, to address problems of disputation and violence (Welsh 1992).

Conflict Management on Communities

At this point it is important to acknowledge that there is a diversity of mechanisms in place throughout the communities for the maintenance of social order. These range from the handing down of correct codes of behaviour from appropriate and knowledgeable members of the community, to the traditional process of public dispute management required between rival families or clan groups.

Some common issues of concern are those of violence on communities, children, physical conditions, and funding arrangements. Land disputes arising out of the *Aboriginal Land Act 1991* (Qld) are also expected.

Concern is often expressed regarding the term "dispute resolution" in relation to these disputes. Conflict is regarded as an essential part of life and there is a high tolerance of anger and aggression.

Aggression had traditionally been accepted and managed in a ritualised structure which encompassed a strict set of rules and expectations. Large numbers of people

became quickly involved in supporting their kin and "blockers", who acted as referees, intervened to prevent serious harm. Skilful management of the process allowed the participants to control and enjoy the interaction. On occasion, these controls proved inadequate. However, the structure generally worked to reduce the level of conflict.

The desired outcome was a return to harmony and balance within the society, rather than a win/lose resolution. One of the main reasons for violence was to regain the balance upset by a former injury or death.

Alcohol abuse has transferred controlled violence into uncontrolled violence on many communities and changed the nature of conflict. Drunken conflict is now a major social problem. Traditional processes often escalate the violence and people are looking for alternative means to manage disputes.

As well, there are, it is acknowledged, formal Aboriginal structures such as Aboriginal Courts and Community Councils which have played important parts in the resolution of conflict in communities, alongside the more traditional, informal processes.

The Project

Although the details of the project needed to be developed in consultation, there was a broad vision which encapsulated the advice and knowledge and experience which was already to hand. This vision entailed three key strategies.

Firstly, the CJP would continue to provide a visiting expert dispute resolution service to communities when asked, when possible, and when appropriate. Provision of this service would, when able, rely upon the assistance of Aboriginal and Torres Strait Islander mediators working sometimes in conjunction with white mediators, sometimes on their own. Recognition was also given to the possibility that alternative dispute resolution services would sometimes be provided through the use of an all-white mediation team.

Secondly, the CJP would train Aboriginal and Torres Strait Islander people, both on and off communities, in dispute resolution skills so that they could effectively manage their own disputes.

Thirdly, in conjunction with existing legal, justice, policing and welfare processes, the CJP would assist Deed of Grant in Trust (DOGIT) communities to establish structures and arrangements on their communities which would allow the full utilisation of a range of alternative dispute resolution possibilities. For example, the establishment of victim-offender mediation processes as piloted in Beenleigh, may require specialist interventions and assistance from CJP staff to fully set up on remote communities.

It will be appreciated of course that the dilemma in planning such innovative services and programs is in convincing Treasury officials to fund a project broad in vision, which will only proceed *after* consultation with relevant key stakeholders. The challenge has been for the CJP to present a draft plan of action without pre-empting the wishes or decisions of the Aboriginal communities.

So far, the CJP has produced a video on Aboriginal mediation called *Talk About It* which was mostly filmed at Doomadgee with members of that community talking about their experiences of mediation and re-enacting some mediation processes.

As well, the first mediation skills training course particularly aimed at Aboriginal and Torres Strait Islander people has been offered. Fifteen Aboriginal and Torres Strait Islander people undertook and completed the thirty-five hour course. We expect

that this group will form the nucleus of a pool of Aboriginal mediators who will both assist in dispute settlement service delivery and help train other Aboriginal people, especially those on communities, to be mediators.

Challenges And Issues

Alternative dispute resolution services throughout Australia and overseas have mushroomed from the neighbourhood mediation services to more complex court-annexed, mandatory processes such as in the Family Court, those attached to Tribunals, grievances and complaints procedures as listed in government manuals, and sometimes as standard elements of contracts in business agreements.

Aboriginal people have responded enthusiastically to a procedure that does, after all, owe more to its origins in traditional dispute resolution processes within Aboriginal society than the Western legal tradition. The emphasis on personal and group empowerment and resolution, the face to face confrontation of protagonists, the structured discussions, the free expression of feelings as well as facts, the ability to deal with substantive as well as perceived issues of alternative dispute resolution are significantly different elements than those found within the arcane rituals and structure and mystifying language of the court experience.

Some Aboriginal people have expressed views similar to the Danish Criminologist, Nils Christie (1977) who argues that we ought to think of conflicts as property and that we ought to guard our conflicts jealously and not allow them to be stolen from us or to give them away. Christie says that in modern Western societies, conflicts have been taken away from the parties directly involved and in the process have either disappeared or become someone else's property. This is a problem, because conflicts are potentially very valuable resources for us as individuals and as communities. Nowhere is this whole process more painfully apparent than in the operation of the criminal law, where offences have become offences against the state, and others, primarily lawyers, generally speak on behalf of both victim and offender.

The Alternative Dispute Resolution Process

Central to discussions of alternative dispute resolution, in particular mediation, are the key issues of voluntary participation by the parties, the confidentiality of the process and outcome and the neutrality of the mediator.

Voluntary Attendance

Although voluntary attendance at mediation is seen by most as desirable, it is worth considering whether or not there may be some cases where parties should be required to attend. The *Racial Discrimination Act 1975 (Cwlth)* and *Sex Discrimination Act 1984 (Cwlth)* have powers to require parties to attend conciliation conferences and the industrial arena is another where compulsory conferences between parties are common.

It may be that mediation may be used as a compulsory pre-court diversionary option, or as a sentencing option by Aboriginal Courts in criminal matters. In civil relationship matters people may be required by the Community Council or a respected elder to attend mediation. It has been suggested (Cedric Geia, personal communication, Cairns 1992) that mediation may only be considered acceptable on some communities if a respected older person "orders" mediation for parties as the

prescribed method of dispute settlement in particular cases. The alternative dispute resolution process is flexible enough to accommodate these variations. They should be considered by communities and decided according to local needs.

Confidentiality

The mediation process as practised by the CJP and most dispute resolution services is characterised by its universal commitment to the confidentiality of the process. This confidentiality is seen by many as essential and as a major incentive for people to attend in the first place.

The disadvantages of the court—the expense, time—are hugely compounded by the public exposure that court brings. The confidentiality provisions also ensure that parties cannot use what was said in mediations as a basis for future legal action or public prosecution of the other.

Aboriginal communities do not resemble the same dispersed and private living arrangements as those found particularly in urbanised Australian society. Privatisation of disputes through mediation as experienced in cities would not only be absolutely impossible on communities but also, in many cases, completely unacceptable. It is expected that disputes on communities *will* be public and polycentric, that is, involve issues of shifting focus and importance and affect the wider community beyond merely two protagonists.

Families and interested parties may need to be aware of negotiations and outcomes and settlement may often require pressure from appropriate family members and the widest possible publication throughout the community.

Neutrality

The neutrality of the mediator, as with the concept of "blind" or impartial justice, is held to be of paramount importance in effective dispute resolution practice. It is considered, however, that neutrality of mediators will be almost an impossibility within communities due to family and kinship affiliations. A respected person appears to be a more appropriate person, as these are the people who have traditionally been required to take a role in dispute management.

Some disputes may involve conflict within whole communities, or between communities and government or organisations such as mining companies. In these cases outside mediators may be used.

As with the issues of voluntary attendance and confidentiality, neutrality is a concept which will have special and sometimes limited application in the management of disputes on Aboriginal communities. It would be expected that local rules and procedures governing these fundamental concepts would emerge on a community basis.

Domestic Violence

The question of whether mediation is appropriate between couples with a history of domestic violence is one of the significant policy debates in the field of alternative dispute resolution in Australia at the current time.

The issue is contentious and a general policy consensus has not been achieved to date.

The Community Justice Program's position is essentially consistent with that promoted by the National Committee on Violence Against Women (Astor 1991). Key elements of the National Committee on Violence Against Women policy include:

- an intention to exclude the majority of disputes from mediation where there has been domestic violence;
- the introduction of procedural guidelines to provide effective protection for those victims who find themselves in mediation or who make a free and informed choice to use mediation.

The guidelines adopted by the National Committee on Violence Against Women and by the Dispute Resolution Centres Council (Community Justice Program 1992, unpub.) acknowledge that mediation is undesirable in many cases of domestic violence in that it may expose the victim to several kinds of unacceptable risk. However, they also provide for the reality that it is not possible to screen out all couples affected by domestic violence, and for the rights of victims or survivors of domestic violence to choose a method of dispute resolution.

It is apparent that the most common presenting problems in the Aboriginal Community are conflicts within families and extended families, and that they are most likely to involve some degree of domestic violence. Those are the very issues that people want mediated.

There is widespread alarm and distress at the degree of family violence occurring and the number of women dying as a result of that violence. It is estimated that many more Aboriginal women die as a result of violence than Aboriginal people die in custody. Yet they have little access to appropriate support groups or agencies, and have a negative contact with the formal justice system.

In a position paper prepared for the National Committee on Violence Against Women, Dr. Hilary Astor (1991) explains that

> . . . many Aboriginal women who are the victims of domestic violence have strong doubts about using the protections of the formal justice system if it results in their husband, fathers and brothers being sent to jail. European women also have such doubts, but the consequences of using the formal justice system are different for Aboriginal women. However, some Aboriginal women do want and need the protections of the formal justice system but their experience of seeking to use these protections is that, in most cases, nothing is done and their complaint is not taken seriously. Other women fear that complaining will bring the intervention of the white welfare system and that they will lose their kids.

It is therefore obvious that alternative dispute resolution services provided by and to Aboriginal women may well include meetings between perpetrators and victims of domestic violence.

In looking at providing this service to Aboriginal women, care will need to be taken that appropriate safeguards are in place to minimise risk to the woman's safety and checks made to ensure that any arrangements or agreements entered into are not as the result of fear and powerlessness on the part of the women concerned.

Conclusion

It is the author's view that Aboriginal people must explore current developments in alternative dispute resolution, to take from these processes what is useful and relevant

for themselves and their communities and evolve a coherent set of interlocking strategies which will address their problems of disputation and violence. Whilst new alternative dispute resolution processes are put in place, older traditional conflict management processes must not be discredited or dismantled. It is important that new ways do not bring about the loss of face or authority by key elders. A further consideration relates to the ethos of the Community Justice Program version of mediation which promotes collective decision making arising out of negotiated, bottom-up agreements. The challenge will be to integrate this underlying principle with more traditional top-down decision making processes as practised in Aboriginal communities.

This and other challenges outlined in the paper are set before the Community Justice Program and the Communities. The goal of an integrated and effective dispute resolution service on communities is there to aim towards.

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MWERRE ANETYEKE MPARNTWELE

(SITTING DOWN GOOD IN ALICE SPRINGS)

A PROJECT BY TANGENTYERE COUNCIL

Paul Memmott and Staff of Tangentyere Council

Project Aims

THE MWERRE ANETYEKE MPARNTWELE PROJECT HAS RECENTLY commenced in Alice Springs. It has been conceived and is driven by Aboriginal elders, although it utilises an experienced non-Aboriginal facilitator in a coordination and secretarial role. The project has, during its evolution, been called the Social Behaviour Project, the Anti-Social Behaviour Project and Town Camp Law. It aims, over several generations, to gradually socialise Aboriginal people into agreed-upon styles of preferred healthy social behaviour, in response to the currently widespread alcohol-related violence and numerous other types of anti-social behaviour. The Arrernte title, *Mwerre Anetyeke Mparntwele* (sitting down good in Alice Springs) refers to such preferred ideal behaviour. This paper provides a description of the project's ideology and its current and proposed methods.

The program is orientated to three broad categories of Aboriginal people:

- the residents of the nineteen established town camps of Alice Springs;
- the permanent and itinerant residents of up to twelve small informal camps in the Todd River and Charles Creek in central Alice Springs; and
- Aboriginal people from the outlying communities of Central Australia, including those adjoining the Northern Territory in South Australia and Western Australia, who visit the Alice Springs town camps, and use Alice Springs as their regional centre. The visitation of bush people is characterised by a large influx of money into town camps, heavy drinking sprees, noisy all-night partying and associated problems.

The "problem" behaviours that the Mwerre Anetyeke Mparntwele Project seeks to address are numerous and well-documented, and include: alcohol-related violence; inappropriate sexual behaviour between "skin" groups; sexual assault; the spending of money on liquor leaving little or none for food; the ignoring of obligations to non-drinking relatives; neglect of commitments to work and ceremony; damage to personal and public property; and inappropriate behaviour towards host families by bush visitors. The extent of social problems caused by or contributed to by alcohol abuse are well documented, but see especially Langton et al. (1991), Royal Commission into Aboriginal Deaths in Custody Report (NT), and Tangentyere Council's "What everybody knows about Alice", and its River Campers Report. Detailed definition of "preferred" and "non-preferred" styles of behaviour are being resolved by Aboriginal participants in the program through a series of conferences, consultations, workshops, and attempts at putting such into practice.

The creation of a better "style of drinking" is especially important. Many social problems are caused by "binge drinking" which is not only injurious to the health of the drinker, but disruptive to other Aboriginal and non-Aboriginal residents of the town, as it often leads to rowdy behaviour, social disruption, neglect, violence, property damage, vehicle accidents and shame. Apart from the social costs, this type of behaviour imposes a heavy economic burden on the Central Australian community —probably some tens of millions of dollars per year. The Social Behaviour Project aims to reduce such damaging behaviour, and its associated social, psychological, and economic costs.

The ideological and methodological approach in this project is believed to be a more holistic one than that tried by any government or Aboriginal agency in Central Australia before, involving both reactive and pro-active strategies and involving many divergent albeit interrelated problem dimensions, including behavioural norms, leadership, social structure and cohesion, social authority, conflict management, communally sanctioned punishment, educational processes, and personal identity with sacred sites and Dreamings. It is argued that this more holistic approach is necessary in order to come to terms with the complex and rampant problems of Aboriginal violence in Alice Springs. This project aims to impact on anti-social behaviour in a manner which has not been possible from within the conventional agencies (police, courts, prisons, church, etc). Emphasis is placed on culturally appropriate methods, drawing on traditional Aboriginal concepts when available, relevant and applicable

(for example, the authority roles of elders, the use of the "square-up" concept—see later).

The Mwerre Anetyeke Mparntwele Project

The Mwerre Anetyeke Mparntwele Project will involve a series of integrated sub-programs to help create better social behaviour and more appropriate use of alcohol in the Alice Springs region. It is hoped that an initial and careful balance of research, design, trial implementation and evaluation, will provide the foundation for the long-term project aims of implementing social changes over several generations, into the twenty-first century. Although the project has been operating in piecemeal fashion for several years, it is only in the last four months that it has been implemented in an intense manner under the coordination of Dr. Memmott. He is in turn directed by the Four Corners Council, a Council of male elders from the Alice Springs town camps who form a consultative group for Tangentyere Council on matters of Aboriginal law. At present, women's sub-programs are being planned which will be controlled by the Tangentyere Women's Committee, a parallel women's elders' group to the Four Corner's Council, and whose coordinator is Ms Betty Pearce.

Each component of the Mwerre Anetyeke Mparntwele Project is part of an overall strategy to reduce the incidence of destructive behaviour through information, intervention, negotiation, and education. A common denominator is the identification and reinforcement of the role of Aboriginal elders, and their powers arising from Aboriginal Law, and which are relevant to addressing contemporary social problems. In detail, the sub-program components are as follows.

Preferred and non-preferred behaviour

This phase of the project has involved holding elders' meetings and workshops to develop lists of preferred and non-preferred forms of behaviour in town camps and in Alice Springs, based on Aboriginal values. These lists are being discussed at town camp meetings and at bush community meetings in order to refine and gain endorsement for such. The rules can then be incorporated into conflict management and mediation processes.

It is not expected that there will be a sudden conformity with the rules in the town camps; the process of change can only be gradual. However, change cannot occur until there is an agreed-upon ideal at which to aim in working at such change. The rules thus provide an important reference point.

Bush elders' consultations throughout Central Australian communities

These consultations are being held between Four Corners Council elders and elders in the many settlements throughout Central Australia in which reside the Arrernte, Alyawarre, Kaytetye, Warumungu, Warlpiri, Pitjantjatjara and other language groups.

These consultations intend to:

- explain and gain support for the town camp rules and the program generally, in bush communities;

- identify common interrelated problems and joint solution strategies; and

- deal with specific problems such as getting bush people home and co-participation in conflict resolution. The most important purpose of these trips is to seek formal endorsement of the project by bush elders and to nominate bush representatives to the Four Corners Council from each centre. These representatives will in turn be assembled at a large regional conference later this year in order to consider the progress of the Project. It is also intended to engage them, when appropriate, in conflict mediation involving protagonists from within their own groups. These trips have to date been carried out by members of the Four Corners Council under the coordination of an Aboriginal cultural officer, Mr Ian Liddle (a traditional owner for the Alice Springs region). Funds are being sought for a parallel program of consultation by women elders.

Conflict management and mediation

Whilst Tangentyere Night Patrol provides a first line of intervention in Aboriginal conflicts, this sub-program goes further, by attempting to manage the worst or most potentially disruptive disputes so that they terminate and do not continue as a drunken series of reverberating paybacks and homicides. Such problems are not necessarily solved by the normal judicial and corrective services systems. Indeed they may well be exacerbated. The incarceration of a convicted killer, without undergoing organised tribal payback for his homicide, is likely to result in ongoing acts of drunken retaliation against the innocent family members of the convicted person, by those who are aggrieved.

The Aboriginal concept of a controlled "square-up" is a principal method under evaluation in this project, used to manage the worst conflicts, which involve homicides, severe stabbings, brain injuries, et cetera. This technique involves assembling the protagonists and their close families including their senior-most responsible leaders, together with other elders from their tribes, neutral elders as witnesses, elders from Mparntwe (traditional owners of Alice Springs), and the leaders of the camps where violence occurred. The presence of the traditional owners is seen to legitimise events in the eyes of the local country holders in whose land, transgression of the law is occurring. The senior elders of the protagonists' groups are encouraged to judge the situation and decide on whether any appropriate punishment is required. Once emotions are "squared-up", the protagonists are required to shake hands and commit themselves to having finished their troubles. This method has met with most success in conflicts between rival gangs of siblings or other conflicts between family groupings.

A recent outstanding example involved the assembly by Warlpiri elders of about 150 adults on the Yuendumu oval to witness and participate in the public chastisement of two gangs of young men who had been assaulting one another in Alice Springs for five years. The assembly stressed the closeness of their grandfathers who had been ceremonial partners, and insisted that the men hug one another, shake hands and reconcile.

By invoking the town camp rules in the process and involving a public shaming process, as well as other types of Aboriginal punishments, this approach is thus designed to introduce notions of responsibility for correct behaviour, and social disdain for unacceptable behaviour, as well as a socially accepted form of Aboriginal justice.

A range of approaches to conflict management is necessary due to the different types and severity of problems, as well as the differing identities of individuals involved. For example, treatment of an internal camp conflict will differ to that of an inter-camp conflict, or a conflict between people from a town camp and a bush community. Internal camp conflicts may occur within a single extended family or alternatively between permanent residents and partying bush visitors who have over-stayed their welcome. Inter-camp conflicts often involve gangs of young men who strike unexpectedly, terrorising residents with knives and sometimes guns. Their disputes usually commence in bars or clubs, and reverberate on to town camps.

Funds are currently being sought to employ male and female Aboriginal Mediators or "Square-up" Officers, who will coordinate the dispute management process. Their roles will be to consult with town camp leaders who are experiencing a serious social problem in their camp and who have requested assistance, and then to organise a mediation meeting with an appropriate composition of people as described above.

A further role of the Mediation Officer will be to regularly monitor the nineteen town camps for the occurrence of serious problems, through regular interaction with camp leaders, Night Patrol staff, Tangentyere's Housing Officers, et cetera. In circumstances of alcohol abuse, it will be the duty of the Mediation Officer to involve Tangentyere's AAA Counsellors to offer and provide alcohol treatment to individuals. The mediation process thus aims to draw in a wide range of town camp people and in so doing generate experiences of leadership and strengthen social cohesion in communities. This in turn is an empowering process which provides people with the skills and confidence to solve many of their own problems.

With the strengthening and increased involvement of the Women's Elders' Council it is expected that more incidents of spouse violence, rape and child abuse will be addressed. The male elders consider it essential that female elders be involved in dealing with female antagonists and victims.

Leadership and social cohesion

Leadership and social cohesion will be encouraged by all aspects of the Mwerre Anetyeke Mparntwele Project. The "social rules" must have, and must be seen to have, the backing and support of the appropriate Aboriginal leaders, both men and women, to have any effect. Furthermore, leaders cannot quell spontaneous alcohol-fuelled trouble in camps unless they are self-confident, well-respected and can draw upon their fellow residents for any necessary physical support.

One way to strengthen leadership and social cohesion is through ongoing participation in the male elders' Four Corners Council and the Women's Elders' Council. The Four Corners Council is currently the dominant Aboriginal force behind the Mwerre Anetyeke Mparntwele Project. The Four Corners Council established itself in February 1991 and has formally met fourteen times in the period up to March 1992, that is an average of once a month. Recent meetings have involved a minimum of sixteen members and up to twenty-eight members present. There is a membership list of about fifty male initiated elders who are resident on the town camps. However, the attendance at meetings is flexible since elders from bush communities who are visiting town are usually encouraged to participate; whilst formal members may often be absent at their out-stations. The composition is such that it incorporates representatives of all of the sixteen or more language groups in Central Australia as well as traditional owners of Alice Springs itself. This gives the Four Corners Council

a capacity to communicate with elders from other tribes or language groups, and to ask for their support and assistance, particularly in dealing with their own people when they come to Alice Springs. The name "Four Corners" was originated by the Arrernte elder, Wenten Rubuntja. It is his term for the site Nthwerrke or Emily Gap, into which four significant travel lines of ancestral heroes converge, linking together tribes from all four corners of the Central Australian region.

An underlying ideology of the Council is a commitment to Aboriginal Law. It aims to educate, advise and adjudicate on the basis of Aboriginal Law. Furthermore, the Council aims to support Aboriginal culture, particularly those aspects that relate to:

- standards of appropriate behaviour (from an Aboriginal viewpoint); and
- the holding of ceremonies on town camps. The adherence to Aboriginal law and the recovery of influence over young men through the revitalisation of ceremony is another method of strengthening leadership and social cohesion.

The Tangentyere Women's Elders' Council consists of a body of leaders from the town camps who have similar aims to the Four Corners Council (keeping the Law, improving social behaviour). Funds are currently sought to strengthen this group and broaden their membership so that they work parallel to and in liaison with the men's Council. It is well known that in many urban Aboriginal contexts, it is often the women who are the strongest leaders.

A number of meetings of camp elders and leaders have already been successfully held, and have led to cross-camp support between certain leaders. Another method which will be used to strengthen leadership is the holding of a workshop on "leadership skills". A proposed theme is "big leaders and what they do", a type of oral history dealing with the biographies, ideologies and practices of strong Aboriginal leaders. Workshops may be combined with ceremonial demonstrations, and with bush leaders in attendance.

Educational strategy

This component involves the design and implementation of a long-term public program aimed at encouraging appropriate social behaviour in the town camps over several generations. This will be done in close cooperation with the Central Australian Aboriginal Alcohol Planning Unit (CAAAPU), the Coordinator of the Central Australian Aboriginal Alcohol Media Strategy, and the Institute for Aboriginal Development.

The themes of the educational messages will relate to the basic content and ideology of the project:

- Aboriginal history of Alice Springs, early territorial and behavioural rules, plus territorial camping patterns of the 1960s and 70s;
- the pitfalls and trauma of alcohol abuse experienced by Aboriginal town camp residents and their visitors in recent years;

- the current proposed rules of preferred and non-preferred behaviour, the identity of the camp leaders and their roles, appropriate territorial rules, the processes of conflict management and mediation being employed; and

- the advantages to Aboriginal people of using or visiting Alice Springs within the constraints of particular lifestyle types (preferred behaviour).

Funding is to be sought from appropriate bodies to implement aspects of the program on an ongoing basis during the implementation phase. Suggestions of what might be produced are:

- a video on "Town Camp Law";

- a series of about 15 one to two-minute radio programs on "Town Camp Law";

- school teaching materials on preferred town camp lifestyle for use in town and bush schools throughout the Central Australian region;
- distribution of information on town camp rules and the identity of town camp leaders to bush communities; and

- advertisements on Imparja Television.

An initial phase of this sub-program has been the presentation of the project concepts to the senior staff of the various Aboriginal agencies in Alice Springs such as Aboriginal Congress (health service), the Central Land Council and the others mentioned above, together with a request for their criticism and advice and ultimately their endorsement. This in itself has been a mutually productive educational experience.

Participation in the Government's Judicial and Corrective Services systems

It is clear from the outcome of the Royal Commission into Aboriginal Deaths in Custody, that it is necessary to introduce into the conventional State judicial and corrective services systems, more culturally appropriate approaches and methods. By way of introduction to this goal, this sub-program comprises a six-month pilot strategy consisting of the following components:

- the development of a role for the men's Four Corners Council and the Women's Elders' Council in advising the judiciary on the appraisal of Aboriginal crime and appropriate sentencing, including a wider range of community sentencing options as well as customary law procedures;

- the provision of a counselling and consultation service to gaol inmates to assist them to prepare for and resolve the likely circumstances of payback and tribal punishment impending their release from prison;

- the development of effective methods of repatriation of offenders to home communities after release from gaol or after court procedures, in order to prevent immediate return to alcoholic behaviour, recidivism and disruption

of town camp communities in Alice Springs; and where necessary incorporating alcohol counselling and treatment from CAAAPU; and

- participation in the NT Law Reform Committee on matters of Aboriginal customary law.

A subsidiary aim of this sub-program is to mount a low-key, cross-cultural, educational process and ideological re-orientation of values amongst the police, correctional services, town council, and judiciary of Alice Springs, and to encourage a more culturally sensitive approach to their respective operations. It should be noted that the Four Corners Council already enjoys a highly cooperative relation with the senior police officers who have demonstrated a willingness to lend support with their ground staff in dealing with more difficult negotiations between Aboriginal offenders who are known to the elders, but not actually under the surveillance of the police themselves. Aboriginal police aides are also able to be coopted at times from the police by the Four Corners Council for important negotiations or meetings.

River campers rehabilitation strategy

This sub-program aims to move illegal river campers from the central reaches of the Todd River in accordance with a pre-planned strategy. These campers are composed of people from the entire range of Central Australian tribes who have gravitated into town.

This proposal is pursuant to a decision by the Four Corners Council, that most of the campers have no right to be in the central Todd, neither in accordance with Aboriginal law, nor conventional Australian law. The worst offence from an Aboriginal viewpoint is the burning of sacred trees in the riverbed. In pre-European times the presence of these sites along the central Todd prevented people from camping in the river at all. Damage of the trees is sacrilege. When Four Corners elders visit bush communities, they stress the point that Arrernte people do not travel to such remote centres, conduct drinking sprees and destroy sacred sites, therefore the reverse should not occur either.

It should be noted that most of the river campers pursue a heavy alcoholic lifestyle and do not wish to move from the riverbed. They are often placed in the watch-house, but this seldom deters them from their lifestyle. The Council fines that can be imposed for river camping are not substantial and can be met through several days of community service or a very short prison sentence. The main problems then are:

- to find an ideological rationale for the movement to which the campers will respond;

- to facilitate alcohol counselling and rehabilitation treatment from CAAAPU where possible; and

- to organise transport for river campers back to their bush communities or find alternate living places that are acceptable to the campers.

If the first stage is successful, it will need follow-up work over several summers to discourage further re-occupation of the river.

Counteracting centralisation trends in the wider region

Alice Springs represents the regional centre, and hence the "fat city bright lights" for many Aboriginal people throughout Central Australia. Young adults are invariably drawn to its environs to enjoy its excitement: to experiment with liquor and other drugs, frequent pool rooms and game parlours, to shop for cars and other luxury commodities and find easier

access to potential lovers and spouses from a wide spectrum of tribal backgrounds. Although it needs to be acknowledged that visitation has its positive aspects, and that it is inevitable and must be accommodated, there is also clearly a need to counteract certain aspects of these centralisation trends. So far, the following specific problems have been noted.

The very existence of "dry" communities results in an exodus of a proportion of their people into town for occasional or regular drinking (including binge drinking). In some communities where efficient Night Patrol services have been established, the difficulty and consequences of smuggling liquor for home consumption has resulted in some permanent migration into Alice Springs.

Many individuals who are brought to town by government agencies for hospital treatment, court appearances and prison sentences, are not provided with a free transport service back to their home communities, once their transactions are completed. Such individuals are likely to find themselves residing in a town or river camp, waiting for a transport opportunity, but in so doing, may become involved in heavy binge drinking and an alcoholic existence. A proportion of such individuals are overtaken by this lifestyle and some remain indefinitely.

A similar problem is experienced with Aboriginal football carnivals and rock concerts. Truck and bus loads of visitors are transported into Alice Springs from communities, but some miss their return lift and are left stranded in town camps.

The above circumstances are exacerbated by the relative ease with which people can have their Social Security cheques diverted into town. Rather than pay for return transport, these cheques are too frequently used to reciprocate shouts of beer and wine for their town camp hosts. The lifestyle becomes one of regular intoxication and poverty.

The above problems represent the symptoms of a deeper seated problem, that of providing adequate employment, recreation and education facilities in bush communities, so that people generally become more content with their home lifestyle and make less frequent visitation to Alice Springs. An important reason promoted by bush elders for regular home community residence is to enable cultural maintenance: the practice of language, participation in public ceremonies and learning about the ritual maintenance of sacred sites. It is not within the scope of Mwerre Anetyeke Mparntwele to completely solve this wider problem, but these strategies are being explored to assist in a modest way:

- a home transport system for prisoners is being designed as mentioned previously; and

- a proposal is being explored to transfer the majority of the AFL football carnival from Alice Springs into bush communities, and supplement football games with rock concerts organised and manned from within the CDEP scheme.

Research components

The Mwerre Anetyeke Mparntwele Project incorporates a number of applied research components to strengthen its viability.

Production of a model of *residential territoriality* and dynamics in the Town Camps, using the TCHIP (Town Camp Housing Infrastructure Program) reports. The TCHIP reports are an existing series of socio-cultural studies of the Alice Springs

town camps carried out by a number of consultants to Tangentyere Council during 1989-1990. This research analysis aims to assist in developing rules of preferred camping locations for bush visitors to Alice Springs based on their tribal language and kinship affiliations, and with an understanding of past and current practices or residential dynamics. Analysis of the TCHIP reports will also result in biographical data on camp leaders for use in the project.

A systematic *land study* in Alice Springs to establish needs and options on the setting up of new town camps, particularly to cater for the needs of visitors to Alice Springs and to prevent over-crowding in existing camps. This will be carried out in conjunction with the Aboriginal traditional owners and the Four Corners Council. The principal aim is to alleviate the stress and conflict resulting from the juxtaposition of too many tribal and family groups in dense settings.

Program evaluation

Another research task is to design a methodology to evaluate the impact of the program at various times in the future. Hopefully the project will have a long life and it may be necessary to carry out evaluations after two, five and ten years for example. A type of quantitative evaluation will be made by collecting data on town campers which is indicative of the incidence of assault injuries (health statistics), alcohol abuse (watch-house records) and homicides (Law Department records). The aim is to try to understand from the available statistics whether the program has had any significant impact resulting in behaviour change. A type of qualitative evaluation will be made in written reports on the progress and achievements of each component of the project.

Conclusion

The foregoing methods can be divided into pro-active and reactive categories. Pro-active methods, encouraging appropriate social behaviour, include definitions of such behaviour expressed in rules and norms, educational programs, improved leadership and social cohesion, and preferred styles of drinking in moderation. Reactive methods against anti-social behaviour consist of Night Patrol, conflict management and mediation, participation in judicial and corrective services processes, and alcohol counselling and treatment.

These methodologies are being designed, tried and tested by Tangentyere during 1992 with the intention of mounting a persuasive argument for the recurrent funding of a refined program through the mid-1990s. An internal management structure is being sought whereby many of the existing Tangentyere Council members and workers have some part to play in the various sub-programs, the aim being to embed the project ideology, its skills, practices and experiences as widely as possible throughout the organisation and its clients. Mwerre Anetyeke Mparntwele is being viewed within Tangentyere as one of its most important projects for the 1990s.

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QUEENSLAND POLICE SERVICE ABORIGINAL/POLICE RELATIONS

Terry Tyler and Dianne Jeans

Background

THE RECOMMENDATIONS OF THE REPORT, "THE COMMISSION OF INQUIRY into Possible Illegal Activities and Associated Police Misconduct", commonly referred to as "The Fitzgerald Report" was the catalyst for the most revolutionary changes in the history of the Queensland Police Service. One of the major changes recommended by the report was the introduction of community policing as a basic policing philosophy. The definition of *community policing* is:

> an approach to police work which recognises and fosters a partnership between the service and the community. It involves police and the community working together to identify and solve policing problems. (*Cross Cultural Policing in Queensland* p. 1).

In 1990, to assist in the introduction and implementation of the community policing philosophy into the Queensland Police Service, a new branch—Community Policing Support Branch—was created. The Cross-Cultural Support Services Section, formerly known as the Aboriginal, Torres Strait Islander and Ethnic Liaison Unit, is located within that branch and currently has a staff of two. It is hoped and anticipated, however, that it will be expanding in the near future.

In addition, the service has established a network of regional police who are designated as cross-cultural liaison officers in each region. These positions have responsibility for making links with community organisations and individuals, working with the community to identify and solve policing problems, and facilitating communication between police and the communities. Instructions issued in June 1991 also formalised their role in negotiation with Aboriginal and Torres Strait Islander groups in potential crowd conflicts where there may be police action taken against individuals at a large gathering involving Aboriginal or Torres Strait Islander people to which police have been called. Under those instructions, the commissioned officer in charge must consider arranging for attendance of the liaison officer to assist in

reducing the risk of the incident escalating. There are currently twenty police officers in full and part-time liaison positions across the eight regions.

Communication

The need to establish and maintain strong effective relationships between police and the Aboriginal and Torres Strait Islander people at a local level is considered a major priority for community policing by the Service. This is reflected in the strategic plan for cross-cultural policing in Queensland and has four main objectives:

- To increase community involvement in addressing policing issues.
- To increase police service members' understanding of the needs of Aboriginal, Torres Strait Islander and ethnic communities and individuals.
- To increase the number of police service members from indigenous and ethnic backgrounds.
- To improve the manner in which the police service responds to the needs of Aboriginal, Torres Strait Islander and ethnic people.

To assist in achieving these objectives Police/Aboriginal and Torres Strait Islander Consultative Committees are being formed throughout the State. There is also an Aboriginal and Torres Strait Islander Police Advisory Group based in Brisbane.

The Police/Aboriginal and Torres Strait Islander Advisory Group was formed in November 1991 by people nominated by the Brisbane Aboriginal and Torres Strait Islander Community Police Liaison Committee. The first advisory group was formed as an "interim advisory group" with a life of six months to see how well the concept would work. In May 1992 the new advisory group was formed with many of the original group nominated to continue their role. The advisory group has no permanent chairperson, the office being rotated in a reverse alphabetical order.

One of the first issues addressed by the advisory group at the November 1991 meeting was the Queensland Police Service, "Cross-Cultural Policing in Queensland" booklet. The first objective of this booklet was, as stated previously, "to increase community involvement in addressing policing issues". This objective recommended the establishment of the Aboriginal advisory group with the following objectives:

- To identify issues affecting the Police Service and Aboriginal and Torres Strait Islander communities in Queensland.
- To consider appropriate ways and means of addressing these issues.
- To improve communication and understanding between police and Aboriginal and Torres Strait Islander communities.
- To have input into police service policy and development as it may affect Aboriginal and Torres Strait Islander peoples.

At the end of the meeting the advisory group declared it could work with those objectives as they gave scope to cover all the issues they would want or need to address.

The Brisbane based consultative committee is called the Aboriginal and Torres Strait Islander Community Police Liaison Committee, and the first meeting was held in August 1991. The purpose of the committee is to provide a forum for communication between the Aboriginal and Torres Strait Islander people and members of the Queensland Police Service in the South Eastern area. The committee decided not to have a formal structure, or permanent office bearers. Nominations for a chairperson are called at the start of every meeting, and clerical support is provided by the cross-cultural support services section. This ensures that no one group controls the committee or meetings, and all people have equal status at the meetings.

The meetings are open to any person who wishes to attend, and are attended by both police officers and community members from the Gold Coast, Ipswich, metropolitan Brisbane, Redcliffe Peninsular and Stradbroke Island, drug arm, Federal and State government departments, and Aboriginal and Torres Strait Islander organisations. All ranks of the police service attend the meetings, including constables, sergeants, and commissioned officers.

Meeting attendance is usually forty to fifty people; however, the recent May meeting saw seventy-two people in attendance. A wide range of subjects are discussed at these meetings including police procedures at the city watch-house; police disciplinary procedures; public servant and police recruit selection procedures; youth problems; funding received by the service in relation to the Royal Commission into Aboriginal Deaths in Custody; conflict between the police service and Aboriginal people and Torres Strait Islanders; and specific operational policing problems in various areas. The forum allows everyone to discuss issues of interest or concern to them and to exchange views, information and ideas.

It should be acknowledged that the Brisbane based consultative committee or advisory group cannot speak for the rest of the State, therefore, the establishment of consultative committees throughout the State is most important. It is necessary that a mechanism be developed to formally link these with the Brisbane groups to ensure a statewide perspective is available at decision making.

One of the keys to ensuring community policing is successful is in the use of advisory groups and consultative committees. Two-way communication can be achieved and maintained through these mediums. For successful communications the police believe the following rules should be followed:

- be aware, and sensitive to cultural differences
- be honest and open
- listen to what is being said
- respect each other's point of view
- do not ridicule a speaker
- do not talk down to anyone
- consult
- be patient
- share ideas, knowledge, opinions and viewpoints
- trust and respect each other.

Training

Coupled with this strong recognition of the need for improved communications, is an acknowledgment that programs to improve police and Aboriginal/Torres Strait Islander relations are an important priority for the Queensland Police Service. Major advances in training and in the development of programs targeted at improving these relationships are also taking place. As part of their university studies, all police recruits now undertake "Aboriginal and Torres Strait Islander Social-cultural Awareness Training". This topic gives students an insight into these cultures and the impact of white settlement. The beliefs of Aboriginal and Torres Strait Islander people are outlined in addition to aspects of cultures including traditional roles, family structure and laws. Appropriate behaviours for police when interacting with Aboriginal and Torres Strait Islander people are also discussed. The universities also organise special lectures to complement these studies, at which Aboriginal and Torres Strait Islander people from the community are asked to come and speak to the recruits.

Aboriginal and Torres Strait Islander issues are also integrated throughout other recruit course studies at the Police Academy with the assistance of an Aboriginal lecturer. In addition, staff and recruits from the academy visit the "Agtanaluy" Aboriginal cultural centre at Inala on a regular basis. The visits have been organised to gain a greater understanding and appreciation of the culture and appropriate police responses to the needs of Aboriginal and Torres Strait Islander people and to enhance communication.

The Academy has also made its resources available to the community, in the Woomera course program. This is a three-week full-time ongoing certificate course run by private consultants funded by the Federal Government and provides personal development and work experience for Aboriginal people. The course participants use the Academy facilities and frequently Academy staff and senior police officers are involved as guest

lecturers. As well, recruits interact directly with the participants and learn much from that direct interaction. Two of the twenty-six participants from each course are given work experience at the Academy.

Training in cultural issues also extends to in-service education and training. A cultural awareness training program is currently being developed, following consultation with Aboriginal and Torres Strait Islander communities statewide, by a project team including a project manager and both Aboriginal and Torres Strait Islander project officers. The project will provide a module for the competency acquisition program in 1993 and successful completion of the subject will be a prerequisite to wage increases for all non-commissioned officers.

Another part of the cultural awareness training is the development of an induction training package directed specifically at police who are to serve in communities with significant numbers of Aboriginal and Torres Strait Islander people. Service policy already specifies the inclusion of Aboriginal or Torres Strait Islander community representatives on selection panels for police officers promoted to Aboriginal or Torres Strait Islander communities. Another training package being developed will train selection panel members, including community representatives, in skills to select for the most appropriate officers to serve on these communities. Both of these packages are being designed by an Aboriginal consultant, Mary Graham and Associates.

A trial program operating at Cherbourg since early 1991 provides intensive community-based training for first year constables through a one-month full-time program in which the constables live with the community and get involved in all aspects of community life with Aboriginal community members. Activities include supervising youth camping trips, visits to local schools, attending at the community's emu farm, and other community oriented activities. The program provides participating police with an insight into the lives and circumstances of Aboriginal people, and evaluations have indicated a positive change in the attitude of participating officers towards Aboriginal people. The program has been designed with the community elders and has the full support of the community. An external evaluation of the program and the development of a training package that can be extended to other regions and communities are also being undertaken with the assistance of Commonwealth funding.

Programs and Projects

As part of community policing various regional initiatives have been implemented, targeted at improved policing of their local communities, including the needs of Aboriginal and Torres Strait Islander people, and acknowledging the role of these communities and members as partners in community policing initiatives. For example, in Townsville, police work with the Aboriginal liaison committee and the local licensing inspectors to visit night spots and remove under age drinkers from these premises.

In the far northern region, the Police Service have or are in the process of employing nine Aboriginal and Torres Strait Islander staff to act as liaison

officers. Two of these will be located in the Cairns shopping mall to improve relationships between the police and people who congregate in the area. Thirteen Aboriginal and Torres Strait Islander liaison officers have also been employed in Townsville to assist police working in the city mall and surrounding parks. This program is operating as a three-month trial. In Weipa, police have assisted with a Comalco sponsored scheme which has addressed youth problems through the development of training and employment initiatives to meet local industry needs.

A Murri Watch community initiated program has been established and is fully supported by the Brisbane City Watch-house where local community volunteers are contacted when an Aboriginal or Torres Strait Islander person is brought into custody. The volunteers assist with cash bail if necessary, and where possible, take the arrested person out of the watch-house and back to the community. Where prisoners are not released, the Murri Watch members interview and counsel the prisoner. Similar programs have, and are, being developed in a number of centres around the State, including at Townsville, Mt Isa, and Rockhampton. Townsville has a funded coordinator for this program as well as one full-time cell visitor who works with a number of volunteers. This scheme, acknowledged by the Queensland Police Service as a major community policing initiative, recently won the Commissioner's lantern award for community policing.

Methods for providing a policing service to the Aboriginal and Torres Strait Islander community, by necessity, vary considerably depending on the location of the community in question and its specific needs and problems. For example, while the Aboriginal people within urban and larger rural centres have access to mainstream policing services, the majority of designated Aboriginal communities and the eleven Torres Strait islands are policed by a combination of State police and Aboriginal/Islander community police. While Aboriginal/Islander community police are employed and equipped by the community council and exercise varying powers depending on the local by-laws, the Queensland Police Service has some responsibility for training, and where State police are present they have a supervisory role over the community police. The Queensland Police Service has sought, and recently received, a federal grant to upgrade training for community police across the State. Training commenced in the far north region on 9 June 1992.

Other strategies to enhance police/Aboriginal and Torres Strait Islander relations include increasing the representation of people with Aboriginal or Torres Strait Islander background among Queensland Police Service staff. The service's recruiting section is reviewing and developing marketing strategies to attract recruits from Aboriginal and Torres Strait Islander backgrounds. A bridging course is now being conducted at the South Johnson TAFE College, Innisfail, for Aboriginal and Torres Strait Islander people. The purpose of the course is to assist students to achieve qualifications required for the academic component of the recruit training program.

The Service is also responsive to policy developments arising from the Royal Commission into Aboriginal Deaths in Custody. All of the recommendations relevant to policing are supported in principle by the service, although the implementation of some will depend on availability of additional funding and other necessary resources. Along with other government departments, the Queensland Police Service has applied to the State and Commonwealth governments for funding to implement these recommendations.

Many of the Royal Commission's recommendations had already been implemented or were being developed by the time the final report of the Commission

was completed. Revised instructions on the care and management of prisoners had been progressively implemented over the preceding two years, and a custody manual is currently being finalised which consolidates all policies and procedures on detention of prisoners. The introduction of this manual includes training in identification of at-risk prisoners and duty of care obligations, developed jointly between the Police Service and the Health Department. A statewide training exercise has commenced to train all watch-house staff on their duty of care obligations and relevant prisoner health and risk factors. The manual itself will be subject to consultation with the Aboriginal community and other interested community groups.

Summary

The specific policies, procedures, and programs outlined indicate the commitment by all levels of the service, including the Commissioner and executive officers, to improve relations between police and Aboriginal and Torres Strait Islander people. They are only part of the reform process which is improving the face of policing to all community groups and to achieving a fair and equitable policing service for all Queenslanders.

The Queensland Police Service has come a long way in the past few years—but what has happened is only the foundation. It must be acknowledged and appreciated that the future tasks are not, and will not, be easy. For many years the police and Aboriginal and Torres Strait Islander people have opposed each other both physically and culturally and it will take many more years to overcome this past. Two-way communication will not come easily either for the Aboriginal and Torres Strait Islander people or police. It is a new experience for us all and it will require a strong concerted effort from all parties to ensure success.

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DEVELOPING POLICE UNDERSTANDING OF ABORIGINAL ISSUES

Cherie Imlah

THE QUEENSLAND POLICE RECRUIT TRAINING PROGRAM EVOLVED AS A result of the Fitzgerald Commission of Inquiry and the subsequent establishment of the Criminal Justice Commission in Queensland, under the Goss Labor Government. The Police Service is in the process of professionalisation, of which the recruit training course is part. The Police Service now requires recruits to undergo a year of academic study, one semester of which is conducted through two tertiary institutions in Brisbane. The second semester of study and training is carried out at the Oxley Police Academy. On the successful completion of the year's study and training, recruits receive an Advanced Diploma in Policing which gives them a year's credit towards completion of a BA degree. A number of serving officers of the Police Service are undertaking the BA in Justice Studies at Queensland University of Technology as part-time students, in order to meet the requirements for professionalism in the Service and to advance their careers.

The first semester of study includes four compulsory units: "Contemporary Issues in Australian Society", "Communication for Justice Professionals", "Ethics" and "Introduction to Law". Police recruit students spend four days per week at university, and one day per week at the Oxley Police Academy.

Attitudes of Police

As the lecturer involved in presenting Aboriginal issues in "Introduction to Law", "Contemporary Issues in Australian Society" and "Communication", the writer can only describe the first semester as a distinct culture shock, being totally unprepared for the degree of opposition and hostility to Aboriginal issues. However, as the semester advanced, subtle shifts took place in students' attitudes to a range of issues.

At first, it seemed that the entire student body was racist or, at least, ethnocentric, but gradually it was realised that the overt hostility was coming

from a minority of predominantly male police recruits who managed to maintain their anonymity in group behaviour. There appeared to be three distinct groups:

- a majority of students with dogmatic, racist views;
- a minority of students with open-minded and aware attitudes; and
- a minority of students who are ethnocentric, lacking knowledge of and/or experience with Aboriginal and Torres Straits Islander people, and perceiving their culture to be superior.

From the writer's perception, the third group is the one which experiences most attitude change towards Aboriginal issues by the end of the semester.

Aboriginal and Torres Strait Islander Issues

During the two three-hour blocks of time assigned to Aboriginal and Torres Strait Islander issues, a panel of Aboriginal and Islander community members comes in for a question and answer session. Members of the Incarcerated Persons Cultural Heritage Aboriginal Corporation (IPCHAC) are involved in this session in which a free exchange of opinions takes place. This is a turning point for most students who have an opportunity to relate directly to community members in a non-threatening way. At this point, awareness is raised. Questions arise which have been dealt with in lecture presentations but the affirmation by the panel on those issues tends to reinforce and validate information previously imparted. The information and cultural interaction become synthesised into an acceptable and understandable form. There is a realisation that Aboriginal issues are not just historical and sociological facts but part of a living culture which is as valid as any other.

This Murri community input is the most valuable aspect of the course and students have commented that it has been the most rewarding aspect of their semester of study. General student feedback is that they want more time allocated to this process of learning through interaction with community members.

In the "Communication" strand, individual Aboriginal and Torres Straits Islander community members go into small group tutorial discussion sessions which take a further step in breaking down barriers of prejudice, fear of the unknown and anxiety. Police recruits, in particular, are interested in how to behave in community situations and derive practical advice from community members. Other students are interested in a wide range of cultural issues, becoming absorbed in these informal expressions of a different world view. Most students have not had positive interaction with Murris before.

Two members of the Justice Studies Unit at Queensland University of Technology, Gayre Christie and Dr Simon Petrie, are undertaking a longitudinal research study into students' attitudes. The results of the first semester research are soon to be published. In this study (1992), the attitudes of Queensland University of Technology Justice Studies BA Degree students, Justice Studies Police recruits and Oxley Police Academy recruits were compared, measuring attributes such as attitudes towards institutional authority, ethnocentricity, attitudes towards women, conservatism and authoritarianism. They were tested at the end of the semester of study.

The results indicate that Justice Studies police recruits and Oxley Academy police recruits have a gender difference in attitudes, with males having higher ethnocentricity scores than females. However, Justice Studies police recruit students and non-recruit students scored significantly lower on measures of authoritarianism and ethnocentrism, compared to police recruits completing the traditional Police Academy training course.

While this first semester study involved comparison with an Oxley Police Academy group, subsequent research in the longitudinal project will measure students against themselves, that is students involved in the first semester Justice Studies course will be tested at the commencement of the semester and at the completion of the semester. It is planned that the longitudinal study will run for three years and will follow-up students already tested.

It will be interesting to see whether the effects of tertiary education have lasting results. Christie and Petrie (1992) cite Smith, Locke and Walker who maintain that:

> . . . the bulk of evidence seems to suggest that the most educated (police) are lower in stereotyped beliefs about minorities and less prejudiced than people with less education. The difference apparently results partly from introduction to new perspectives through contact with faculties and other students.

This study does not investigate what percentage of recruits undergo significant individual attitude change but it is the writer's perception that there is a minority of police recruits whose mindset and cultural conditioning remains racist. This is not suprising, considering the tacit acceptance of racism in Australian society. It would be quite unrealistic to expect otherwise.

TIt seems that many police recruits identify with the "police culture" as soon as they don the uniform. Even though they are external to the Police Academy for four days of the week, the day at the Academy reinforces this sense of identity with the Service. This encourages students to behave as a group, rather than as individuals, when undergoing tertiary study. It also appears to give more conformist students a defensive stance when any reference to policing arises, and, of course, it does so inevitably when addressing Aboriginal concerns. This "police culture" identification gives rise to a considerable degree of hostility and resistance to Aboriginal issues.

Fortunately, by the end of the semester, the minority group with rigid and unchanging attitudes are less overt in their racist attitudes, realising themselves to be the minority at this point. Nevertheless, these few police recruits pose problems for the Police Service when they become serving officers. There appears to be a need for a more rigid system of selection of recruits and while there are Aboriginal community members involved in the selection process, some re-assessment of the procedure is required to take greater account of attitudes, even though it is appreciated that applicants would tend to mask any racist or ethnocentric tendencies in order to be

accepted as recruits. In particular, young students coming from the secondary school system exhibit an unacceptable level of racism.

Aboriginal and Torres Strait Islander Entry into the Police Recruitment Scheme

This raises another concern, which is the entry of Aboriginal and Torres Strait Islander persons into the police recruitment scheme and into the BA in Justice Studies course, and the level of racism which they, undoubtedly, will experience. Since the dominant white society does not experience racism firsthand and is unaware of the daily occurrences which blight black lives, there is a pervading air of inevitability which lurks in the corridors of tertiary institutions when the issue of racism arises.

Police Recruitment

There are suggestions that, in the near future, new police will be recruited after undergoing a full degree in Justice Studies. (This is now the procedure for entry to the Australian Police Service.) This seems to be a desirable procedure for recruitment to the Queensland Police Service, if professionalism and social awareness are to be priorities in the Service. This would tend to reduce the problem of "police culture" identification and "groupie" behaviour when students undergo tertiary study. The process would provide, hopefully, more independent thinkers in the Service.

While cultural awareness can diminish racist and ethnocentric attitudes, the writer suggests that nothing less than a pro-active stand on racism will deal it a mortal blow. Racism has been assigned to the "too hard" basket for too long and will linger there as long as academics look to EEO initiatives and anti-discrimination legislation to do their work for them. It is altogether too convenient to talk about "free speech" which merely maintains the white status quo and conveniently assigns anti-racism to the politically correct movement (Wilson 1992). Combating racism is not given the priority it deserves and is relegated to corners of tertiary institutions as a peripheral or minority concern.

Justice Studies and Senior Police

In Justice Studies the writer is also involved in several other second and third semester lectures. In these classes, there is a significant number of senior police students studying part-time. The resistance to Aboriginal issues here is of a different kind to recruit resistance as it is based not only on folk knowledge and ignorance but on ingrained, rigid attitudes reinforced by negative interactions with Aboriginal and Islander people in policing. This has implications for newly-appointed officers going into the field. How will they maintain the level of acceptance and understanding they have gained of Aboriginal and other issues as a minority in the service?

Many new recruits are coming into service with high ideals and social consciences because they see that the service is attempting to change and professionalise. The Service cannot afford to lose these people because of old, rigid attitudes.

Conclusion

The Justice Studies course outlined here goes some way towards changing attitudes but the issue of racism cannot be subsumed under a banner of cultural awareness, and must be confronted as a particular issue, despite the flack.

In the Justice Studies first semester units of study, placing Aboriginal issues within the broader framework of "Introduction to the Law", "Contemporary Social Issues in Australian Society" and "Communication" which are compulsory units gives the issues a validity and established place in the curriculum. However, one barely touches the surface of pressing concerns. There have been difficulties in establishing a meaningful continuity in second and third year, attempting to fit into confined curricula outlines. However, the course has only run for three semesters and constant assessment and reassessment is occurring. It is now proposed that the writer prepare an elective unit, for both internal and external study. It would seem that there are no compulsory, individual units of Aboriginal study throughout Queensland University of Technology faculties and most likely elsewhere in tertiary institutions.

If resolution, reconciliation or understanding is to occur between the indigenous people of this country and the rest of the population, there will have to be an all-out effort to facilitate that process through education. In particular, law faculties have a duty to lead the way in raising issues of rights and recompense (which are central to the justice system) and the false foundation on which this society currently rests.

The Police Service merely reflects the broader society. In the past, it has mirrored its most conservative and reactionary aspects. In Queensland, things are slowly changing and, despite the wear and tear which racism brings to the writer's door, there is an increasing number of police recruit students coming through that doorway seeking dialogue on Aboriginal issues and making the job worthwhile.

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JULALIKARI COUNCIL'S COMMUNITY NIGHT PATROL

Dave Curtis

THE PURPOSE OF THIS PAPER IS TO DESCRIBE BRIEFLY SOME OF THE LESS known features of Julalikari's night patrol program and express a note of caution to communities thinking of adopting the scheme. In making these comments, it is hoped that communities can be helped to make informed decisions and avoid failures.

Over the last couple of years Julalikari's Night patrol has gained considerable attention. Interest has been aroused by the Royal Commission into Aboriginal Deaths in Custody's detailed examination and recommendation that the program be adopted elsewhere. It has obvious relevance both to the current debate on Aboriginal/police relations and to those seeking to improve community management of alcohol problems. There is even international interest with Council members now discussing the program in Papua and New Guinea.

Julalikari Council is a town camp organisation of about 900 Aboriginal people in the remote Northern Territory town of Tennant Creek; whose total population is approximately 3,000. With reduced mining activity, the town's economic base has contracted, enterprises have suffered, and the white population has declined. Alcohol abuse is a major problem in the community, both indoors and outside.

The night patrols have been operating since the mid-1980s. The starting date is not clear, for the community began the program without the tiers of bureaucracy and welfare assistance which would otherwise have recorded it.

The night patrol began because there was nothing else. While it was not obvious to government agencies, it was tragically clear to the Julalikari Community that something had to be done if the escalating violence, trauma and death in the town camps was to be halted. At the time there were no "Beat The Grog" campaigns, no suitable rehabilitation resources, no drive to improve community management of alcohol and little recognition that better relations between police and Aboriginal people was urgently needed.

What is The Night Patrol Program?

What is the night patrol program? A senior Northern Territory police officer has provided the following description:

> The Council patrol operates a roster system of volunteer persons who conduct mobile patrols of the town area and camps at night. The patrol assists in removing intoxicated persons from the streets back to their residence and camps, as well as handling minor disputes that arise in the camps. As a general rule, councillors at each camp now contact the Council patrol in the first instance, however if the matter is serious, the police are called immediately.

This commonly held view is only partly correct, and in need of some elaboration. Five main points can be made about this description.

Firstly, while the patrols are based on a roster system, there are some important parameters. It is the Julalikari elected Council that makes the weekly roster, not the paid Council administrators. The rosters are not open to anyone. Participants must be approved by the Executive. Most of the Executive regularly participate and all of them take part in the camp meetings, even the elders.

Because the rosters include Executive members, the patrols are frequently led by some of the most influential and authoritative members of the town camps. Thus the Executive have a practical and intimate knowledge of the program. In a sense the patrol is the Council and the Council is the patrol. So while the roster formalises who is doing service at any given moment, all the Executive are eligible for call-up.

Secondly, a basic principle of the patrols is their voluntary nature. This principle is vigorously held. It is argued that one does the job because one cares for the community. If it were paid work, some might do the job with the wrong attitude and for the wrong reasons.

For Executive, voluntary patrol work may exceed thirty hours or more per week. For some on roster, it may mean a full day's work on their normal job and then a twelve-hour night shift. This is a huge amount of effort and calls for immense dedication.

Camp leaders and Council Executive are now attempting to reduce the burden of work by encouraging younger members of the community to participate. It is hoped that not only will their participation relieve the older people but that it will give the younger ones a new perspective, and show them what a pain in the neck they can be when drunk.

Thirdly, mobile patrols are often more patrol than mobile and that includes both tyre rubber and shoe leather. Patrols may consist of two women walking up and down the main street at sunset keeping an eye on some young drinkers or "rascals", as they say in Papua New Guinea. Patrol duty may be having the vehicle parked at the sports' grounds on basketball night to provide both a Council presence and a radio base for all manner of reasons.

The patrol vehicle has a much wider function than police vans. It is constantly in use. With its communications radio it is able to inform

Executive members where each member is and can collect individuals and provide transport as necessary.

Fourthly, the object of the patrol is *not* to "assist in removing intoxicated persons from the streets". This is a frequent cause of misunderstanding for the police and the general public. The object is to resolve problems in town camps and special purpose leases; to settle disputes when they begin and not after they have exploded, drawing in extended families or entire tribal groups.

It is the Council's experience that by resolving disputes at an early stage the destructive cycle of alcohol-induced "paybacks", anger, guilt, misunderstanding and frustration can be short-circuited. By publicly discussing and resolving these tensions the Council and community are able to spend more time on building rather than defence.

Lastly the quote suggests that "serious matters" are the province of the police and the night patrol are junior helpers. This is quite incorrect. The community does not suspend its care or concern for its members because matters are serious; quite the reverse.

Where police have been required the immediate task of the patrol is to support the police and assist them and the community communicate with each other. Their role is also to collect information and provide a council presence that will be used later in community meetings. This is a serious task that complements the serious business of the police.

Public attention has been drawn to the program's attempts to overcome problems with police and policing, to reduce heavy-handed police surveillance and resolve conflicts in an Aboriginal way. What is less well known but equally important is the essential part community meetings play in the program and the way these meetings have come to affect the whole Council.

Community Meetings

Community meetings are held when there has been confrontation during the patrols or in the course of camp life. Camp meetings are called by the councillors and generally held on the following day. The aim of the meeting is to mediate the disputes. Outsiders are rarely permitted to attend.

The success of the patrols has strengthened and deepened the authority of the meetings. In turn the meetings have supported the patrol by promoting communication and understanding amongst a very diverse group of town campers and reaffirming the collective intolerance for unacceptable behaviour.

In the course of the meetings, the patrol's policy, protocols and rules are constantly under examination. Thus for instance, early in the life of the program, it was found that the productive efforts of single men and women on patrol was not what was wanted and had to be stopped. More recently, on a dark night, with little moon a "serious matter" that included the police ended with patrol members in gaol. Patrol workers now wear distinctive shirts while on duty and carry an identity card with their photograph.

At these meetings unacceptable behaviour is condemned and offenders may receive a public dressing down. There may be some machismo in being given a hard talking to by the police or local magistrate. There is none in a community meeting of peers. The importance of this process cannot be understated. In communities that suffer from a high incidence of alcohol abuse one of the first things that disappears is frank, public, non-intoxicated discussion of the problem. With this disappearance comes a deepening of the problems. Julalikari is turning this process about through its community meetings.

Addressing Alcohol Related Problems

As the program and meeting procedures have matured so has developed an ethic of council sobriety. Patrol rosters exclude problem drinkers—senior executive members must be sober people as drinking on council property is prohibited. This ethic is a major strength in Julalikari's corporate structure and underpins its dignity and authority.

With Julalikari members meeting regularly and discussing community problems and patrol matters, the ground work has been done for the council to widen its activities. Nearly all patrol matters deal with alcohol related problems. Thus a logical act for town campers was to have the Liquor Commission formally declare some areas "dry", while some areas have been left "wet" drinkers' camps. This declaration has the force of law: the police can remove drinkers and alcohol from dry camps. For the patrol workers and community it clarifies where drinkers may and may not be.

With wet and dry camps a subtle difference is also developing. The quality of accommodation and family life for families in non-drinking camps is steadily improving and people are becoming aware in their own lives of the heavy cost of alcohol abuse.

Coordination of Administrative Roles

The functional relationship between the councillors and Julalikari's administration needs comment. The function of the latter is to ensure fuel is available, mechanical repairs are done and radio communications are manned and operating. The daily management of the program, the community meetings, rosters and dispute mediation are all done by the councillors.

Over time the night patrol has expanded its contacts to include more government agencies and law enforcement bodies. It is the administration's role to develop these contacts, provide an educative role and sort out problems. One example recorded in the Royal Commission into Aboriginal Deaths in Custody is the meetings held between the Council and the visiting magistrate:

> In those meetings the magistrate gained an appreciation of what the community thought of the sentencing process and how they believed offenders could be discouraged from offending without penalising innocent members of the family of the offender . . . Members of the community were invited to give their comments as to the sentences which the magistrate had administered to offenders in the past, and where they expressed disagreement about sentences the magistrate invited suggestions from the community about the type of sentences which they thought appropriate. (Royal Commission into Aboriginal Deaths in Custody, vol. 3, p. 76.)

More recently the Council has participated in negotiating with the police an "Agreement on Practices and Procedures" that formalises protocols of the police and the council patrol.

The general effect of the Council's educational program with the police, magistrates, legal aid and parole board has made the judicial system in Tennant Creek more responsive to the night patrol. Sympathetic law enforcement bodies certainly help a great deal.

Even though mutual respect has grown and there is recognition that both police and patrols are necessary, the relationship is a fragile one. The Royal Commission into Aboriginal Deaths in Custody speaks of the deep animosity many Aboriginal people have towards white law. This animosity will not disappear overnight. It is the task of the council staff to try and explain this perception to law agencies, and to explain how patrol workers are not apprentice police; or present in order to hide the consequences of high Aboriginal unemployment, poor housing and education and policies of assimilation. They are to provide bridges between white and black law, to further self-determination and self-management.

Cautionary Words

To conclude this paper some cautionary words are in order for people interested in duplicating the program.

A danger which people must be aware of is the program's appeal to politicians sensitised to community law and order problems and to police administrators faced with declining budgets and increasing policing problems. For these people, programs such as the Tennant Creek night patrol mean fewer police, an Aboriginal organisation responsive to law and order, and a township with a modicum of racial harmony. Yet it is not the task of the night patrol to cover over the cracks in poor alcohol legislation or the consequences of denying basic human rights in health, education, employment and the right to enjoy one's own society and culture.

It is necessary to try and understand the Aboriginal perspective. One should not accept the narrow categorisation that places Aboriginal efforts like the night patrol into a law and order box. Julalikari's night patrol is a service of care to the community in the widest possible sense.

Questionable support also comes from that part of the community that believes Aboriginal people should be made to clean up their own "debris". While Julalikari refuses to accept this role it is very difficult not to feel sorrow and anguish for community members so labelled. Little assistance is given to

the publican who sells as much alcohol as he can to Aboriginal people and then finds the front of his pub has been demolished. Little sympathy is available to shop owners who refuse to employ Aboriginal people, are overtly racist, yet dependent on Aboriginal money. How much help should such operators get from a voluntary Aboriginal program?

A final comment needs to be made concerning Aboriginal organisations. They are as subject to fashion as any other group of people. Schemes like the patrols are topical and smart grant applications are now riding the new wave coming from Aboriginal Deaths in Custody. Funding should not be an issue in considering the program. To make it dependent on funding is to lock it into performance indicators, quarterly reports and the Canberra men in grey. Cars, radios networks and offices are all nice but not necessary, more important is community commitment and dedication.

Conclusion

Frankly, given Julalikari's experience, it is difficult to imagine how some Aboriginal organisations, councils and health services can seriously consider community patrol programs. Some organisations have their eye too much on funding opportunities and demonstrate little real care or love for their members. Some groups have weak administrative systems and lack community support. Too many organisations have executive and administrative problem drinkers that make them quite unsuitable to support any programs like the "Beat The Grog" campaign or night patrol. Julalikari's patrol scheme works. It works because it has been designed to meet the particular and unique requirements of the community. More importantly it is, with pride and commitment, owned by the town campers who wish to care and nurture their members. It works because it has no other agenda but to serve the community. All these things can be repeated elsewhere.

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THE COMMONWEALTH'S RESPONSIBILITY FOR ABORIGINAL YOUNG OFFENDERS

Chris Sidoti

ON 6 JANUARY 1992 THE ACTING PREMIER OF WESTERN AUSTRALIA, Mr Taylor, announced the Government's intention to introduce harsh new measures for certain juvenile offenders. The announcement followed a number of deaths in high-speed car chases through Perth suburbs and a forceful public campaign for the Government to "get tough" on juvenile crime. The campaign had been building for some time and was fanned by a local radio commentator, Howard Sattler, of 6PR. The campaign peaked shortly before Christmas when a pregnant woman died as a result of a collision following a car chase. A few days later an estimated 20,000 people attended a rally outside Parliament House to demand tougher government action.

The legislation introduced by the Western Australian Government at a specially convened session of the Parliament is the most draconian juvenile justice legislation in Australia. There is little doubt that it will have little or no impact whatsoever on reducing juvenile crime but that, on the contrary, if it is ever implemented, it will increase the probability of affected juvenile offenders becoming hardened adult criminals.

The Western Australian legislation drew criticism from a wide range of individuals and groups—legal professional associations, church leaders, criminologists, youth and social welfare experts, human rights and civil liberties activists. Many pointed out that it would principally affect Aboriginal young people, because of the disproportionate rate of conviction of Aboriginal offenders.

Aboriginal and Torres Strait Islander Young Offenders

Any discussion of juvenile justice gives rise inevitably to issues of Aboriginal justice. Aboriginal and Torres Strait Islander young people are over-represented at all stages within the juvenile justice system. Further, the extent of over-representation increases as the level of intervention increases. While these conclusions are beyond doubt, it must be noted that there is a scarcity of national statistics which provide a comprehensive overview of the situation of these young people within the juvenile

justice system. The detailed research that has been undertaken has been done primarily on a State basis.

Studies undertaken by Garth Luke and Chris Cunneen in New South Wales provide the most significant information about the situation in that State. The preliminary results of their study of 1990 statistics shows the level of Aboriginal participation at each point in the juvenile justice system (*see* Table 1).

Table 1

Aboriginal Participation in the NSW Juvenile Justice System, 1990

Aboriginal Participation	*Aboriginal people as % of total*
Aboriginal population 10-18 yrs	1.8
police cautions	6.9
total interventions	15.3
court appearances	16.5
charge cases	17.4
police bail refusals	23.1
final bail refusals	21.6
control orders	27.2

Source: Luke & Cunneen 1992, p. 5.

Luke and Cunneen comment, "As can be seen Aboriginal children are over-represented in contacts with police and this over-representation increases as one passes further into the system" (Luke & Cunneen, 1992, p. 5). They conclude, "The preliminary data suggests that Aboriginal children are not directly discriminated against at the court level but that they do appear to have a lower chance of receiving police cautions and court attendance notices" (p. 8).

The Western Australian Legislative Assembly's Select Committee into Youth Affairs, in its recent discussion paper, referred to the level of Aboriginal over-representation in the State as demonstrated by statistics provided by the WA Department for Community Services. The Committee's Discussion Paper stated,

> Aboriginal juveniles aged between 10-17 years constitute only about 4 per cent of the State's juvenile population yet they comprise:
>
> - 16 per cent of all youth who appear before the Children's Court
> - 45 per cent of youth with a history of 5 + court appearances who appeared for 1990-91
> - 66 per cent of youth with a history of 21 + appearances.
>
> (WA Select Committee 1992, pp. 7-8)

The extent of over-representation among repeat offenders gives some insight into the impact of the Western Australian legislation. It is specifically targeted at repeat offenders and that means that it is targeted principally at Aboriginal young people.

The Committee came to the same conclusions as the Luke and Cunneen study in New South Wales, that the over-representation is exacerbated at each point in the process.

> Significantly, Aboriginal juveniles charged with offences are less likely than non-Aboriginals to be diverted from the Children's Court system. There are also significant differences in the way in which Aboriginals [sic] are treated in the various regions of the State. (Select Committee 1992, p. 8).

The Queensland Criminal Justice Commission recently released a discussion paper on Youth Crime and Justice in Queensland. That paper presents similar conclusions for that State.

> The proportion of Aboriginal and Torres Strait Islander youth under corrective orders increased between 30 June 1985 and 30 June 1990. In that time the proportion of children under care and control who were Aboriginal increased from 32.1 per cent to 42.8 per cent. Aboriginal and Torres Strait Islander youth are concentrated at the most intrusive end of the juvenile justice system. At 30 June 1990, 65.7 per cent of all Aboriginal and Torres Strait Islander youth under a juvenile corrective order were under a care and control order as the result of an offence; 27.8 per cent were under a supervision order. In contrast, for non-Aboriginal and Torres Strait Islander youth, 42.8 per cent were in care and control and 45.1 per cent on supervision. Aboriginal and Torres Strait Islander youth were admitted to care and control at a younger age than non-Aboriginal and Torres Strait Islander youth. (O'Connor 1990, p. 58).
>
> Aboriginal children were also substantially over-represented in juvenile detention centres in Queensland. In the period 1987-1991, the proportion of Aboriginal youth in detention centres has varied between 30 and 40 per cent (and thus the level of over-representation of children in custody is greater than that of adults in custody). Given the location of the detention centres, incarceration means removal from family and kin. The sentencing of Aboriginal children is in need of further research. (Criminal Justice Commission 1992, p. 57).

Finally, in South Australia, research undertaken at various stages over the last ten years by Gale and Wundersitz produced significantly similar results (see Tables 2 & 3).

Table 2

Number of Children's Court and Children's Aid Panel appearances per individual, South Australia, 1 July 1979-30 June 1983

	Identity			
Number of	*Aboriginal*		*Non-Aboriginal*	
appearances	*No.*	*%*	*No.*	*%*
1	523	42.9	16,138	74.6

2	231	18.9	3,191	14.8
3	154	12.6	1,122	5.2
4 and over	312	25.6	1,182	5.4
Total	1,220	100.0	21,633	100.0

Source: Gale & Wundersitz 1987.

Table 3

Penalties imposed in appearances before the Children's Court in South Australia 1 July 1979 - 30 June 1983

Identity	*Detention*	*Detention (Suspended)*	*Bond*	*Bond with supervision*	*Fine*	*Discharge*	*Total*
	%	*%*	*%*	*%*	*%*	*%*	*%*
Aboriginal	31.8	25.4	8.8	19.8	9.7	16.2	14.1
Non-Aboriginal	68.2	74.6	91.2	80.2	90.3	83.8	85.9
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	n=336	n=389	n=1,751	n=2,356	n=4,526	n=3,560	n=13,806

Source: Gale & Wundersitz 1987.

In the course of a study undertaken for the Human Rights and Equal Opportunity Commission in 1990, Cunneen sought to identify and interview all Aboriginal young people in detention centres in Queensland, New South Wales and Western Australia. The over-representation in this most severe form of treatment in the juvenile justice system is evident in the statistics he provides (*see* Table 4).

The impact of the juvenile justice system on Aboriginal young people was the subject of a significant part of the Report of the Royal Commission into Aboriginal Deaths in Custody. Recommendations 234 to 245 deal with "breaking the cycle for Aboriginal youth". A large number of other recommendations also have implications for the juvenile justice system. In particular, recommendation 92 states:

> that governments . . . should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.

Table 4

Aboriginal Over-representation in Juvenile Detention Centres in Queensland, New South Wales & Western Australia 1990

	NSW	*QLD*	*WA*
Aboriginal young people as % of total youth population	1.8	3.8	4.1
Aboriginal young people as % of youth detainees	23.0	32.0	73.0

Source: Luke & Cunneen 1990, p. 15.

The Royal Commission's recommendations are important for a very simple reason. It is time to stop the process whereby young people who commit minor offences become adults who commit serious crimes. The over-representation of Aboriginal people and Torres Strait Islanders in the juvenile justice system leads inevitably to their over-representation in the adult justice system. Addressing the issues for children is critical to addressing them for adults.

Developments in the States

The Western Australian legislation received wide public attention but it is in fact only one of a number of significant developments in juvenile justice law and practice in many parts of Australia over the last twelve months. There seems to be unparalleled national interest in juvenile justice issues but the developments across the country are inconsistent, frequently ill-informed,

often counter-productive and in many respects contrary to Australia's human rights obligations.

Western Australia

The Western Australia legislation enacted in February—the *Crime (Serious and Repeat Offenders) Sentencing Act 1992*—was developed with unseemly haste and passed in an atmosphere of vengeance. In providing for mandatory indeterminate detention of certain young offenders, it seriously restricted the ability of the courts to treat each particular offence on the basis of its own facts and circumstances. The indeterminate nature of the detention defies all legal principle and is contrary to effective penal policy.

The sudden enactment of the legislation cut across two other important initiatives taken by the Western Australian Government to review its juvenile justice policy and develop new laws and programs. The first involved an expert committee appointed to advise the Government, working for some time, collecting the best available research and taking public submissions. It had reported as recently as November 1991. When that report was delivered, it was warmly welcomed and endorsed by the Government. It made a series of recommendations which were quite contrary to the provisions embodied in the Act.

Well before the legislation was thought of, the Legislative Assembly of the Western Australian Parliament had already appointed a Select Committee into Youth Affairs and given it terms of reference to consider youth and law. The Committee's work was well under way, although it had not reported, when the new legislation was introduced. The Committee presented a discussion paper on the subject on 18 March 1992. While the discussion paper does not express the views and conclusions of the Committee itself, it does summarise the major evidence presented to the Committee in oral and written submissions. It provides a more rational overview of juvenile crime in Western Australia and lends weight to arguments that an approach to young offenders based on rehabilitation is not only more humane but also more successful.

In spite of the well founded recommendations of the expert advisory committee and in spite of the well advanced work of the Parliamentary Select Committee, the Government decided upon a course of action which was quite contrary to the best advice and insupportable. The Parliament was recalled in an atmosphere of crisis, hardly one in which good judgment can prevail, and the Bill was forced through both houses. The Western Australian Opposition had been even more gung-ho in its approach than the Government. The Opposition controlled the Legislative Council but many of its members were uncomfortable about the proposals. The Government, however, would not accept this and instead agreed to a reference to the Committee after the Act was passed. So far as I am aware, the Act is unique in being subject to a subsequent examination by the Committee.

In May, the Standing Committee delivered a damning report in which it endorsed the views of many that the legislation infringed international human rights standards in many significant respects, that it was contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody, which had been endorsed by the Western Australia Government, that it removes discretion from the courts and transfers it to the police and prosecuting authorities (in the exercise of their unfettered discretion to decide what an offender is to be charged with and thereby pursuant to the Act determine the penalty to be imposed—WA Standing Committee 1992, p. 19) and

that it was contrary to the Government's "longstanding commitment to actively seek the rehabilitation of offenders and to reduce the number of offenders in custody". The Standing Committee recommended that the Government should reconsider the legislation.

The Western Australian legislation was passed as a response to fatal accidents following high speed car chases. Since its passage, there have been no further deaths. Is this to be taken as an indicator that the legislation is having the intended effect? Or is it a reflection of the change in police guidelines governing hot pursuits, which were made at the same time as the passage of the new law? Many argued that the deaths of innocent people could be traced not to weak laws but to the actions of the police in undertaking dangerous chases through built-up areas. Perhaps that is why the police have refused to release their new guidelines. In any event, since they stopped giving chase the accidents and deaths have stopped.

South Australia

The juvenile justice debate in South Australia appears to be a delayed replay of the recent debate in Western Australia. Frequent high-speed chases and the inevitable deaths of innocent people as a result have been the subject of considerable media attention. The Police Commissioner, Mr David Hunt, announced on 20 May 1992 that there had been 162 high-speed pursuits in the first 141 days of the year. He called for stronger government action, although his statement was quite contradictory. "We need preventative measures in a way never seen before. One answer is stiffer penalties". Stiffer penalties are the antithesis of preventative measures.

Juvenile justice has also been the subject of an inquiry by a Select Committee on the South Australian Parliament, chaired by Mr Terry Groom, an Independent Labor MP. Mr Groom's public statements in recent months have lent weight to the pressure for stronger penalties. Echoing the approach of the Western Australian Government, he said South Australia should return to the old style "kick in the pants" policing with harsher penalties for repeat offenders. He has also called in the past for courts to send young offenders to adult prisons for a day or two as punishment and for deterrence. This would be in breach of Australia's obligations under the International Covenant on Civil and Political Rights and under the Convention on the Rights of the Child.

The South Australian Parliament's Select Committee is yet to report but Mr Groom's frequent public comments leave little doubt as to the direction he would like the report to take.

New South Wales

While in Western Australia and South Australia the clock is being rapidly turned back, in New South Wales there is hope of a more positive approach towards preventing juvenile crime. The failure of past policies is now well acknowledged and the Government, with strong community support, is moving towards a more humane and effective approach to juvenile crime.

The stimulus for this change of policy was a major report, *Kids in Justice*, produced by the New South Wales Youth Justice Coalition. That report exposed the ineffectiveness of policies of high detention rates and long sentences. It revived public debate on the need for policies that were both humane and effective. In 1990 the Standing Committee on Social Issues of the New South Wales Legislative Council was given a reference to inquire into the juvenile justice system in the State. That

reference was renewed by the Attorney-General and the Minister for Justice after the 1991 election. The report was released on 20 May 1992. The Committee strongly endorsed policies and programs to divert young offenders and potential young offenders from the court system and from detention centres. It saw the wisdom of not exposing young offenders, particularly first offenders, to hardened criminals and the desirability of using more effective rehabilitation strategies than detention. The report makes recommendations on crime prevention, court diversion schemes, community based options for young offenders, and broader resources and servicing in juvenile justice systems. It comments, "Any appropriate or effective response to juvenile crime must be based on an understanding of the causes of offending young behaviour".

The report has been welcomed by the New South Wales Government and has received strong support in the community. New South Wales seems set for another significant period of juvenile justice reform.

Queensland

In March 1992 the Queensland Criminal Justice Commission released an information and issues paper on *Juvenile Crime and Justice in Queensland.* The paper provides an overview of juvenile justice in Queensland and calls for urgent action in relation to crime prevention and the administration and operation of juvenile justice systems. The release of the report followed soon after an announcement by the Queensland Premier, Mr Goss, of the Government's decision to introduce significant reforms to the juvenile justice system. A task force on juvenile crime was established within the Office of the Cabinet to consider legislative measures and crime prevention programs in relation to juvenile justice. In his announcement, Mr Goss indicated that the reforms would seek to distinguish between welfare and justice matters in relation to children, with the emphasis on the latter in the juvenile justice system.

Juvenile crime is also the subject of an inquiry by a parliamentary committee. The committee recently travelled to Western Australia to examine the juvenile justice approaches being taken there. This apparent interest in the Western Australian model is ominous. The directions taken in that State are contrary to those proposed for Queensland by the Premier and, if introduced, would jeopardise the success of the reform effort there.

Northern Territory

Although there are no formal inquiries into juvenile justice under way in the Northern Territory, the Government has expressed interest in the Western Australian model and has indicated that it is being examined to assess its applicability to the situation in the NT.

The Commonwealth

Juvenile justice may be under the microscope in many States and the signs may indicate increasing inconsistency in policy directions and continuing ineffectiveness in programs. Nonetheless, the Commonwealth is yet to take a significant interest in the subject.

That is not to say there has been no Commonwealth activity in relation to juvenile justice. There are Commonwealth grants for innovative programs for the diversion of young offenders and potential offenders. There is also important Commonwealth

responsibility for data collection and analysis, through both the Australian Bureau of Statistics and the Australian Institute of Criminology. But there is no Commonwealth juvenile justice policy and no explicit Commonwealth view on juvenile crime prevention or on the treatment of juvenile offenders.

This may be about to change. The Federal Justice Office, in the Attorney-General's Department, has been coordinating a joint Commonwealth/State examination of crime prevention strategies. This work, it is hoped, will culminate in the presentation of a White Paper on crime prevention in the budget session of Parliament. The White Paper will represent a Commonwealth commitment to involvement in crime prevention at a significant level and, inevitably, it must represent a new Commonwealth interest in juvenile justice. This interest is long overdue. The Commonwealth has clear responsibilities towards the community and young people in relation to juvenile crime. The responsibilities are particularly important for Aboriginal and Torres Strait Islander young people.

The Commonwealth's Responsibility

Aboriginal and Torres Strait Islander people

The Commonwealth has primary governmental responsibility for the well-being of Aboriginal and Torres Strait Islander Australians. Although juvenile justice systems are run by the State and Territory Governments, their impact on Aboriginal and Torres Strait Islander young people, and particularly the over-representation of these young people in them, requires the Commonwealth to take a close interest in the systems.

Human rights concerns

Australia has international obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child which are applicable to the treatment of juvenile offenders. Other obligations under the Convention on the Elimination of all Forms of Racial Discrimination are also significant in view of the disproportionate detention of Aboriginal and Torres Strait Islander juveniles. These international instruments, which have been ratified by Australia, create obligations that bind not only the Commonwealth Government but also the governments of each State and Territory. The Commonwealth bears a particular responsibility to ensure that all Australian jurisdictions comply with these treaties' provisions. Further, the Commonwealth Government is required to report periodically on Australia's observance of the treaties and to submit to questioning by the international committees responsible for them.

The International Covenant on Civil and Political Rights (ICCPR) contains a number of articles relevant to the criminal justice system, including juvenile justice:

Article 7:	The right to freedom from torture and from cruel, inhuman or degrading punishment.
Article 9:	The right to freedom from arbitrary arrest or detention.
	The right to be informed at the time of arrest of the reasons for the arrest and to be properly informed of any charges.
	The right to be tried within a reasonable time or to be released.
	The right, as a general rule, to release pending trial.
	The right to take proceedings before a court to challenge arrest or detention.
	The right to compensation for unlawful arrest or detention.
Article 10:	The right of all persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person.
	The right of persons remanded in custody to be segregated from convicted persons and treated separately in accordance with their status as unconvicted persons.
	The right of juveniles to be separated from adults and to be treated appropriately to their age and legal status.

The Convention on the Rights of the Child (CROC) has important provisions relating explicitly to children in the criminal justice system. Some of these provisions mirror those in the International Covenant on Civil and Political Rights, for example

Article 37:	the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment
	the right not to be deprived of liberty unlawfully or arbitrarily
	the right to freedom from arrest, detention or imprisonment except in conformity with the law and only as a measure of last resort and for the shortest appropriate period of time.
	the right to be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the age of the person
	the right of a child deprived of liberty to be separated from adults unless in the child's best interests not to do so
	the right of a child deprived of liberty to maintain contact with his or her family
	the right of a child deprived of liberty to challenge the legality of the deprivation before a court or other competent, independent and impartial authority.

The Convention also includes important provisions relating specifically to the juvenile justice system. Article 40(1) provides:

> States Parties recognise the right of every child alleged as, accused of or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's resuming a constructive role in society.

Further, Article 40(4) provides

> A variety of depositions, such as care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

It is important to note as well that Australia is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This Convention deals explicitly with forms of detention and situations which are contrary to the essential human dignity of the detainee.

Australia has also undertaken to observe international minimum rules and guidelines relating to the treatment of juvenile offenders (the Beijing Rules and Riyadh Rules). Although these do not create obligations in the same sense as international treaties do, nonetheless they represent a significant international commitment and therefore a Commonwealth responsibility. Whereas similar minimum rules relating to the treatment of adult offenders have been adopted throughout Australia, there has been no mechanism established for the application of the rules for juvenile offenders.

The juvenile justice system in various parts of Australia has been strongly criticised as infringing these fundamental internationally guaranteed human rights, which Australia has an obligation to observe. The Western Australian legislation mentioned earlier, for example, was the subject of detailed criticism by the Federal Human Rights Commissioner, Mr Brian Burdekin, and others as being contrary to these provisions. It is significant that the Standing Committee on Legislation of the WA Legislative Council supported these criticisms. Its report finds a clear violation of Article 9(4) of the ICCPR (detention should not be arbitrary and the detainee should be able to challenge detention in a court) (p. 7), clear inconsistency with Article 40(4) and Article 37(b) of the CROC, (the court must have a range of dispositions at its disposal and discretion to ensure appropriate and proportional sentencing) (p. 8), non-compliance with Article 2 of the CROC (the right to individual assessment before an appropriate sentence is passed) (p. 8), failure to meet the obligation under Article 12(1) of the CROC, (the right to be heard in proceedings affecting the child) (p. 8), clear breaches of Article 37(c) of the CROC and Article 10(3) of the ICCPR (separation of juvenile from adult offenders) (p. 9). The Committee quotes approvingly (p. 11) from a paper, "Juvenile Justice in Western Australia", by Ms Moira Raynor, Victorian Commissioner for Equal Opportunity and a former President of the WA Law Reform Commission:

> The WA legislation is a problem for the whole country. Australia signed the Convention on the Rights of the Child with the States' consent. We have now adopted the Optional Protocol to the International Covenant on Civil and Political Rights in 1991. We are internationally accountable for our protection of human rights throughout Australia. We are about to be severely embarrassed.

The Western Australian laws are not the only juvenile justice practices in Australia which breach human rights standards. The use of police watch-houses in Queensland is also of serious concern. In a recent address to a seminar in Brisbane, the President of our Commission, Justice Elizabeth Evatt, referred to the prohibition of inhuman and degrading treatment and the requirement of adequate supervision. She said,

> In terms of the overcrowded, unpleasant and under supervised conditions reported by children detained in watch-houses, this provision is undoubtedly not being honoured by Australia. . . Looking at each of the principles—last resort, separation of juveniles, discrimination, proportionality, rehabilitation and standards of treatment—there is much cause for concern—and plenty of material to suggest that Queensland has not yet done enough to bring its law and practice into conformity with international standards (Evatt 1992, pp. 6-7).

The standards set by international human rights instruments ratified by Australia are binding obligations. They bind all Australian governments equally but the Commonwealth has a primary responsibility to ensure that they are met. That responsibility is presently not being discharged.

Federal offenders

A number of young people coming before the courts are charged and convicted of offences under federal legislation. Although the number is small (probably around a hundred each year), the Commonwealth has clear responsibilities towards these federal offenders. This responsibility is particularly significant in the light of legislation such as the Western Australian Act which breaches Australia's human rights obligations.

The *Crimes Act 1914* (Cwlth) section 20C provides that a juvenile who violates Commonwealth law is "dealt with pursuant to State law". The offensive provisions of the Western Australian Act therefore apply to federal juvenile offenders, thereby placing the Australian Government itself in breach of its international obligations. It is not difficult to imagine this occurring; all that is needed is for a young person with previous convictions to assault someone while stealing a Commonwealth car. The same situation would arise if young persons charged with federal offences were placed in certain police watch-houses in Queensland. The effect of section 20C is to leave the Commonwealth responsible for the laws and programs of each State and Territory which deal with a juvenile offender on behalf of the Commonwealth.

Inconsistent approaches

In the face of inconsistent State objectives and practices in juvenile justice, there is now a clear need for a consistent national approach in this important area of public policy. The States at the moment are not merely moving in different directions; they are often moving in quite contrary directions. Australian governments are sending mixed messages to young people, and indeed to the whole community, about what they hope to accomplish through

their juvenile justice systems, about attitudes towards offending behaviour and about the expectations for young offenders themselves. Because so many, aspects of the systems in so many States clearly breach international human rights standards, State practices also raise concern about our commitment as a society to the observance of fundamental human values.

Although the States and Territories have, and will continue to have, responsibility for the administration of juvenile justice, it is no longer good enough to leave to them the determination of fundamental principles. This is being recognised more generally in the community. In the wake of the Western Australian legislation earlier this year, the Insurance Council of Australia, amongst others, called for a new coordinated nationwide approach to juvenile crime and juvenile justice.

A National Approach

The President of our Commission, Justice Evatt, has also advocated a national approach:

> (T)he inconsistency in the treatment of young people in the criminal justice system, and the apparent failure to comply with international obligations, suggest that these issues be looked at nationally in order to determine
>
> - whether the treatment of juvenile offenders (especially Aboriginal offenders and young people convicted of federal offences) is in accordance with Australia's international obligations
> - whether it is desirable that uniform standards apply to all juvenile offenders
> - what legislative and other options are available to the Commonwealth to implement uniform standards and
> - what those minimum standards should be.

The responsibility for coordinating national approaches to national issues lies with the Commonwealth. The Australian Law Reform Commission recognised this, in relation to juvenile justice, in its report on sentencing (ALRC 44), p 123.

> The Commonwealth has a role in juvenile justice matters beyond simply making provision for federal and ACT juvenile offenders... the Commonwealth is in a position to influence, and play a leadership role in, the development of coordinated juvenile justice policies throughout Australia.

The new Commonwealth interest in crime prevention may be the catalyst and the proposed White Paper the vehicle for the assertion of a Commonwealth role in establishing principles and standards for juvenile justice in all Australian jurisdictions.

A national approach to juvenile justice should have four principal objectives:

- promoting crime prevention
- focussing on the rehabilitation of young offenders
- addressing the over-representation of Aboriginal and Torres Strait Islander young people in the juvenile justice system
- setting national standards, including human rights standards, for the treatment of young people who have been accused or convicted of crime.

The approach will not require changes in responsibility for the administration of juvenile justice systems. Rather, it will require a common outlook by Commonwealth, State and Territory Governments and a shared commitment to ensure a more effective response to juvenile crime and more humane treatment of young offenders. Such an approach is now essential.

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DEVELOPING COMMUNITY INITIATIVES IN JUVENILE JUSTICE

Evelynn Crawford-Maher

HISTORICALLY, THE ABORIGINAL PEOPLE OF AUSTRALIA HAVE ALWAYS been affluent within their own society. This was evident at the time of colonisation, although not to the eyes of the white settlers who did not see fences, houses or material possessions. It was at this point that the first impact of colonisation was evident.

The impact of colonisation upon Aboriginal people has had far-reaching consequences. Because of removal from their traditional land, Aboriginal people could not continue to practise or live a traditional lifestyle: they were forced from their own land onto someone else's land. This created conflict between other tribes as well as conflict over land use with the settlers. All these disruptions have added to and increased the attempted destruction of Aboriginal society leaving traditional Aboriginal society fragmented.

It could be easily argued that Aboriginal society has been deliberately kept dependent on government funding as a plot to prevent self-sufficiency, thus giving Aboriginal people limited power over their own destiny. The lack of a stable society has had a dramatic impact upon Aboriginal people in general, particularly the younger generation.

Juveniles

When consideration is given to the fact that Aboriginal juveniles offend, the reasons should be seriously considered. At times some offending behaviour can be traced back to events of the past which may have affected the whole family. Some of these events are not always of the family's making. The different kinds of family breakdown, and the trauma suffered by a young person can be extremely distressing and can provoke all kinds of rebellious actions against parents, schools and almost all other authorities with which a juvenile may come into contact.

There are some offenders who offend for the thrill of it. Most offences committed by Aboriginal juveniles are of a less serious nature. It is also evident that Aboriginal children have much higher rates of *detection* for crime generally ensuring a greater likelihood of apprehension by the police. This

has resulted in the over-representation of Aboriginal juveniles in the juvenile justice system. This phenomenon may be attributed to many variables which all need to be considered individually as well as collectively.

The social problems of today's society proved to be a significant influence on the behaviour of Aboriginal youth and there are many frustrations being experienced by youth in general. However, being Aboriginal appears to be a major disadvantage for most offenders, particularly those offenders from country towns.

In New South Wales Aboriginal youth are more visible within the community: high unemployment among Aboriginal people generally combined with unsophisticated criminal activities, draws a high level of attention from police. Aboriginal youth are considered by many police officers to be prime suspects for any criminal activity and therefore are apprehended and committed to institutions at a much higher rate than committals for non-Aboriginal youth. Police and magistrates do not take advantage of any diversionary programs and therefore Aboriginal youth do not have access to the same pre and post sentence alternative programs that non-Aboriginal people do. There is definite bias towards Aboriginal youth by police. However, the police have also recognised this and have established steps to improve community policing policy.

Juvenile Justice

It has been demonstrated that Aboriginal juveniles constitute approximately 20 per cent of the New South Wales institutional population, yet they represent only 1.8 per cent of the total population between 10 and 17 years of age. Although a variation exists between States, the only interstate comparison available found that New South Wales had not only the largest number of committed Aboriginal children, but also the highest incarceration rate per 100,000 of the relevant population (Semple 1988).

New South Wales sentenced Aboriginal people are locked up at a rate which is twenty-five times greater than the non-Aboriginal population. The other States then follow with Victoria having 10:1 and the Northern Territory having the lowest rate of 7:1. Since 1987, an average 29.5 per cent of committed residents and 17.7 per cent remanded residents have been Aboriginal people in New South Wales. The lower rate of country remands in custody probably accounts for the lower percentage of Aboriginal remands (Luke 1988).

Thus, Aboriginal children are over-represented at all stages of the juvenile justice system. This over-representation actually increases with an individual's penetration of the system. Data from both New South Wales and South Australia indicates that the over-representation of Aboriginal children at the prosecution level increases at the court level, and again at the institutional level (Cunnenn 1990).

Some reasons for this over-representation are that:

- most Aboriginal people in detention centres are from rural areas;
- Aboriginal offenders are not getting access to the pre and post-sentence diversionary programs that non-Aboriginal people get;
- due to high visibility, Aboriginal youth are constantly noticed by the community and police;
- areas with significant Aboriginal populations tend to be over-policed; and

- contact with police confirm the Aboriginal offenders expectations of the system (Anti-Aboriginal).

Aboriginal and police relations in New South Wales are strained, at present. Aboriginal and police contact is much higher than police and other community contact, and is almost always on a negative basis: the result is extremely volatile. Consequently, Aboriginal youth regard police as not the keepers of law and order, but as watchdogs.

The main response to all these misdemeanours of the past, has been instrumental in influencing responsible departments to take appropriate and relevant steps to address all the issues mentioned previously.

The problem facing Aboriginal communities at the present, is the issue of young Aboriginals' behaviour in public as well as at school, on a family and social level.

Community responses

It is interesting that some communities do not perceive any problems with their juveniles because one community can always compare the behaviour of their own youth to that of another community. Like most government departments, Aboriginal communities tend to wait until some disruption has occurred before any action will be taken. By this time the problems can become insurmountable.

Aboriginal people have dealt with the issues of housing, health and education for quite some time now; however, the issue of Aboriginal juvenile offenders is one that has not been fully realised, let alone clarified in the minds of the community. Establishing a community based initiative will only be effective if the police, magistrates, government departments and the community mutually agree to support the program. If one agency is not cooperative, then this could jeopardise the smooth operation of the program.

Much depends on how all these community resources are utilised, in terms of developing and nurturing the program, especially in view of the high level of competition for funds. It is difficult to avoid the clash on a political level, because Aboriginal organisations depend largely on government funding and are subject to evaluation, which is normally carried out by non-Aboriginal departmental staff.

In the past, the issue of juvenile justice has had to compete with all other program areas within the welfare system. This has made it extremely difficult to pay any real attention to dealing with juvenile justice matters, which are quite separate to "normal" welfare cases.

It is an interesting observation, that if the welfare cases were dealt with at the level of requirement then there might be a reduction in offending behaviour among Aboriginal youth.

The Office of Juvenile Justice

With the establishment of the Office of Juvenile Justice as a separate, autonomous government body, a new perspective on the delivery of juvenile justice services had been launched.

One important development is the creation of the Juvenile Justice Advisory Council which will provide recommendations for a long-term strategic plan relating to policy, management direction and legislative reform.

Its formation was recommended in the report *Kids in Justice* and one of its immediate main tasks will be to closely scrutinise current policies and procedures, and provide assessments of their appropriateness. The Advisory Council is made up of a broad cross-section of experienced professionals and representatives of community organisations who are involved in the delivery of juvenile justice issues.

The emphasis of juvenile justice services is now on rehabilitation and diversion and developing effective preventive programs rather than incarceration.

The new theme of the office, "A Second Chance for Kids", clearly indicates the direction that will be taken.

Part of this new direction will include the process of consultation with Aboriginal communities and organisations. Consultation has taken place with several Aboriginal organisations to consider possible options to establish programs in the community.

The main aim of the community based schemes is to appropriately divert juvenile offenders so that placement in a juvenile justice centre is utilised as a last resort. To provide assistance for young people who have committed an offence to take their place in the community, the Office of Juvenile Justice, with the assistance and support of the Aboriginal community organisations, provides balanced programs which are aimed at meeting the specific needs of the individual.

The Office of Juvenile Justice has agreed to and already implemented 115 recommendations made in the Final Report of the Royal Commission into Aboriginal Deaths in Custody and another thirteen recommendations are currently under consideration.

Preventive Programs

A high priority has been placed on addressing the over-representation of Aboriginal juvenile offenders in the court and juvenile justice centres by initiating preventive programs such as:

- Aboriginal Juvenile Justice Councils which are already operating successfully in Taree, Wellington and Dubbo. Additional councils will be established in the near future.
- Aboriginal community workers are employed in several regions to assist local communities to develop their own community based initiatives.
- A community Bail Hostel in Redfern will provide an alternative to custody for offenders on remand.
- Aboriginal foster homes have been established for Aboriginal youth who have committed less serious offences.
- A live-in Rural Training program at Bourke as an alternative to detention is being developed by an Aboriginal Management Committee.

Innovative programs such as home detention, intensive neighbourhood care, periodic detention, attendance centres, and intensive personal supervision are currently subject to feasibility studies. For their own sake these programs cannot be allowed to simply exist within the system, without providing any hope for the future.

The system has to be made to work for most young offenders and in recent times major steps forward have been taken in juvenile justice centres to ensure this will

eventuate for 6 per cent of offenders who appear at court and are placed in the juvenile justice centres.

Not every child who comes into a juvenile justice centre can be successfully rehabilitated but those who are in this category, and continue to commit serious crimes, need to be managed in an humane and supportive environment.

Many young people who enter juvenile justice centres are from dysfunctional family environments with low educational levels, poor self-esteem and little general knowledge of available community resources which could help them re-establish themselves in the community unless they were previously involved in the community based schemes.

General education programs and involvement in TAFE have accomplished heartening results in recent times and facilities in all centres have been updated.

An indication of the government's commitment to helping juvenile offenders achieve include increasing facilities at the Mt Penang Vocational Centre in 1990, and a new school building at Cobham and Keelong Juvenile Justice Centres. A number of young offenders have gained their School Certificates and the number who are seeking their HSC is increasing significantly.

Vocational training is providing these young people in juvenile justice centres with the chance to develop skills that will increase their chance of obtaining jobs on release. A number of courses have TAFE recognition and several juveniles have been placed with employers following this introduction to work practices. In some centres mixed gender activities such as metalwork, woodwork, spray painting and bricklaying are conducted.

Girls in custody now receive individual case planning, psychological counselling and sexual assault counselling as required. General living skills

such as personal and social development, beauty care, child care, computer use, dressmaking and textiles are an integral part of the program.

All programs are aimed at helping young people make a positive contribution to the community. Resident drug and alcohol counsellors are situated in most centres and further appointments are to be announced soon.

Diversionary Schemes

Current diversionary schemes include:

Juvenile Justice Community Services. Formerly the Young Offender Support Scheme, this statewide service provides assessment of juveniles remanded in custody to satisfactorily address problems relating to bail issues; assessment and court reports for juveniles charged with offences; provide individual caseplans on juveniles who are supervised in an attempt to address relevant issues and provide court ordered supervision for juveniles on recognisances, probation, community service orders and parole.

Railway Reparation Scheme. Where young offenders are found guilty of vandalism or graffiti offences to State Rail property they may be ordered by the courts to complete hours of work at railway stations.

Fine Default Orders. Juveniles are able to convert the non-payment of fines to hours of community work, to be completed as restitution to the community.

Parole supervision. Juveniles are supervised or supported following a period in a juvenile justice centre to assist in re-integration into the community.

C**ommunity Youth Centre Program.** This is a community based attendance program which provides an alternative to detention for assessed young offenders who require intensive counselling.

Personal Development Program. Young offenders found guilty of sexual offences are provided with ongoing counselling in juvenile justice centres and community youth centres when they re-enter the community.

Traffic Offender Programs. Courses specifically designed for young offenders who have committed traffic offences are conducted at Mt Penang and Worimi and deal with traffic matters that place emphasis on prevention, education and awareness of the law and individual responsibilities.

Conclusion

With the creation of the Office of Juvenile Justice a number of significant changes to services for Aboriginal people have already been implemented.

The Office is committed to reducing the number of Aboriginal children in custody and making sure that community based services which are culturally appropriate.

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JUVENILE OFFENDING IN AURUKUN: A RESPONSE AND OVERVIEW

Allan John Carter

Aurukun¾ A response and overview

AT THE BEGINNING OF THIS YEAR, THE SHIRE OF AURUKUN ACHIEVED national notoriety when a "riot" brought national media attention to the Shire. As a result of the riot twelve young people aged twelve to sixteen years appeared in the Children's Court. This paper outlines the response taken by the Department of Family Services and Aboriginal and Islander Affairs, Division of Protective Services and Juvenile Justice and seeks to raise issues for future responses to offending in remote communities.

Aurukun

The township of Aurukun is situated on the western tip of Cape York Peninsula, at the mouth of three rivers—the Archer, Watson and Ward. It is approximately 80 km south of Weipa and approximately two hours flying time from Cairns. Contact by road is limited to the dry season and then only by four-wheel drive vehicles. The population of Aurukun at the 1991 census was 783 with 175 aged between ten and nineteen.

History

European contact has greatly undermined the way in which social control was maintained by the clans around Aurukun and created a complexity of issues that need to be recognised by workers with the Aurukun community.

Under the missionary period 1904 to 1965 and in particular, during the Reverend William MacKenzie era 1923 to 1965, the community led a very structured existence as control centred with the superintendent. Children were removed from families and placed in dormitories so the influence of the kinship system was eroded, even though some contact was maintained with families. Without role models these children had difficulty with parenting skills. The housing of children from differing clans led to clans with a history of disputes having to live in close proximity to each other. Further erosion of natural systems of social control occurred when MacKenzie gave selected people the responsibility of carrying out punishments. The paternalistic attitude of

controlling people's wages did little to prepare people for administration and financial skills.

After 1965 Aurukun became exposed to a wide range of institutions and agencies. The people were now exposed to a whole range of departments with differing goals and administrative structures. In 1978 the Local Government model was established at Aurukun. It was introduced with little or no consultation with the people. Although designed to give local people more say in running their affairs, in reality it has lead to a greater number of white people being in key administrative positions. The report by the Aurukun Support Group (Dec 1991) highlights some of the issues facing this council today. They include the clarification of its roles and functions, training for staff and greater involvement by Aurukun people.

The impact of the MacKenzie era and post MacKenzie developments have altered all areas of Aurukun life. Although it is necessary to be aware of this influence, it is the area of social control that must be of significance to the juvenile justice worker. Under MacKenzie, social control was maintained through his presence and the system he developed. However, his removal of young children from mothers, setting up of dormitories, and Christian marriage arrangements have all had a negative impact upon the system of social control between the generations. This has been further eroded post 1965 by the lack of meaningful employment for people and the exposure of young people to the technological culture of today. An Aurukun man expressed recently that while he could live in both the white and Aboriginal world, he feared that his children would only be able to live in the white world. Such has been the impact of European culture on the Aboriginal society.

Division Involvement

The Department of Family Services and Aboriginal and Islander Affairs, through the Division of Protective Services and Juvenile Justice has had involvement in the Cape and Gulf areas since 1970. During the early 1970s intervention was primarily concerned with neglect and occurred when complaints were made by police or medical workers. Stafford and Venables (1987) say that the likely outcome was that children were removed from the community and placed in long-term white foster care. The results of the intervention policy are still being addressed today.

From 1977 regular visits to isolated communities began and with this came an increase in statutory case loads. It also saw the beginning of placements in culturally appropriate foster care and Aboriginal Health team workers often offering "more accurate definitions or useful explanations of child neglect, than those perceived by Managers, Hospital staff and Police" (Stafford & Venables 1987).

From 1984 a community service development approach aiming to "devolve responsibility and power to a local body who then uses the statutory service of the Department when needed" (Stafford & Venables 1987) was undertaken.

This approach was introduced into areas that expressed an interest. It involved the establishment of a core committee of local people who could call upon professionals. Such an approach was considered successful, with Yarrabah recording significant benefits. This approach was and is dependent upon the support given by the statutory body and thus is very demanding upon the time of the individual worker and other resources.

In the late 1980s with the high increase in the notifications of child abuse/neglect in the Cairns district, coupled with the high turnover of staff and the lack of adequate financial resources, the decision was made not to service the Cape area in 1990. Instead it monitored concerns through contact with the Aboriginal Coordinating Council. The Department was back at the initial response of the 1970s, where it primarily responded to issues raised by police and medical staff.

In 1990 the restructuring of this Department saw the formation of the Community Services Development Division. This Division, with its community services development approach, is seeking to address the underlying issues of child neglect and young offending and is working closely with the Juvenile Justice sub-division in seeking community responses to offending.

In August 1991 the Aurukun Shire Council, following a spate of offending, requested that the Department address the council in regard to juvenile justice and community development issues. The meeting proved beneficial as better ideas of the needs of the community were gained. Issues raised at that meeting included the diverse role of the Shire council; the lack of recreational activities for the young; the gaps in knowledge regarding legal rights; and the use of out stations and funding. This contact was to prove beneficial once regular visits by a juvenile justice worker occurred in February 1992.

Issues Facing The Aurukun Community.

The document, Woyan Min Uwamp Aak Ngulakana (Finding The Right Road Ahead) by the Aurukun Support Group (Adams et al. 1991), highlights eight critical issues facing the Aurukun people and makes forty-four recommendations on how these may be overcome. The issues identified include education; community control of alcohol; homeland development; role of Aurukun Shire Council; health; families in crisis; developing a local response to justice issues and the delivery of government services. All of these issues impact greatly on the Aurukun community; however, it is education, families in crisis, and a response to justice issues which directly affect juvenile justice.

Education

Although "Education of Children (or lack thereof) was most frequently mentioned and felt most deeply by people" (Adams et al. 1991), only a very small proportion of children attended school on a regular basis. They considered that two essential reasons for the failure of school are "People have little involvement or control over schooling" and "the present structure and process of schooling are wrong" (Adams et al. 1991, p. 24). The Education Department is currently addressing these issues and is looking toward developing a response involving Homeland schools.

When visiting Aurukun it is apparent that a schooling problem exists. Down the streets youngsters, aged between five and thirteen, can be observed playing stick ball during the normal school hours. Adams et al. (1991) give several reasons for this. Aboriginal and non-Aboriginal people referred to drinking and fighting leading to kids being too tired and upset to attend school; social divisions which carry over into the school resulting in fights between families being continued at school, including situations when the Aboriginal teacher's family was in dispute with the pupil's family; many children live on out-stations but receive no educational services, and they have little involvement or control over schooling in Aurukun. Non-Aboriginal people in the main referred to parents who "won't, can't and couldn't care" about sending kids to school and that the school curriculum was not culturally appropriate.

Families In Crisis

A further factor requiring consideration when looking at the background of the spate of offending is the fact that many families at Aurukun are in crisis. It is apparent that parents of young people at court are genuinely concerned about them, but they are at a loss about what to do. It is very easy to blame them for not providing an adequate example and to the casual observer they may present as not caring. It is the author's opinion that they care but are unable to influence a system which maintains them in a state of dependency. They are left with feelings of inadequacy and powerlessness as they struggle to deal adequately with the undermining of their cultural heritage.

Boredom and the influence of peers (with coercion sometimes mentioned) are two reasons given for offending by young people. Young people equate the increase in offending to alcohol abuse by parents and close family members and in at least one instance have related it to firearm offences (Adams et al. 1991, p. 64). As previously mentioned the cultural social controls have been eroded and although young people would still welcome control when appropriate, the parents and the kinship system have lost some of their credibility.

Adams et al. (1991) suggest that more be made of the people's strengths and links to the homelands; emphasis be removed from offenders and placed on creating opportunities for all young people; development occur which ensures recreational, educational and career opportunities; personal support systems be provided; families obtain greater control and responsibility over their lives and the Department of Family Services and Aboriginal and Islander Affairs provide services to the community in the areas of protective services and juvenile justice.

Justice Issues

Within Aurukun two laws are operating—the European and the traditional. Both laws are important to the people but it is the European legal system that dominates. The local people are far from versed in the intricacies of the European system and if anything are disadvantaged by it. At court English is the spoken language even though it is a second or third language to the people. Parents of children appearing in court are often intimidated by a system which may have little or no understanding of their values, customs or needs. The Criminal Justice Commission's paper *Youth, Crime and Justice in Queensland* (March 1992, p. 57) quotes the Royal Commission into Aboriginal Deaths in Custody: "The exercising of the ideal of impartial justice is necessarily accompanied by the values of those who enforce the `rule of law'".

Adams et al. (1991) suggest that the issue of justice can be addressed by both systems supporting each other; empowering clan leaders and the provision of mediation services.

Offending

On the 12 February 1992, twelve young people appeared in the Aurukun Children's Court charged with a total of 136 offences. The majority of charges were property offences including unlawful use of a motor vehicle, wilful damage, break enter and steal, as well as the serious offences of assault and armed in public to cause fear. The whole episode began with car stealing but soon escalated into a frenzy of destruction and violence. The reasons behind the offending are not clear. When asked the young people claimed that they were not drinking, but rather that someone asked them to become involved. At the same time at least seven adults appeared in court on 100 charges.

Considerable pressure was being brought to bear on the responsible Department to do something. Police and the community were demanding that something be done, with the main emphasis upon the young people being removed from the community.

Departmental Response

The initial response was to consider what was known about Aurukun and how to work with Aboriginal offenders. In this community incarceration was not necessarily the best solution and should be used as a last resort; Aboriginal workers worked best with Aboriginal people; some young people would need to be removed from the community; contact with family was important to maintain; activities which assisted their re-integration into the community was essential and factors causing the offending were more likely to be traced to social issues at Aurukun rather than to individual pathologies. These factors influenced the Department's response post court.

Program Development

The nature of the offending, the damage caused and the community's pressure for removal from Aurukun, prompted three strategies to be developed. One involved removing the "ring leaders" from Aurukun into a work/skills orientated program. Another involved sending young people to out-stations, and the last involved the use of voluntary community service within the township of Aurukun. All were designed to be alternatives to incarceration.

Placement on cattle properties was suggested as a work skill program. Although some success had been experienced with such programs, under training grants, concern centred upon isolation from families, the ability to monitor the progress, state of mind of the individuals, the ability to provide adequate and immediate support, and the relevance of station work to the young people of Aurukun. A further consideration was cost. There were limited funds available and what funds there were would need to be diverted from community support programs for adolescents. This cost factor quickly ruled out the option of cattle stations when contact with two stations revealed that their services would be provided at $500 per week per child.

A further option of an adventure/work experience program based in the Tully/Ingham area was considered. This option was worthy of consideration because Aboriginal support people were accessible, the individual's welfare could be monitored closely, and a variety of work skills could be accessed. Contact with the

respective managers of National Parks and Forestry in the Ingham/Tully area indicated that they were not averse to young people working on projects in the parks. Accommodation could be provided through a Forestry Barracks with on-the-job supervision and equipment provided by Forestry or National Parks. The Department of Family Services and Aboriginal and Islander Affairs would need to meet the costs of a full-time supervisor and food.

Contact with the community throughout this time was through the Aboriginal Coordinating Committee. One elder and former Shire Chairman, Mr Dennie Bowenda, had been identified as being interested in being involved and had expressed a desire to take a group of six, other than the "ring leaders" to an out-station where with other elders' input, he would take them hunting and fishing, and teach them craft skills over a two-week period. This was an alternative approach with the added advantage of being identified by the community as a suitable response to the offending.

Two weeks prior to the court date three options had been designed to cater for the offenders should they be found guilty of the charges. One involving an adventure/work skills program was an initiative of the Department whilst the other two had their roots in the Aurukun community. The Departmental program was the most difficult to organise due to staffing and the probable need to have the young people remain out of Aurukun for a period of twelve weeks. The staffing problem was overcome with the release of a worker from the Division of Aboriginal and Islander Affairs. The worker, employed as an Aboriginal ranger at Coen, proved to be effective with young people.

At Court

At Court on 12 February 1992, twelve young people appeared charged with numerous offences. Of the twelve, two were admonished and discharged, one was remanded in custody after a plea of not guilty and nine were committed to the Care and Control of the Director for a period of two years, convictions recorded and restitution ordered. It was further recommended that five be detained at a place other than Aurukun for a period of three months. The Department, basing its recommendations on previous offending, number of current charges, and arms related charges had recommended that three young people be placed on care and control orders. Conversations with families and young people prior to court revealed that two parents wished to take their children to out-stations. Meetings with Dennie Bowenda also indicated that the two-week camping program would not be able to be undertaken because of the mix of top-end and bottom-end boys.

The court officer sought a remand period prior to sentencing for six young people in order to enable a worker and community elder to work with them on a community project. It was further suggested that this would enable the worker to assess the suitability of a Supervision order rather than a care and control order. The worker had also reasoned that this was a more appropriate consequence for their offending in that they would be seen by the community as making amends for their behaviour. These proposals were put to the court, but when it was obvious that the court was not in agreement with a remand for sentencing, the court officer sought a supervision order. This was rejected with all six being placed on care and control.

Post Court

Four young people were taken to Cleveland Youth Centre for a two-week period. Although this was hoped to be avoided, the logistics of the camping program and requirements at Aurukun post court made it impossible to avoid. Of these four, one was remanded in custody until March and one was a first offender from Thursday Island. He was returned to Thursday Island after one week in custody, once support was assured.

Two young people were placed on out-stations. In one case the parents of the boy accompanied him to the out-station and in the other, the Clan Elder advised that he would take firm control of the boy.

Four boys, although on Care and Control Orders were not removed from the community. They became involved in working with the Department representative and a community elder. Agreement was reached with them and their families for them to be involved for forty hours in a community project.

Only two were left at Cleveland who were in a position to attend a camping program. One other Aurukun boy was detained at Cleveland Youth Centre at this stage and it was decided to include him in the program. Each was given the choice of participating, with all three accepting.

Camping Program

The program was not seeking to further punish the young people, as their punishment was being sent from Aurukun. They certainly missed home as was apparent by their frequent phone calls. Based at Cardwell the three boys and supervisor resided at the forestry barracks and worked around Mission Beach and Tully. Work activities included, cleaning areas of undergrowth for walking tracks, constructing barbeques, paving, and building viewing ramps over swimming holes. The exercise was conducted in a relaxed atmosphere with the emphasis not on output but rather on skills. Relationships developed with the leaders and the other forestry workers, and an increased awareness of other options available to them.

The work done by Bernie Singleton and the support and assistance provided by the Cairns Office of Aboriginal and Islander Affairs was paramount to the program. Bernie, with no previous experience of working with "delinquents" handled all situations with the skill of a professional. On the one occasion two of the boys decided to abscond, he found them, advised them of their options and the consequences of both and left them to decide. They chose to go back with him.

The boys were provided with entertaining activities on the weekends by Townsville Aboriginal and Islander Child Care Agency, Tharpuntoo Legal Service, a student social worker and the author's family so that the supervisor could have a break. The final weekend was spent at Clump Mountain. The program offered at Clump Mountain is conducted by Aboriginal people from the Innisfail region. It was on the agenda for the group to go there as it offers a craft and culture program. A further benefit, made possible through the Cairns Division of Aboriginal and Islander Affairs, was that Mr Dennie Bowenda attended and was able to gain valuable ideas for possible similar programs at Aurukun.

The death of a close relative of all the boys at Aurukun necessitated that all return for the funeral. As they were now back at Aurukun it was decided that they would remain, but attempts be made to have them go to out-stations. This did not eventuate

but they maintained contact with Dennie Bowenda and to this day have not been charged with offending.

Program Issues

A number of issues evolved out of the post court response by the Division which deserve some comment. Firstly the use of out-stations. Experiences in other states have indicated that the use of out-stations as a form of punishment has not proven successful. Experience at Aurukun would suggest that out-stations should not necessarily be seen as the only response but one option in a range of responses. It can be successful when parents or a direct care-giver is present. Although the concept of punishment may not be removed entirely, the emphasis should be placed more upon the benefits of being with their family and the opportunity to gain greater knowledge of their culture. Care needs to be taken to ensure that all people at the out-stations are in support. It is important to remember that many on the out-stations are seeking to avoid the fighting and situations involving alcohol.

Of great benefit throughout the program has been the involvement of a community elder. This person was able to provide advice and guidance. Very few decisions have been made without prior consultation. Since the initial contact in January the role of this person has developed from one of adviser to one where he feels confident enough to make decisions regarding children in care.

Re-integration into the community is a major concern with any program. Experience had shown that it is easy to take young people on camps, which provide education, work skills and cultural awareness, but the difficult task occurs when the young people return to a setting where access to employment, education and support is missing. They are "returned" to the very conditions of existence that give rise to particular kinds of offending in the first place (White 1991). Attempts to overcome this were done by, firstly providing workskills that were applicable to their community and secondly by the Tharpuntoo Legal Service's proposal to provide access to TAFE. This has yet to come to fruition but all boys remain keen for it to occur.

Programs which are directed toward responding to offending on remote communities need to employ Aboriginal workers. One preferably should have youth work skills or experience and at least one other should be from the community group. The strain placed upon the inexperienced worker could have been reduced by having a co-worker. Both require the support of a third, experienced in programs of this nature. Consideration needs to be given to the location of programs. Programs which allow access to family would not only maintain family ties but would also recognise their importance and lessen the difficulties created by homesickness. From observations these young people have strong bonds to their culture but want to access the world outside.

How the Court Responds at Aurukun

Prior to 1983 it is reported (Adams et al. 1991, p. 64) that the number of children appearing in court did not exceed one or two. In 1991, twenty-five males aged between twelve and seventeen presented on fifty-two occasions in the Aurukun Children's Court on a total of 342 charges. In 1992 until the end of April, sixteen males have presented on twenty-three occasions for a total of 204 charges (*see* Table 1).

A breakdown of the charges reveals:

Table 1

Charges, Aurukun, 1991

Charges	*No.*	*Rank*	*%*
Break and/or Enter and/or Steal related charges	147	1	43.0
Unlawful Use or Misuse of a Motor Vehicle related charges	136	2	39.8
Firearm related charges	23	3	6.7
Violence/Bodily Harm related charges	22	4	6.4
Armed related charges	9	5	2.6
Other	5	6	1.5
TOTAL	342		100

Table 2

Charges, Aurukun, 1992

Charges	*No.*	*Rank*	*%*
Unlawful Use of a Motor Vehicle and related charges	92	1	45.1
Break and/or Enter and or Steal related charges	87	2	42.6
Violence/Bodily Harm related charges	13	3	6.4
Armed related charges	10	4	4.9
Other	2	5	1.0
TOTAL	204		100

The majority of the offences were carried out conjointly which explains the high number of actual charges, that is, one unlawful use of a motor vehicle would result in four charges if four young people were involved.

Figures also reveal that offending in 1991 was concentrated in the months of July (124) and August (86), that is, approximately 62 per cent of the charges were laid in those two months. In 1992, a similar fact is revealed with February (136) and March (55) being the main months of offending. Attempts to gain an understanding of this phenomenon would suggest that a group of young people urged on by a few leaders—there is some hint of "standover" tactics—went out of control and police and families were powerless to stop it.

A further feature of the offending is that in 1991, seven young people were charged with 172 offences which means that 25 per cent of all the young people charged in 1991 were responsible for 50.3 per cent of all charges. In 1992 a similar figure emerges where five young people are credited with 108 charges or 31.25 per cent of those charged are credited with 52.9 per cent of all charges laid until April. Using 1991 census figures this means that 12.9 per cent of males aged ten to nineteen years at Aurukun were responsible for over half of all the charges laid in 1991-92.

Results of appearances in Children's Court in 1991 are as shown in Table 3:

Table 3

Appearances, Aurukun, 1991

Admonished and discharged	5	9.6
Supervision	7	13.5
Care and Control	39	75.0
Remand	3	5.8
Convictions recorded	29	55.8
Restitution	0	0.0
Charges withdrawn	1	1.9
Orders Imposed	46	88.5

Results of appearances in 1992 until April are as shown in Table 4:

Table 4

Appearances, Aurukun, 1992

Admonished and discharged	3	13.0
Care and Control	17	73.9
Remand	2	8.7
Convictions Recorded	15	65.2
Restitution	4	17.4
Charges withdrawn	1	4.3
Orders Imposed	19	82.6

A young person appearing in the Aurukun Court in the last two years had approximately an 85 per cent chance of being placed on an order and about a 60 per cent chance of having a conviction recorded. Furthermore in North Queensland 1.06 per cent of the ATSI population aged 0 to 17 years are under orders whereas in Aurukun 9.59 per cent of that age group are under orders. These figures are alarming and require some discussion.

The Aurukun experience certainly supports the findings of the recent Criminal Justice Commission (1992) that Aboriginal young people are dealt with less leniently by the Children's Court. Of the twelve appearing in Aurukun three were first offenders. Of this three, one aged twelve was admonished and discharged while the other two were placed on care and control and convicted. The court histories of the others appearing revealed that none had ever been admonished and discharged. All had either received supervision or care and control orders on their first appearance.

A goal of this Department is to reduce the number of Aboriginal and Islander people coming into care. It is primarily seeking to do this through its policy of diversion. Although this Department is endeavouring to improve its service to juvenile justice, there is a need for other players in the justice system to critically evaluate their performance and to seek ways which ensure that young people are not brought into the system unnecessarily.

The system under which the court operates is an adversarial one where guilt needs to be proven. It assumes people know their rights, and if this is in doubt then an independent person can be enlisted. In principle this is sound, but in practice it has its flaws. This person has a responsible role in ensuring that people are treated fairly and that any statement made is done voluntarily. It is questionable as to whether all the independent persons have the knowledge and assertiveness to carry out this role. Adults in Aboriginal communities are just as intimidated by white authority figures as children. The independent person is of little or no value while they lack training and understanding of the role.

Further, it must be remembered that English at these communities is a second language. Yet at police interviews, and at court, there is no guarantee people will understand exactly what is occurring. The Court process can be quite mystifying and

O'Connor & Sweetapple (1988) point out most young people are confused by the process. At Aurukun this confusion is heightened by the spoken word being in English and is not assisted by the process of "hand up statements" where no one other than the magistrate, prosecutor and the defence knows what is going on.

Naffine et al. (1990, p. 203) highlight the fact that many young people "admit the allegations made against them thereby waiving all those rights which accompany the contested hearing". The lack of knowledge, the powerlessness of the people and the language used in the process does not benefit those accused. At court the adversarial position is curtailed by confessional evidence given in front of an "independent person". It is only when time is taken by legal services such as Tharpuntoo that discrepancies between what the young person says and the police statements may become apparent.

If anything, there is an expectation that all young people will plead guilty, as evident when one young person pleaded not guilty to the majority of charges. The reaction of the public to this was that it was stalling the inevitable and that guilt would be established eventually. Although this was expressed outside of the court it could be suggested that it was also the feelings of most in court that day. The exception being the Defence and the Department. It is this atmosphere which is of most concern. It would appear that kids appearing in court are presumed guilty by the fact that they are there. The process is there to protect them but is it adequate? It is of concern that these young people do not get the same rights as others. In court, one sees that they have legal representation and the right of election is advised to them so the duty is done. Yet it is not difficult to be left with a perception that what is occurring is a game with little or no meaning to all the players as long as justice is seen to be done. Police and others say court is a joke to kids. If it is a joke to them then we are the ones who make it so. The kids have little power in the system so it is certainly not their problem. There is a need to recognise the importance of the court and ensure that all parties leave knowing they have been treated fairly and justly.

Working Strategies

This Department has sought to assist the people of Aurukun in two ways. One which directly addressed the offenders, and the other of developing structures which would assist with crime prevention and meet other needs of the community. This task is being undertaken by two divisions, Protective Services and Juvenile Justice, and Community Services Development working closely together. The approach by the divisions has focused upon community support and development and sought to take note of the report by the Aurukun Support Group (Dec. 1991, p. 1) which highlights the need for government workers to accept that "Aurukun people identify with family, clan, regional ceremonial and political associations and other natural groupings". Further to this, it seeks to take away the emphasis of control from outside and replace it with one of empowerment of clan and family members in order for them to meet the needs of the Aurukun people. The role of the Department is to facilitate this development and to provide support. This approach looks at the strengths that exist within the individual and the community and builds upon them. The strength of any people is their culture. It is culture which establishes Aboriginality or the values, beliefs and social patterns of behaviour and organisation. These need to be built on if we are to assist a fragile society.

Conclusion

The spate of offending that has occurred at Aurukun in 1991-92 may be interpreted as a statement by young people about their alienation from the older generation and their minimal life prospects.

> Individual pathology rather than community quandary has become a focus with the children becoming victims twice over. Firstly, to the system of their community life and secondly to the judicial penal system (Smith 1992).

A response which only seeks to control offending behaviour by deterrence does not take in or seek to address the issues which underpin the offending behaviour.

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JUDICIAL RACISM[1]

Chris Cunneen

WHY TALK ABOUT JUDICIAL RACISM? DOESN'T THE EMPIRICAL EVIDENCE suggest that the judiciary treats Aboriginal and non-Aboriginal offenders alike? In fact, some academics and criminologists have even argued that the judiciary treats Aboriginal people favourably. Yet such a claim of equal (or indeed favourable) treatment seems contrary to Aboriginal commonsense about how the justice system works. Indeed, there is a renewed urgency to question every aspect of the operations of the criminal justice system given that Aboriginal imprisonment has continued to rise since the Royal Commission into Aboriginal Deaths in Custody. In some states like New South Wales there are actually more Aboriginal people dying in custody now than there were during the period which the Royal Commission investigated (Cunneen 1993). Many people believe (and the evidence would suggest) that the situation in some areas is worse now for Aboriginal people, vis à vis the criminal justice system, than it was prior to the Royal Commission.

There is clearly a widespread and long-running view that judicial racism is a problem. It is a view that is held by many Aboriginal people. Both Paul Coe (1980) and Pat O'Shane (1980) referred to the role of the judiciary in supporting police and as bearers of racist attitudes themselves during a conference which the Sydney University Institute of Criminology organised in 1980. Coe referred to the concern of Aboriginal people that judges and magistrates were not representative of the community and that they were completely out of touch with Aboriginal people, their way of life and their communities. One might question the extent to which the judiciary is either more representative of the community and/or educated in relation to Aboriginal issues twelve years after Paul Coe made the observation. Pat O'Shane related incidents from a trip she had made in western NSW with the then Attorney-General and the Chairperson of the Anti-Discrimination Board during 1979 to investigate complaints made by Aboriginal people about police and magistrates. It was during this period that a NSW magistrate, Mr Quin, referred to Aboriginal people in Wilcannia as constituting a "pest race".

How far have we gone from the racist stereotyping of magistrates like Quin a decade ago? Some public comments by the recently retired NSW State Coroner, Kevin Waller, suggest that such stereotyping is still in operation. Writing in the

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Sydney Morning Herald (13 March 1992, p. 11), the ex-State Coroner conducted a harangue against Aboriginal people and a former Royal Commissioner into Aboriginal Deaths in Custody, the Hon Hal Wootten. His public attack on the Royal Commission sought to minimise the dimensions and tragedy of deaths in custody. Among the more overt examples of racism, Waller finished his article with the following statement:

> As a means of earning respect among non-Aboriginal people, dare I suggest that Aboriginal leaders begin making demands for better education, health and employment, and soft-pedal on the handouts (Waller 1992, p. 11).

The author suggests that this is an example of racist stereotyping for a number of reasons. Firstly, it portrays Aboriginal people as "in need of earning respect". In a single phrase this statement obliterates invasion, colonisation and genocide. It puts Aboriginal people back on the defensive as the cause of their own oppression. Secondly, to suggest that Aboriginal "leaders" should "soft-pedal on handouts" and instead make demands for better education, health and so on ignores completely the work of community organisations like the medical services, the legal services, child care agencies and educational consultative groups as well as those Aboriginal people working directly in ATSIC and state departments.

It is little wonder then that there remains concern about the issue of racism among judicial officers. During 1991 the Sydney University Institute of Criminology held another conference involving Aboriginal participants (Cunneen 1992). Two Aboriginal speakers again raised the issue of judicial racism. Bill Craigie (1992) from the National Aboriginal and Islander Legal Service Secretariat (NAILSS) noted that one of the principal failings of the Royal Commission was that it did not pay sufficient attention to the institutional racism of the criminal justice system. In particular, "the National Report failed to address the whole question of judicial bias. The question was not even raised for discussion, let alone for recommendations" (Craigie 1992). Pat O'Shane (1992) also made some pertinent and perceptive comments on racism. She noted that "police and prison officers have been the focus of most attention; but it is well to keep in mind judicial officers". O'Shane noted that there had been few, if any, follow-up research studies on the racism of judicial officers originally identified by Eggleston. Eggleston (1976) had argued that racist attitudes were common amongst magistrates and justices of the peace. She also argued that ignorance of the law, and a tendency to believe any police evidence, were important factors with magistrates and justices of the peace dealing with Aboriginal people at a summary level. O'Shane noted that while there continued to be the occasional and outrageous public example of the judiciary displaying prejudice against Aboriginal people, "there seems to be an assumption that judicial officers, by reason of their status, are not likely to be racist" (O'Shane 1992, p. 6). That assumption will be explored further in this paper.

Racism, Bias and Discrimination

Often discussions concerning the judiciary and sentencing use words like bias, discrimination and racism without defining the terms or noting the differences between such terms. It seems that we need to make some distinctions between racism and bias or discrimination, and also between direct and indirect racism. The terms bias or discrimination usually refer to unfair or unequal treatment. In relation to the judiciary, the terms have usually been taken to refer to directly observable differences in sentencing outcomes based on Aboriginality. Although the distinction between direct and indirect discrimination is prevalent in anti-discrimination legislation, such a

distinction does not appear to have been taken up when considering judicial decisions. Racism is a far broader category implying the processes through which one group of people are deemed to be essentially different and lesser from those who dominate. It is also a systematic set of both ideas and practices which explain and perpetuate racial division (Cowlishaw 1988, pp. 245-84). Racism need not be consciously articulated as a policy or personal belief—it may well be inherent in the structural and routine processes of an institution. It can be thought of in terms of direct and indirect practices. Racism is clearly one category which can be used to explain why so many Aboriginal and Torres Strait Islander people are processed by the criminal justice system.

Feminist approaches to the law can contribute to an analysis of the important conceptual differences between discrimination and racism. Carol Smart (1990) has argued that early feminist work had a major objective in empirically challenging the idea of an objective judiciary, that is in showing that women were discriminated against. The results of those empirical studies were ambivalent.

One can argue that there have been at least some similar experiences in terms of analysing race/ethnicity and the courts with various studies showing conflicting results (*See* for instance Gale, Bailey-Harris & Wundersitz 1990, pp. 9-14, for a discussion of the literature). Smart has argued that the belief that racism or sexism could be established through a few simple criteria was overly simplistic and misleading. Firstly, the focus on discrimination or bias was caught within an "equality paradigm" which maintains the centrality of the dominant. In the case of women, an equality paradigm holds men as the standard against which the other is judged. Similarly an "equality paradigm" for Aboriginal people maintains the centrality of non-Aboriginal people and a non-indigenous justice system. The standard against which Aboriginal people are being judged is the treatment of non-Aboriginal people. In other words non-Aboriginal people and the dominant justice system remain in a position of centrality which closes off the possibility that different treatment or indeed a different system is what is required. Secondly, there is the presumption that the law is itself a neutral object which is outside the actions of individuals who might apply it in a discriminatory fashion. Smart has argued that this misconstrues the nature of law and the nature of power. If law is seen as part of the relations of power, then it is appropriate to

consider it as part of the nature of oppression and part of the system which maintains race relations.

Discrimination

One attempt to look at judicial bias within a positivist framework has been the work of John Walker (1987). Walker's approach has been to statistically analyse sentencing outcomes by Aboriginality. He describes the level of Aboriginal over-representation among prisoners nationally, and argues that:

> far from being the result of a blatantly biased system, the observed over-representation could actually be the result of accumulations of relatively minor disadvantageous selection processes (Walker 1987, p. 110).

Such a position is similar to that argued by Gale, Bailey-Harris and Wundersitz (1990). Walker isolates "prior record" as of importance, and cites the National Prison Census figures that 53 per cent of non-Aboriginal remandees had previously been imprisoned compared to 77 per cent of Aboriginal remandees (Walker 1987, p. 110).

Based on the 30 June 1984 Prison Census, Walker argues that the level of over-representation is not the same across offence types and that Aboriginal people are most over-represented in the categories of good order, driving offences, administrative offences, assault and other offences. They are relatively under-represented in robbery, extortion, fraud, unlawful weapons, and drug offences (Walker, 1987, p. 111).

Walker also analyses the average length of sentences and demonstrates that although 81 per cent of Aboriginal prisoners had previously been in prison compared to 57 per cent of non-Aboriginal prisoners, the average length of sentence for an Aboriginal prisoner was 42.6 months compared to 74.9 months for a non-Aboriginal prisoner. Walker argues that the shorter average prison sentences for Aboriginal people "cannot be entirely attributed to different types of offences committed by Aboriginal people", nor to "the relative youthfulness of Aboriginal offenders or to any differences in sentencing practices between States" (Walker 1987, p. 111).

He concludes:

> that the courts cannot be held to blame for the high rates of Aboriginal imprisonment. On the contrary, they appear to be particularly lenient to Aboriginal offenders, especially when one considers that prior imprisonment record is regarded as a key factor in sentencing, tending towards longer sentences. In short the criminal justice system is not likely to be responsible for high Aboriginal rates of imprisonment—it may be merely responding logically and even sympathetically to the offending pattern of Aboriginals (Walker, 1987, p. 114).

Walker apparently demonstrates an absence of judicial discrimination or bias in sentencing. However, this is not the same as demonstrating that "the criminal justice system is not likely to be responsible for high Aboriginal rates of imprisonment" as he concludes. This claim, of course, ignores the role of police practices in relation to targeting, arrest, bail conditions, and so on, all

of which impact on the crucial question of why Aboriginal people appear before the courts in the first place and how they obtain criminal records. In other words there is a significant slip in Walker's argument from demonstrating the apparent lack of judicial discrimination to the assumption that rates of imprisonment reflect offending patterns. The courts, without displaying any overt bias, may simply be legitimating particular policing practices. There are also the additional questions raised earlier (by Coe & O'Shane) concerning the judicial officer's attitudes to police evidence and their own assumptions about Aboriginal people.

It is significant that other authors who adopt a similar explanation concerning discrimination in the juvenile justice system are reluctant to state that the statistical results actually indicate so much about processes which occur prior to the court stage. Gale and her colleagues argue that there is an accumulation of disadvantage in the system deriving from the original police decision to arrest (Gale et al. 1990). As the authors argue, the variations in charge patterns may indicate police discrimination at the pre-arrest stage.

To be critical of Walker's conclusions is not a rejection of empirical work per se. Indeed empirical studies on the sentencing of Aboriginal and non-Aboriginal people are fundamental. Such studies are particularly important if we remember that the vast majority of court cases are dealt with before a magistrate at local court level (over 90 per cent), and the vast majority of those cases are dealt with by guilty plea (over 80 per cent). In other words the overwhelming bulk of court work involves magistrates sentencing offenders who have pleaded guilty. The magistrates are the final legitimating point in a process of criminal justice. Their function is not to decide the outcome of a case, but rather to impose penalty which in around two-thirds of cases will be a fine. It is also worth noting that in many cases the imposition of a fine for Aboriginal people may be the equivalent of imprisonment because of the inability or refusal to pay.

An understanding of how and what the judiciary decides may be fundamentally important in the functioning of a system which is institutionally racist. At this level the processes of an indirect racism need to be analysed. Given that Aboriginal people are most over-represented in appearances for offences which are more minor, magistrates may be instrumental in a role which accepts, legitimates and enforces the basis of police intervention.

Racism

A very different approach to the question of judicial racism was that provided by McCorquodale who examined the "extent to which a general judicial ignorance of Aboriginal history, culture and customs, and a corresponding judicial acceptance of an Aboriginal stereotype, have created injustice and discrimination for the Aboriginal" (1987, p. 31). McCorquodale examined civil and criminal cases across all Australian jurisdictions. In relation to civil cases he concluded that:

> With the obvious exception of land rights cases, the civil actions discussed show a judicial predisposition until very recently to accept an Aboriginal stereotype painted in negative terms, culturally, socio-economically or as enshrined in law. If legislation itself discriminated massively and specifically against Aboriginals, it would be surprising indeed were judicial officers to do otherwise (1987, p. 43).

In relation to criminal cases McCorquodale argued that:

> In nearly all jurisdictions the courts seem to have accepted that there is a continuum which distinguished Aboriginals in various stages of "sophistication" from a presumably more homogeneous white or non-Aboriginal society (1987, p. 43).

McCorquodale argued that in the field of sexual mores and public behaviour "there is a pronounced judicial perception that Aboriginals are different from whites in a way that disadvantages Aboriginals" (1987, p. 43).

McCorquodale also discusses some of the historical aspects of racism in the judicial system including terra nullius, trial procedures and punishment. It is not difficult to point out the traditions of judicial racism among members of the higher courts in Australia as their decisions are reported. Such racism can be seen at the grand level of the "big lie" of terra nullius which became firmly imbedded in the nation's history.

Many historical and political accounts of the interactions between Aboriginal people and the colonising society demonstrate the way in which racism structured the decision-making processes of the judiciary. For example Markus (1990) gives an account of Judge Wells from the Northern Territory Supreme Court during the 1930s. Markus states that Wells regarded Aboriginal people as of inferior intelligence and that white standards were not generally applicable to Aboriginal people. In addition "in Wells' view there was no need for a judge dealing with Aborigines to have a detailed understanding of their society, for in the case of simple, primitive people, the motivation for actions was transparent to the intelligent white observer" (Markus, 1990, p. 115). In cases involving assaults by police on Aboriginal people, Wells found in favour of the police, even in cases where there was considerable concern by white officials about police behaviour. In relation to punishment for Aboriginal people, Wells believed that flogging was appropriate for minor offences and execution for major offences. In the case of Tuckiar, the High Court unanimously overturned the decision in a case heard by Wells after he had sentenced Tuckiar to death. Wells openly advocated that "the aboriginals [sic] are getting cheekier. . . and the only punishment aboriginals appreciate is a flogging" (Markus 1990, p. 119).

Of course such attitudes were not uncommon among white Australians. The Northern Territory was known at least until the 1940s as having a tradition of juries acquitting whites for the murder of Aboriginal people. Indeed in the Tuckiar case the High Court overturned the decision because Wells had misdirected the jury. What makes Wells' attitude to Aboriginal people important was not whether it was common or not, but rather the fact that he was a Northern Territory Supreme Court judge in a position of power to implement his ideas.

Judicial Racism Today

It is not difficult to point to cases which one might argue to be more contemporary examples of judicial racism. Queensland has provided some recent and notorious examples. In the case of David Barry, a seventeen-year-old Aboriginal youth was

sentenced to three years imprisonment at a time when his life expectancy was two years as a result of AIDS. There were a number of details about the sentence, including the failure to consider Barry's condition as a mitigating factor, which gave rise to an appeal against the severity. The Queensland Court of Criminal Appeal rejected the application and upheld the sentence. McPherson J, with Ryan and Moynihan JJ in agreement, referred to Barry's condition as "We understand that he has also been informed at the beginning of 1990 that he has the HIV condition and that he will die from it. He is a person of low intelligence". As Behrendt (1992, p. 27) has noted "the ability of McPherson J to pass judgment on David Barry's intelligence must be questioned. It would be interesting to see by what criteria such a determination was arrived at and what possible relevance it had to the issues in question". Indeed the judges' opinion on Barry's intelligence fits within a tradition of non-Aboriginal authorities assuming to be able to assess (from a position of superiority) the intelligence of Aboriginal people.

The Queensland case of Kelvin Condren also provides examples of the way in which racism may define judicial modes of thinking. Condren claimed that he was assaulted and verballed by police. He eventually made admissions in relation to a murder. He was sentenced to life imprisonment in 1984. The case caused considerable controversy and the conviction was finally quashed by the Court of Criminal Appeal after intervention by the High Court. However, in a previous application to the Court of Criminal Appeal evidence pointing to Condren's innocence had been rejected. The mode of reasoning in that rejection is illuminating. A socio-linguistic expert Dr Eades had presented evidence to the court that the speech patterns in the police record of interview were inconsistent with the type of speech patterns used by Aboriginal Australians. Eades' evidence was rejected by the court on a number of grounds. However, Ambrose J questioned the Aboriginality of Condren and his mother. Such an argument was used to undermine the validity of Eades' evidence by claiming that Condren was "part-Aboriginal" and therefore not within the group described by Dr Eades (*see* Caruana 1989; & Masters 1992). In this case the appeal judge assumed the fundamental right to determine *who is Aboriginal*. Ultimately the judges were also legitimating the police practices of verballing and violence.

In Western Australia, one can point back to comments by Furnell in 1974 as the Royal Commissioner into Aboriginal Affairs in that state when he claimed that a "warning to a European drinker is far more effective than a similar warning to an Aboriginal in the same condition" as a rationalisation for the arrests of Aboriginal people for drunkenness (cited in Stafford 1991, p. 41). Furnell also went on to discuss Aboriginal character including those who "having fallen into a state of idleness and indolence, the victim more often than not becomes further worthless by over indulgence in all the vices known

to man" (cited in Tatz 1979, p. 3). More recently one might consider the judgment of the Full Court of the Western Australian Supreme Court in relation to Bropho and the redevelopment of the Swan Brewery site. Churches (1992) has argued that the court has further contributed to the dismemberment of Aboriginal cultural beliefs through its inability to recognise and understand Aboriginal spiritual attachment to particular areas. Churches (1992, p. 12) describes the judgment as an example of "casual judicial ignorance".

In South Australia, Charles (1991) has reviewed a number of recent decisions involving Aboriginal people in the appellate courts. He states that:

> The colonial perception of Aboriginal people as either "noble savage" or "fallen from grace on the way to cultural extinction" still underlies some of the judgments of the South Australian Supreme Court in their sentencing of Aboriginal people (Charles 1991, p. 90).

Charles argues that *Wanganeen v. Smith* (1977, 73 LSJS 139), a major reported case on sentencing Aboriginal people, has continued to influence judicial thinking. *Wanganeen v. Smith* involved an appeal against a sentence for disorderly behaviour. The court in its judgment implicitly accepted that assimilation was a desirable outcome, and indeed the law had a role in enforcing such assimilation. The judgment stated:

> Where an aboriginal native has established himself in the more general community and intends to remain there and to work side by side with other members of that community, he must accept the ordinary standards of behaviour expected of his fellow citizens (cited in Charles 1991, p. 90).

The judgment can be criticised for its acceptance of assimilation and for its outmoded colonial language; however, Charles also notes that the court established a distinction between "Tribal Aboriginal Natives", "Semi-Tribal Aboriginal Natives" and "Urban Aborigines". The court maintained that only "tribal Aborigines" were entitled to special considerations. Charles maintains that the Supreme Court in a number of sentencing appeals has continued to perpetuate the distinction between "tribal" and "urban". He cites a number of South Australian Supreme Court decisions between 1986 and 1989. In *Roberts v. Young* it appears that the notion of "semi-tribal" is associated with criminality, that the supposed process of "detribalisation" is somehow "a kind of fall from grace into criminality" (Charles 1991, p. 92). In one case, *Leech and Lovegrove v. Milera***,** Prior J applied the categories of "tribal", "semi-tribal" etc to justify an increase in the original sentence on the basis of the respondent not being a tribal Aborigine (Charles 1991, p. 94).

What is Aboriginality in the Minds of the Judiciary?

The previous discussion draws attention to the fundamental issue of who defines, and what is Aboriginality. The very concept of Aboriginality held in the minds of the judiciary may be racist. Aboriginality may be conceived of as a thing, something which can be measured and evaluated; a thing which individuals can be measured against and declared to be lacking. A thing against which individuals can be declared either "true" or "false", or indeed partly true or false depending on the context. This view sees "degrees" of Aboriginality. Keefe (1992, p. 95) has argued that in such a view, "Aboriginality is compared to a body of reconstructed facts, concepts and

traditions, objectified by the label of "traditional". In such views Aboriginality is supposed by mainstream academic and legal thought to be confined to the fixed status of an object.

Keefe has argued that this notion of culture as an object is used to determine what is Aboriginality. Within this scheme, urban Aboriginal culture is found to be lacking (1992, p. 95). Such a view is profoundly conservative and racist. Most importantly the judiciary plays a fundamental role, at least in relation to the criminal justice system, in determining what constitutes Aboriginality and which individuals possess adequate amounts of it. It is a view which follows in the tradition of the earlier "protection" legislation which also legally determined which individuals were Aboriginal. Such determinations of Aboriginality are implacably opposed to notions of self-determination. They search for a western-defined authenticity of indigenous culture which is frozen in time, and which is then used within the legal system to deny Aboriginality, to deny difference and to legitimate intervention based on a spurious equality.

The Royal Commission into Aboriginal Deaths in Custody and Judicial Racism

By and large it is an accurate observation that the Royal Commission ignored judicial racism as an issue. However, there were a number of issues relating to the sentencing of Aboriginal people which were considered. Elliott Johnston noted that in certain circumstances Aboriginal people may receive longer sentences for the same offence than non-Aboriginal people (Johnston 1991, vol 1, p. 217). It was clear from evidence before the Commission that one particular circumstance affecting sentences was the use of justices of the peace in Western Australia. Commissioner Pat Dodson (1991) noted with alarm the attitudes of justices of the peace concerning Aboriginal people. At various Royal Commission-organised conferences, Aboriginal people were referred to as "primitive", "coloured people", "natives", "boys" and "girls" (Dodson 1991, vol 1, pp. 111, 116). Dodson noted that these "paternalistic attitudes and derogatory comments are indicative of a deep seated ignorance" which reflected the "deep seated and entrenched racism inherent in the social fibre of the State of Western Australia" (1991, vol 1, pp. 116-17).

Sentencing by justices was also scrutinised by Commissioner Dodson who noted that justices had little respect for the use of community service orders. Some justices stated that they sentenced Aboriginal people to seven to twenty-one days imprisonment for drunk offences to "dry them out" (Dodson 1991, vol 1, p. 125). Dodson reiterated Eggleston's concern from the mid 1970s concerning prejudice and excessive sentences. She had suggested a system of review by magistrates. Dodson noted that in 1990 this review mechanism had not been established and that magistrates became aware of sentencing incongruities on the part of justices by chance. One case which was cited by the Royal Commission referred to a justice imposing a sentence which exceeded the maximum permitted by law (Dodson 1991, vol 1, p. 134).

Commissioner Dodson noted that some justices saw their role as useful for the police. The justices relied heavily on Clerks of the Court because they purportedly had more legal knowledge. At the time of the Royal Commission in 89 courts in Western Australia the function of the clerk of the court was administered by a police officer (Dodson 1991, vol 1, p. 113). Training for justices was noted to be inadequate and voluntary. There was no special training in relation to Aboriginal issues.

The Royal Commission into Aboriginal Deaths in Custody conducted a special survey of national corrections during April 1989 to collect data on all *receptions* of prisoners during the month. The focus on receptions was to counteract the limitations implicit in census data which under-represents persons serving shorter sentences. Two points emerged from the survey which are relevant to current discussions on judicial racism. The national survey revealed that 39.5 per cent of Aboriginal prison receptions that month were for fine default. Thus almost four out of every ten Aboriginal people that entered Australian prisons in that particular month did so for failing to pay a fine. Furthermore, some 20 per cent of all prisoners received nationally that month were Aboriginal people. Such a percentage was considerably higher than the usual 14 to 15 per cent indicated by census surveys (Johnston 1991, vol 1, pp. 207-8).

The high proportion of Aboriginal people entering prison because of fine default raises serious questions in relation to the level of fines imposed by judicial officers. Commissioner Muirhead (1988) had previously recommended that legislation should be introduced which placed a "statutory duty upon sentencers to consider a defendants means to pay in assessing the appropriate monetary penalty" (Muirhead 1988, p. 24). This in fact was recommendation two of the Interim Report and followed immediately after the recommendation requiring that imprisonment be a sanction of the last resort. Certainly it is apparent from the Royal Commission's own national survey that the proportion of Aboriginal people entering gaol for fine default is twice as high as the proportion for non-Aboriginal people (Johnston 1991, vol 1, p. 207, Table 7.6).

Racism is Gendered: Aboriginal Women and the Courts

Any discussion of judicial racism must analyse the way in which such racism is also gendered in its perspective and application. We know that Aboriginal women make up a greater proportion of those in prison and police custody than do Aboriginal men. Aboriginal men comprise 14 per cent of all male prisoners. However, Aboriginal women comprise 16 per cent of all female prisoners. Similarly Aboriginal men comprise 26 per cent of all males in police custody, but Aboriginal women comprise 50 per cent of all women in police custody (Johnston 1991, vol 1, p. 194). We also know that Aboriginal women are victims of family violence and abuse. It is important then to consider how Aboriginal women are treated by the courts as both offenders

and victims, and to explore how issues of racism and sexism become intertwined.

Let us begin by looking at the issue of Aboriginal women as offenders and their over-representation in sentenced matters. If we take Western Australia as an example, Aboriginal women made up 67 per cent of all sentenced female prisoners during 1989, compared to Aboriginal men making up 49 per cent of all sentenced male prisoners (O'Dea 1991, vol 1, p. 163, *See* Table 4.9 Major Offence of Each Sentenced Prisoner Received in Western Australia Year Ending 30 June 1989). In addition to Aboriginal women being proportionately more over-represented than Aboriginal men, there were also significant differences in the reasons for imprisonment between Aboriginal women and non-Aboriginal women.

Some 20 per cent of Aboriginal women sentenced to gaol were there for offences related to public order including drunkenness, disorderly conduct and other good order offences. However less than 3.5 per cent of non-Aboriginal women were in prison for similar offences.

Aboriginal women were also more likely to be in prison for assault than non-Aboriginal women (12.2 per cent compared to 1.1 per cent). Conversely 32 per cent of non-Aboriginal women were in gaol for fraud and drug offences, compared to 2.5 per cent of Aboriginal women.

It could be argued that such figures simply represent different offending patterns of Aboriginal and non-Aboriginal women. However, one fundamental question which needs to be addressed is why are Aboriginal women being imprisoned on trivial charges? Even if we accept that Aboriginal people do not generally receive longer sentences for the same offences as non-Aboriginal offenders (Walker 1987), the question as to the extent to which Aboriginal women are brought before the courts and sentenced to imprisonment for minor offences remains. This question of course raises again the issue of the extent to which the courts simply rubber stamp the process of selective policing for particular offences.

In addition, the question is raised as to why imprisonment is being used as the sentencing option for these offences. Commissioner Johnston has noted that the level of over-representation of Aboriginal people in non-custodial corrections is lower than in custody. He suggests that this may occur because of a "belief held by judges, magistrates and parole authorities that Aboriginal offenders are either less able or less willing to comply with the requirements of non-custodial orders" (Johnston 1991, vol 1, p. 217). Other evidence suggests that it may also occur because of a paternalistic racism. Dodson noted that one justice in Western Australia stated that he sentenced Aboriginal women to terms of imprisonment to protect their welfare. "Sometimes I sentence them to imprisonment to help them . . . They get cleaned up and fed then" (Dodson 1991, vol 1, p. 136).

It has also been suggested that because Aboriginal women are the victims of domestic violence, this factor may have some bearing on the number of Aboriginal women imprisoned for offences against the person. It has also been suggested that some Aboriginal women have been convicted for killing a person who has been violent to them (Atkinson 1990). The statistics do not indicate whether the convictions for offences against the person are directly related to, or attributable as a response to domestic violence.

LaPrairie (1989) in discussing Canadian indigenous women has linked high levels of domestic violence to the disproportionate imprisonment of indigenous women for crimes against the person. She argues that there may be a strong relationship between the condition of indigenous men as a result of colonisation, male violence against

indigenous women and subsequent criminal activity by indigenous women. She suggests three ways that indigenous women's conflict with the law could be related to family violence; firstly, indigenous women might retaliate against violence by the use of violence; secondly, by escaping from violent or abusive situations there may be a resort to alcohol or drug abuse; and thirdly, the victimisation of women may itself cause abuse or neglect of others.

For Aboriginal women, physical force may be the only resistance to domestic violence available given a range of pressures which militate against the involvement of the police (Atkinson 1990; Dodson 1991, vol 1, p. 381). It has also been suggested that the forms of violence that Aboriginal women use are more akin to customary obligations (Langton 1991, p. 311).

The issue of family violence obviously raises the question of Aboriginal women as victims of physical and sexual assault and their treatment by the judiciary. Both Audrey Bolger (1991) and Sharon Payne (1992) have discussed how appeals to Aboriginal customary law have been used in a way which legitimates physical and sexual violence against Aboriginal women. Bolger writes,

> Reading many court transcripts relating to cases of rape, murder and assaults on women is like reading the minutes of a male club. Judges, lawyers and witnesses act to confirm each other's prejudices—that men may be provoked into violence by women's actions, that women are inferior and that rape is not a serious offence in Aboriginal society and so on (Bolger, 1991, p. 85).

Bolger has argued that while the police response to violence against women leaves much to be desired, there has at least been some recognition of problems in that area and training programs have been put into place. The reaction of the judiciary, however, has been quite inadequate. Justice Vincent from the Victorian Supreme Court has noted that the courts have not kept up with changing community standards in relation to domestic violence, noting that the perpetrators of these violent crimes were treated with more "understanding" than other violent offenders and that pleas of provocation were generally accepted by male offenders but rejected for female offenders (Bolger 1991, p. 85). Bolger has argued that in addition to these permissive attitudes towards domestic violence, in the Northern Territory there is the additional dynamic operating concerning white preconceptions and stereotypes about Aboriginal culture and traditions.

Bolger referred to a number of Northern Territory cases which had occurred during the 1980s where it was accepted by the judge that violence and rape were in some ways acceptable within the Aboriginal community. In the case of *R v. Narjic* (1988) the defence suggested that "it is the custom... for whatever reason, that wives are assaulted by their husbands" and that the defendant was "a highly respected member of the community". Bolger notes that evidence presented to the court indicated that the man had seriously assaulted his wife on previous occasions causing injuries including ruptured spleen and two miscarriages. The judge found the defendant guilty but concluded that he was "a man of good character" and "seemed to have a good marriage" (Bolger 1991, p. 86). In the case of *R v. Lane,* the defendants were accused of the rape of a woman who subsequently died. Bolger notes that "the defence adduced evidence, all obtained from non-Aboriginal males, to show that rape was not a very serious crime in Aboriginal society and by approaching the men and asking for a cigarette the woman may have been seen as inviting the men to join her" (Bolger 1991, p. 86). The judge in his summing up is reported as saying,

> There is evidence before me, which I accept, that rape is not considered as seriously in Aboriginal communities as it is in the white community . . . and indeed chastity of women is not as importantly regarded as in white communities (cited in Bolger 1991, p. 86).

Bolger noted that it is invariably the practice that those who are responsible in court for interpreting and defining Aboriginal traditions are male. The determination as to what is Aboriginal culture or tradition is derived from a male perspective.

In a similar vein Sharon Payne has noted that Aboriginal women have been subject to three types of law, "white man's law, traditional law and bullshit traditional law; the latter being used to explain a distortion of traditional law used as a justification for assault and rape of women" (Payne 1992, p. 37). According to Payne "quasi-anthropologists and all manner of experts" have been used to justify rape and sexual assault as in some way traditional. A variation on this theme was a case in Canberra during early 1991 where the defence for an attack on an Aboriginal woman "was based on the loss of lands and culture on the part of the young males involved" (Payne 1992, p. 37). Payne added caustically "apparently the young woman had no such defence although she too had lost her heritage". The judge accepted the loss of culture as a mitigating factor. Payne adds that other explanations for the assault—that the offenders were young, male and drunk—were ignored.

Through analysing the judicial reasoning used in cases referred to above we can begin to appreciate that racism and sexism are intertwined. There is of course considerable room for far greater analysis of the link between the way Aboriginal women are treated by judicial officers as a law and order problem to be sentenced to imprisonment for minor offences, and the racist conceptions of the place of Aboriginal women within Aboriginal society.

Judicial Racism and the Royal Commission Recommendations

On 10 June 1992 a thirty-eight year old Aboriginal woman was found hanging in a cell at Macquarie Fields police station in outer Sydney. She had been sentenced earlier that day by a local court magistrate to two months imprisonment for possession of a small quantity of marijuana. The victim had a history of depression and anxiety. The magistrate refused the request of the Aboriginal Legal Service for a pre-sentence report. The ALS has since claimed that at least five recommendations of the Royal Commission were breached prior to the death including that a custodial sentence was not used as a last resort; the woman had been left alone in a cell; there were no regular checks; no medical assessment was made prior to being placed in a cell; and all dangerous objects were not removed.

How might we interpret this incident in the light of an understanding of judicial racism? It seems apparent that the results of the Royal Commission place serious responsibilities on magistrates in relation to the imposition of custodial sentences on Aboriginal people. There is of course no legal responsibility for magistrates to follow, or indeed inquire into the recommendations of the Royal Commission. The judiciary, if it so chose, could remain blissfully unaware of one of the nation's most extensive reviews of the criminal justice system. The recommendations do not have the force of law, they are simply recommendations to government. However, it can be argued that the judiciary has an ethical and professional responsibility to at least be aware of the Royal Commission's recommendations, particularly as many of the Commission's recommendations impinge on sentencing practices.

Yet many Aboriginal Legal Service office managers, field staff and solicitors from a number of jurisdictions have expressed alarm at the unprofessional and contemptuous manner in which reference to the Royal Commission's recommendations have been swept aside by magistrates during hearings. How seriously did the magistrate consider the Royal Commission's recommendations in the case of Phyllis May, if the Aboriginal Legal Service were refused the opportunity to have prepared a pre-sentence report?

One of the major Royal Commission recommendations (No 96) involving judicial officers relates to their training in Aboriginal issues. The recommendation is supported by all States and Territories. Several issues flow from a concentration on training judicial officers in Aboriginal issues. Firstly the degree of support for education can be questioned. For instance, the Queensland response, while supporting the recommendation, noted that "concern exists in relation to the concept of imposing training on judicial officers in that this could be perceived as an unwarranted intrusion on the independence of the judiciary" (Commonwealth of Australia 1992, vol 1, p. 352). It should also be noted that an awareness of the need for judicial training in Aboriginal issues has been around for some time. McCorquodale concluded some five years ago, after a review of the issue of judicial racism, that there was a need for formal training of judicial officers concerning the unique or exceptional social condition of Aboriginal people. Such training should be "extra-legal and particularly sociological" (1987, p. 51).

A focus on training also raises the issue of the nature and success of training. Judging from the government responses to Recommendation 96, it seems that the focus would rely on "one-off" presentations related to Aboriginal issues (Commonwealth of Australia 1992, vol 1, pp. 349-55). Such an approach has dubious pedagogical value and its effectiveness has certainly been questioned in relation to police training both in Australia and overseas (Human Rights and Equal Opportunity Commission 1991, p. 330).

The third issue which is raised by the focus on training judicial officers is the inevitable limitations of such an approach. The assumption underlying the need for training is that the non-Aboriginal criminal justice system will remain as central in the administration of justice for Aboriginal people. Training judicial officers in Aboriginal issues in one sense confirms the centrality of non-indigenous justice systems while reasserting and maintaining the marginality of indigenous people. Aboriginal people remain on the periphery. Another approach would be to assert the principles of self-determination and the right for indigenous people to develop Aboriginal justice mechanisms as a priority over any training of judicial officers.

There should be recognition of the limitations inherent in relying on training of judicial officers to change far more fundamental processes of structural racism.

Pat O'Shane stated recently that:

> In imposing penalties judicial officers are expected to take into consideration the background, personal and familial circumstances of a defendant. Usually, but not always, issues of family breakdown, ill health, lack of employment, and so on, are considered as mitigating factors. The late Mr Justice Murphy went even further in relation to Aborigines, and said, in the case of *R v. Neal*, that when dealing with Aborigines, courts should have regard to the entire history of Aboriginal-White relations since 1788, as mitigating factors. Statistics on penalties suffered by Aborigines show that Courts are not heeding Murphy's words in that case (O'Shane 1992, p. 6).

While the author respects Murphy's view that the processes of colonialism should be seen as a mitigating factor in determining sentence, we should also be aware that judicial officers are in a position to impose their interpretations of history and culture. Indeed the South Australian examples and the cases relating to rape and sexual assault in Northern Territory show how particular racist conceptions of history and culture can be used to decide quite fundamental questions in relation to what is and who is Aboriginal. The judiciary remains in a powerful position to legitimate a range of racist concepts concerning indigenous people.

Conclusion

There is little doubt that the area of judicial racism has been neglected. This paper certainly aims to open up as many questions as it might answer, and points to the need to scrutinise judicial thinking within a broader framework than simply the logic of legal rationality. Judicial decision-making also needs to be analysed within a framework that understands the functioning of the judiciary as part of a criminal justice system. This paper has largely relied on the more overt cases of direct racism in conceptualising the nature of Aboriginality. However, the more mundane and obscure functions of magistrates passing sentences on Aboriginal people on a day-to-day basis also need to be subjected to far more careful analysis than has occurred

recently. The judiciary has been largely immune from considerations of racism and this no doubt reflects partly their own positions of power within society. It also reflects the related issue that racism is often considered as the attribute of uneducated "rednecks" rather than seeing it as a systematic process which may inform the most powerful institutions in the nation.

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ABORIGINAL PEOPLE AND THE COURTS

Lionel Fraser

Aboriginal Assistants to the Courts

THIS IS A PROPOSAL WHICH ATTEMPTS TO PROVIDE A SCHEME FOR THE TRIAL of Aboriginal people in criminal proceedings. There should be created a position, designated "Aboriginal Assistant to the Court"; "court" should be defined to mean Magistrates' Court, District Court, Supreme Court and the Court of Criminal Appeal. The proposals are confined to Queensland, but they may find favour with the law makers and be translated to a national scale.

One of the major problems confronting the administration of criminal justice in Queensland is physical. It is the tyranny of distance. The most convenient division of the state, for present purposes, would be the adoption of the existing Magistrates' Courts Districts.

The Attorney-General should appoint an advisory committee of three for each district. Two of the three should be Aboriginal people of good standing in their community. The third should be a non-Aboriginal, preferably a cleric or a social worker. The composition of the committee, once appointed, should be published. The term of appointment should be no more than three years.

The prime function of the committee is to advise the Attorney-General on suitable persons for appointment to the position of Aboriginal Assistant to the Court. Only Aboriginal people should be recommended to the Attorney-General. The qualifying criteria for recommending a particular person should include:

- His/her good training in the community at large, and, in particular, the Aboriginal community of that district. It is of paramount importance that he/she should have the confidence and respect of the Aboriginal community in which he/she lives;

- His/her knowledge and appreciation of Aboriginal customary law and practice and all, or most, of its ramifications;

- Literacy (although not essential);

- A willingness to serve on a paid part-time basis as required as an assistant to the court involving the trial or sentence of an Aboriginal person.

A list of five suitable names should be furnished to the Attorney-General by the district advisory committee. The Attorney-General should appoint three as Aboriginal assistants to the court of the district.

In every case involving the trial or sentence of an Aboriginal person, at least one Aboriginal assistant to the court should be present in court during the whole of the hearing of an Aboriginal criminal litigant's case.

The Aboriginal assistant should not sit on the bench unless invited by the magistrate or the judge for a particular purpose. He/she should sit below the judge in the position presently occupied by the judge's associate or clerk.

An Aboriginal assistant's function in court should include:

- explaining to the litigant the nature of proceedings and his/her legal and constitutional rights. This should, of course, only be necessary if the Aboriginal litigant is not legally assisted. Nowadays, almost without exception, in the District and Supreme Courts, Aboriginal people are legally represented pursuant to a Legal Aid Scheme;

- Helping litigants express themselves in a way which is both fair to them and intelligible to the court (*See*, in this connection, the remarks made by Wells J. in the *Queen v Williams* (1976) SASRI, at pp. 6 and 7);

- Taking his/her own notes on evidence;

- Listening to the evidence with particular regard to the discovery of possible causes of the offence with which the litigant is charged. These may be directly or indirectly referable to Aboriginal customary law, practice or attitudes;

- With the leave of the judge, putting questions to witnesses, including the accused, immediately relevant to customary law. These questions and answers will constitute a part of the record;

- In the trial or sentence matter in the Magistrate's Court, retiring with the magistrate before he/she gives a decision and advising on any aspect of customary law relevant to the case. A note of such advice should be taken and should constitute an integral part of the record of proceedings;
- In the trial matter in the District Court or Supreme court, retiring with the judge before summing up and advising the judge on any aspect of customary law or practice relevant to the case. A note of such advice should be taken and should constitute an integral part of the record of proceedings;

- In a sentence matter in the District Court or Supreme Court, retiring with the judge before passing of sentence, and advising the judge on any aspect of Aboriginal customary law or practice relevant to the case. A note of such advice should be taken and should constitute part of the record of proceedings;

- In an appeal matter before the Court of Criminal Appeal, if invited, retiring with the Court before it pronounces judgment and advising the Court on any aspect of Aboriginal customary law or practice affecting the case, whether on conviction or sentence, or both.

The foregoing is not intended to diminish the right of either party to litigation, in an appropriate case, to call expert evidence on Aboriginal customary law or practice. Nor is it intended to preclude the judge, in a suitable case, from calling an expert on customary law to assist in deliberations. Presumably anthropologists will be called upon from time to time for this purpose.

A note of the assistant's advice to the judge should be made. The judge may accept or reject the advice. The judge should state in open court, at the appropriate time, whether advice has been given, and whether it is accepted or rejected and the reasons. Generally, such advice will go in mitigation of sentence. Where the advice goes to substantive issues, it is probable in most cases, that other expert evidence will vary from case to case, but presumably, in many cases, the evidence will be given by anthropologists who have done considerable field work.

It is realised that in many instances there will be no element of Aboriginal customary law involved. However, the visible presence in court of an Aboriginal assistant, with the powers above, would be tangible evidence to the Aboriginal people of their own kin participating in the judicial process of the law. Such visible participation should inspire greater respect and confidence in the criminal justice system as it impinges upon Aboriginal people.

The scheme the author has devised is not put forward as a panacea. However, it may amongst other things, have at least the incidental and good effect, of reducing the painful hostility of the Aboriginal people to the established system.

It may be impracticable to implement the proposed scheme in its entirety in that court. Some accommodation or modification to the peculiar requirements of the Magistrate's Court may be necessary.

Here we have the visible presence of a person who, by law, is entitled to advise the judge.

This will require a period of experimentation. In Queensland, if the scheme is not to be implemented as a whole, towns like Mt Isa and Cairns may be good starting points, where a large proportion of the criminal litigants comprise Aboriginal people. Improvements or modifications can be made in the light of experience.

Legal Representation¾ Legal Aid System

The whole concept of the Legal Aid system in Queensland concerning Aboriginal representation needs to be addressed.

The current system is inadequate and has little input or involvement by Aboriginal Legal Service representatives, acting for or on behalf of an Aboriginal person before the courts. The Aboriginal Legal Service engages a solicitor or firm of solicitors to act on behalf of Aboriginal people before the courts. These firms of solicitors act for Aboriginal people mainly in the Magistrates' Courts on minor matters, such as remands, pleas of guilty and committal proceedings on minor offences. For serious offences the Public Offenders Office would take over the case and act for the accused at the committal and subsequently at the trial.

The major problems with this system are that there is no Aboriginal involvement or input in these cases at the committal proceedings or at the trial. There is also the problem of the Public Defenders Office engaging a Junior Counsel less experienced in Criminal Law.

There are two proposals which may resolve this problem. The first is that the firm of solicitors engaged by the Aboriginal Legal Service could act as agents for the Public Defenders office. The Public Defender would then brief the matter back to the firm of solicitors engaged by the Aboriginal Legal Aid Service and this would enable the Aboriginal Legal Service to be involved throughout the case.

The other alternative is that Queensland should be brought into line with other States where the Aboriginal Legal Services may employ barristers to work in their offices. This would enable these barristers to represent Aboriginal people throughout the entire legal proceedings.

WHAT IS OBSCENE¾ THE LANGUAGE OR THE ARREST THAT FOLLOWS?

Kathryn Pirie and Sheryl Cornack

"You can all go and get fucked"
"Fuck off"
"Fuck you cunt"
"And fuck you cunts too"
"Why don't you fucking leave me alone?"
"You get fucked you bastard"

A PAUSE MAY BE NECESSARY AFTER SUCH AN INTRODUCTION TO CHECK FOR the sound of handcuff ratchets on my wrists as the strong arm of the law descends to protect you from "public obscenities". If adolescents are caught swearing at school they may have to write lines as punishment, or at home they may be threatened with having their mouths washed out with soap, if their parents are sensitive to indelicate language. It is disturbing that the use of these words in North Queensland in the 1990s may lead to a person being arrested, and kept in custody overnight to face a criminal prosecution. It is most disturbing that this is more likely to occur if the words are used by an Aboriginal person to a white male police officer. Yet on any day in any place in Australia, people are likely to hear words like these used freely in everyday conversation in many different contexts and circumstances. These words may once have caused affront and alarm, but the limits of what words may be used in conversation without social stigma or disgrace have now greatly expanded. The use of obscenities may still cause discomfort, mild distress, or upset to some people, and may lead to a rebuke or criticism of the speaker.

There have been a number of recent appeal matters before the District Court in Townsville which have highlighted the appalling use of the power of arrest in these cases. These appeals have assisted the Townsville Aboriginal and Torres Strait Islander Legal Service to spotlight the abuse of

the obscene language charge in policing members of the Aboriginal community. Each case concerns a charge under Section 7 of the *Vagrants Gaming and Other Offences Act 1931* which prohibits the use of obscene or insulting language and disorderly conduct in a public place. The cases concern language used by Aboriginal people in exchanges with police after the police have issued a warning which has not been heeded. The annoyed police officer then arrests the Aboriginal person for obscene language. The Aboriginal person may struggle against the arrest so that what follows sets in motion what is often termed the trifecta of offences—that is, charges of resisting arrest, hindering police, and assaulting police.

Usually the offence occurs in a public place where any other members of the public present do not appear interested in or offended by the language. In most instances the user of the words has been affected by alcohol, has not been suspected of any real criminal conduct, and has been unable to articulate a studied or eloquent response to police intervention in other meaningful language. The use of the words has been little more than the exasperated and frustrated cries of people powerless in the criminal justice system. The first of these cases involved an Aboriginal woman who was arrested at 4.00 am one Thursday morning after she had screamed "You can all go and get fucked!" to a police officer. He had told her to move off the Flinders Street roadway where she had been standing waiting for a taxi with other people who had earlier left a local nightclub with her. He had already warned her about her language.

The second case concerned an eighteen-year-old Aboriginal woman who told a police officer to "fuck off" at 2.00 am on a suburban street on Palm Island. The officer had earlier warned a large group of people using the same sort of language to stop. They had moved off and the woman had continued to shout abuse at the rest of the group. The officer had warned her again and she had turned and used those words to him before attempting to move off herself. She was arrested before she could do so.

The third involved an Aboriginal youth who was hitchhiking in a remote part of Townsville where public transport is not readily available. A police officer issued him with a traffic offence notice for hitchhiking. The police looked in the rear view mirror as they drove away and saw the youth raise his arm and index finger. The police stopped the vehicle and returned to him. He said, "You pigs are all the same". He was warned about his language and was arrested when he replied, "Thanks pigs". In the fourth, an Aboriginal man was lying on the ground in Anzac Park in Townsville on a Saturday afternoon. Two police officers approached him and said "Gidday, how are you going?".

He stood up and said, "Why don't you fucking leave me alone?" The officers warned him about using that sort of language.

He then said, "You get fucked you bastard!" which immediately prompted his arrest.

In the fifth case, police were patrolling Hanran Park in Townsville when an exchange took place between an Aboriginal woman and a police officer about a charge outstanding against her. She became agitated as she believed police were telling lies to support their case. She said to the police officer, "Your wife is at home in bed with another man". She was arrested.

A later case involved two Aboriginal youths at Mount Isa. In the very early hours of a Friday morning police officers received a complaint about an assault and went to investigate. They did not find any evidence of any assault but found a group of Aboriginal youths all affected by liquor playing around and joking with each other at

the roadside in the business district of the city. The police decided to herd the group to the taxi rank. One of the youths wanted to shake hands with the police and was warned he would be arrested for hindering police. The group protested that they had not done anything wrong and objected to the way the police were treating them. Their protests included a fair amount of robust language. They were warned about swearing and the group became aggressive and complained that the police were only interfering with them because they were black. One youth yelled out, "Fuck you cunt" and raised his middle finger.

The police called for assistance and the youth was arrested. Two others were charged with hindering police when they tried to intervene as their friend was being bundled into the paddy wagon. A fourth member of the group was arrested outside a nightclub a short time later when he told police who were watching him from a police car either "and fuck you cunts too" or "get fucked". The evidence on his exact words was not clear. Furthermore, it is not only the use of this sort of language that can lead to arrest and charge.

In another case an Aboriginal woman became upset when her defacto husband suffered chest pains and needed medical attention from ambulance attendants in the Flinders Street Mall. She yelled, threw her arms around and swore when she was told that she could not go in the ambulance with him to hospital. She was arrested and charged with behaving in a disorderly manner in a public place.

All of these people were arrested, taken into custody, and then before a Magistrate's Court to face criminal charges. In each case they were convicted of the offence and fined. Appeals were taken to the District Court against both conviction and sentence. The appeals were successful, the convictions and sentences were set aside, and each of the defendants were awarded costs against the prosecution. Charges of obscene language are usually preferred ostensibly because members of the community are sensitive to the language and offended by it.

Offensive Language and Community Standards

Some members of the Australian community are undoubtedly offended by the use of language such as this. As Judge Wylie, sitting as an appeal court in the Townsville District Court, has pointed out the proper test is whether the current standards of the community as a whole would be offended. On a criminal charge the community standards of the majority must be proved to have been offended beyond reasonable doubt. The test for obscene language is whether the language so offends the current community standards of decency that the conscience of the community as a whole is offended by its indecent, repulsive, lewd, depraved, abominable, immodest, or disgusting nature. There is no definitive list or category of words proscribed by parliament as obscene or indecent and those terms are not statutorily defined. It is important to look at the community as a whole and not just a portion of it. That community includes members of the Aboriginal community and many people who regularly use similar words.

Judge Wylie has commented that the Australian community is a robust one even in its reaction to four-letter words. There is a broad range of community reaction to the words "fuck" and "cunt". They appear in poetry, drama, and literature, and may be used as terms of abuse, or terms of endearment. They are used in oral and written communication by ordinary people in the street and by those in the corridors of power. Indeed the same sort of language is regularly used by the police towards members of

the community both Aboriginal and non-Aboriginal. This was portrayed graphically in the arrest of the person charged with obscene language on the recent ABC television documentary *Cop It Sweet*.

The Townsville community is not so very different from the rest of the Australian community. Four-letter words are frequently used in communication in public places. It is not unusual to hear the words "fuck" and "cunt" used at football games at the local sports reserve, or aboard the public bus flooded with high school students, in lounge bars in the city, in suburban hotels, on inner-city taxi ranks, and on the streets when motorists protest at each other about their driving skills. It is even common experience to hear these words used by police in the watch-house and by members of the local legal fraternity in the precincts of the local courts. This list is seemingly endless.

In all these cases, the words were spoken to a police officer, and the arrest followed disobedience to a police direction, irrespective of whether that direction was legally based. Judge Wylie forms the view that in most of these cases the direction was unlawful and legally unjustifiable. It is the disobedience that leads to the arrest, not the language or the behaviour itself. In most of the cases there were no other members of the public in the near vicinity, or those that were, appeared unconcerned at the language. In none of the cases have members of the public been called to give evidence either at the original hearing or on the appeal.

Judge Wylie points out that courts should look with great care at the precise words and actions which are said to found the charge, and not at the totality of the conduct and situation. The courts must determine as a question of fact whether the language is obscene, indecent, or insulting, or whether the behaviour is disorderly according to the context and circumstances. He indicates that these offences may amount to a punishment for illiteracy or deficient vocabulary. These cases concern words which have been used as a protest by people who believed they were being poorly treated by the police. In most cases there was a good reason for the person to become agitated by the treatment afforded to them. Their hostility is understandable, as is the fact that their response is forthright, firm, and even rambunctious. The words are used to tell the police to go away, or to leave them alone.

In most cases they are spoken in the heat of an angry moment to express exasperation, frustration, despair, or protest. These people had a right to express dissent, to ask the police to go away and leave them alone, and to protest about police interference. Had this communication occurred in sophisticated language which was more subtle and veiled, the arrest may not have occurred.

Judge Wylie comments that parliament seems concerned that there should be purity of language and dignity of conversation in public places. An examination of Hansard's record of the debate prior to the law being passed in 1931 is revealing. Parliament seemed concerned with sexual perversion and ensuring that the police had adequate power to deal with matters offending public morals without being subject to unnecessary abuse and attack. The debate recognises that it is difficult to gauge community standards of decency as public perceptions are so diverse and often influenced by prejudice. It was argued that offences prompted by sexual perversion were in a different category to those prompted simply by bad temper or exuberance of spirit. There was some concern that the power of arrest would be abused so that innocent people would suffer from harassment, but the debate indicated a faith in police that they would not abuse the wide powers given to them as it was seen that it was only a minority of police who were as much concerned with harassing people as

with preserving law and order. The Home Secretary assured the house that the Bill did not vitiate the power and authority to proceed by way of complaint and summons rather than by arrest. Doctor Noble protested about the high penalties which included imprisonment. He said, "Let us go the whole hog and pour molten lead down the mouths of those who utter indecent language, and let us pour molten lead into the ears of those who listen to it. Let us tear their toenails off. That is what Hitler did" (Hansard 1931).

Parts of the debate also reveal the racism of the time. Parliament was considering a section which provided that any person not an Aboriginal native or child of an Aboriginal native who wandered in the company of an Aboriginal native and did not give satisfaction that he had a lawful fixed place of residence was deemed to be a vagrant. This provision was intended to outlaw comboism, the "carnal knowledge of a gin by a white man". Parliament considered it was necessary to specify the sex of an Aboriginal native to avoid prospectors who had male Aboriginal offsiders being dragged out of the bush to the nearest court and charged with vagrancy. The Home Secretary declared "It has been found in the past that, unfortunately, there is a class of white men who are prepared to live in Aboriginal style with black gins. I do not care whether a man be a prospector or whatever one may call him, he has not lived up to the principles of white manhood" (Hansard 1931).

In Judge Wylie's view, exchanges between members of the Aboriginal community and police officers should be shrugged off as far as possible and not made the subject of criminal charges. He has indicated that the charges should be brought by complaint and summons and not by arrest. These are sentiments which should be shared by all reasonable people. As he points out, proceeding by Complaint and Summons not only avoids the brutality of arrest, but it allows an opportunity for tempers to cool, feelings of outrage, surprise and annoyance to abate, and for the police to discuss the incident

with senior officers. There are stronger reasons for insisting on such a course. It is the experience of most Aboriginal Legal Services that the power of arrest is used arbitrarily, and with violence toward Aboriginal people. In addition, ancillary charges usually arise out of the process of arrest of the person or others. The power of arrest for swearing cannot continue to be abused as it has in the past.

Public Disorder Offences

Recommendation 60 of the Royal Commission into Aboriginal Deaths in Custody (1991a) is that police services take all possible steps to eliminate violent or rough treatment or verbal abuse of Aboriginal people by police officers and to eliminate the use of racist or offensive language by police officers. The Commission recommends that where such conduct is found to have occurred, it should be treated as a serious breach of discipline. It is time for the government to seriously examine the use of the police power of arrest for offences involving language.

It was the experience of the Royal Commission into Aboriginal Deaths in Custody that the recorded criminal history of many Aboriginal offenders included repetitive public disorder offences including obscene or offensive language convictions. Often the conviction resulted in a period of imprisonment for default in the payment of fines. The ultimate penalty for use of bad language usually directed at police is repetitive imprisonment. This abuse of the obscene language charge has had little effect other than to oppress members of the Aboriginal community. The comment by Commissioner Wootten in the inquiry into the death of David Gundy is apt:

> It is surely time that police learnt to ignore mere abuse, let alone simple "bad language". In this day and age many words that were once considered bad language have become commonplace and are in general use amongst police no less than amongst other people. Maintaining the pretence that they are sensitive persons offended by such language . . . does nothing for respect for the police. It is particularly ridiculous when offence is taken at the ranting of drunks, as is so often the case. Charges about language just become part of an oppressive mechanism of control of Aboriginals. Too often the attempt to arrest or charge an Aboriginal for offensive language sets in train a sequence of offences by that person and others—resisting arrest, assaulting police, hindering police and so on, none of which would have occurred if police were not so easily "offended"(Royal Commission into Aboriginal Deaths in Custody 1991b).

Recommendation 86 of the Royal Commission is that:

> The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and police services should examine and monitor the use of offensive language charges.

The Queensland Government's response is support for this recommendation subject to community expectations. This is the very issue considered and determined by the Townsville District Court in all of the cases outlined.

In 1992 the community expectation is that the majority of members of the community will use four-letter words to express themselves in certain contexts and circumstances, even at times in public places. The response of the Queensland

Government is that Recommendation 86 will be dealt with through the review of police powers and the *Vagrants Gaming and Other Offences Act.*

Whilst Townsville has been at the State's forefront with this issue, the Government has not yet sought any input nor invited comment from the Townsville Aboriginal Legal Service. The reaction from the local courts, police and community to the District Court appeal decisions has been mixed. The Townsville Aboriginal Legal Service has not been in a position to thoroughly test the response from the local magistracy to these decisions of the District Court. In most matters which have come before the courts since these decisions the police have not proceeded with the prosecution or some other element of the charge has not been proved beyond reasonable doubt. Occasionally there have been remarks from local Magistrates that the law is "unsettled".

All the appeals referred to in this paper have been heard before the one District Court Judge, who no longer resides or sits in Townsville. The waters are yet to be tested before his brother judges. There has been some reaction by the police to the appeals.

There has been a reduction in the number of obscene language charges brought against Aboriginal people. This does not appear to be a response to the philosophy of the decisions, or the legal principles set out in them, nor is it a positive reaction to the Commission's Recommendations. Often in cross-examining police witnesses as to their knowledge of the appeals and recommendations, the police officers concede they know very little, if anything, about either. One police officer who volunteered in cross-examination that he had been briefed on the appeal decisions, suggested that the effect of the decisions was that offenders now had to be charged with "insulting language" rather than "obscene language". Indeed, the number of insulting language charges has increased in the Townsville District since these appeals. This effectively allows a detour to be taken around the central principles expressed in the decisions of Judge Wylie. The penalty upon conviction is the same for both offences but the test is different. The insulting language offence is more personal in nature and the test is whether the language is insulting and capable of provoking personal indignity or affront. It is absurd that police allege they experience insult at being called "queenie" or "pig". It is even surprising that they experience insult at being called "copper cunt" in view of the extent of the use of similar language in the police force itself.

The practice of proceeding with this alternative charge allows the hypocritical policing practices criticised in the appeals to continue. It allows the train of offences which generally follow an arrest for obscene language of resisting arrest, hindering police and assaulting police to continue. This is a mockery of justice. The Queensland Police Union reacted to the decisions of the District Court by publicly urging the community to lobby politicians. On the front page of the local newspaper in October 1991, a police union spokesman was quoted as saying that "police hands were tied by the decisions and people power was necessary to reverse the situation".

An irate member for Townsville, Ken Davies MLA, publicly accused the local judiciary of being "too soft on drunks and the obscene language offenders". He recommended that the judiciary "hand down maximum sentences to deter offenders or to keep them out of circulation for as long as possible". Responding to the involvement of the local Aboriginal Legal Service, Mr Davies suggested that "police should not be reluctant to act because of the backlash from the so-called do-gooders with seemingly endless funds of available legal aid". Whilst policing practice may be in response to local political calls to "crack down on the drunks and bad language",

the reality is that police remain the primary agent to react to this conflict. Police hold wide powers which they use to deal with these situations in the exercise of their discretion. Commonsense is required to deal with the conflict involved in these situations. The motives for using the power of arrest in these situations may include the wish to quickly remove Aboriginal people from public view to resolve a disturbance. It is also likely, however, that the motive includes an element of instant punishment for what the police perceive as disrespect. The Townsville Superintendent of Police responded to this interchange in the media between Ken Davies and the Police Union with common sense. He indicated that police did not have the power to remove any person from the mall whether they be Aboriginal or not. He indicated that a complaint had to be substantiated at law and that the conflict was being exaggerated. He added that the mall was a relatively quiet and nice place to be. Accordingly, the Aboriginal community and the legal service that represents them did not experience a fresh attack of obscene language and drunkenness arrests. The only identifiable community reaction to the appeals in Townsville emanated from the Townsville mall traders. The City Heart Business Associations Chairman stated in the local press that "traders were absolutely disgusted with the way drunks and indigenous people carry on in the mall". Of course, this reaction comes from those with vested commercial interests in a declining city mall trade. In order to gauge community reaction to the current situation and to the appeals it may be necessary to arrange a phone-in which raises the question "Should the use of obscene language or insulting language directed toward police during police intervention be penalised by the courts as a criminal offence?"

Cross-Cultural Communication

In seeking solutions to the present unsatisfactory situation, the cross-cultural aspects of communication must be recognised. Communication between people is often difficult, imprecise and uncomfortable and is influenced by cultural factors, including any shared past. When members of diverse cultures communicate the process is complicated by the cultural background of each. Words and phrases have a cultural context, and messages may be confused as reactions to words differ because of the disparate cultural landscapes of the people concerned. Communication reflects diverse cultural values and attitudes about people's personal rights. Even where an

Aboriginal identified person speaks English as their first language and lives in urban society, Aboriginal values and behaviours influence their lives and communication. The content of conversation has significant Aboriginal cultural and social aspects which lead to distinctively Aboriginal interpretations and meanings and the English spoken is not standard English but is a distinctly Aboriginal dialect called Aboriginal English.

It is not easy to develop effective cross-cultural communication skills as language reflects and expresses social and cultural realities and is a dynamic and creative instrument of social action. It is impossible to separate language from its context and the total interaction. In communication, a sense of Aboriginal identity remains strong as does the effect of ethnic consciousness, history, culture and the lived experience of racism and oppression. When these obstacles to communication are confused and complicated by the antagonism and real polarity of power involved in communication between Aboriginal people and white police, it is not surprising that difficulty and conflict occur. In traditional Aboriginal society, communication avoids direct verbal confrontation. Much depends on the relationship between speakers. In communication between white police and Aboriginal people, the Aboriginal people may see the police as powerful, prejudiced, rude, nosy, impatient, and inquisitorial. The police may see the Aboriginal person as slow, stupid, disrespectful, and uncooperative because they do not appreciate Aboriginal culture and communication. Better understanding of some of the principles of Aboriginal interpersonal communication and the differences of Aboriginal English might enable more tolerance, acceptance, and respect to improve communication between Aboriginal people and police. Police should be trained about these cultural differences and encouraged to use caution, circumspection and commonsense in their dealings with Aboriginal people.

Strategies

In order to develop strategies to overcome the problems highlighted in this paper, it is also necessary to recognise the purpose of the arrest and the unstated aims of it. It is necessary to devise fresh solutions which reflect the very human problems at the core of the situation. Appropriate action is needed. Arrest and incarceration is no solution. Aboriginal people will continue to get drunk and make a mild nuisance of themselves but there are social, cultural and historical reasons for this. Special attention may need to be paid to disturbances involving noise and alcohol in the mall and in the suburbs in domestic situations. To recognise the changed social perceptions to public swearing, the offences of obscene and indecent language in a public place should be abolished. As most of the charges against this law involve intoxicated persons, the abolition of the offence of public drunkenness is an additional necessary corollary. The abolition of these offences would be of no practical benefit or effect without the establishment of a network of diversionary shelters which are properly resourced. The practical implementation of a diversionary program would depend upon political commitment, guaranteed funding, and cooperation by the police and the community. Solutions need to be found to such basic and practical obstacles as who will transport people who are intoxicated and swearing to Diversionary Centres.

Diversion

A pilot Diversionary Centre is to be established in Mount Isa but is not expected to be operational until September 1992. In Brisbane an organisation known as "Murri Watch" has been incorporated to facilitate the implementation of the Commission's Recommendations. One of the objects of this organisation is "the decriminalisation of public drunkenness and offensive language". The Townsville representatives of the Watch-house Cell Visitors' Scheme are working to establish a Diversionary Centre for Townsville which they hope will be operational in about December 1992. In Townsville, the establishment of the Aboriginal and Torres Strait Islanders Police Liaison Unit may prove invaluable to the practical implementation of a Diversionary Centre and the policing of Aboriginal persons who are intoxicated and swearing.

In the majority of cases, the conflict, if any, can be readily resolved without arrest. The Aboriginal and Torres Strait Islander Police Liaison Unit was established in Townsville in May 1992 after dialogue between Winston Pryor of the Aboriginal community and police representatives. The unit features Aboriginal and Islander Liaison officers who assist in patrolling the city regions trouble spots. Mr Prior advises that in the four-week period in which the unit has operated, the rate of alcohol and drug-related offences for which Aboriginal people are charged in the city region has been reduced by 25 per cent in comparison with police statistics for the 1991 period.

Legislation

If the abolition of the offences of obscene and insulting language is not acceptable to the community as a whole, then the legislation should at the very least, be amended to provide that a necessary element of the offence is that the language used in its context and circumstance actually intrudes upon other individual's rights as users of the public place. This is in accordance with the New Zealand position where the courts have indicated that the offence is not simply swearing in public. The gravamen of the offence there is seen as the interference with the public rights of others.

Legislation is needed to enshrine the principle that police should only use the power of arrest as a sanction of last resort. Alternatively, the power of arrest should be removed entirely for public disorder offences. If this sort of behaviour remains the subject of criminal sanctions, then on-the-spot tickets could be issued or the offence could remain but become non-punishable like riding a bicycle without a helmet in Queensland. Difficulties would arise if imprisonment, rather then levy by distress, was the default sanction for non-payment of the penalty imposed in on-the-spot tickets. Alternatively, the penalty imposed by the on-the-spot tickets may not be monetary, but may be a direction that the person "move on", be taken to a diversionary centre, or perform community service.

If these matters are to remain the subject of criminal sanctions and prosecutions pursued, they should be commenced by complaint and summons. If other matters are taken on appeal, it may be appropriate to consideration taking civil action as well for false imprisonment if it can be proved that the arrest was unlawful as the language was not obscene. This may prompt a positive change in police practices at the risk of police harassment if the action were not successful. Even if these matters remain the subject of criminal sanctions, prosecutions should not be commenced for every breach of the legislation. Queensland may need to adopt a prosecution policy similar to that

in force for the Commonwealth. The prosecution policy of the Commonwealth provides that the decision as to whether a prosecution should be commenced must take into account whether the public interest requires a prosecution to be pursued. Factors to be taken into account in making that decision include whether the offence is trivial or technical, any mitigating circumstances, the alleged offenders antecedents and background, the effect on public order and morale, whether the offence is of considerable public concern, whether there is a need for deterrence, and whether the prosecution would be counter-productive by bringing the law into disrepute.

Police Training

There is an urgent need for ongoing police training. Police officers remain the primary agent in reacting to these conflicts. In the heat of the moment officers need to rely upon clear informed guidelines instructions and directions to properly exercise discretion and restraint. Any alternative practice for dealing with these situations will only succeed with the commitment of the police. It is necessary to gain the support of the police to alternative solutions. The comments of the Report of the Royal Commission on Police Powers and Procedure of 16 March 1929 are apposite. It reported that "unless relations (between the police and the general public) are marked by mutual confidence and cooperation, no laws, no matter how well conceived, no regulations however well drafted, will ensure the maintenance of law and order, and the very basis of our social fabric will be exposed to disintegration".

Literacy

Action is also needed to improve literacy amongst Aboriginal people. In many ways it is not surprising that these cases have occurred in Townsville which has a reputation for being the centre of the parochial north, where racism and sexism thrive. The action taken to address the concerns raised in this paper must include long-term action designed to remove the structural oppression currently experienced by Aboriginal people. A fair proportion of powerful positions in the criminal justice system should be held by Aboriginal people. Action is needed to provide Aboriginal people with the training and skills required for positions within the police force, the legal profession, the magistracy and the judiciary. It will only be from a position of true equality that true justice can be experienced.

Conclusion

In 1992 it is time to demand from the police that they exercise their powers and discharge their obligations in a fair, reasoned and just way with cognisance of the unequal position of Aboriginal people in this society resulting from two centuries of oppression and prejudice. Surely it is time to demand of police that they act, at all times, in a way which does not fuel and fan the fires of inter-racial conflict and Aboriginal discontent, but in a manner which is based on commonsense and sensitivity.

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THE NORTH WEST COURT CIRCUIT (PITJANTJATJARA LANDS): A PERSONAL PERSPECTIVE

Garry Hiskey

WE LIVE IN A MULTI-CULTURAL SOCIETY. ONE IS ACCUSTOMED TO THAT, but our (or at least my) multi-culturalism is one viewed against the background of an Anglo-Saxon environment. To discover English as the second language and a community life based on a structure other than an Anglo-Saxon organisational structure came as a surprise to me. To me, going to the Pitjantjatjara Lands for the first time in 1980 was a bit like going to a foreign country. My ignorance was enormous.

I was accompanying the Circuit Magistrate preparatory to commencing duties as senior solicitor in South Australia for the Aboriginal Legal Rights Movement (ALRM). I observed the court in action. I was amazed at the number of community members who were present and I recall one occasion in particular. The room where the court sat was large. It was like a community hall. The magistrate sat at a trestle. Further trestles were provided for the prosecutor and lawyers. A dog lay asleep under the table where the prosecutor and lawyer sat. People wandered in and out of the court at will. Dogs moved about. Occasionally a man or woman would pick up a piece of wood or stick and throw it at a dog to get it to leave. Children walked or crawled all over the place. Overall, there seemed to be a level of interest and concern within the community which I had not seen in suburban Adelaide Courts to which I was accustomed.

Over a four-year period I became much better acquainted with and aware of Aboriginal issues and people. In 1984 I commenced duty as a Magistrate working in courts of summary jurisdiction. Since 1988, I have been the Circuit Magistrate running the summary North West Circuit Court on the Pitjantjatjara Lands.

Pitjantjatjara Lands

The Pitjantjatjara Lands referred to in this paper are part of the Lands which are the traditional home of the Pitjantjatjara. The Lands are located in the north west corner of South Australia and adjacent to both Western Australia and Northern Territory borders. They are vested by Act of Parliament in an incorporation of traditional Aboriginal people (known as Anangu). Estimates of the number of resident Anangu vary. The best estimates given to me are that Anangu number about 1,650. When white staff residents—school teachers, medical staff, and others—are counted together with non-Anangu Aboriginal people, the estimated population is 1,800-2,000 people. The major population centres are Ernabella, Amata, Fregon and lndulkana. The court visits each centre plus Pipalyatjara, located in the far corner of the State and close to the Western Australia border.

The Court Circuit

The North West Court Circuit sits every two months, that is, six times per year. Most of the personnel involved must travel to the Lands for the purpose of the conduct of the circuit. The personnel fly or drive to the Lands. They travel from Adelaide, Port Augusta, Coober Pedy, Marla and Alice Springs. The week is spent travelling around visiting each of the main population centres. The number of personnel and the distance means that the total cost of six circuits per annum is very substantial.

The Pitjantjatjara Council provides a lawyer who is recognised by the court as having status or "locus" to appear before the Court and make sentencing submissions, especially as to community attitudes about particular problems within the Lands and sometimes, but less often, about individuals. A police patrol from Marla also follows the court party. From one end of the Lands to another is a long drive—upon dirt roads not always well maintained. From Marla at the eastern end to Pipalyatjara at the western end by road is over 550 km.

There is no such thing as a timetable in the North West Circuit. How long one will spend at a particular court sitting is totally unpredictable. The extremes are enormous.

On one occasion I arrived at a particular community with a list of twenty or so people and thirty to forty court files only to find that the whole of the community was at ceremonies in Western Australia. Not a single person on the court list turned up. All non-appearances were proven, appropriate orders made and there was nothing further that the court could do. On the other hand, I once sat at another location until after dark finishing up at about 8.00 pm.

One of the outstanding attributes required of those participating in the North West Court Circuit is the ability to wait patiently. Inevitably, during the course of a court day, there are long delays. The lawyers take instructions only on the morning of the court sitting or on the night before. From a practical point of view, there is no point in starting the list until the lawyers have got instructions. One of the hardest parts of being a magistrate on the North West Circuit is to arrive at a community at say 10.00 am and then to sit and do nothing for several hours until the lawyers and the prosecutor are ready. Sometimes conditions can be extremely distressing, for example, this year in February at Amata the temperature reached 52^{o}C and there was not one day of the circuit when the temperature did not reach at least 40^{o}C.

Travel

When I started to carry out the circuit, I travelled by plane. My predecessors as magistrates usually carried out the circuit by this means. Visiting magistrates still do.

For the last two years I have travelled by road using the Court Department's four-wheel drive vehicle from Coober Pedy. This involves travelling some 1,500 km or so during the course of a circuit. All of the other personnel involved in the circuit travel similarly, that is, police, lawyers, probation officers and others. We all need to travel self-contained with our own camping equipment, food and water.

I have no doubt in my mind but that the status of the court has been enhanced by virtue of the fact that the magistrate travels by road. My knowledge of the people and my capacity to appreciate the issues which affect them has certainly been enhanced by this experience. Inevitably by travelling in this way, I have lost some of the remoteness which is often considered essential to preserve both the actuality and perception of independence and impartiality which judicial officers deem appropriate and desirable.

In the circumstances under which the North West Circuit comes to be conducted, one abandons many of the usual symbols of independence and status. We sit in whatever room or facility is available—usually something akin to a community hall. There are no such things as Chambers or separate rooms or facilities. It is often the discreet thing for me to go for a walk because the lawyer is taking instructions within earshot. There is no library other than what you carry with you. One cannot stop for long during the course of a day to consider sentencing options. There is the always present danger that if the court adjourns to think about things that people will think that it has finished for the day.

It is difficult to remand or leave matters from one day to the next because between one day and the next one might be a 100 km down the track. If one is to remand in custody (as happens from time to time in difficult cases) from say a Monday or Tuesday at Amata or Fregon to the Friday at Marla, the probability is that the prisoner will during the course of the circuit have to be transported from the Lands to Marla and then by plane to the prison at Port Augusta and flown back to be at Marla on the Friday. The disruption for the individual and the cost to the community and the system generally is enormous. None of these practical considerations can be far from the mind of the working magistrate.

A court circuit such as at North West Court Circuit relies heavily upon mutual trust and cooperation between its components. For the purposes of taking instructions, my observation is that lawyers are invariably given access to police briefs. Usually before the court circuit the prosecutor at Port Augusta and the lawyer (also based there) will meet and the lawyer will be given photocopies of the allegations. This practice can and will only happen as long as the lawyers do not abuse the trust which is reposed in them. To the credit of both sides this system has worked without abuse for many years.

One needs to guard against the possibility that the necessarily close relationship between police prosecutors, lawyers and the court does not prevent or hinder any of the components from launching appeals and challenging decisions from time to time. The magistrate must be on guard lest the practical necessity of working together prevents him from being forthright and truly independent.

The Work Load

Table 1

Court files listed to be dealt with, North West Court Circuit, 1991 and 1992

	1991 NOV	*1992 FEB*	*1992 MAR*	*1992 MAY*
Number of files	212	354	203	201
Number of charges (all files)	314	584	329	246
Total number of persons charged	150	178	125	147
Number of Persons who appeared	41	71	47	47
Number of files represented by appearances	61	161	96	73

The table above requires some explanation. A file relates to a single defendant. That person may have been charged with one or more incidents which arose from a particular event. Whilst many files will contain only a single charge, sometimes on the one file there may be as many as six charges. If a particular defendant has been involved in more than one incident giving rise to offences, there will be separate files for each incident.

The statistic of most concern from Table 1 relates to non-appearances. The court cannot sentence or adequately deal with defendants in their absence (except to a limited degree).

Appearances as a percentage of those who are due to appear:

November 1991	27%
February 1992	40%
March 1992	38%
May 1992	32%

The overall figure over these circuits shows that the number of defendants who appeared is less than 40 per cent. Overall, some 60 per cent of the defendants on the list who were supposed to be in court failed to attend. Unless the defendants attend, the capacity of the court to deal with matters with anything like reasonable expedition is hamstrung.

When considering the problem of non-attendance, one must have regard to cultural factors. My observation is that a community activity or a group related activity takes priority over an individual's personal obligations. If a community is engaged in a football carnival most of the community will attend. If tribal ceremonies are in progress, those participating will see it as their duty and obligation to be involved in those ceremonies rather than attend court.

Attitudes towards ceremonies appear to vary. At one location in September last year, the court was refused permission to enter the community because ceremonies

were taking place there. On another occasion when I went to the same community, court was held at a time when ceremonies were in progress. Offenders attended court with head bands and red ochre paint marks on their foreheads, arms and bodies. The court accepts and respects the value and importance of such occasions. If I am told by an appropriate person, for example, the community solicitor or council chairman, that it is inappropriate to be at a certain place, I would not go there. At times, particular roads are closed because of ceremonies. Again, in such a situation, I would choose an alternative route for travel and non-attendance at court would be excused.

The problem of non-appearances is a central problem. One answer is to deny defendants bail and rely less upon defendants attending court of their own volition. The problem of remanding Aboriginal people in custody is well known. Moreover, the relative infrequency of court once every two months and the dislocation to individuals, not to mention the cost of transporting them to Port Augusta and leaving them in custody, makes this an unattractive solution.

How Can the Problem of Non-attendance be Overcome?

The reasons for non-attendance are important. Table 2 looks at files where reasons for non-attendance are apparent. Summons not served means that the defendant has not been located. Summons not returned means that it may have been served but there is no proof of service. G4A means that the defendant has pleaded guilty in writing and is not required to be present.

About 30 per cent of non-appearances relate to files where the defendant has not been served. Inability to serve documents is understandable to some extent because the population in tribal communities is very fluid. On the other hand, the "bush telegraph" and the presence of police aides is such that one might expect a much better service of summons than is actually obtained.

Table 2

Reasons For Non-Appearance, North West Court Circuit, 1991 and 1992

	1991 NOV	*1992 MAR*	*1992 MAY*
Fail to answer bail	40	34	47
Fail to appear following adjournment	19	19	3
Summons not served / Summons not returned	33	27	31
Fresh summons to issue from last circuit, but not served	7	6	7
G4A / fail to answer summons / other	1	19	30

Disposal of Non-attendance Files

Bearing in mind that on a typical circuit 60 per cent of offenders fail to attend, what happens to the files with respect to such offenders? (*See* Table 3)

The three categories, bail estreated—complaint to lie on file; complaint to lie; FSOA (fresh summons to issue on application), account for significant numbers of files;

November 1991	79 out of 149	(53%)
March 1992	31 out of 105	(29%)
February 1992	75 out of 179	(42%)
May 1992	32 out of 109	(29%)

A typical "bail estreat-complaint to lie on file" is a file where a defendant is charged with a consuming liquor offence and is on bail for, say, $200. The prosecutor knows that the fine is likely to be $150 and is content to have bail revoked. Whilst technically the complaint may still be alive, the reality is that no-one expects the file to be processed further. Similarly, "complaint to lie" and "fresh summons to issue on application", in practice, will mean that nothing will be done to activate the file or bring the offender to court. If the offender brings himself to the attention of the court by committing further offences, these files can then be re-activated. If the offender does not come to attention, the file will remain dormant and drop out of the list of current court files.

If 60 per cent of offenders do not turn up and if 30 to 50 per cent of non-appearances "drop out" of the system each circuit, the court disposes of a substantial percentage of court files each circuit as if the matters had been finalised. The reality is that the system has failed to catch up with the offender and the system eventually "gives up". It is easy to be lulled into a

false sense of security and the belief that we are closing or completing matters when in reality the system and the offender are not making contact.

Table 3

Disposal of non-attendance files, North West Court Circuit, 1991 and 1992

	1991 NOV	*1992 FEB*	*1992 MAR*	*1992 MAY*
Bail revoked and warrant to issue	28		19	21
Warrant to issue	9	58	18	7
Bail estreated—complaint to lie on file	14	9	1	12
Complaint to lie	29	65	25	10
F.S.I. to next Court date	9	11	15	18
F.S.O.A.	36	1	5	10
Ex-parte leave granted—penalty imposed	1	20	4	10
B.T.C./adjourned/excused	18	15	15	5
Warrant to issue to lie on file to next Court date	2		2	5
Other	3		1	11
Total Number of Files	149	179	105	109

Characterisation of Offences

It is an offence under by-laws passed under the *Pitjantjatjara Land Rights Act* for persons (Aboriginal and non-Aboriginal) to possess or consume liquor on the Lands or to supply it to others. The penalty prescribed is a fine of up to $2,000, although for offences of supply, a gaol penalty is possible. The penalty of imprisonment is considered to be appropriate to deal with commercial grog-selling operations primarily. Most offences against the by-laws are punished by the imposition of a monetary penalty. In addition to the "grog by-laws" there are separate by-laws designed to deal with the problem of petrol sniffing and further by-laws regulating gambling.

The volume and percentage of files which relate to By-Law offences alone is significant.

November 1991	85 out of 211	=	40%
February 1992	125 out of 354	=	35%
March 1992	55 out of 203	=	27%
May 1992	57 out of 1195	=	29%

It must be emphasised that these files are all files where the only charge laid has been the breach of a by-law.

In other words, they are incidents where the by-laws have been breached but have not been accompanied by other offences. They are offences without accompanying offensive language, resist arrest, assault police charges, and so on. A substantial percentage of the court list is made up of such offences.

Minor indictable offences (which include housebreaking and assault occasioning actual bodily harm charges) constitute about 15 per cent of the court list.

Table 4 shows the type of offences which came before the court.

Table 4

Characterisation of Offences, North West Circuit, 1991 and 1992

	1991 NOV	*1992 FEB*	*1992 MAR*	*1992 MAY*
By-Law only	85	125	55	57
By-Law & other offences	10	23	31	20
Non By-Law-Road Traffic	33	61	30	23
S.O.A.	34	65	27	30
Minor Indictable	31	57	35	49
Indictable	7	10	12	
Other	11	13	13	16
Total Number of Files	211	354	203	195

The most serious offences (indictable offences) constitute a very small percentage of files as a whole.

Road traffic offences and summary offences each account for about 15 per cent of the court list.

Obviously, the level of serious violence and the number of indictable charges is encouragingly low. Whilst the number of court files and the number of charges when viewed against the population might seem high, the profile of these offences is much more encouraging. Of special significance is the fact that the by-laws seem to me on the face of these figures to represent a screening mechanism which helps prevent more serious trouble from developing.

Our statistics do not distinguish between offences on the Lands and offences off the Lands. A significant percentage of offences are offences committed off the Lands or at Mintabie. Many of the driving offences are offences committed at Coober Pedy or Port Augusta by people from the Lands who go there, drink and are then apprehended but dealt with back at their place of residence on the Lands. In short, the statistics give a misleading impression as to the amount of criminal behaviour on the Lands. This profile analysis indicates that the gravity of the offending on the Lands is much lower than might be indicated by the figures. In fact, it is interesting to compare the profile of offences with the sorts of offences which arise in a white urban community. The Office of Crime Statistics (SA) has broken down the court list from a

suburban magistrate's court in Adelaide for an equivalent number of court files and the following comparison can be made.

Table 5

Comparative Offence Profile Breakdown as between Pitjantjatjara Lands and a typical suburban court list

Category of Offence	*North West (Percentages of files as a whole*	*Suburban Court (Percentage of files as a whole)*
By Law Only	33%	Not Applicable
Road Traffic	15%	41.0%
S.O.A.	16%	9.0%
Minor Indictable	18%	
Drugs	negligible	6.5%
Major Crime	3%	0.8%

A comparison is difficult to make. The sample of files analysed consisted of 963 North West files over the four circuits referred to in this paper. The suburban court's statistics come from a computer printout chosen at random from the Para Districts Court and comprise 736 files. Comparisons are difficult because there is no correspondence in the suburban court with the by-law offences considered in the north west area. Road traffic offences in the suburban court include simple speeding offences. Charges of that nature are rarely laid in the North West Circuit although more serious road traffic offences such as drink driving and driving dangerously charges are laid. Drug offences are infrequent. I can recall only one or two such charges over the last twenty or so circuits which I have conducted in the Pitjantjatjara Lands.

North West Circuit Today Compared with North West Circuit Ten Years Ago

It is interesting to contrast the present state of the court lists on the Pitjantjatjara Lands with the situation a decade or so ago. Over this decade there have been significant changes in circumstances. The *Pitjantjatjara Land Rights Act 1981* has been passed. The white Australian law then was administered from the Oodnadatta Court of Summary Jurisdiction. The clerk of court was a sergeant of police. Three times a year a magistrate from Adelaide sat at the Oodnadatta Court and held court in the three major centres of the reserve area. The court now visits six times a year with an occasional extra visit. The administration of the court is entirely separate from police. The major police presence is now located at Marla adjacent to the Lands and some 150 km closer to the Lands than Oodnadatta. Police aides are located at each major population centre on the Lands and a white police officer is resident at Marla. The Pitjantjatjara by-laws regulating the control of liquor, petrol and gambling have been introduced.

An article by Ms Judith Worrall published in the *Australian and New Zealand Journal of Criminology*, March 1982 is informative:

> The 103 cases heard in the four visits of the Magistrates cover seven different offence types. There were fifty individual offenders . . . all fifty defendants were males, twenty of whom were juveniles when they committed the offence. Although juveniles constituted 40 per cent of the defendants, they were charged in 50 per cent of the cases before the court. Juveniles were charged with 52 per cent of the total of 121 offences.

The contrast between then and now, at face value, is remarkable. The four visits referred to would cover a magistrate's attendance for more than one year. The four visits referred to by me represent two-thirds of a year's work.

But the figure of 970 files should be treated with caution. As was pointed out earlier there is a significant "duplication" of files from circuit to circuit because of the low level of attendance from one circuit to the next. Also, some 40 per cent of the files are "by-law only" offences which did not exist ten years ago. Other factors which may contribute to this increased number of charges is the more significant police presence at Marla and the presence of police aides in each community.

Another significant difference which shows up from Ms Worrall's study is the different approach currently adopted regarding juvenile offenders. In Ms Worrall's paper it was noted that juvenile offenders made up 40 per cent of offenders who appeared in court and that they accounted for 52 per cent of the charges. It is rare to find more than five or six juveniles on court lists today. Diversionary approaches are used much more frequently and more children are dealt with by juvenile aid panels.

Table 6

All files: Age of charges (from date of offence), North West Court Circuit, 1991 and 1992

	1991 NOV	*1992 MAR*	*1992 MAY*
less than 2 months	24	43	53
2-3	31	24	38
3-6	64	75	54
6-9	42	38	24
9-12	27	16	15
12-24	23	21	6
Over 24	4	4	5
Total files	215	221	195

Summary courts are intended to deal with case loads expeditiously. Justice delayed is justice denied. I note that in November 1991, 43 per cent of the files were more than 6-months-old. In March 1992, 33 per cent of the files were more than 6-months-old. In May 1992, 26 per cent of the files were more than 6-months-old. This delay factor is too long. A primary cause of the delay is the failure of the system to ensure that defendants are present at court. The problem of delay and the problem of non-service and non-attendance are related.

Penalties

For those who attend court, how effective is the system? Courts have four major sentencing options: fines, bonds, community service and gaol.

By South Australian legislation (see *Sentencing Act*, Sec. 11) gaol is the last resort. It is the penalty to use when all other penalty options have been considered and rejected. Special problems arise for tribal Aboriginal people. The nearest prison to the north west is located at Port Augusta. By road, Port Augusta is located 600 km from the closest north west community. Not only will the offender be locked up, but distance makes it practically impossible for the prisoner to have visits from relatives or friends. Inability to attend ceremonies or funerals can impose a special hardship on a tribal Aboriginal person.

There are times when a particular offender and offence merits imprisonment for a short time. A prisoner sentenced to say twenty-eight days may well be transported to Marla from the Lands by police vehicle, held overnight at Marla, taken by plane or by road to Port Augusta, and as a result of early release under discretionary powers, released after say fourteen days. Upon release, the prisoner finds himself 600 km from home and faced with both the practical problem of getting back to the Lands and the temptation to explore Port Augusta. For both reasons of principle and for practical

purposes, the gaol option is particularly unattractive, except for serious offences and where no other alternative is open.

Fines are not a useful penalty either as a punishment or as a deterrent. Often the financial situation of the offender makes payment of a fine a practical impossibility. When fines are paid they are often met on the offender's behalf by members of his family. The strong communal character of Aboriginal society tends to cause fines to be paid, if at all, by persons other than the offender. The value of this option is thus largely diminished.

The concept of bonds and suspended sentences is difficult to make meaningful across language and cultural barriers. The problem of supervision of offenders is great —although the Correctional Service officers make a valiant attempt. Bonds do have a role to play and especially with respect to petrol sniffers, the involvement of family members in supervision of the offender by way of bond is important.

The most useful sentencing option is that of community service.

Police Discretion to Lay Charges

Police discretion is one of the aspects of the system of justice in tribal communities which is the subject of much discussion. A good and proper example of police discretion was given to me by the community development officer at one community.

It seems that a family dispute had come to a head and the two opposing sides decided "to have it out". The person speaking to me told me of sitting by the side of a shed with a police aide and a white police officer watching what happened. The two sides turned up. They were carrying sticks and spears and confronted one another. Following some shoving, pushing and shouting, there developed some more physical hitting with sticks and the like. Whilst this happened, the police officers looked on apparently unconcerned as interested observers. This continued until one of the combatants produced a knife. The moment that happened and traditional forms of confrontation were abandoned, the police went straight in and took out the man with the knife.

Community Services Orders

The community service order scheme has been in operation in South Australian courts generally for the best part of a decade. It is only in the last twelve months or so that community service has become a viable option within the Pitjantjatjara Lands. Remoteness of the region and the tremendous costs involved in the establishment of the scheme were the reasons why community service has been introduced comparatively late.

It is interesting to note the different ways in which communities have responded to community service orders. I highlight the two communities where the scheme is most successful. In one community the major community service work project relates to collection of rubbish. A day's work is measured by three large loads of rubbish on a tip truck rather than by hours. This seems to work well. Offenders do not get credit for a day's work until

three loads of rubbish are collected. If, for example, at the beginning of the day there are four persons engaged in helping to collect the rubbish and two do not return after lunch, the other two get no credit until the three loads of rubbish have been collected. Peer group pressure is thus provided by those who come back to those who fail to return. This is a successful and pragmatic, if somewhat innovative, approach to the scheme.

In the other community, when the scheme is well established the approach may be unconventional but highly successful. Again, participants in the scheme at the moment have, as their only option, a rubbish collection scheme. There is no supervisor employed by the Department as such. Rather, the community has nominated its community development officer, to ensure that those who carry out community service work do it. His method is to take the offender in the week following the court appearance and to require the offender to carry out the work in one continuous slab of time. In other words, if the offender was given forty hours work he would be found and made to commence work on the Monday and keep working until the Friday. Delay has been one of the major sources of criticism of the court circuit. This approach is different. Certainly, there is no delay.

Sentencing Policies

Much has been written elsewhere concerning formal recognition by "our" legal system of Aboriginal customary law.

Put very generally, the North West Circuit Court as it presently is constituted, does not involve itself in customary law issues. The existing legal system has not created, and does not formally recognise as criminal misconduct, breaches of Aboriginal customary law. For the purposes of determination of guilt or innocence of a particular charge, the ordinary legal principles are applied.

When it comes to penalty, recognition is given to Aboriginal customary law. If the court is satisfied that as a result of a particular incident a defendant charged with an offence is to be punished by the imposition of a customary penalty, that is taken into account when the court determines what is the appropriate penalty for it to impose. Usually, either the community solicitor or the solicitor for the defendant will bring considerations of this nature to the attention of the court.

A greater difficulty arises where under customary law there are circumstances of aggravation which should be taken into account. That happens particularly in situations where an offender who has been drinking uses words or phrases which ought not to be uttered or used in particular circumstances. What on the face of it might appear to the court as an ordinary charge of offensive language, may to the Aboriginal community be a grave breach of custom and tradition akin to the uttering of a blasphemy. When language of this nature is used, traditional beliefs make repetition of such language inappropriate. There is therefore a great problem about communicating the gravity of the allegation to the court. This is one aspect of criminal behaviour which poses a dilemma for both systems of law. To date there has been no answer found to this dilemma.

The Role Of The Court

Most of the problems which lead to breaches of the law stem not from Aboriginal society but from white society. The statistical analysis of our court files and the profile of offences both indicate that a very substantial number of the matters to be dealt with

by the court relate to alcohol or petrol. Another major category of offences relates to offences involving motor vehicles.

With respect to the petrol sniffing problems in particular, my impression is that whilst the Aboriginal community appreciates the damage to individuals caused by petrol sniffing, there is largely a feeling of helplessness as to what is to be done about it or how it can be stopped.

Aboriginal communities look to the court to be supportive of the community and to protect its members from outbursts of violence. A magistrate who comes in from outside and who is not part of or caught up in the conflict situation can provide a much needed and welcome assistance towards the resolution of problems. My experience is that communities respect the court and desire the court system to deal firmly and strongly with offenders. There is more pressure by communities to be tough on offenders than there is to treat them leniently.

A prerequisite for a judicial officer who conducts a court in a tribal community is that the officer be open minded. The idiosyncratic magistrate and the magistrate who approaches court with a belief that they know the answers or can resolve the problems is likely to be more of a hindrance than a help.

There is an obvious danger in a magistrate becoming too close to a community. There would be a danger if a magistrate were to do no more than reflect the prevailing mood within the community at the time when sentences are passed. One of the phenomena which I have observed is that of arriving at a community shortly after a particular incident and finding that people are very angry and demanding swift and draconian punishment. Yet, after a relatively short time, a matter of a week or two, the attitude of the community might well have changed to seek little or no penalty. The court needs to be sufficiently detached to penalise according to consistent and relevant standards.

There is some disadvantage and there are some constraints imposed by the rigidity of our legal system and by the fact that its principles have been created in a totally different environment from that of a tribal Aboriginal community. The system is one which needs to be implemented in a very flexible manner and sometimes in a way which tests the strict letter of the law. As citizens, members of these communities are entitled to have the same laws as apply to the broader community sensitively applied to their particular communities. An abandonment of the system and introduction of an alternative which denies Aboriginal people the right to legal advice and representation or which submits them to swift justice at the expense of fair justice, creates a potentially less satisfactory system than presently exists. Our system, despite its shortcomings, does have its strengths. The risk of draconian solutions and of the lynch-mob mentality are real. Most importantly, my understanding not only from court observation but as a result of meetings with communities, is that the court system is respected and that Anangu desire it to be strong and effective.

Disclaimer

The statistics used in this paper have been hand collated, in particular by the Clerk of Court of Coober Pedy, Ms Carolyn Healey. The tabulations have been arranged by the author. I cannot vouch for the validity of the analysis from the view point of the professional statistician. Our system of collation is such that some numerical anomalies may be detected.

On the suggestion of the Pitjantjatjara Legal Service whom I have consulted concerning this paper, this paper has been kept as anonymous as possible. Communities are not identified by name except in a geographical descriptive context. No individuals are named. I do not seek to hide from the reality that our system of justice has its faults. Nonetheless, innovation and change have been introduced and the system is making a genuine endeavour to be meaningful and effective and is enjoying some measure of success. The introduction of the by-laws is one such success. The value of that factor is illustrated by the earlier comments made. The carrying out of circuits by road is another example of change. Community service projects are being implemented and in a manner which is pragmatic and workable. The major problem is that of non-attendance which inevitably produces delay. The answer to that lies largely in the hands of communities themselves.

Conclusions

An analysis of Court files over the circuits conducted in November 1991, February 1992, March 1992 and May 1992 suggest to me that the following conclusions can tentatively be expressed:

- Non-service and non-attendance and failure of defendants to attend court is the major and most concerning issue. The solution lies largely in the hands of the communities.

- The age of files is a serious concern. This problem is inevitably related to the first problem identified.

- The court disposes of a significant percentage of files artificially. It is easy to take credit for a clear-up rate or closure of court files when the reality is that the system does not catch up with the offenders. But this is also related to the first problem.

- The volume of serious crime—serious offences of violence or dishonesty—is small. Assumptions which some people might make about "problems" within Aboriginal communities are exaggerated.

- A significant percentage of offenders commit by-law offences unaccompanied by related behavioural offences. The by-laws thus appear to be successful in enabling early intervention.
- A significant percentage of those who fail to attend breach bail. This raises the issue of the validity of bail agreements generally. But the most obvious alternative to grant of bail, such as remand in custody is impractical and undesirable.

- It is essential that the court system adjust to the environment in which it finds itself. The status of the court will be best preserved by making the system work. This involves some relaxation of the usual principles of judicial remoteness but care must be exercised to ensure that what is delivered is justice which is impartial, fair and effective.

Community service can work but needs to be introduced in a pragmatic and practical way.

References

Worrall, J. 1982, "European courts and tribal Aborigines: a statistical collection of dispositions", *Australian and New Zealand Journal of Criminology*, March.

ABORIGINAL WOMEN AND THE LAW

Carol Thomas and Joanne Selfe

> Don't stereotype an image of what you want me to be
> I'm a Woman and I'm Black and I need to be free
> I'll give back your sense of values you bestowed upon me
> And regain my pride, my culture, and true identity
> (Johnson 1988, p. 23).

> For over 2000 generations our people have stood on this land. As women we had our own special relationship with the land. Whilst we had the same status as men, we still remained sacred and separate. We had rights as individuals. We were able to exercise well-defined rights of ownership of the inherited regions of our tribal territories. Inheritance was through the mother's side. We were recognised as being economically productive. Our work was valued because of our role as mothers and food gatherers. Women's labour provided consistent food for the whole group.
>
> We had our own magic. We had our own religion. We had our own rituals. We had our own ceremonies and corroborees. All to which men had no access (NSW Women's Coordination Unit 1991, p. 8).

ABORIGINAL PEOPLE ARE NOT A HOMOGENEOUS GROUP. THIS PAPER IS based on work done with Aboriginal people within New South Wales and therefore talks about problems and solutions Aboriginal women face within that State. This is not to say that some of the issues are not relevant to Aboriginal women in other States and Territories. However, the assumption cannot be made that what is being said by the women of New South Wales is also what is being said by all Aboriginal women in this country.

The situation in which Aboriginal women are now placed and in which they are viewed by the non-Aboriginal population must be seen in light of the way Australia was "settled" and the consequences this had for Aboriginal people in general, in particular the consequences for the country's indigenous women.

It is important to recognise that Aboriginal society was one which gave all members equal importance. Even though men and women had different roles, those roles were equally significant and both genders contributed equally to a well balanced, functioning society.

The white men arrived and so too did a white value system which saw a different type of person (that is, white and male), placed at the top of the ladder. Along with their racist, pre-conceived notions of Aboriginal people, they brought with them a new legal system, incredible levels of uncontrolled violence and a belief that women did not have the same importance or significance to society as men. In general, they attempted to re-create what they had left behind: a society which did not function particularly well, and which included notions based on those who this society considered deserving and those considered undeserving. Aboriginal people fell into the category "undeserving".

It has been easy for the new white population to assume that Aboriginal women were not equally important to Aboriginal men. It was, and continues to be, easiest for non-Aboriginal Australia to force its own sexist and racist value system upon the indigenous people of this country. White women had their "place" determined by white men. The assumption was that Aboriginal women would have the same, if not lower, social position. The new population simply never considered that Aboriginal society placed equal importance on all members of society. As a result, Aboriginal women were denied a place in the new patriarchal society of white politics, power and violence (Thomas 1991, p. 86).

Aboriginal women face both racism and sexism. Women do not always like the idea of being classed as a feminist because they feel that to be this they have to leave their men behind or leave their community, rather than recognising the rights of women as individuals. Before making judgments, it must be remembered that Aboriginal women have additional barriers which non-Aboriginal women do not have to face, stemming from a drastic and rapid change in lifestyle, changed roles and responsibilities and a shift in power structures within communities.

Consultations

This paper is based on community consultations undertaken in New South Wales by the Women's Coordination Unit. Not all consultation was specific to the law, yet the Aboriginal women participating felt that Aboriginal women and the law was an area of significant importance and, as a result, it was discussed at length.

The following are the relevant consultations:

- In 1990, New South Wales held its first Aboriginal Women's Conference. The agenda was set by Aboriginal women from all over New South Wales and over 400 Aboriginal women participated in the conference. The conference addressed a number of issues of concern to Aboriginal women such as housing, education and employment. However, dominant items on the agenda were violence against women, women in prison and various aspects of the legal system.

- In August 1990, two women undertook the "Surviving Rape Campaign". The aim of the activity was to raise public awareness about sexual assault and about the availability of support services and responses of legal agencies.

- The *New South Wales Domestic Violence Strategic Plan Discussion Paper* was launched in January 1991. The paper was primarily an issues paper which listed many of the issues surrounding domestic violence. The Discussion Paper addressed domestic violence from a broad-based

perspective and went beyond legal responses. An Aboriginal consultation was held which made it clear that special strategies need to be developed in response to issues specific to Aboriginal communities.

- The Women Out West Project concentrates on remote towns in the far-west of the State. The project is a response to a request from community women who felt that the few services which visited their town were not effective for a number of reasons. For instance, people representing the services would go to centres that the Aboriginal people did not feel comfortable attending or they would only be in town for half a day. The women believed that with the information and support, they could provide more effectively and more regularly for their community. The project is based on the belief that some under-resourced communities will never be properly resourced. The project provides information to community women who then are able to act as resource people for the rest of their community. A large part of the project deals with legal information, particularly as it relates to domestic violence, family law, sexual assault and areas of law which are of particular concern to Aboriginal women. The project is coordinated by the Women's Legal Resources Centre.

- The Women's Coordination Unit commenced a project, Aboriginal Women and the Law, at the end of 1991. The objective of the project is the development of strategies to ensure that New South Wales legal processes are accessible, appropriate and equitably available to Aboriginal women. The aims of the project are to enable Aboriginal women to have more equitable access to the legal system, in particular in the areas of Family Law, Criminal Law, Child Welfare and Civil Law; and to develop increased responsibility towards, and an awareness of the needs of Aboriginal women in government departments and community organisations dealing in legal matters. The first phase of this project, the research and consultations, is nearing completion.

Issues raised through consultation with Aboriginal Women

Access

The women identified lack of access to the legal system as a major concern. It was acknowledged that the present legal system is not necessarily appropriate and that community strategies need to be developed to make that system more accessible and effective. However, Aboriginal women need to be able to make informed decisions; that is, whether they choose to use the law or whether they choose not to use the law. In most instances the choice is taken away from them by the legal system's inability to provide a culturally appropriate and sensitive service. Once Aboriginal women are allowed to make that choice, they may decide that the legal system is not the way they wish to go. The law is by no means the only answer, but it must be one of the options.

Lack of responsiveness of the system

There are a number of very obvious reasons why Aboriginal women generally, are not using the law. The legal system has not been kind to Aboriginal people and has

contributed to the stereotyping of Aboriginal women. The following is a list of statements from court cases in which Aboriginal women were the main witnesses:

> Rape [is] not as seriously regarded in the Aboriginal community as it is in the non-Aboriginal community (McCorquodale 1987, p. 391).
>
> rape [is] not considered as significant in Aboriginal as in white society—more as a matter of dishonour so far as the women's husband and family are concerned (McCorquodale 1987, p. 408).
>
> . . . I have no doubt it is my duty to do what I can to deter you, and people like you, from acting in this way, and to offer such protection as the law can provide for white women in remote places. Your crime would, I should think, be disapproved by Aboriginal people as well as by white, no matter how tolerant the Aboriginal attitude towards rape may be (McCorquodale 1987, p. 399).
>
> Appellant's lack of awareness of criminality [is] a product of an ethnic background coupled with a form of life within a community which has standards of sexual conduct very different from the standards accepted by the general public and the laws of this State (McCorquodale 1987, p. 406).

Opinions such as these, stated publicly by prominent white men, do nothing to empower Aboriginal women but further alienate the women from any legal processes.

Throughout the consultations for the Aboriginal Women and the Law project, women spoke of their concerns when appearing before the courts because of their fear that the system has been used against them in the past. Many women see courts as the place you are made to go when charged with an offence and therefore a place to avoid.

When asked the question "Do you receive the same service as non-Aboriginal people", some of the comments from the Aboriginal women consulted included:

> We get hurried through, even young kids, just to get rid of us;
>
> Police prosecutors don't understand Aboriginal culture and have no concept of community perceptions;
>
> They stereotype Kooris, they think we deserve domestic violence;
>
> We should be told about Victims Compensation;
>
> We're told to plead guilty even when we're not;
>
> Women are not informed of their rights or entitlements.

Basically, women complained that services were not always equitably available to them.

Violence against women

Little data exists which provides evidence of the high level of violence against Aboriginal women or Aboriginal women's use of the law. Statistics which exist on violence against women and their use of the legal system claim to include Aboriginal women in the overall data but do not have specific data relating to Aboriginal women.

It is questionable whether the available data includes Aboriginal women at all as it is often taken on court appearances, Apprehended Violence Orders, contact with the police and so on, avenues which Aboriginal women rarely take. The NSW Bureau of Crime Statistics and Research (1991) found that the highest number of Apprehended Violence Orders were sought in low income areas of Sydney and therefore concluded that domestic violence was more prevalent in low income areas. The research did not include Aboriginal women and, in fact made no attempt to do so. It did not look at the reasons why Apprehended Violence Orders are not being used effectively by Aboriginal women or if Apprehended Violence Orders are appropriate to Aboriginal women.

Reports on court statistics do not include Aboriginality. The few statistics that do exist are not an indication of the level of violence against Aboriginal women.

Domestic Violence Advocacy Service

The Domestic Violence Advocacy Service Client Profile report (MacAlister 1989) states:

> that of the 520 women who rang their service, only one Aboriginal woman sought their advice, four referred and none was represented by the Domestic Violence Advocacy Service. This is compared to 176 Australian born women who sought advice, 242 who were referred clients and 102 who were represented by the Domestic Violence Advocacy Service. Reports on court statistics etc, do not include Aboriginality. The few statistics that do exist are not an indication of the level of violence against Aboriginal women.

A recent SBS *Vox Populi* program, contained a segment about domestic violence in Aboriginal communities and responses by legal agencies. The program focused on the north-western town of Bourke. It was stated that Aboriginal women within the town seek apprehended violence orders but then do not attend court. The reporter stated that the failure to attend court was termed by the local people (presumably the non-Aboriginal people within the legal process) as "the Bourke defence". The explanation of "the Bourke defence" did not take into account the reasons why such large numbers of Aboriginal women do not follow through with court processes. The term rather flippantly dismisses the real concerns of, and barriers facing, Aboriginal women.

The Mortality of Aboriginal Australians in Western NSW 1984-1987 (Gray & Hogg 1989) states that "accidents, poisoning and violence" is one of the two major categories of death for adult Aboriginal people in western NSW. Within this category, "homicide" is one of the few causes of death where female deaths occur in greater numbers than men. Specific causes of death include stabbing, shooting, manual strangulation (p. 38). The Report does not state who killed the victims or the relationships between killer and victim.

The Northern Territory report *Aboriginal Women and Violence* (Bolger 1991) does detail a number of statistics relating to Aboriginal people. In the Northern Territory in 1989, offences against Aboriginal women (murder, attempted murder, assault and sexual offences) represented 18 per cent of total offences. At that time, Aboriginal women constituted 11.5 per cent of the population (p. 11). The Report states that there has been an increase in violence against Aboriginal women since 1982. In the January/February 1989 period, the Royal Darwin Hospital treated thirty-three Aboriginal women for injuries due to violence (compared with fifteen non-Aboriginal women). Sixteen of the thirty-three Aboriginal women were treated for injuries sustained by weapons, compared to two of the fifteen non-Aboriginal women.

In 1990, the New South Wales Aboriginal Women's Conference made the following recommendation:

> That the Attorney-General establish a working party to review the effectiveness of the Children's Court and the effectiveness of the criminal law system in relation to the needs of Aboriginal women and children who are victims of sexual assault. Aboriginal women have stated their feelings of alienation with the legal system. This system must be examined to determine how best it can include the needs of Aboriginal women and children. The terms of reference for the working party should include:
> the number of cases of sexual assault involving Aboriginal women and children which are reported;
>
> the reasons why such a low number of adult and child sexual assault cases are being reported;
>
> how court rules and procedures affect Aboriginal women and children as witnesses;

> the adequacy of Section 409(b) of the Crimes Act be examined in relation to Aboriginal women;
>
> the development of strategies which would make the Children's Court and the criminal law system more relevant to and effective for Aboriginal women and children;
>
> consideration of support systems for Aboriginal child sexual assault cases.

The concern was that Aboriginal women victims were not being treated appropriately by the legal system and in return were not reporting sexual assaults.

New South Wales does not have comparable data to that available in the Northern Territory. In fact, the general data collected in NSW on violence against women statistically suggests that the incidence of violence against Aboriginal women is low. Anecdotal evidence of violence against Aboriginal women is high.

Aboriginal women recognise the legal system's failure to adequately meet their needs and in so doing, have attempted to develop their own community strategies.

A number of communities have established women's groups, formal and informal. One community has women's nights where women can come together and relax and discuss their concerns with other women who are aware of the particular sensitivities in their community. It acts as an informal method of support and friendship. Another community has organised a group of women who are able to accompany other women when they need to see a solicitor or police or when they need to attend court.

Mygunyah Aboriginal Corporation is an Aboriginal women's support service. It is based in Dubbo and has outreach services in Bourke, Brewarrina and Lightning Ridge. The service is operated by Aboriginal people and provides support for women and their children. It offers advocacy and help in obtaining services and assistance from relevant agencies, such as Social Security. It provides information on issues such as health, housing and child care, and provides accurate information on options and choices. Most importantly, it provides a safe environment in which women can be supported in their own decisions.

Community strategies are extremely important; however, they are not used as substitutes for due process. Both avenues need to work together in developing strategies and in finding solutions appropriate to Aboriginal women.

Lack of knowledge

Women are reluctant to become involved in the law when they are unaware of the processes and when the initial contact people are unsympathetic to Aboriginal women's concerns.

One of the major problems facing Aboriginal women is that of getting access to appropriate information. Different problems exist for different communities. A rural or isolated community may simply not have any appropriate services and therefore, information within the town is fairly limited. Information dissemination can also be a concern in urban communities where services may exist but do not employ Aboriginal workers or who are not culturally sensitive to the needs of Aboriginal people.

Aboriginal women are not being told about the processes of the legal system or about what the law can be used. Women are not encouraged to use the law. They are aware of the law as defendants but are generally not aware that the law can be used effectively in matters which benefit them.

The Clerk of the Court in one particular community with a high Aboriginal population kept relevant pamphlets and forms in his filing cabinet. His explanation for his actions was "because they could ask for them. If we left them out everybody would take them". It is difficult to understand why pamphlets containing information on legal rights cannot be taken by the people who need them the most. It is also alarming to know that government departments are unable to keep up the supply of pamphlets to many isolated towns.

One area relevant to Aboriginal women is that of victims' compensation. During consultation for the Aboriginal Women and the Law project, very few women were aware of their legal rights in the areas of victims' compensation, family law and child welfare.

This consultation was the first time many of the women had heard about victims' compensation. It is alarming to know that women are not being told that they are entitled to apply for compensation if they are victims of violent crimes. It is worrying when one considers that:

> Aboriginal women as individuals, wives, mothers, sisters, and so forth have a greater chance of contact with the criminal justice system than non Aboriginal women. They have a higher risk of imprisonment, a higher chance of experiencing violence or homicide, and from harassment by the police, than non Aboriginal women (Payne 1990, p. 10).

Cultural inappropriateness

The legal system has not responded to the cultural values and the varied backgrounds of Aboriginal people. The formality of a courtroom, the language, the dress, the questioning techniques have all been addressed by other writers and are all relevant to Aboriginal women.

The Federal *Sex Discrimination Act (1984)* is an example of non-criminal legislation which has little effect on Aboriginal women. The legislation and its procedures were developed without input from indigenous women and as

a result there are a number of procedures which are not culturally appropriate. For instance, to be able to use the legislation, it is necessary to first be able to determine that you are being discriminated against because of sex. This might appear to be an easy thing to do to the wider community but may not be so to Aboriginal women who see gender and race closely intertwined.

The processes involved in making a complaint under the Sex Discrimination Act means that, once the woman has determined that the reason she is being treated unfairly is because she is a woman, she must then give a written complaint to the Human Rights and Equal Opportunity Commission. Firstly she needs to know that this has to happen and she needs to know who deals with the complaint. A written complaint, no matter how short or seemingly simple, will always be a very formal way of complaining to Aboriginal women. The process assumes a prior knowledge and assumes that all women are comfortable with writing. She must then be prepared to conciliate with the offending party and, failing conciliation, go through with a hearing. Is it realistic for an Aboriginal woman living in a small country town who, for example, may wish to make a complaint against the town's only shopkeeper, to use the Sex Discrimination Act? The legislation and its procedures fail to recognise that some people do not see gender as a stand alone issue. Aboriginal women are discriminated against because they are women, but also because they are Aboriginal. Obviously, no person can make use of something they do not know anything about.

People do not voluntarily use processes that they do not consider to have an effect. Aboriginal women have many factors affecting their lives. They may have problems getting access to appropriate health care for themselves and their families, employment related issues, problems with the children's education, difficulty in getting fresh food and clean water. Many women leave support networks in the final stages of their pregnancy to give birth hundreds of miles from home because the absence of doctors means that hospital staff are reluctant to take responsibility for childbirth. Given the situation that many Aboriginal women face, voluntarily taking any type of legal action is not high on their agenda.

At the moment, there are three complaints from Aboriginal women under the Sex Discrimination Act. These complaints have only been made in the last twelve months. Basically it means that, because the legislation has failed to include the different needs of Aboriginal women within its development, Aboriginal women are unable to use the Act.

Summary

Aboriginal women and the law is not a highly researched area. There are a large number of areas where research needs to be undertaken, such as responses to apprehended violence orders, Aboriginal women as witnesses, on juries, victims' compensation, and so on. One area which needs urgent research and action is that of Aboriginal women in prison. As of 30 June 1991, Aboriginal women comprised 13 per cent of women within New South Wales prisons. Eight of these women were unsentenced and a further thirty of the remaining forty-three prisoners were serving less than two years. One of these women was serving a sentence for murder but the largest group (twenty-three) were in prison because of theft (New South Wales Bureau of Crime Statistics and Research 1991).

It is also interesting to note that recent work by Cunneen concludes that the Aboriginal prison population in New South Wales continues to increase as a result of the increase in the number of Aboriginal women in prison (Cunneen 1992).

There are many areas of the law which Aboriginal women have no knowledge of or which adversely affect Aboriginal women. For the sake of this paper, the authors have attempted to address the issue as broadly as possible but have not touched on the many community strategies which have been suggested to bypass legal avenues. It is important that Aboriginal women are put on the agenda in this area and that they are consulted and listened to.

Aboriginal women must have their importance—as this country's indigenous women and as individuals—recognised by legal processes. It is not acceptable to simply assume that Aboriginal women do not use the law because they choose not to use it. The legal system must now work and cooperate with Aboriginal women in developing a process which acknowledges and accepts their particular concerns and barriers.

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A WOMEN'S REFUGE FOR BOURKE: A COMMUNITY INITIATIVE

Esther Alvares

IN THE EARLY 1980S A PUBLIC MEETING WAS HELD AT THE WALLY BYERS hall in Bourke. This meeting was largely attended by Aboriginal women who stated that they needed a refuge in the town. This need was as a result of a perception that violence in the home was on the increase and that there was such a degree of overcrowding in the community that the previous response of seeking refuge at the house of a relative was not one that could be relied on any more.

In the next few years there were some meetings held and some government departments approached but nothing much came of these efforts. The next major push for the refuge came in 1987-88. The District Manager for the then Department of Youth and Community Services, Ms Maureen Irvine tried her hardest to assist a group of local women to obtain funding in order to establish a refuge.

Ms Irvine explained to her departmental officers who administer Supported Accommodation Program (SAP) funding that domestic violence was a very real problem in the town and that Bourke's relative isolation made it imperative that some facility of this nature should receive funding. These applications and submissions came to nought.

The committee formed to make these submissions continued to meet occasionally over the next few months.

The Establishment of a Refuge

In 1989 at one of these meetings it was advised that a woman from the Department of Family and Community Services would be coming to address local women about the possibility of obtaining funding for a refuge through her department.

When the meeting convened it was made aware that a group calling itself the Mygunyah Aboriginal Corporation had been formed by a group of women in Dubbo. The objective of that group was to provide support for victims of domestic violence. This group had already obtained funding for

the appointment of a domestic violence support worker in a number of western New South Wales towns. The assembled group of women were informed that Bourke, like a number of other places, would be able to appoint or elect a local sub-committee who would in turn elect two members who would be seconded to the Mygunyah governing committee. There was strong protest among the women that the town needed a women's refuge and not a support worker. However the meeting was presented with a fait accompli and the role of the worker was explained.

Whenever a woman was faced with domestic violence she could seek out the worker who would make arrangements to find her accommodation in a motel until public transport could be obtained or the worker could be in the position herself to transport the woman and her children out of town to the nearest refuge in the town of Parkes some 500 km away.

This service also provided the women with some funds to pay for the refuge and transport. This was the first facility that was set up to cater exclusively for the needs of victims of domestic violence in Bourke. There remained a vocal group of women who continued to argue to maintain the quest for a refuge because despite the vital service offered by Mygunyah and its domestic violence support worker, a large number of women in the town only wanted a short separation from their spouse while there was the potential for violence and after that wished to return to the spouse and the matrimonial home. They argued that a residential facility should remain as an objective.

A group continued to meet with this objective in mind and in May 1991 decided to formalise proceedings again and start writing submissions for funding. A Roman Catholic nun from Cobar, Sr Philomena Sewell, of the Presentation Congregation, came to Bourke to give us some ideas about how the committee could embark on this project. She had been involved in the establishment of a refuge in Young.

Shortly after that meeting a public meeting was called of representatives from every organisation in the town. Some thirty people attended. At that meeting the members of the Bourke Historical Buildings Cooperative made an offer which could not be refused. They had been in possession of a heritage listed building in the centre of town for nearly ten years. In the current climate of government funding they were finding it increasingly difficult to maintain the building and were willing to make it available to the women's refuge committee on the undertaking that it was maintained.

The value of this offer has to be explained. This building was a grand old mansion with six very large rooms, two enclosed verandahs, open verandahs on three sides, a kitchen, two toilets and a bathroom. It was set on a large block and had a lock-up garage. The house was located in the centre of town and was only a half block away from the police station.

The Buildings' Cooperative offered the committee a twenty-five year lease rent free with an option to renew the lease for a further period of twenty-five years on the same terms. The Shire Council, on application, subsequently waived the water, sewerage and land rates. The committee thus had its premises at the right price.

Having accepted the generous offer of a free house, the hitherto fairly informal group of women decided to incorporate as an association under the NSW *Associations Incorporation Act (1984).* This group applied and attained charitable status and then applied to the Commissioner of Taxation to be exempt from taxation and bank charges.

It was decided that rather than wait for government at local, state or federal level to respond to the applications and submissions, the association would start raising

funds in the community in order to complete the building repair and security enhancement program. A radio auction was organised on the local public broadcasting radio station. This entailed approaching every business house and organisation in Bourke and the surrounding towns of Brewarrina, Lightning Ridge, Nyngan and Dubbo and asking them to donate items for auction. All committee members chipped in with services, for example, two weeks ironing, a picnic luncheon for eight, a nappy service and so on.

On a Sunday in November 1991 the three stock auctioneers in town spent the whole day on the air broadcasting the auction of these items. This raised approximately $13,000.

In the same month a local businessman appeared in the local court and in order to demonstrate to the court that he was of good moral character he donated $2,000 to the refuge.

A private bequest of $4,000 was donated from a CSIRO scientist. These funds were made available from her husband who said that she would have been delighted to be involved in such a project.

In addition money had been raised through the more usual means such as bingo, cake stalls and raffles.

Some of these funds were used for public liability insurance, workers' compensation insurance, and volunteers' compensation insurance. The building and its contents also had to be insured.

After the building repairs were completed and the fence installed, then began the difficult task of finding personnel. Up to date the committee had been unable to access any government funding. An Aboriginal woman who had been employed as a health education officer by the Health Department of New South Wales agreed to move into the refuge as her permanent home. The arrangement was that she would get the exclusive use of two rooms and a toilet and share a bath and kitchen facilities with the clients.

She would not be paid for her services and she would not be charged for her accommodation or electricity. There would be a phone installed at the committee's expense and whilst the committee would pay for rental and for the calls made by the refuge, she would make up the rest of the bill. The committee were really fortunate with its choice of the live-in refuge manager. Mrs Collis already had high standing in the community. Her reputation was unequalled for both integrity and confidentiality. As a result, from the day she moved in, which was about two weeks before the refuge was ready to accept clients, she had people knocking at the door to just spend a few hours talking to her and asking for refuge.

Some tough decisions about the refuge policy were also taken. It was decided that, unlike city refuges, the location of this refuge could not remain secret. The address and the fact that it was a women's place where women could go and speak to a sympathetic listener were published in the community.

The six months prior to the opening were really busy. A great deal of the time was spent talking to the grandmothers who had until now borne the weight of domestic violence by being the people who provided refuge largely at the expense of their own health and well-being. A large cross-section of the community was informally consulted, asking them about their requirements, their needs and their worries about such a place.

Most of the older women were extremely supportive of the concept of the refuge and many offered their services as volunteers. The younger women who had spent

most of their lives in the shadows of full government funding seemed apprehensive that the refuge could possibly function without funding.

Many older women who had been victims of domestic assault in their younger days stated their regret that such a place had not been around while they were younger. Younger women and current victims asked the following questions most often:

> Would they be compelled to complain to police should they use the refuge?
>
> Would they be chastised for returning to their husbands?
>
> Would they be compelled to apply for an Apprehended Domestic Violence order?

They were assured that the refuge only existed as a place they could go to for a long or short term (as they felt like it) during which they could avoid an unacceptable situation. It was agreed that all women could bring their children. The committee was unable to agree on whether or not adolescent boys would be allowed in the refuge but eventually we decided that should a woman arrive in the middle of the night with an adolescent son she would be allowed to let him remain with her for the night. The next day, however, his continued residence would be dependent on the feelings of other residents at the time as well as the child's willingness to abide by the rules of the refuge.

Some time was spent talking to the wider community. The policies were explained and publicised. The intention was to ensure that nobody felt that the refuge was to be detrimental to men in the community. It was the intention to provide a safe place for women and children, but the committee were not going to proselytise and try and convince the women that it was the one and only way in which they could live their lives.

The intention was to support women in whatever decision they made and provide them with a safe and comfortable place should they need it.

The refuge opened on International Women's Day 1992. In the first month of operation, 100 bed nights were occupied.

Funding

To date, no government funding has been received despite letters to all levels of government and the refuge has been unable to employ full-time paid staff for any length of time. Nevertheless some help has been received from the congregation of the Presentation of the Blessed Virgin Mary and also from St Vincent de Paul Society. The former made available an amount of $10,000 while the latter donated $5,000 for furniture. Two casual employees have been employed for two hours each day, five days a week in order to provide the refuge with continuity and to assist with cleaning and other household chores.

Both these women are local Aboriginal women. The live-in manager becomes a live in refuge worker after office hours four days and five nights a week. During office hours, on alternate Wednesday evenings until 10.00 pm and on weekend evenings and nights the refuge is staffed by an army of volunteers. Some thirty-two women aged between the ages of twenty-one and sixty-five staff the refuge on a monthly roster.

The committee continues to raise money through street stalls and raffles to pay for electricity bills and other incidentals. Some publicity is received in the *Catholic Weekly* and some $600 in the mail as donations.

A fundamentalist Christian community provides the refuge with half a sheep a week and the committee buy bulk food like frozen vegetables, milk, tea, coffee for the clients'.

The clients are asked to contribute $5.00 per day per adult and 50c per day per child. Only two clients have paid so far. There is no system to collect unpaid fees nor is there any intention of doing so. All that is done is request payment and hope that a sense of fair play and decency will prevail. The Mygunyah Corporation has recently agreed that should any of their clients use the refuge they will be pleased to meet the costs of their stay. This is vital as such income is exclusively applied to purchasing food and other items for the use of the residents.

Conclusion

What has been achieved is a facility that runs for twenty-four hours a day seven days a week and this has been achieved without having seen a cent of government money. It has been an enterprise run only by women for women.

The committee itself is an interesting cross-section of the community. It includes the first Aboriginal woman to be an elected member of local government in Australia, a grazier's daughter, a local general practitioner, a nun, an Aboriginal teacher's aide from the convent school, a pre-school teacher, a primary school teacher, a State government employee and a nurse from the Aboriginal Health Service. All of these people, except the nun, also have children.

All but one of the clients have been of Aboriginal descent although the problem of domestic violence, both in the town and in the wider community, is not an exclusively Aboriginal one. However, so far only Aboriginal women have publicly acknowledged the problem. The committee has decided that it will make its services available to all sections of the community. However, there has to date been little public acknowledgment that family violence occurs within the non-Aboriginal community.

There is widespread acknowledgment of violence on a personal and private level. However, it seems that economic factors, coupled with living conditions, make the desperation of Aboriginal victims of domestic assault more extreme than that experienced by their non-Aboriginal sisters.

In an otherwise racially divided community we have managed to have Aboriginal and non-Aboriginal women work together for the common good. Many women who would have never met have come together and made friends. There is a level of decision-making among volunteers that has made them feel that they have a stake in the ownership of the place. They cherish and nurture the institution as their own and defend it very strongly.

One of the great strengths is a non-judgmental stance. The women are not told what to do. A large proportion of clients stay only for a short time. They come to the refuge when they perceive that a situation has the potential for escalation into violence or after they have been assaulted to avoid further assault.

So far the premises have not been threatened by any men. This may be due to the fact that a large proportion of the volunteers are older Aboriginal women who have

some standing in the community and whose very association with the organisation gives us our reputation and prestige.

Finally, the name of the refuge is the Edith Edwards Women's Centre. Edie was a matriarch of the community. She was of the Wangkumara tribe. Her family owned a droving plant and originated from corner country. One day in 1937, following the government edict of the time her whole extended family were loaded onto a cattle truck and moved to the newly designated Brewarrina mission. This for her family was alien country and shortly after they walked out of the mission and began the long walk back to Tibooburra. When they got to Bourke the Darling was in flood and they stopped here. This is where Edie grew up and raised her family. And a large number of local Aboriginal people are related to her and this increases the sense of ownership. Edie died in 1990 but we hope her memory and her dignity and her traditional values will continue to live on through the refuge.

THE DOOLIGAR JUSTICE CENTRE: A POST-ROYAL COMMISSION RESPONSE TO ABORIGINAL CORRECTIONAL ISSUES

Reg Blow

THE VICTORIAN OFFICE OF CORRECTIONS IS RESPONSIBLE FOR THE SAFE, secure and humane supervision of adult offenders who have been deprived of their liberty by the courts. This responsibility emphasises the provision of opportunities for the personal development of prisoners and offenders and facilitating their reparation to the community.

The Office of Corrections (OOC) corporate mission statement, "The Way Ahead: Corporate Directions 1990-95" contains eight major principles upon which Corrections policy is based. Although all principles apply equally to all offenders, two principles have particular relevance to Aboriginal prisoners and offenders:

> *Principle 5: Individualised management of offenders*
>
> Services, facilities, activities and programs should be based on the concept of individual management and designed to meet the individual needs of offenders. In particular, regard should be paid to the special needs of specific groups of offenders.
>
> *Principle 8: Anti-discrimination provision*
>
> There must be no discrimination in any respect of correctional programs on the grounds of race, colour, gender, marital status, physical disability, religion, political affiliation, national origin, except as is necessary in properly meeting the needs of a disadvantaged individual or group.

These principles indicate, not only the need for anti-discrimination, but also the need to take positive steps to counter the disadvantages suffered by Aboriginal people.

Aboriginal Offenders and Prisoners in Victoria

In recognition of the plight of Aboriginal people within the criminal justice system the OOC, in consultation with Aboriginal organisations and communities, has undertaken a range of initiatives aimed at decreasing the over-representation of Aboriginal people within the corrections system and to prevent the occurrence of prisoner deaths in custody.

Since 1987, the OOC has been involved in continued consultation with the Royal Commission into Aboriginal Deaths in Custody. In December 1988, an interim report from the Commission was released. The OOC responded to identified areas of concern with the following initiatives:

- the up-grading of suicide resistant cells;
- development of an Aboriginal employment strategy;
- development of cultural awareness training programs for all staff working with Aboriginal offenders;
- the employment of specialist Aboriginal staff in education and health positions;
- holding culture camps for young Aboriginal offenders;
- the creation of Aboriginal Liaison Officer positions at all Corrections facilities; and
- support for the development of Community Justice Panels within local Aboriginal communities.

In early 1992 the OOC, in response to the findings of the final report of the Royal Commission into Aboriginal Deaths in Custody, undertook a comprehensive review of its policy and practices associated with the supervision and incarceration of Aboriginal people.

Arising from the review process, the OOC has developed a proposal for a new Corrections initiative, provisionally titled "The Dooligar Justice Centre" aimed at addressing issues such as Aboriginal imprisonment, the delivery of services to Aboriginal people within the criminal justice system and increasing Aboriginal control and ownership of these services within a correctional context.

The detail of this proposal represents a starting point and direction for consultation with the Aboriginal community of Victoria through which the Office of Corrections hopes to make a significant contribution to decreasing the over-representation of Aboriginal people within the Victorian criminal justice system.

Trends in Aboriginal Offender Numbers

The number of Aboriginal people in Victorian prisons has increased over the past four years. This reflects an Australia wide trend.

- In 1987 there were 52 Aboriginal prisoners (2.6 per cent of the total prison population) and by June 1992 there were 106 prisoners (3.9 per cent of the total prison population).

Analysis indicates that this trend is still increasing. There has been 0.9 per cent increase in the ratio of Aboriginal to non-Aboriginal prisoners between June 1991 to June 1992. Major factors which have influenced this trend include:

- a more accurate recording of Aboriginal people within the Victorian prison system;

- a study by the Australian Institute of Criminology (Biles & McDonald 1992) found that Aboriginal people are more likely to come into contact with the criminal justice system at an early age and they are more likely as adults to attract custodial sentences due to their longer juvenile criminal histories;

- Australian Bureau of Statistics census data (Australian Bureau of Statistics 1988 & 1992) shows that the number of people who are identifying themselves as Aboriginal has been increasing since 1981, therefore some increase in the overall numbers of Aboriginal people in custody can be explained as part of a general increase in the population of offenders in custody; and

- Aboriginal people display higher rates of failure on community based corrections orders and parole than non-Aboriginal offenders. This causes a disproportionate increase in custodial numbers due to the consequences of failure to abide by the conditions of release or court orders.

The Aboriginal prison population as at 1 June 1992 is as follows:

- Victoria currently houses 106 Aboriginal inmates in custody;

- Of these 97 inmates are male, 9 are female;

- Of the 97 male prisoners, 20 are being held on remand;

- Of the 9 women prisoners 1 is being held on remand;

- Aboriginal prisoners are dispersed throughout the State prison system, with the highest concentrations of prisoners being 42 within the Coburg prison complex, 10 prisoners at Ararat prison, 7 prisoners

at Loddon prison and 15 prisoners situated at the Melbourne Remand Centre.

Community Based Corrections Aboriginal Offender Population

The trend in numbers of Aboriginal people under the supervision of Community Based Corrections has undergone a similar increase to that of the prison population.

In 1987 there were 108 Aboriginal offenders (2.01 per cent of the total offender population) and by March 1992 there were 203 Aboriginal offenders (2.6 per cent of the total offender population). An analysis of gender indicates that 177 offenders are male and 26 are women offenders.

Aboriginal offenders are dispersed throughout Victoria with the greatest concentration of people being in large rural centres such as Shepparton, Warrnambool, Mildura and Bairnsdale.

In undertaking its examination of the deaths of Aboriginal prisoners the Royal Commission was forced to confront a broader range of issues than simply the behaviour of police and corrections departments.

In attempting to define the causal factors of deaths in custody, it was found the following factors contributed to the over-representation of Aboriginal people at all levels of the criminal justice system:

- a combination of social and racial inequities suffered by Aboriginal people;
- the crisis of a diminishing Aboriginal culture and identity; and
- the capacity for all elements of the non-Aboriginal social and justice systems to alienate Aboriginal people.

The Effects of the Correctional System

The effects of the correctional system on Aboriginal people include:

- high rates of imprisonment and community based orders;
- high rates of failure of community based orders due to breaches of reporting conditions and further offending; and
- high rates of failure on parole.

The only solution available to these problems from a correctional perspective is to:

- divert Aboriginal people from entering the criminal justice system or at least from entering prison; and
- assist Aboriginal prisoners in successfully returning to the community.

The Framework

In response to the need to divert Aboriginal offenders from imprisonment and increase the success of prisoners undertaking parole, the Dooligar Justice Centre has been designed to achieve five primary goals.

- Provide culturally relevant diversionary programs for Aboriginal offenders undertaking community based corrections orders.

- Provide personal development, release preparation and post-release support programs for Aboriginal prisoners.

- Train Aboriginal people to work within the criminal justice system to provide assistance and support to Aboriginal offenders and prisoners.

- Train non-Aboriginal workers in the criminal justice system with respect to Aboriginal cultural awareness to improve the effectiveness of communication and counselling strategies.

- Provide mechanisms for Aboriginal offenders and prisoners to undertake community work, personal development and drug and alcohol treatment in Aboriginal communities.

The Dooligar Justice Centre

Providing these services and facilities is in itself not enough. The findings of the Royal Commission have shown that if correctional facilities and programs are to be relevant to Aboriginal offenders and prisoners then a greater presence of Aboriginal staff, self-determined policies, an emphasis in programs on cultural identity and the involvement of the wider Aboriginal community in the care of offenders, are required. Thus the following features have been incorporated into the design of the Dooligar Justice Centre.

Community involvement

The Dooligar Justice Centre will provide the Office of Corrections and the Aboriginal Community with a pathway of communication and interaction that is not available under the current structures of the Office of Corrections. The centre will facilitate the involvement of Aboriginal people in the development and delivery of corrections programs and consequently it will provide a greater presence of Aboriginal people in professional roles within the correctional system.

The centre will facilitate the involvement of Aboriginal people at all levels of the correctional system in providing supervision and care to Aboriginal offenders and prisoners. Examples of community involvement include:

- the training of Aboriginal correctional volunteers and Aboriginal Community Justice Panel members in providing a broad range of supervisory, administrative and advocacy roles within the criminal justice system;

- the employment of Aboriginal sessional employees in community based corrections and prisons programs to undertake the provision of culturally relevant personal development and community work programs;

- using Aboriginal community centres and significant Aboriginal cultural sites as places of learning and for community work purposes;

- utilising Aboriginal community members as prison visitors;

- the employment of Aboriginal people to staff the Dooligar facility and as correctional workers within the mainstream corrections system; and

- employing Aboriginal people to manage and develop policies relating to the provision of correctional services to Aboriginal people.

Operational philosophy characteristics will be:

- the reinforcement of Aboriginal identity and pride in the ownership of Aboriginal culture and heritage;

- recognition of the effects on Aboriginal people of white settlement in Australia;

- acceptance of Aboriginal spirituality, tradition and cultural values;

- the responsibility of all Aboriginal people to protect and preserve their cultural heritage; and

- the right of all Aboriginal people to lead a healthy and socially productive life in Australian society, as Aboriginal people.

One of the central purposes of the Dooligar Centre is to develop an environment in which offenders can have the opportunity to confront their offending behaviour, and examine how their status as Aboriginal people relates to their offending.

Through pro-social modelling by staff cultural history education and the provision of challenging experiences which reinforce traditional skills and beliefs, offenders will be exposed to alternative viewpoints of their heritage which construct a more positive view of Aboriginal people than existing social stereotypes.

It is expected that within the provision of a cultural emphasis to correctional programs, greater rates of participation in non-custodial orders by Aboriginal offenders will be achieved.

Culturally relevant program

The Dooligar Justice Centre will provide personal development, treatment and supervisory programs which promote a positive recognition of Aboriginal identity and focus on Aboriginal culture and spirituality as an alternative to the negative stereotypes which are a feature of Australian society.

Although no direct solutions to the problems of Aboriginal people are possible from within a corrections framework, by utilising the time offenders and prisoners are required to be under the supervision of the Office of Corrections to increase their cultural knowledge, Aboriginal people undertaking corrections programs will be given an opportunity to see themselves and their communities in a more positive manner.

Emphasis will continue to be placed on skills training, education, health and specialist treatment where required, but where possible the delivery of these services will be undertaken within an Aboriginal context and with respect to the roles offenders and prisoners are likely to undertake within their own communities.

Independent Aboriginal management

The Dooligar Justice Centre will be jointly developed by the Office of Corrections, the Victorian Aboriginal community and other government agencies and departments. After an initial three-year period of development and infrastructure building it is envisaged that the fully operational centre will be transferred to an independent Aboriginal Board of Management and operate as an autonomous service provider within the criminal justice system.

The development period, where the Office of Corrections will retain responsibility for services provided by the Dooligar Justice Centre, is intended so Aboriginal employees have time to assimilate to the rigorous demands of the court system, Adult Parole Board, prisons and corrections centres in which they will provide services.

The structure

The structure of the Dooligar Justice Centre will consist of three primary elements.

The Residential Unit There will be a central facility located in or near the metropolitan area of Melbourne, which will house five service units associated with the Centre's key areas of operation.

The Residential unit will maintain all relevant services to the housing and primary supervision of the Centre's residents. A ten to fifteen bed unit is envisaged as an appropriate size for centre based accommodation to service Intensive Correction Orders, bail hostel and emergency post release accommodation needs. Although the projected numbers of participants (twenty to twenty-five) is greater than this number, accommodation will also be provided by participants being involved in the culture camp program.

Dooligar Programs Unit The program unit will offer a range of Aboriginal personal development and the educational programs which emphasise Aboriginal culture and tradition. Programs will be made available to all Aboriginal prisoners and offenders.

A major emphasis for program centre workers will be on the coordination of community organisations and education providers (TAFE, Skill Share, DEET) to participate in the delivery of programs, so community contacts are maximised and centre staff do not become over-committed as service providers.

It will also provide and/or coordinate the delivery of personal development, educational and therapeutic programs for Aboriginal offenders and prisoners; provide bridging programs for prisoners undertaking release; and provide a range of intensive support services to Aboriginal people undertaking parole, including emergency accommodation and personal development.

Criminal Justice Training Unit The Criminal Justice Training Unit will have two primary focuses: developing skills within the Aboriginal community and better equipping non-Aboriginal workers in the criminal justice system to work with Aboriginal offenders and prisoners.

Training will be provided on an ongoing basis to members of Aboriginal Community Justice Panels (a Victorian Aboriginal community based initiative) and any Aboriginal people wishing to develop knowledge about, or work within, the criminal justice system. It will involve both specific programs associated with different tasks in the corrections system, as well as general community information programs.

Currently the Office of Corrections utilises its senior Aboriginal staff to implement staff training programs for prison recruits, community based corrections staff and Aboriginal liaison positions at all Office of Corrections locations.

To expand the frequency and content of staff training in cross-cultural awareness the Criminal Justice Training Unit will focus on operational staff within the Office of Corrections. With over 2,300 staff involved in custodial and community based services, the Office of Corrections has substantial training requirements to fulfil the criteria set out in the Royal Commission in relation to training.

Cultural Awareness Programs Cultural awareness programs will provide staff training in Aboriginal culture and society and courses to corrections personnel as well as providing training contracts to other Government and private organisations.

Community Justice Panel Training Specific training modules and systems will be developed relevant to the needs of Community Justice Panel members.

Volunteer Training Ongoing training for Aboriginal volunteers working in the criminal justice system will be developed.

The training officers will be located within the Dooligar Centre and utilise the program centre's facilities. It is envisaged that services will also be provided on a regional basis to Aboriginal communities, prisons and Community Based Corrections centres.

Outreach counselling unit

The outreach counselling unit will provide emergency counselling and support services to Aboriginal offenders and prisoners. Counselling staff will be responsible for the collation of a data base on Aboriginal offenders and prisoners which examines their progress through the correctional system. Via the development of offender management plans and case reviews, the data base will be used to develop profiles of offender needs. This data can be utilised in the future planning and development of programs for all Aboriginal offenders and prisoners.

Outreach staff will be available to visit offenders either in their own communities when significant problems are identified by local correctional supervisors or as an additional support to prison welfare services.

For offenders on community based orders, outreach staff will be able to offer direct counselling, liaison with the Office of Corrections, the offender and their local community agencies, or referral to services available through the Dooligar Justice Centre. These options will help keep the offender in the community in compliance with court or parole board orders.

Culture camp / community work unit

The Culture Camp program will undertake outdoor personal development programs and culturally significant community work projects within the Aboriginal community. The Unit will operate ongoing camp sites on Aboriginal land throughout Victoria for Aboriginal offenders and prisoners. The camps will be used as extensions of the Centre's cultural programs and reinforce traditional skills within bushland environments.

The team will also be responsible for the identification and undertaking of community work projects as part of the normal activities of the camp program. The camp coordinators will involve local Aboriginal communities in supervising offenders and providing programs.

The Dooligar Community Resource Network

Through its training, outreach and culture camp programs, the Dooligar Justice Centre will establish links with a broad range of Aboriginal communities, individuals and organisations. In capitalising on these contacts, the Dooligar Justice Centre will provide specific resources for the development of a community network.

Formally, the network will be utilised to deal with the high mobility of Aboriginal offenders, a problem which currently results in many breaches of correctional and parole orders. Informally, through the dissemination of information, holding forums and helping share ideas on local community initiatives, the community network will assist in the overall development of effective responses to criminal justice issues which affect Aboriginal people.

Importantly, through its training functions the Dooligar Justice Centre will be able to identify community members who have special skills or who are willing to assist in the supervision of offenders in the community, and be able to coordinate these resources on a state-wide scale.

The Benefits

The Office of Corrections has given priority to this initiative on the basis of:

- the extent of compliance the initiative achieves to the findings of the Royal Commission into Aboriginal Deaths in Custody;
- its long-term focus towards developing solutions to Aboriginal over-representation in the criminal justice system;
- the opportunities it provides for employment and involvement of Aboriginal people in the criminal justice system;
- its ability to achieve greater levels of diversion of Aboriginal offenders from imprisonment than current mainstream services; and
- the opportunity it provides for the Aboriginal community to become involved in developing responses to the needs of Aboriginal offenders.

Conclusion

The Dooligar Justice Centre proposal gives the Office of Corrections an operational framework through which it can develop responses in conjunction with Aboriginal people working within the criminal justice system, to address the needs of Aboriginal offenders and prisoners. Importantly, the Dooligar proposal creates a focus for the Office of Corrections and the Aboriginal community towards diverting Aboriginal people from the criminal justice system.

In developing a dual approach to Aboriginal over-representation within the criminal justice system the Dooligar Justice Centre seeks to recognise the importance of family structure and the manner in which Aboriginal people organise and support each other. By developing a greater awareness of criminal justice issues within the Aboriginal community and providing offenders with a more structured support network of Aboriginal workers and volunteers, the Dooligar Justice Centre will increase the likelihood of success for Aboriginal offenders involved in correctional orders.

In committing itself to the development of the Dooligar Justice Centre the Office of Corrections is both recognising the crisis of Aboriginal people within the criminal justice system and the importance of Aboriginal people developing and implementing the solution. Whilst aware of past failures by both governments and Aboriginal organisations in undertaking initiatives to deal with these issues, the Office of Corrections believes that success will depend on cooperation and partnership with the Aboriginal community and will provide a credible and effective service to Aboriginal people.

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THE EVOLUTION OF A CONSULTATIVE APPROACH TO CORRECTIONS ON ABORIGINAL COMMUNITIES

Angela Musumeci

A PROJECT BEGAN IN QUEENSLAND ABOUT TWO YEARS AGO TO ESTABLISH a Corrective Services presence on remote Aboriginal communities. During the course of the two years that the project has been in progress non-Aboriginal Commission officers who have worked on the project have learnt much more about these communities and the way in which they need to interact, thanks to the patience and trust of the communities and the hard work of Aboriginal staff members.

Background

Before December 1988, Queensland had two distinctive services dealing with Corrections. These were the Prison Service under the Prison's Department and the Office of the Chief Probation and Parole Officer under the Justice Department. Interaction between the two departments occurred, but was relatively minimal. The proportion of Aboriginal people in prison was about 20-25 per cent. Given that Aboriginal people form 2.3 per cent of the total population, this figure was enormously over-representative. The situation was much the same for the Probation and Parole Service.

Demographically, the proportion of Aboriginal people in the Queensland population increases further north, with prison and non or post prison orders reflecting this. At that stage, all prisoners from North Queensland were imprisoned in Townsville. The opening of Lotus Glen in Mareeba in May 1989 has meant that most Peninsular prisoners are imprisoned in Mareeba, with Aboriginal prisoners being taken some considerable distance from their homes to serve their sentences. With their release on parole or for those on probation, community service or fine option orders, the situation was no better. North Queensland had three area offices: Cairns, Townsville and Mount Isa. Visits to communities such as Thursday Island, Bamaga, Aurukun, Lockhart River, Hopevale, Kowanyama, Edward River (now called

Pompuraaw), Weipa, Wujul Wujul and Yarrabah were being undertaken on a visiting basis from Cairns; Palm Island and Charters Towers from Townsville and Doomagee; Burketown and Mornington Island from Mount Isa. Usually visits to these communities were made during the Court Circuit to the area every one or two months. The Probation Officer would fly into the community with the magistrate, see as many people as possible before, during and after court, induct those placed on new orders and try to provide some form of counselling service before the plane flew out again that afternoon. This process bore very little relevance whatsoever to the day-to-day life experiences of residents of the community. At one point budget restrictions forced even that level of service for about three or four months. In spite of this, a good rapport was established between the Probation and Parole Service and members of those communities.

The Kennedy Review 1988

The 1988 Kennedy Review into Corrections in Queensland resulted in the combination of the two services into the Queensland Corrective Services Commission which began on the 15th December 1988. It had an impact on Aboriginal people in various ways. A major part of the Kennedy Review reflected upon the problems of Aboriginal inmates and the Queensland prison system. The report recognised that Aboriginal people were disproportionately represented in Queensland prisons and that the differences between the various groupings were not only geographical, but also related to the extent to which they retain and maintain their cultural identity.

It acknowledged that Aboriginal people have for decades suffered the effects of institutionalisation, unemployment, low educational and legal status and over-representation in the criminal justice system, and it also acknowledged the extent to which the presence of alcoholism, interpersonal violence and other problematic behaviours in contemporary Aboriginal communities contributed to this over-representation. Recommendations 75 and 76 of the Kennedy Review gave the following clear directions to the Queensland Corrective Services Commission:

- that the Commission develop a comprehensive database relating to Aboriginal people in custody;
- that the Commission appoint an Aboriginal policy liaison officer;
- that the Commission carry out a series of workshops and seminars:
  - that closely involve the Aboriginal community;
  - address the problems facing Aborigines in prisons; and
  - address the problems of Aboriginal communities in their interaction with Corrective Services in this State;

- that the Commission empower correctional centres to develop areas or sections which can become centres for the Aboriginal culture and community with accommodation in these areas totally voluntary; and

- that as an alternative to the seven person board recommended in the interim report, consideration be given to the creation of a larger board with one position to be filled by an Aboriginal or Islander.

The Queensland Corrective Services Commission responded to these recommendations by involving the Aboriginal community to assist in providing a range of services for Aboriginal and Islander offenders that contribute towards decreasing the number of offenders represented within the system and to improve the overall quality of treatment during imprisonment.

The major thrust has been:

- representation of Aboriginal and Torres Strait Islander groups in an official capacity within the Commission;

- development of a recruitment policy aimed at increasing the composition of Commission staff to 10 per cent representation of Aboriginal and Torres Strait Islanders across all operating levels of the Commission;

- establishment of specific positions within the Commission to address Aboriginal and Islander needs;

- establishment of formal services and programs within correctional centres to cater to the needs of Aboriginal and Islander offenders;

- improved access for the Aboriginal and Islander community to offenders in correctional centres; and

- the creation of community based programs that provide alternatives to imprisonment and support for community bodies that address Aboriginal and Islander needs.

The creation of a community based program, to provide alternatives to imprisonment, support for community bodies and to address Aboriginal and Islander needs formed the basis for this project. The Royal Commission into Aboriginal Deaths in Custody had begun when the project was initiated, although no reports had been tabled at that stage.

The Project

The project has evolved over the period of its existence. Initially it was planned to open an all purpose facility to deal with the non-custodial orders, house some minimal risk low/open classified inmates, and initiate some community development in attempts to prevent offending. It was envisaged that some communities could run these centres under contract to the

Commission or alternatively be employed to do so. The thing that was different about this idea, was that the Commission planned to go to each Community Council and ask them which option they preferred. After interviews with only a few communities some fundamental elements were factored in to this project:

- what the Commission thought was consultation was not viewed that way by the community. The Commission's concepts of who were community leaders reflected a very narrow perspective;

- it was recognised that each community was different: they have different problems and different relationships with their neighbouring communities; and most importantly,

- the Commission realised that these communities develop and change constantly.

All this has evolved into a three-step model. Whilst the model is the same for every community, actual implementation is specific to each individual community. The aim is to rebuild the authority and discipline within the community—it seeks to empower those in traditional authority to implement the model.

The Model

Step 1: Form Community Corrections Committee

There needs to be a process which identifies key Aboriginal leaders who would be willing to form the core of a community task group designed to overcome the problem of discipline. This group would work to strengthen the norms which already exist and which give authority to members of the Aboriginal community. Such a task group works to ensure that persons responsible for the behaviour of undisciplined people are made aware of their duties and supported when they act responsibly. It will work to strengthen the structures of social control in the community by breaking the present divisions between institutions and providing a community wide network of support.

Step 2: Appoint Community Corrections Development Officer

Queensland Corrective Services Commission would appoint an officer in *consultation* with the *community* to be not only responsible for supervision in the statutory sense—but more importantly to be a resource person to the task group. This officer would bring the authority of the government to support the task group and to empower them. The officer would work constantly with the task group to plan what is to be done reflecting on the success or failure of the plan. This officer *would not* be the focus of responsibility. By

working side by side with the people of the community to plan their response to each situation the responsibility lies with the community.

Step 3: Networking Consensus and Community Development

Together with the officer as facilitator, the group will plan the involvement of other community institutions in the resolution of behavioural problems in that community. They will involve the police, council, church, school, companies and bodies involved in enterprise in creating a new consensus for acceptable behaviour in the community.

The model has four objectives:

- to motivate the total community—Aboriginal and others from outside;
- to identify, motivate and support those persons who have been traditionally responsible for leadership and discipline;
- to identify existing functional groups still involved in trying to maintain social control in their part of the community's life; and
- to coordinate the resources of the community as a whole to confront their own dysfunction, that is, to bring together those with traditional authority, statutory, normal religious authority and financial power to work towards a new pattern of expectation and the establishment of Aboriginal authority.

The model has now been developed and will be initiated subject to the appointment of staff to those communities who *in consultation* with Queensland Corrective Services Commission, feel they are ready to develop the process and who are working towards providing community programs that provide alternatives to imprisonment. Interviews for Palm Island have already occurred, with Kowanyama to be completed by the end of next month. It is believed that this type of process will allow self-determination and self-management for Aboriginal people, and it will ensure that Aboriginal people are involved in setting the goals and objectives and in administering the programs that concern them. Aboriginal people will determine their own priorities, develop initiatives and take responsibility for their decisions. Already two communities, Hopevale and Aurukun have established out-stations to supervise prisoners at the end of their sentences which they manage under Contract with the Queensland Corrective Services Commission. Pompuraaw is keen to establish an out-station also.

Conclusion

Like all government and public agencies, at this time, finance is a major problem. But there is the fundamental element of this model which has occurred independently of budgetary restraints. It is an attitude change on behalf of the Commission, a willingness to be flexible, to meet each community individually and adapt its practices to adjust to the community.

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ABORIGINAL PEOPLE AND THE MEDIA¾ REPORTING ABORIGINAL AFFAIRS

Diana Plater

IN LATE 1985 I WAS AUSTRALIAN ASSOCIATED PRESS'S WESTERN Australian correspondent. While I was in Kununurra, the family of a young Aboriginal man who had died in Broome gaol came to visit. They were desperate. They did not believe the cause of death suggested by the prison and suspected some foul play. For this reason they wanted an independent post mortem, only they could not afford it. They had asked the local legal service but they were told it did not see the need for it. So they asked that the story be written to help their case. Like many people, who find little help from bureaucracy, they had gone to the media for help.

Late 1985 was a traumatic time in Western Australia for Aboriginal people—they had held strong hopes for both State and national land rights which were dashed by governments, who were unable to stand up to powerful lobby groups. People who had bared their souls and their intimate knowledge to land commissioners and lawyers learnt yet again that their precious time and effort had come to nothing. Around the same time there was a series of deaths in prisons, police lockups and vans and in hotels. Predictably, people had spent their built-up frustration by protesting, often leading to violence. Coronial inquiries and subsequent court cases had brought little justice.

Some of the journalists working in the area, who were sympathetic to Aboriginal calls for justice, had themselves been verbally attacked by the police and prison officers and accused of bias, treachery and disloyalty to the white status quo. The reason journalists—in Western Australia and in the other States—wrote those stories was because of a belief that the public should know how Aboriginal people were being treated by the law, the police, courts and government. For some, unused to conflict with the state and police, it was a shocking revelation.

However, as the environmentalists have learnt and politicians and the police have always known, the media, for all its faults, is there to be used.

Elliott Johnston QC in his reports to the Royal Commission recognised the role of the media.

> The media played a significant role . . . in the establishment of this Royal Commission. By its coverage of the issues, from the death of John Pat to that of

> Lloyd Boney, by placing them in their broader social and moral context, and by its presentation of the campaign of the Committee to Defend Black Rights, the media has acted as one of the protagonists in the process of achieving greater justice for Aboriginal people that is the goal of this Commission (Johnston 1991).

Johnston also points out that there is another side to the story. Aboriginal people generally claim that they have had an extremely bad deal from the media, experiencing discrimination in access and presentation. We all accept that and know the pain and suffering that has been caused by the lies and distortions, negative stereotypes and clichés that the media often uses when reporting on Aboriginal issues.

Racial Stereotyping

One of the main problems is the common journalistic practice—also promoted by the police—of identifying the Aboriginality of alleged offenders in crime stories. Of Mark Quayle, who died in Wilcannia in western NSW, Commissioner Hal Wootten said:

> The dehumanised stereotype of Aborigines in Australia caused his death. . . . in that stereotype a police cell is a natural and proper place for an Aborigine (Wootten 1991).

The Commission was told by a journalist:

> Racial stereotyping and racism in the media is institutional, not individual. That is, it results from news values, editorial policies, from routines of news gathering that are not in themselves racist or consciously prejudicial. It results from the fact that most news stories are already written before an individual journalist is assigned to them, even before the event takes place. A story featuring Aboriginals is simply more likely to be covered, or more likely to survive sub-editorial revision or spiking, if it fits existing definitions of the situation (Johnston 1991).

Although there is a negative side of the media and its coverage of Aboriginal issues, it is important to stress the positive work that is being done between Aboriginal people and some sections of the media and give some examples of how the situation can be improved further.

Journalists believe that there are few extremely racist reporters, but many, many ignorant ones. It is the responsibility of the industry to do something about that ignorance and it needs the help of Aboriginal people.

The industry recognises the work that Aboriginal people such as Lester Bostock and Cheryle Schramm and others have done in writing guidelines, running seminars and working towards the continued employment of Aboriginal journalists and filmmakers in the mainstream media, particularly the ABC and SBS.

Still, however, one of the main gaps is in the teaching of journalism in institutions with a lack of or little discussion of Aboriginal issues. The Royal Commission has recommended that "courses contain a significant component relating to Aboriginal affairs thereby reflecting the social context in which journalists work".

Through the Australian Centre for Independent Journalism at the University of Technology in Sydney, Kitty Eggerking and the author are presently working on a project known as "Reporting Cultural Diversity". Consisting of a resource book for working journalists and a text book and a training video for journalism students, the

project is designed to raise awareness about Aboriginal affairs and issues affecting people of a non-English speaking background. The resource book, *Signposts*, was launched during National Aborigines' Week as part of the Redfern Community Festival.

Up until recently, for those journalists who are keen to write non-racist stories on Aboriginal issues, the only guidance they have had has been a clause in the Australian Journalists' Association Code of Ethics. Point 2 of the code says that journalists "shall not place unnecessary emphasis on gender, race, sexual preference, religious belief, marital status or physical or mental disability".

In order to clarify some of the areas, the Australian Journalists' Association (AJA) has passed a set of guidelines on reporting issues affecting Aboriginal people. These are published in the resource book as well as guidelines already written by Lester Bostock for SBS filmmakers, *The Greater Perspective, A Guideline for the Production of Television and Film on Aborigines and Torres Strait Islanders,* and ones by Imparja Television, the ABC, the Warlpiri Media Association and a guide on reporting deaths in the Warlpiri community.

There has been a great deal of interest in these guidelines, basically because a lot of journalists just do not know where to start. Journalists would welcome any suggestions from Aboriginal people for additions or changes to these guidelines for the text book and update of the resource book.

Positive Stories

The author believes that positive stories about Aboriginal people means portraying them as human beings, not as two-dimensional walking clichés (for example protesters, drunks, criminals and victims) but rather as voters, mothers, fathers, children, students, lawyers, community workers, nurses and so on. Without denying the importance of Aboriginal and Torres Strait Islander identity, it is important that Aboriginal people are seen in the mainstream of Australian society as people with views about a whole range of subjects that affect everybody and as people who are doing things for themselves, working within their communities for change.

For example, when the controversial documentary, *Cop it Sweet*, about police in Redfern, was shown on ABC TV, it would have been useful to

screen a complementary documentary about the interesting and positive side of Redfern—something that refers to all the wonderful things happening in that much maligned neighbourhood, such as the medical service, the Eora Centre, the pre-school and the legal service.

"Positive stories" means looking more deeply into issues and understanding the history and the background. For example, the fact that Aboriginal people are now publishing their own histories and making their own programs and films should be of enormous interest to the media. Perhaps better reporting on Aboriginal issues could even lead the way to a more responsible, less sensationalist media on *all* subjects and issues.

The Aboriginal Media Liaison Group

Because, sadly, it is still true that many Australians go through life never meeting an Aboriginal person, most people still get their information about Aboriginal people from the media. It would seem that closer contact between Aboriginal people and journalists is the best way to change attitudes.

In Western Australia, a group of journalists and Aboriginal people have got together to do that. Concerned about the coverage in that state of Aboriginal issues they have formed the Aboriginal Media Liasion Group. They conduct campaigns to raise awareness and improve standards as well as holding forums for the media on how to improve reporting and for Aboriginal people on how to handle the media.

One such seminar was held in a country town, north of Perth, which has had a history of racial problems. Although it is not a big city, most of the journalists had never met the local Aboriginal people. After the seminar they went down to the pub together. The group believes having an outside agent organise the seminar made all the difference. We can only hope the media coverage will now improve.

The group, however, has not been so lucky with the *West Australian*, a newspaper that dominates the media in that state. Basically, if the *West Australian* does not run a story, it is not news. Aboriginal people found an ally in WA Premier Carmen Lawrence, who was particularly critical of a front-page story headlined "Aboriginal gangs terrorise suburbs". Forty-five journalists also signed a letter complaining about the story. Highly sensitive to criticism, the newspaper refused to be swayed by their arguments.

The group has also been conducting a campaign to have standards or guidelines introduced in commercial radio in relation to Aboriginal issues, such as those that exist for the ABC and SBS. They are particularly concerned about talk-back radio, where all sorts of racist myths and comments are aired with little opportunity to show the other side of the story. As part of this campaign, a report, *Gambling on the First Race*, a comment on racism and talk-back radio—6PR, the TAB and the WA Government; and written by journalist Steve Mickler for the Louis St John Johnson Memorial Trust Fund has been tabled in Federal Parliament.

There is no reason why similar groups cannot be formed in every State and town.

Media Coverage of other Communities

It is interesting to look at media coverage of other communities and how they have responded. During the Gulf War, Arab Australians were extremely upset about the way they were being portrayed by the media—a portrayal that led to mosques being attacked and harassment of members of their communities. Government bodies were

also concerned about this and meetings between members of the Arab Australian community and senior media people were organised in Sydney and Melbourne.

Those frank chats led to enormous changes of attitude, particularly when the newspaper editors learnt that their negative stories were upsetting a substantial section of their own market.

It was suggested that the Arab and Moslem communities should try to communicate directly with media organisations by, for example, making spokespeople more readily available and responding quickly to inaccuracies (Human Rights and Equal Opportunity Commission 1991).

There is a lesson here for the Aboriginal community. Similar forums between organisations and the media to try and break down these barriers would be an important step to changing attitudes.

Contacts and Representatives in the Aboriginal Community

Another problem is that journalists often go to the same person for a quote, who is then quoted on issues on which he or she sometimes does not have the authority to speak. For a journalist, contacts are everything. So it is important for journalists to have the appropriate contacts in the Aboriginal community. In our resource book, with the help of Aboriginal people, we have provided a directory of Aboriginal organisations. Perhaps Aboriginal organisations could put together such directories and let their local media know the best person to speak to when something happens. It is best to be pro-active, rather than reactive.

Some Aboriginal organisations, such as the land councils, have journalists or media relations officers on their staff. But not all organisations can afford that. If not, it is an idea to appoint somebody who is authorised to speak to the press, who can present a positive image. The guidelines that Aboriginal people have written emphasise that journalists should speak to Aboriginal people about Aboriginal subjects to make it easier for the journalist by having an Aboriginal person available for comment. A journalist being fobbed off to the white spokesperson or lawyer or whatever can be counter-productive.

Journalists

Cultivating individual journalists is one way of getting a story run. At present only a few news organisations have Aboriginal roundspeople but there are certain journalists who have a personal interest in the subject.

It helps of course if they are senior journalists, who are well-respected by the organisation for which they work. To cite the coverage of Coronation Hill, is a good example of how Aboriginal religious beliefs and attachment to the land was not taken seriously by the media. Yet some good examples of

journalism rose above the mire to try to present a different view, such as the articles by Cameron Forbes of *The Age*. Cameron has written about Aboriginal issues for many years, as have a variety of journalists throughout the country. It is interesting if you look at the winners of the Walkley Awards—Australian journalism's most prestigious award—over the years to see how many journalists have been noted for their reports on Aboriginal issues. Freelancers Jan Mayman, writing for *The Age*, and Duncan Graham, for *The National Times*, are two such examples.

Using the Media: Press Releases

In the meantime, however, it is worth remembering that journalists rely heavily on press releases and press conferences. It is worth getting advice on how to write one and how to hold a press conference. ATSIC and the Western Australian Aboriginal Media Association have published a book, *Yarning with the Media*, with this sort of information.

Some Aboriginal people and organisations already are completely aware of how to use the media, particularly the international media as seen in the international coverage of the protests at the Commonwealth Games in Brisbane and the 1988 anti-bicentennial survival march in Sydney.

Australian Media

Unfortunately, in both cases, there was far less positive coverage from the Australian media. A British journalist pointed out that the Australian media acts a little like the British does when it comes to coverage of the war in Northern Ireland. To many, Aboriginal issues are the blind spot of Australian journalism. But journalists are learning, bit by bit, due to Aboriginal efforts to tell their story, particularly through the Aboriginal media. As the people at Brisbane Indigenous Media Association told the author, they are planning to lift the mainstream media's game through their own example at their new Brisbane radio station.

One of the problems seems to be that the media has been slow to recognise the sophistication that exists in the Aboriginal community. Having roundspeople covering the subject would help. Reporters in the ABC and SBS have also welcomed having Aboriginal journalists working in their organisations, who they can go to for help with stories.

Complaints About Media Coverage

If Aboriginal people are unhappy with a story there are avenues of complaint. Complaints can be made to the Australian Press Council if the error has been made in a newspaper, to the Independent Complaints Review Panel if the error has been made by the ABC and the Australian Broadcasting Tribunal if the problem is with a commercial radio or television station. If it is believed that the station has broadcast racist material, or has been unfair to Aboriginal people on a regular basis, complaints can be made when the station's licence is to be renewed.

Recommendation 208 of the Royal Commission into Aboriginal Deaths in Custody states:

> That, in view of the fact that many Aboriginal people throughout Australia express disappointment in the portrayal of Aboriginal people by the media, the

> media industry and media unions should encourage formal and informal contact with Aboriginal organisations, including Aboriginal media organisations where available. The purpose of such contact should be the creation of a better understanding, on all sides, of issues relating to media treatment of Aboriginal affairs.

Conclusion

As can be seen, these recommendations are gradually being implemented in some form in some places. Most were already on the agenda before the commissioners made them.

Contact at a grassroots level between people will always be the most successful route to changing attitudes, as the Western Australian group has shown.

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CLOSING REMARKS

Michael Mansell[1]

IN CLOSING DOWN I THINK THAT SOME DELEGATES MAY GO AWAY FROM the conference somewhat disappointed in the fact that despite the few days of deliberation, the speeches, and the fact that people have workshopped a number of issues, that nevertheless we still have the imprisonment rates, we still have the deaths in custody, we still have all the injustice in the Aboriginal community. They may walk away with an air of disappointment that these conferences really do not have an effect or to a large degree, do not have a real purpose. But I would urge people not to take that away as the most important memory they had from this conference because we cannot be expected to resolve problems which have built up over 200 years in a three-day conference.

All the features of the white man's system which impose themselves on Aboriginal people and cause the problems that we suffer have been built up over a long period. Attempts to reform the harshest effects of that system against Aboriginal people have in the past been done at the behest of white people. It is they who have stated what is in the best interests of Aboriginal people in the future. It is only in recent times that we are starting to change the agenda by having Aboriginal people at the forefront in bringing about that change, laying down the priorities for change through conferences such as this. Now that is a process in itself which takes some time to be accepted widely throughout both the Aboriginal communities and the white communities, especially at the government level. And so that is the context of the overall plan of bringing about reform to benefit all Aboriginal people in this country.

What we did not set out to do here at this conference was to resolve overnight all of the problems which we know next time we attend a conference, will still be there. What we really intended was to set down a program for reform, a program which is directed towards putting power back into the Aboriginal communities, taking away power that other people exercise over Aboriginal communities and allowing Aboriginal people the opportunity to build a future based on black ideas developed by black people in black people's time. If this conference is a part of that program then we have been to a large degree successful. I do not ask people to quell the rage within you about the injustices in Aboriginal communities, but we can be patient in developing a new strategy, based on new ideas which hopefully will bring about the new changes that we want.

I thank all the participants for coming from Aboriginal communities all around Australia to this conference, for being patient, for being workmanlike, for working

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1. Edited from a transcript of Michael Mansell's closing remarks to the conference.

hard throughout the conference. If you have been paid by your organisations, you have earned your money. I think that if nothing else comes out of this conference other than the need for immediate implementation of the Royal Commission recommendations, then there is a need for many more workshops such as this to develop a very tight program of reform which governments must adopt as a priority, for the call has come from the black community. Thank you very much.

RECOMMENDATIONS

Practical Steps Toward Sovereignty And Royal Commission Recommendations[1]

1. That any Federal Aboriginal Affairs Minister, upon taking up this position publicly declare that the Aboriginal people are the rightful owners of this country and have an historical law that governed this country. Failing this public statement the Minister will be forced to resign.

2. That before any court in Australia sentences an Aboriginal or Torres Strait Islander to gaol it obtain a report detailing why it is not possible for that person to be dealt with by way of a non-custodial sentence.

3. That ATSIC (Aboriginal and Torres Strait Islander Commission) provide immediate funding to the CDBR for a National Family counselling conference which is planned for September 1992, to be held in Victoria.

4. That all Federal government monies allocated for the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) be directly channelled to Aboriginal communities and organisations by-passing State and Territory governments and ATSIC, and be used by Aboriginal health and legal services.

5. That post release programs for Aboriginal offenders be established nationally, and be community based and controlled.

6. That Federal and State governments take immediate steps to decriminalise (under the *Summary Offences Act*) the following offences:

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[1]. The workshops on the last day were used to formulate these recommendations which were accepted at the final plenary session.

- Drunk and disorderly/incapable
- Offensive behaviour
- Abusive language
- Vagrancy
- Also gaoling for non payment of fines to cease immediately until alternatives are established

7. That ATSIC in consultation with

   (i) the APG, NAILSS, NAIHO, the FLC, the NSW Aboriginal Land Council and the Tasmanian Aboriginal Centre, produce and distribute copies of the Draft Universal Declaration on the Rights of Indigenous Peoples.

   (ii) the mentioned organisations organise a national conference as part of the United Nations International Year of Indigenous Peoples early in 1993.

8. That land claims be strongly highlighted to provide protection for sites of significance, and that ATSIC regional councils prioritise the purchase of property and land for Aboriginal Land Councils south of Cape York Peninsula.

9. That the Federal Court provide funding to the families of people who have died in custody so that they may take private civil action against the Police/Corrections for neglect to provide a safe environment for those people in their "care".

10. That this conference states in the strongest of terms, that if the principle of self-determination is to be respected, the Federal government must ensure monies allocated to implementation of the RCIADIC recommendations are directed through community controlled Aboriginal organisations, *not* through State or Federal Government agencies.

11. That money allocated from Treasury (for the implementation of the RCIADIC recommendations) to the Attorney-General's Department (for the establishment of the First Optional Protocol Unit and the refurbishing of the Jervis Bay Watch-house) be reallocated to the National Aboriginal and Islander Legal Service.

12. That this conference condemns the juvenile justice legislation in WA, and calls for this legislation to be rescinded, and that similar State and Territory legislation not be adopted.

13. That this conference calls for the immediate release of funds to Aboriginal community organisations which act on behalf of the families of our victims of deaths in custody to bring them together in each State/Territory to commence the healing process, and to decide how funds for counselling should be spent.

14. That the jury system be changed to ensure that Aboriginal people going through the white law courts be judged by their Aboriginal peers, and that the jury system stipulate that each Aboriginal person be heard by four or five Aboriginal people on the jury (in and outside).

    (ii) That funds be made available for professional counselling of Aboriginal persons coming out of gaols and also counselling for their families, and training of local persons to carry on the counselling skills.

    (iii) That funds be made available to educate Aboriginal people in the court procedures and police interviews.

Indigenous Women

Statement

That we, as indigenous women within Australia, see ourselves first and foremost as Indigenous people. We see ourselves in a joint struggle with Indigenous men to overcome the racism and injustice suffered as people living under occupation within Australia. Yet at the same time Indigenous women have specific needs living under a western patriarchal society that need to be addressed which also places us in the struggle with non-Indigenous women.

Aboriginal Women And Justice Workshop Recommendations

1. That the funds allocated to Commonwealth, State and Local Government agencies as part of the Government's response to the Royal Commission into Aboriginal Deaths in Custody report be subject to consultation at local level with Aboriginal and Torres Strait Islander people before they are expended.

2. That an effective means of communication be developed to ensure Aboriginal and Torres Strait Islander people receive all the appropriate and relevant information related to government's policy and program initiatives.

3. That government departments establish feedback processes that enable Aboriginal and Torres Strait Islander people to have input into policy and program development and become more involved in decision making processes.

4. That the Federal Government take all the necessary measures to implement and enforce national legislation of the Aboriginal child placement principles.

5. That monies available through the response of government to the Royal Commission be identified immediately to initiate a research project to determine numbers of Aboriginal and Torres Strait Islander women in prisons and lockups and to further ascertain the issues that confront Aboriginal and Torres Strait Islander women whilst they are incarcerated and this be channelled through Aboriginal and Torres Strait Islander community based organisations.

6. That monies available through the response of government to the Royal Commission be made available to undertake a research project to determine what arrangements are made for the children of incarcerated Aboriginal and Torres Strait Islander women and this be channelled through Aboriginal and Torres Strait Islander community based organisations.

7. That appropriate support services be established for Aboriginal and Torres Strait Islander people in custody to ensure that contact with family and community can be maintained to prevent further family and community breakdown.

8. That monies available through the response of government to the Royal Commission be made available to undertake research to ascertain the extent to which Aboriginal and Torres Strait Islander women are sexually, physically, socially and psychologically abused whilst incarcerated and that this be channelled through Aboriginal and Torres Strait Islander community based organisations.

9. That wider support systems be established for Aboriginal and Torres Strait Islander women within the Family Law Court system.

10. That guidelines be established that will enable families to have access to relatives incarcerated in emergencies or crisis situations, especially after hours, because not all inmates have access to a prison visitors' scheme.

11. That organisations established to respond to Prisoners/Family/ Victims employ a specialist counsellor.

12. That an awareness brochure be developed outlining symptoms that indicate children are stressed or potentially suicidal. These brochures to also outline "What to do" and "Who to contact".

13. That imprisonment of Aboriginal and Torres Strait Islander people should be the last option and that Aboriginal and Torres Strait Islander people should be imprisoned as close to family and community base as possible.

14. That when an individual dies in police or prison custody the state provide the finances to return the deceased to a locality decided by family and that the body be returned within two weeks.

15. That funds be made available to train and employ Aboriginal and Torres Strait Islander counsellors to counsel Aboriginal and Torres Strait Islander men, women and young people in re-adjusting to life outside a prison environment.

16. That the Aboriginal Legal Service hold regional meetings to discuss the findings of the Royal Commission Report and to inform communities of what is happening now and how they can become involved in the implementation of the recommendations.

17. That funds be made available to educate and inform Aboriginal and Torres Strait Islander men, women and young people to understand court procedures and legal jargon.

18. That government agencies refrain from imposing time restraints on discussions, plans and decisions concerning Aboriginal and Torres Strait Islander women and family matters. Specific Aboriginal and Torres Strait Islander women's programs must be supported when initiated, endorsed and supported at local level and presented at the national level.

19. That at future conferences, issues affecting Aboriginal and Torres Strait Islander women be incorporated as main agenda items and not as a side issue.

20. That funds be made available to enable Aboriginal and Torres Strait Islander women to meet on a regional basis to discuss issues and determine solutions.

21. That the national family violence intervention program and proposed mediation training program not be implemented until further consultations with Aboriginal and Torres Strait Islander community at the regional levels reveal that the respective programs are appropriate for their needs.

22. That money allocated to the National Family Violence Intervention program be held in abeyance until a decision on implementation has

been resolved with Aboriginal and Torres Strait Islander communities at regional level.

23. That the Aboriginal and Torres Strait Islander representatives at this conference support the recommendation of the Council for Aboriginal Health related to the National Family Violence Intervention Program.

24. That an appropriate role model program for Aboriginal and Torres Strait Islander parents be developed and implemented to counter the ongoing effects of past programs that did not allow parents to have the responsibility for their children.

25. That government reflect its acknowledgment of the stress on Aboriginal and Torres Strait Islander women as outlined in its overview of the response of Government by giving Aboriginal and Torres Strait Islander women access to resources and services that will reduce the level of stress currently being experienced by them.

26. That all future national, State and local conferences that have a focus on Aboriginal and Torres Strait Islander people take the necessary measures to ensure that program, venue and participation criteria do not in any way shape or form exclude Aboriginal and Torres Strait Islander people who do not have access to the necessary resources that would be required to attend, including allowances to deal with family responsibilities whilst attending such conferences.

27. That government acknowledge that the disempowerment of Aboriginal and Torres Strait Islander people is because of an entrenched attitude of dependency and that programs and processes need to be developed and implemented for Aboriginal and Torres Strait Islander people that will engender a change in attitude and behaviour that will instil in Aboriginal and Torres Strait Islander people a real sense of power and purpose.

28. That government continually take steps to ensure that their policies, programs and processes are culturally appropriate and respond to the needs identified by Aboriginal and Torres Strait Islander people.

29. That government's response to deal with the issues confronting Aboriginal and Torres Strait Islander young people be implemented as a matter of urgency.

30. That training of community based organisation staff in their field of work be given a high priority.

31. That community based organisations be funded to a level that enables them to backfill positions when staff are on leave to ensure

that Aboriginal and Torres Strait Islander people are not denied a service because of lack of staff.

32. That the recommendations of this conference be forwarded to all Aboriginal and Torres Strait Islander community based organisations to ensure they receive feedback.

33. That detoxification and family treatment centres for Aboriginal women and children be established in their communities based on self-help and recovery programs utilising knowledge of community, family and generational alcoholism and addiction.

34. That sexual abuse programs be instituted in communities for Aboriginal men, women and children and that these programs be culturally appropriate and funded by the Commonwealth Government.

35. That communities are given adequate funds to develop strategies to address issues of violence against women and children that affect their communities.

36. That an Indigenous Women's Legal Advice Bureau be established to provide legal advice and ongoing counselling and support for indigenous women and that such an organisation be staffed by indigenous women.

37. That wider support systems be established for Aboriginal and Torres Strait Islander women within the family law court system in consultation with Aboriginal women's community groups as the first step for a re-examination of legal advice and representation by Aboriginal Legal Service to Aboriginal men in criminal matters.

Juvenile Justice

1. Challenges: That the conference notes a number of challenges exist in the juvenile justice area. These include cultural awareness programs for young people and families; encouraging young people to care for families; contact for Aboriginal and Islander people.

2. That State and Federal governments make available more resources for juvenile justice issues.

3. That Aboriginal and Islander juvenile justice policies be implemented.

4. That no children be detained in police custody under any circumstances (that is in Watch-houses).

5. That all legislation in all government departments provide for Aboriginal consultation on a cultural level.

6. That the proposed Queensland juvenile justice legislation should be frozen for twelve months until proper consultation has taken place. The draft Bill should be amended to include appropriate sentencing and diversionary programs.

7. That the Minister for Tourism, Sport and Racing in Queensland be informed of the recommendations of this conference prior to announcing the youth policy in November 1992.

8. That Aboriginal studies be introduced nationally in schools and universities.

9. That there should be greater Aboriginal and Islander participation in schools and higher education and improved access to information for Aboriginal and Islander youth.

10. That there should be national uniformity of a definition of youth.

11. That youth are involved in all conferences on juvenile issues.

12. That all State Governments redirect funds into preventative programs.

13. That a National Aboriginal and Islander Juvenile Justice Advisory Council be established consisting of all Aboriginal and Islander representatives.

14. In relation to the Summary Offences Act: that the offensive language charge for juveniles be abolished.

15. That child protection practices do not undermine the rights of parents.

16. That policies and programs be developed that are more preventative rather than reactive.

17. That Aboriginal and Islander child care agencies be resourced and given responsibility for welfare issues of Aboriginal families and that powers be removed from government departments and returned to Aboriginal child care agencies.

18. Training: That cultural awareness training be implemented for all persons coming into contact with Aboriginal offenders, for example:
    - police
    - juvenile justice workers/panel members
    - legal representatives
    - court staff
    - judiciary
    - correctional/community workers

19. Cautioning: That training of police should be increased in cautioning. That police powers of arrest for juveniles accused of minor offences should be examined.

20. That Aboriginal staff numbers be increased at all levels in the area of Juvenile Justice.

21. Community Based Programs: That specific Aboriginal community based programs should be developed with the local community to provide *real* options to detention for juvenile offenders.

22. That programs be developed in full consultation with all youth.

23. That funding be made available to establish an effective consultation program for Aboriginal youth on a national level, that is a National Aboriginal Youth Forum.

Policing In Aboriginal Communities

1. That communities consider a range of diversionary programs, for example, night patrols, Murri Watch.

2. That communities determine the terms of reference for these programs.

3. A need exists for greater publicity and information exchange about the range of diversionary programs and other initiatives that exist.

4. There be greater recognition given to the need to increase the number of Aboriginal and Torres Strait Islander people who are members of the police services. That improved mechanisms for Aboriginal and Torres Strait Islander people to enter the police services be developed and implemented.

These may include bridging programs (to give Aboriginal and Torres Strait Islander people the skills to enter the police); active recruitment programs (to encourage Aboriginal and Torres Strait Islander people to enter the services); and support programs to ensure the satisfactory completion and continuance of Aboriginal and Torres Strait Islander people who apply to enter the police services.

5. That greater recognition is given to (Aboriginal) police officers' desires about where they wish to serve.

6. In recognition that police do not make the laws, a need exists to "clean up" out of date legislation so that police are not placed in situations where they must enforce unacceptable legislation.

7. That police give serious consideration to their use of discretion with regard to "offences" committed by Aboriginal people.

8. That a process for police and Aboriginal people from all round Australia be established to discuss issues involved in the policing of Aboriginal people on a regular basis.

9. That all responsible parties ensure that the recommendations of the Royal Commission and of previous conferences and other fora actually be implemented.

10. More attention should be placed on developing effective by-laws on the Aboriginal and Torres Strait Islander communities and the endorsement of these by-laws by the relevant legislature.

11. That the police services investigate overpolicing on communities.

12. In Queensland Aboriginal and Torres Strait Islander people ought to be encouraged to make complaints to the Criminal Justice Commission when they have grievances. The Criminal Justice Commission ought to acknowledge receipt of all complaints within 14 days of receiving them and provide a file number so that progress in the investigation of a complaint can be monitored. The Criminal Justice Commission ought to advise all complainants of the outcome of their complaint. There was a concern that the Criminal Justice Commission's independent watch-dog role was being threatened by the referring of too many complaints back to the police.

13. That better selection procedures for State police working on Aboriginal and Torres Strait Islander communities be put in place and that a six-month review be undertaken by the community and the recommendations of this review be acted on by the police.
14. That a need exists for police/community liaison committees.

15. That a need exists for pro-active policing, sport and recreation.

16. That no Aboriginal person be questioned without a legal representative present.

17. That the responsible authorities implement the recommendations of legislative review committees so that communities can have more control of their community justice systems including juveniles.

18. That customary law be reinstituted in these communities who want it with funding allocated for this purpose.

19. That sentencing options for courts include alcohol rehabilitation centres run by Aboriginal people and that immediate funding be allocated for this.

20. That financial assistance be provided for Aboriginal and Torres Strait communities to visit their families in gaol.

21. This conference recommends that the Australian Institute of Criminology or other organisation acceptable to Aboriginal leaders, promote the development of a national campaign to lobby government to enforce a comprehensive plan for reform which would address all issues relevant to combat institution and personal racism in all law enforcement agencies.

22. That alleged assaults by police on Aboriginal people be investigated by an independent panel and not the police.

23. That whereas there now exists a policy or procedure in place that where our people allege an assault has taken place by police upon them that an independent panel be put into place to investigate the alleged assault by police instead of the situation that exists now whereby police investigate police.

Corrections

The Prison Experience

Recommendation's 168 to 187 of the Royal Commission into Aboriginal Deaths in Custody are all supported but need to be reinforced as strongly as possible.

1. That this conference demand that Aboriginal people be empowered to monitor the progress and implementation of all these recommendations.

2. That we express our concern that there are no time frames in place for the implementation of the recommendations and that the Departments of Correctional Services make the implementation of the recommendations their high priority and be completed within 1992. That it is of the greatest importance that the departments address the immediate problem of Aboriginal Deaths in Custody and make these recommendations their highest priority.

3. That every delegate present at this conference be challenged by the issues discussed to go back to their community or agency and personally do something to reduce the number of Aboriginal people entering the Criminal Justice System and the rate of Aboriginal imprisonment.

4. That this conference recognises the concept and importance of the extended family and kinship links for Aboriginal prisoners and demands that all Departments of Corrective Services throughout Australia adopt policies and procedures to allow Aboriginal prisoners to meet all obligations and attend all ceremonies upon the death of a member of their family or person in kinship and that the departments consult with and take account of the expertise of Aboriginal persons employed in all relevant Aboriginal and Torres Strait Islander organisations in those matters.

The Courts

1. That all government levels recognise the existence of two laws.

2. That a meeting of indigenous law men and women be arranged to discuss the recognition and implementation of indigenous law at all levels of government.

3. That the application of all introduced law is considered repugnant by all indigenous people until such time that all levels of government recognise and give effect to the laws of indigenous people.

4. That in pursuance of their process of reconciliation we ask the Federal Government to seek the jurisdiction for a declaration of the International Court of Justice as to who are true and legal owners of the land, water and territories of the continent of Australia.

5. That the Aboriginal and Torres Strait Islander Commission fund this application by Australia's indigenous people to the International Court of Justice.

Additional Recommendations: Various Issues

1. That this conference condemns the Western Australian Parliament for the introduction of the *Crime (Serious and Repeat Offenders) Sentencing Act 1992*—and calls for its immediate repeal because it contravenes international covenants and the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Further, it calls on the Federal Government to take action on behalf of the Aboriginal people.

2. That the Federal Government provide facilities to monitor and provide positive action to prevent maiming and deaths through use of pesticides in this country known as Australia.

3. That the Northern Territory Liquor Commission reconsider the liquor licence application from Tyeweretye Club in Alice Springs, and grant it.

4. That Christian organisations hand back to Aboriginal organisations with no strings attached Aboriginal lands that those Christian organisations now hold.

5. That the conference endorses the point made by other speakers that Aboriginal people establish and maintain close contacts with their incarcerated brothers and sisters.

6. That the emphasis be placed on imprisonment as last resort and not on improvements to correctional facilities.

7. That the conference perceives a lack of commitment by State Governments—State Governments ought to accept responsibility for some of the problems—money should not come from deaths in custody to improve police and correctional facilities.