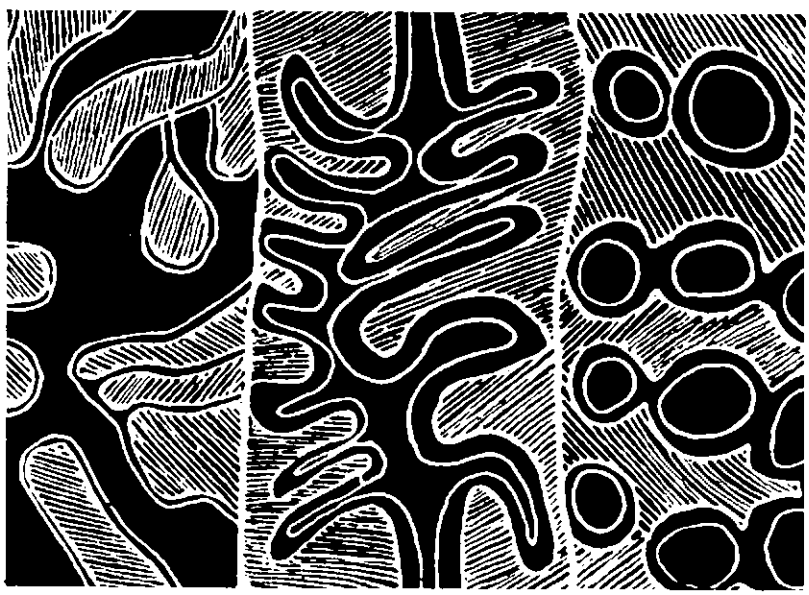
Australian Institute
of Criminology

JUSTICE PROGRAMS FOR ABORIGINAL AND OTHER INDIGENOUS COMMUNITIES

● AUSTRALIA ● NEW ZEALAND ● CANADA ● FIJI
● PAPUA NEW GUINEA



Aboriginal Criminal Justice Workshop No. 1

Edited by Kayleen M. Hazlehurst

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JUSTICE PROGRAMS FOR ABORIGINAL AND OTHER INDIGENOUS COMMUNITIES:

Australia, New Zealand, Canada, Fiji and Papua New Guinea

PROCEEDINGS

Aboriginal Criminal Justice Workshop No. 1

29 April to 2 May 1985

EDITED BY

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Australian Institute of Criminology
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PREAMBLE

At a seminar organised by the Australian Institute of Criminology in September 1983 a number of issues were discussed on the subject of Aboriginal involvement in the criminal justice system (Aborigines and Criminal Justice, AIC Training Project No.27/1/5 1984). It was recognised that Aboriginals in Australia were among the most imprisoned people in the world and concern was expressed regarding the effectiveness of imprisonment in deterring Aboriginal crime or in preventing recidivism.

The conference concluded:

- that a lack of knowledge presently existed at all levels of the community concerning Aboriginal culture and customs;

- that there was a continuing need for Aboriginals to be informed of their rights and obligations with regard to criminal justice matters generally;

- that the rate of alcoholism and petrol sniffing in Aboriginal communities was such as to cause alarm;

- that it was important that there be good relations between Aboriginals and officers serving in the various state and territory agencies throughout the federation;

- that stipendiary and other magistrates be appointed as a matter of urgency to serve in those locations at which justices currently exercised judicial functions;

- that there was a need for a uniform collection of crime statistics and monitoring of Aboriginal sentencing and imprisonment; and,

- that community service orders, probation and other alternatives be specifically considered for Aboriginals in place of prison sentences or fines which, by default, frequently resulted in imprisonment.

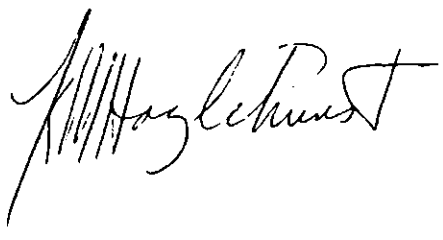
The Institute was most concerned that it should not let its involvement in this area stand merely as a statement of issues and needs, but that it should attempt to propel some of these ideas into action. For this purpose the Institute could provide a 'think-tank' venue wherein areas of needed research could be proposed, alternative schemes could be discussed, and practical solutions to some of the daily problems facing the police, the courts and the Aboriginal and European communities could be explored.

The adequacy of the present court and prison systems in dispensing justice to Aboriginal offenders would need to come under closer review. The role which prosecutorial discretion and community participation can play in deterring recidivism and in directing the course of the offender towards rehabilitation could also be investigated. Traditional and contemporary mechanisms of social control and dispute resolution within Aboriginal society and their potential for grafting on to the wider Australian justice system are also being increasingly recognised.

The three and a half day Justice Programs for Aboriginal and Other Indigenous Communities workshop, held from 29 April to 2 May 1985, was the first of a proposed Aboriginal and the Criminal Justice Workshop Series. The papers presented at this workshop, and three relevant additional papers, have been grouped for publication into four sections. They are preceded by the texts of an opening address by the Director of the Institute, Professor Richard Harding, and of the introductory remarks by the workshop convenor. A fifth section provides a summary of practical suggestions, significant points of agreement and of disagreement, and possible directions for research and action which emerged from the papers and their discussion by the workshop participants.

The terms 'Aborigines/Aboriginals' are interchangable. For many Aboriginal people the former, 'Aborigines', has taken on a distasteful connotation, having been long associated with the Euro-Australian bureaucracies which have insisted upon its use in their references to indigenous Australians. In recent years this rigidity of use has broken down, following the lead of the Aboriginal rights movement since the early seventies. Respecting current Aboriginal preferences, therefore, the use of the term 'Aboriginals' has been standardised throughout this report.

I would like to extend my gratitude to all the participants for their invaluable contribution at this workshop, and to Richard Harding, David Biles, Colin Bevan and Jane Mugford for their assistance and support in its organisation. Finally, the patience and dedication of Jack Sandry, Leona Jorgensen, Val McKenzie, Glenys Rousell, Lavinia Hill, and Ron Snashall in the recording, word processing and publication of this report deserves special mention and thanks.



OPENING ADDRESS

Professor Richard Harding
Director
Australian Institute of Criminology

Since the early years of its existence, this Institute has done a great deal to identify problems of Aboriginal criminal justice, to sensitise the community and criminal justice professionals to these problems, to encourage and carry out research, and to disseminate information about all of these activities to the media and to governments. Let me list some of the things we have done.

In 1976 the Institute convened a seminar on The Use of Customary Law in the Criminal Justice System, thus anticipating the Australian Law Reform Commission Reference on Customary Law generally. The following year, a small conference was held on the subject of Aborigines and the Law. In 1981 a Workshop was held on Aboriginal Criminological Research, and later that year my predecessor as Director, Mr Bill Clifford, delivered the Barry Memorial lecture on the topic An Approach to Aboriginal Criminology. This lecture justifiably attracted a great deal of media attention. In September 1983, a full-scale conference was held on Aborigines and Criminal Justice. This was the biggest yet, with a total of 53 participants representing Aboriginal groups and interests as well as all branches of Australia's overwhelmingly white criminal justice services. Participants were drawn from all States and Territories.

The proceedings of all of these seminars and conferences have been published and widely distributed. In addition, in 1982 and 1983 under the rubric, 'Aborigines and Criminal Justice', there were published Annual Guides to Written Materials and Innovations, Current Research and Quantitative Data. If such a Guide is considered sufficiently valuable, we will endeavour to update it within the next twelve months or so, and in any event it will probably be loaded onto the CINCH database which, as from 1 May 1985, is accessible through AUSINET.

Our own research has most recently manifested itself in the publication of David Biles' Research Report, Groote Eylandt Prisoners. No less important, however, is the ongoing data-gathering which is the underpinning for any useful discussion upon Aboriginal criminal justice, notably by John Walker and David Biles with their annual prison census (Australian Prisoners 1984 has just been published) and by Dr Satyanshu Mukherjee with his analyses of youth crime.

When my own appointment as Director of the Institute was announced in September 1983, I stated at a press conference that one of my priorities would be to increase the Institute's stake in the area of Aboriginal criminal justice. From the brief history of previous involvement which I have set out above, you can see that I was making a point of emphasis rather than one of innovation.

Since taking up my appointment, I have been able to appoint a full-time researcher, whose duties exclusively relate to this area. I would like you to understand that, in an Institute whose research staffing level is such that each specialist has also to be something of a generalist, that arrangement represents a real not merely a formal commitment. Of course, by now you all know the researcher in question, Mrs Kayleen Hazlehurst, and this Workshop is in fact the first tangible and semi-public manifestation of her research and discussions.

The second thing I have been able to do is to reassess our strategy in relation to the fruits of our research and information. The Institute cannot 'take to the streets', literally or metaphorically, with its findings and views. But it can - and must, I suspect, in these times of mass communication - attempt to propel them along a little so that decision-makers stumble over them and are forced to look down from time to time. In the sub-literate jargon of modern commerce, we must 'market our product'. In general terms, we have started to do this in many ways - more attractive publications more promptly produced, national online accessibility of our database, increased readiness to advise Ministers and departments directly, behind-the-scenes pressures upon other agencies or departments, public submissions to government inquiries, and so on. In the case of our concern with issues of Aboriginal criminal justice, we should be prepared to do all of these things as appropriate. But, in addition, we must, I believe, try to build up a momentum, developing practical recommendations for governments and becoming a sort of standing ginger-group to monitor developments and identify omissions.

Let me refer back to the 1983 Conference to illustrate the point I am trying to make. By all accounts, it was a lively conference; by the time it had finished, agreement had been reached on no less than 36 resolutions. They ranged from such matters as general community education and training of criminal justice personnel to the provision of half-way houses for Aboriginal prisoners and assistance to Aboriginal communities to help cope with petrol sniffing amongst juveniles. Alas, these resolutions - because they were by their nature general and contained no follow-up mechanisms - have not, I believe, passed through into action. (That is not to say that every one of them merited implementation.) In those areas where there has been change, it is not <u>because</u> of the previous Institute resolution but is rather

coincidental. An objective of this Workshop should be to identify practical initiatives which should be continued or tried elsewhere or used for the first time - and my job, as Director, and yours as participants having access to various levels in your governmental units should be to persuade and provoke, and, if necessary, to embarrass the authorities into action. As long as, that is, our ideas are good enough.

Follow-up workshops should be held, at least annually, not only to stocktake the impact of the preceding one but also to explore new areas identified by that previous workshop and by discussions in the intervening period with relevant people. The same objective should be pursued - of acting as a ginger-group and of treating governments as if they really are accountable. We have reached the stage in Aboriginal criminal justice where a bit of bastardry towards governments is long overdue.

Let me now go back to my predecessor's 1981 Barry Memorial Lecture. He said:

> Even the most dedicated geneticist cannot believe that the massive disproportion of Aboriginals before our courts and in our prisons denotes a different kind or special degree of criminality. When behaviour so widespread as to be practically normal amongst Aboriginals is labelled criminal by our law, there is a need for rethinking the law. When imprisonment does not deter but is shouldered by the Aboriginal as an inevitable yoke to be carried as a consequence of his residence in a white society, we would be moronic to go on using it punitively and ineffectively. (1)

Earlier this year, Mr Clyde Holding, Federal Minister for Aboriginal Affairs, said:

> It appears to the Commonwealth that it is not possible with present information to evaluate with any precision, why, how and where criminal justice systems impact unfavourably upon Aboriginals in the detailed and total sense. All that we know with any certainty is that at the end of a trail of apparent uneven treatment by police, magistrates and the judiciary, Aboriginals finish up in prison at a rate sixteen times greater than the rest of the community, and at a greater rate for lesser offences, and that Aboriginal over representation in prisons is reflected in all States and the Territory. (2)

The 1984 Prison Census figures show that this has not changed at all; Aboriginals are still imprisoned sixteen times more frequently than non-Aboriginals. In fact, it was even worse as at 30 June 1984 than as at 30 June 1983, for the total prison population was down by 5 per cent. Why might this be said to show a worse picture? Should not a general decrease in the use of imprisonment be welcome? The answer is this: that the decrease, being across-the-board, does nothing to reduce and if anything consolidates the structural discrimination against a group which, it is reasonable to speculate, may be the most imprisoned race in the free world.

In a speech last September, I suggested that it was 'arguable that the patterns of imprisonment of Aboriginal offenders are so oppressive that the Commonwealth should exercise its statutory powers ... to create special sentencing procedures in relation to Aborigines'. (3) In other words, consideration should be given to the creation of a federal sentencing standard in relation to federal or state offences committed by Aboriginals. That is, admittedly, a fairly blunt instrument to apply and one which raises difficult philosophical problems. But it may come to that - unless workshops such as this one can come up with alternative approaches and governments in turn lend them their support. By this I do not just mean passing an enabling statute, but fighting for values in the arena of public opinion. Sometimes, even supposedly progressive governments can be faint-hearted about doing so.

Let me bring these remarks to a close with some optimistic points. The first relates to data. It is still not possible, at a national level, to trace Aboriginals through the criminal justice system - arrest, charge, legal representation, trial outcome, mode of disposition, parole, recidivism rates - so as to identify whether one aspect impacts more oppressively than another. Until one can do so, one cannot with absolute confidence urge one possible rectification - for example, a federal sentencing statute - rather than another. But things are better than they were. Thus, it is now possible, at least in the two States which have specialist agencies dealing with crime statistics, painfully and laboriously to cobble together one-off studies which trace the flow of Aboriginals through the system. Encouraged, perhaps, by a glimpse of what is possible, State and Federal Ministers seem prepared to be more assertive in seeking to have crime and justice statistics collected nationally in such ways. In 1984 Police Commissioners rejected a request for information as to Aboriginality to be recorded in arrest statistics, noting that 'the Commissioners as a body consider it was a matter for consideration by individual governments'. That is not good enough; we are talking about a national problem; and it is encouraging that State and Federal Ministers, recognising this, are pressing again on this matter. This Institute, for its part

will continue to publish data on Aboriginal imprisonment, and sometime early next year, data also on community-based corrections and Aboriginality.

The second encouraging sign is the depth and range of relevant research which is starting to come forward. Dr Paul Wilson's outstanding work on homicide, (4) amounting to an unanswerable case of structural victimisation, has been consolidated. (5) Major research grants have been let by the Criminology Research Council. (6) Other research has produced important information as a by-product about Aboriginals and criminal justice. (7) Virtually every issue of the ANZ Journal of Criminology contains something of relevance.

The setbacks - notably land rights, and the buck-passing - for example, passing petrol-sniffing onto Health Departments - remain, and are bitterly disappointing. (8) This Workshop should not, I believe, dwell upon such matters. All of us understand that general social, cultural and economic factors underlie Aboriginal crime and punishment. However, Aboriginal crime and punishment are not simply reflections of these broader factors. They have an epidemiology and a dynamic quality of their own, and up to a point, they can be tackled on their own. That is what we should be endeavouring to do.

NOTES

1. W. Clifford, 'An Approach to Aboriginal Criminology'. ANZ Journal of Criminology, 15, 3, 1982, p.11.

2. Address to the Australian Aborigial Affairs Council, 29 March 1985.

3. R. Harding, Penal Reform, Address to the 6th National Conference of Labor Lawyers.

4. Paul Wilson, Black Death, White Hands, George Allen and Unwin, Sydney, 1982.

5. Paul Wilson, 'Black Death, White Hands Revisited: The Case of Palm Island', ANZ Journal of Criminology, 18, 1985, p.49.

6. (i) To the WA Prisons Department (Ms Annie Hoddinott) to evaluate the Aboriginal JP scheme in the northwest of Western Australia; and

   (ii) to the WA Special Cabinet Committee on Aboriginal/ Police and Community Relations to evaluate race relations in Jigalong and Roebourne.

7. A study of recidivism in WA, conducted by the WA Prisons Department with Criminology Research Council funding, has highlighted particularly interesting recidivism figures for Aboriginals.

8. Senator Neville Bonner commented as follows on Mr Clifford's paper (W. Clifford, loc. cit., note 1, above):

> I quite categorically state that my race is psychologically scarred, and such condition is a direct result of our dispossession of our traditional lands, the destruction of our culture, and the erosion of our customs. This has sapped our dignity and self respect, and until such time as justice has been achieved in this area, we will continue to crowd Australian prisons.

WORKSHOP INTRODUCTION

Kayleen M. Hazlehurst
Convenor
Australian Institute of Criminology
Canberra

Honoa te pito ora kite pito mate
'Graft the new onto the old'
(Maori Proverb)

A society will survive, not because it upholds its traditions, but because it adapts them. Living traditions draw strength from the successive generations they sustain. In some areas Aboriginal society is what some scholars clinically describe as dysfunctional or, we might more truthfully say, on the edge of total social collapse. Despair and self-destructiveness pervades these communities, and hardens the attitudes of the wider society against all Aboriginal people.

Rampant alcoholism in the adult population, petrol sniffing among the children, are distressing manifestations. Academics speak of maladaptation and loss of self-regulation. Police, teachers, and health and social workers find little comfort in theory. They feel they can do little more than 'mop-up the mess'.

It may appear that I am breaking ranks with my fellow anthropologists when I say that I do not see the preservation of Aboriginal culture and customary law as a panacea. While the thrust to re-establish cultural integrity has been, and remains, an important development I feel it should not take precedence over, or suppress, the human response to the needy cries of the present generation.

We should not only be building monuments to the Aboriginal past we should also be helping to build monuments for the future. It is false to assume that Aboriginal culture is something dead or dying - something which needs to be embalmed for the sake of historic memory. Neither the Aboriginal people nor their culture will be terminated - despite the efforts of some in the past to bring them to this point.

The formula we have to find will distil the essence of a people's spirit to survive - a brave spirit, which is now embodied in this country's history - and infuse the generations that must live in a world their ancestors could not have conceived. If we truly respect the traditions of the Aboriginal people we will seek ways of breathing life into Aboriginal social foundations so that they can continue to function and serve their people.

Aboriginal people have faced a long history of obstruction to the continuance and development of their religion, their economies, their autonomy, and their systems of law. If they are to respond adequately to the social ills which presently afflict them, my contention is that some authority over their own people must first be reinstated.

If society changes, so must the people's law. This factor of conscious change is the only real traditional principle. It has, in all societies I have ever studied, ensured the preservation of a tolerable social life. The life blood of society is its power to change, to redefine and to refine beliefs and practices, to dismantle and to rebuild social institutions.

This workshop embarks, I trust, from a premise that respects the right of Aboriginal social foundations to thrive and develop. It will treat seriously the potential for Aboriginal solutions to Aboriginal crime. We are all indebted to the past. Even in the treatment of present-day illnesses with modern medicines, we do so in the knowledge of our medical ancestors. With government support and the understanding of the wider jusice system, Aboriginal communities may be encouraged to deal with the present-day needs of their people by the same marrying of traditional and modern remedies.

At the end of the Institute's 1983 conference on Aborigines and the Law a series of proposals was developed. We have before us an exciting program of speakers, many of whom have been working in some of these innovative areas of justice reform. I hope they will share with us their programs, as well as the difficulties which they are encountering in their instigation.

Trying to initiate improvements in the justice system can be a lonely and frustrating experience. In the initial stage it is reassuring to hear of the work of others in these fields. The exposure to new ideas, both within Australia and overseas, can be stimulating, perhaps even encouraging to us. It is easy to feel alone when we are confronted by many disappointments. But we still have achieved something here if we take away some inspiration from our colleagues, if we see some insight or possible solution to a problem about which we have begun to feel despair.

Many of us know that we are not alone in our wish to see a reduction in Aboriginal conviction or imprisonment rates. We know there is a need for the circulation of more information on what is going on in other parts of the country. We know that Aboriginal people need to be more informed of their rights and obligations under the law, and that 'someone' has to do 'something' about the petrol-sniffing problem among Aboriginal children. What we also need, it could be suggested, is a vehicle - a mechanism to promote these initiatives. A working party, perhaps, for Aboriginal crime prevention which

will take responsibility for publishing and circulating needed literature. A body with links with community organisations which will help in the educational process. We do not need another study to tell us how rampant alcoholism is. What we need are practical suggestions for the promotion of community-based safeguards for alcohol control and rehabilitation.

The Institute sees a role it can play in propelling some of these objectives into the realm of action. We have invited you here for a 'think-tank' operation - the first stage of this process we hope. Our initial efforts need not be elaborate nor overly ambitious. But let us make small beginnings.

We have established a workshop series so that the knowledge of program developments may be shared; so that needed areas of research may be identified; and so that the advantages as well as the dangers of experimental solutions may be investigated with due caution. The daily frustrations of the police, the courts, and the Aboriginal and white communities must be laid out. There will be unexpected complications, and known pit-falls which we can help each other to avoid.

In the consideration of an Aboriginal Justice of the Peace or community court scheme, for instance, there may be public and political concerns about 'separatism'. It was pointed out to me by an indigenous leader some years ago, that by the very fact that a minority group is the most convicted and imprisoned of a population - this in itself creates a situation of social separation and stigma. The search for the means to bridge the gap between the imprisoned minority and the imprisoning majority is the beginning of shared responsibility and improved relations. To extend the arm of the western justice system into the indigenous community, and to build up at the community level institutions of self-regulation, enables the two to meet, to dove-tail, to collaborate.

What is entailed is not a search for a separate justice system. Nor is it even a search for a parallel system of indigenous law. It is a search, rather for the establishment of the machinery which will promote a more equitable sharing of the means of social control.

The underlying philosophy behind some of the ideas which we will be exploring has been influenced by community policing and neighbourhood justice programs being experimented with in Australia and New Zealand, the United States, and the United Kingdom for over a decade. Programs which, as you know, have been established in the wider community, not just for ethnic minorities.

It has been argued that, for many categories of disputes and for minor crime, the due process of the law is too cumbersome, too

costly, and too impersonal to be an effective deterrent. The formal justice system has the effect of separating and distancing the offender from the society which has been harmed. It also absolves the community from its traditional responsibilities for censuring and rehabilitating the offender. There have been growing appeals for a range of community help services, for the establishment of less formal dispute resolution mechanisms, and for alternative forms of sentencing.

Diversion programs for young offenders; the use of community service orders in place of imprisonment; child abuse centres; women's refuges; and inter-ethnic liaison policing units are pilot schemes which have aroused the interest, as well as the fears, of some sectors of the Australian public.

We cannot embrace these ideas for change without proper investigation - nor can we dismiss them. We cannot dismiss them because the so-called 'Aboriginal problem' is also the 'Australian problem'. Many rural towns and urban centres are frought with racial tensions. Some hostilities, as we know, have led to bloodshed. Yet there are some towns where we see relative cohesion between the police and the Aboriginal community, or where local Aboriginal organisations manage the affairs of the community with considerable success. These places should capture our curiosity. 'Why', we should be asking, 'are these places so different?'. 'What is their secret of success?'

Some of the papers to be presented at this workshop will explain, not only where we are going wrong, but also where we are going right. There will be papers which will introduce new models. Others which will caution us against the trap of quick solutions.

The workshop will focus equally upon presentations and debate - upon the quest for practical and workable developments within the context of the present justice system. The Institute does not hold grand ambitions for change. Slow innovation and small additions are seen to be less disruptive and more likely to succeed.

It is clear, however, that we must move forward from the phase of merely assembling the evidence of discrimination and disdavantage of Aboriginal people within the justice system to an emphasis upon seeking remedies. We must move beyond our dismay or cynicism, to a positive commitment to do something about it, <u>ourselves</u>.

I THE COMMUNITY

HEALTH AND CRIME IN BLACK AUSTRALIA

Shane Houston
National Co-ordinator
National Aboriginal and Islander
Health Organisation

Before I start I would like to give you some background on the National Aboriginal and Islander Health Organisation (NAIHO). NAIHO is a collective of some 72 Aboriginal communities from around Australia. The purpose of the organisation is to assist communities in their efforts to improve the health status of Aboriginal people and to promote concepts of self-determination and community control.

The paper we have prepared for this session purposely has not included any statistics and has not sought to be, I hope, an academic discussion of meaningless figures and suggestions. Rather, I hope, it concentrates on the fundamental causes of Aboriginal ill-health, as they relate to the criminal justice system and the conundrum of oppression which faces Aboriginal people today.

This paper does not purposely draw a cart-full of conclusions. Basically it has drawn one fundamental assumption which I will leave to the end. Hopefully what the paper will do is just start people thinking on questions of Aboriginal health and how it relates to the broader spectrum of Aboriginal affairs and, particularly, to the criminal justice system.

It is vital that in any discussion of the concerns of Aboriginal people, in which non-Aboriginal people are participating, or which may be used by non-Aboriginal people afterwards, that the parameters which flavour discussions are clearly defined by Aboriginal people themselves.

The National Aboriginal and Islander Health Organisation has adopted the following definition, and I shall use this definition for the purpose of this paper:

> Health does not mean the physical well-being of an individual, but refers to the social, emotional and cultural well-being of the whole community.

For Aboriginal people this is seen in terms of the whole life-view. Health care services should strive to achieve the state where individuals are able to achieve their full potential as human beings, and must bring about the total well-being of their communities.

In a discussion of Aboriginal health, and of the Australian justice system, the full scope of our definition is activated. We fundamentally must ask ourselves three questions: 'what is a law?'; 'what purposes do laws serve?'; and 'who makes laws?'. These three questions we believe are central to our discussions here.

We believe that the primary purpose of law in Aboriginal nations was to ensure survival, both of the collective and of the individual. The nature of what was to survive was an intricately interwoven mosaic, centering around individual/group relationships, and the respect and reverence for the land as a living member of Aboriginal life-ways.

The law embodied not so much governments, but more so ideals, hopes, potential, and timing which aided, strengthened and directed individuals and groups. The nexus between spiritual and temporal laws were so close, as to refuse separation. Interwoven, overlapping, and infusing each with the other, spiritual and temporal laws provided a foundation of the past, the existence and the survival.

The administration of law, which in essence reflected the rights of the individual or the collective Aboriginal unit, was recognised by Aboriginal nations and was thereby enforceable through all sectors of the community. In all ways law and health, both physical and mental, supported each other. Survival in our society required both ability and attitudes. The law providing both of these. Without ability survival was threatened. Similarly, without proper attitudes survival was threatened. Life-ways shaped by Aboriginal law promoted both good physical and strong mental health, such was the self-perpetuating cycle of Aboriginal life.

The arrival of European colonisers interferred with that cycle. Interestingly and ironically, it was law which started the assault on Aboriginal identity and survival, and has given rise to the appalling health status of our people. The European law of terra nullius was one of the first deliberate actions imposed upon Aboriginal people. The consequence of this imposition has been scattering and deadly. European colonisers proclaimed 'occupation' and in doing so proclaimed the existence of British justice as the law of the land.

To Aboriginal people and nations both proclamations were lies and acts of unprovoked aggression. It is true that the immediate affects of these proclamations, if not indeed the very presence of Europeans, instilled a measure of confusion, fear and hatred in the lives of our people. There was no explanation provided to our people which satisfactorily addressed the confusion created by terra nullius. There was no attempt to inquire of, respect or participate in Aboriginal law. The confusion and conundrum were compounded.

Aboriginal law and life-ways were stunned by the new boat people and their technological and biological assaults on our nation, our laws, and our survival. From this moment we had two important references. One, a law was forced on Aboriginal people which contributed no identifiable benefit to Aboriginal life-ways and survival. A law which created confusion not clarity of life. Secondly, the law did not stem from Aboriginal collective identity. It did not draw its authority from nor was it recognised by, Aboriginal nations and was therefore not enforceable by them.

The effect of these two references on the health of Aboriginal people is undeniable. The physical well-being of the community was under threat, in that the community was placed behind the colonialist zeal for material gain, which included the ever accelerating land grab. The mental health of the community was under attack also. The Christian, the government official, the lustful, the army, the convict seeking freedom, the greed and the other perverters which infested the colony assailed the moral, religious and legal standards of Aboriginal society.

Let us deal firstly with the matter of the physical threat to Aboriginal survival and its impact on the health of our people. The traditional economy was impeded initially only at the point of colonisation. But with the final spread of the colonial infestation the traditional economy further afield suffered and in many cases collapsed. Not only did they seek to actively prevent us from collecting food and water on our traditional land, thus seeking to starve us out, they also replaced the land use pattern with a model which hastened the destruction of our capacity to survive. Consequently nutrition suffered, physical illness followed. Death, infirmity and dependence replaced health, independence and sovereignty.

The mental health of our people came under particularly sinister and unrelenting attack. With the continuing exclusion of our people from our lands, the lands which our laws had taught us were essential to our continuing Aboriginal survival, the physical manifestations of our culture, our songs, our dance and our ceremonies were curtailed leaving a gap in our life-ways which could only be filled by culturally unmotivating and

inappropriate actions. The total of these actions and those of the perverters pushed our people into physical and mental dependency, weakening self-esteem, weakening collective identity and integrity, and imbuing our people with self-doubt and confusion.

In taking a moment to reflect it is clear that the disregard of the principles of laws within the Aboriginal nations, and the imposition of the colonial law, have had a negative effect on Aboriginal physical and mental health. The ensuing 196 years of colonisation and the continuing existence of physical and mental ill-health in Aboriginal communities is well documented, I need not go into that in detail here. It would, for the purposes of these discussions, appear to be more fruitful to examine contemporary patterns of ill-health, and whether the two original references are valid today.

One of the major health challenges for Aboriginal communities is the continuing efforts of large sections of the Australian community to rob us of our identity and status as Aboriginal people. The sometimes subtle, sometimes overt actions by public and private sector organisations do not in many cases aid the efforts of Aboriginal communities to promote good physical and mental health. The popularisation of the great Black myths by some notable elements within the Australian community; the assertion that our claims to Aboriginal and human rights are more than can be realistically acknowledged; coupled with the actions of some racist groups who have vested interest in maintaining Aboriginal physical and mental ill-health, can only serve to continue the disproportionately large numbers of Aboriginal people appearing before the justice system.

The appearance of Aboriginals before the courts is the result of the conflict between two systems of society; between two national identities. The continual harassment of Aboriginal identity has caused many manifestations of Aboriginal mental health. Some of these include family break-downs, alcohol and drug dependencies, nervous disorders, anti-social behaviour, low motivation and poor self-esteem, child abuse and many other behavioural disorders. Further, these patterns of mental ill-health usually combine with physical illnesses. Indeed most of these manifestations lead the individual into contact with the European legal system.

Complicating matters further, the contact and social put-downs which also flow, reinforce many of the elements present in the original dilemma. The way out of the conundrum is, however, in essence simple. It simply requires the recognition of Aboriginal rights, our status as the indigenous people of this continent, and the guarantee of Aboriginal survival.

Aboriginal people are saying today that a great proportion of the body of legislation and social convention, which makes up the Australian legal system, is in many ways incompatible with our efforts to ensure the survival of our people. These two elements - legislation and social convention - which make up the Australian legal system are established, policed and reviewed by non-Aboriginal people. The capacity of our people to intervene in this process has been minimal. Aboriginal frustration, anger and self-doubt manifests itself in conflict between our two systems. Essentially we must remove the conflict. European legal and social jurisdictions must recognise Aboriginal law and social ideals, and ratify our sovereignty.

I am not advocating separatism but more so parallel development. A pattern of development which allows Aboriginal people to be who we are, for we can be no other, lest yet we die. Still we would wish to participate in the Australian nation state. Control of our lives and of our society is an essential prerequisite for the solution of the conundrum.

Where our people can gain such control, the incidents of violence and anti-social behaviour has decreased. Conversely, where the autonomy of Aboriginal communities is being diluted the incidence of anti-social behaviour or violent behaviour increases.

Examination of the social impact, for instance, of natural resources development on indigenous peoples has shown that, where the concerns and rights of Aboriginal peoples have not been considered, there is a large increase in conflict between the indigenous and non-indigenous societies. Usually resulting in Aboriginals suffering at the hands of the imposed European system. In 1977 Mr Justice Thomas Berger of the Canadian Supreme Court, in his report on the Mackenzie Valley Pipeline Inquiry, said:

> I am persuaded that the incidence of these disorders is closely bound up with the rapid expansion of the industrial system, and with the persistent intrusion into every part of the Native peoples lives. The more the industrial frontier displaces the homelands in the North, the worse the incidents of crime and violence will be.

Similar comments can be found in the social impact statements on various uranium mining projects affecting the Aboriginal people in Australia. Studies have shown a marked increase in violent crime in those Aboriginal communities affected by mining. However, in other locations around Australia, where Aboriginal people have taken control of their communities' lives a reduction in crime, and subsequent contact with the European legal system, is notable.

The health of Aboriginal people has improved with the establishment of community controlled health services. The services they provide, either as an actual curative service or as a preventative one, has had a positive and quantifiable effect on those Aboriginal communities. Give control of our communtities' lives to our people and the physical and mental health of our nations will improve. As a consequence, the rate at which Aboriginal people appear before the Australian justice system will also decrease.

I am reminded of a quotation which you might already be familiar with:

> I sit on a man's back, choking him and making him carry me, and yet assure myself that I am sorry for him and wish to lighten his load by all means possible, except by getting off his back (Leo Tolstoy, 1886).

We propose that the recognition of Aboriginal rights is the only answer to the dilemma.

SELF-DETERMINATION:

Implications for Criminal Justice Policy Makers

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It is one of those strange twists of fate that I am here speaking to you today. It could so easily have been that you were here speaking about me. Indeed, while I do not feature significantly in the statistics on Black criminal justice, you can find modest mention of me - at various stages in my life - sometimes as victim and occasionally as perpetrator.

I want, because of my unique position in this country and at this time as one of the 'lucky few', the 'Black educated elite', to use my own experiences to demonstrate the commonality of the Black person's experience here. In another place my educational attainments might mark me as having been born privileged, of having grown up with the proverbial silver spoon in my mouth. It is therefore important in this international forum to explain that in Australia this could not be the case.

Being born and growing up in Australia provided me with an entirely different context. There is no chance that a Black person of my age in this country could be of privileged family - because this country allowed no privileged Black families. So there is no Black person of my generation, and very few of even recent times, who does not speak of poverty, persecution, ostracism and brutality as their own first-hand experience.

Growing up in North Queensland meant growing up with the Aborigines' Protection Act, and even though I was not declared 'protected' I lived with the constant fear and with several attempts to have me so declared - which would have meant being transported to the nearest Aboriginal Reserve, Palm Island. It was a penal colony for whole families in those days.

Growing up Black meant living with this pervasive fear of legislation supposedly enacted for your 'benefit'. Growing up Black and female meant that I had to learn early how to deal with sexual advances made by the police. Although a scrawny and sickly child, by the age of fourteen I was very adept at slipping away from over-friendly hands placed on my knee whenever I was in proximity to 'fatherly' middle-aged policemen.

Another observation of my childhood was of Queensland police as the administrators of the 'Aboriginals Fund'. A proportion of the sub-standard wages received by Aboriginals was compulsorily deducted and placed in a fund so that it could be drawn in small portions over periods of unemployment - or so the theory went. This was 20 years before the referendum, and as non-citizens Aboriginals were not entitled to draw ordinary unemployment benefits. This special fund, which I believe was unique to Queensland, was administered through local police stations. It meant that Aboriginals were forced to be in closer contact with the police than any other segment of the population.

On Saturdays, as a regular thing, I would accompany a girlfriend of mine to the police station where she would sign a voucher for 10 pounds - and receive 1 pound. When I questioned her about it once, knowing that she could read and write, she informed me that if she did not sign the voucher she did not even get the pound.

Years later I read of the arrest of a police officer for this type of offence, but he was not stationed in my home town so I can only assume that this practice was not too uncommon.

I will not continue with this litany of my personal trials and experience with the 'justice' system. Suffice to say that the nature of the justice system's harrassment directed at me changed when I became involved in political activity. My membership of, first, the One People of Australia League (O.P.A.L.), an extremely conservative group in Queensland which consisted mainly of White people with a religious or university affiliation, and later with the Aboriginal Embassy and the Aboriginal Medical Service, brought about a change in my relationship with the police. It became worse. I was no longer a 'sex object'. I was a 'dangerous object' who also happened to be female. From then on, I was punched, kicked and arrested, and the hand which previously tried to squeeze my knee now socked me on the jaw.

The point here is that this country, and this legal system, will reap what they have sown. My experiences with the criminal justice system are actually very mild. I would say they are the base-line norm for the Black community. The legal system has repeatedly attempted to turn me into a criminal by arresting me and therefore branding me a criminal. I hope I have not been asked here to talk about Black criminality - because I know how that criminality has been created. It is like insanity in that if you brand someone as insane and then watch them closely, you can interpret all their actions within the terminology of insane behaviour. And so it is with criminality.

I am personally very tired of reading articles and statistics that speak only to the impact of Black criminality on the justice system - the number of Blacks in the prison population, for example. If we were conducting an exercise motivated by the best interests of the Black community, the manner in which information is gathered would be very much different. We would measure instead the extent of damage done to the Black community by the incarceration and loss of so many of its people. We would talk about the effect of having one quarter and one fifth of all Black males between the ages of 15 and 30 caught up in the justice system. Prison population statistics are a very crude indicator of the extent of damage being done to the Black community. For every one Black male sitting in prison, there is at least one more, maybe two, outside and in stress because of impending charges and possible conviction; or acting frantic in the Black community trying to get the money together to pay fines; or wandering around unable to take care of his family obligations because, with a criminal record, we can not make it in an already tight job market.

I am not pretending that Blacks do not commit any crimes, or that they are all being put into prison for nothing. On the other hand, I want to share with you a little story about a friend of mine. This friend had a hard life, and like many Black youths was well-known to the police. He was unemployed and, like many of us, had no money. He had bought an old bomb of a car from another guy for about $50. Well, of course, for $50 it did not go, but the youth thought he could make it go if he could get the parts. One early evening after poring over the engine all day, he went out and found a similar model in a distant suburb and he 'nicked' the parts. He walked to the distant suburb, and he wrapped the gear in his coat and he was walking back to his place when the police came driving alongside him and recognised him. Having nothing better to do they pulled him up for a bit of a hassle, and discovered that he had gear wrapped up in his coat. They put him in the car and instead of driving him straight back to the police station they drove him around for a bit so they could talk.

They told him if he slipped them a few dollars they would set him down. They knew his background so they did not ask for much, only $20. He told them that if he had $20 he would have taken a cab instead of walking on the street carrying hot stuff. They came down to $10. He said for $10 he could also have taken a cab. They came down to $6. He told them he did not even have a bus fare, and if he had he would have taken a bus. So they shrugged and drove him back to the police station and booked him. With his background he got a couple of years because he did not have $6. I am not suggesting to you that he did the right thing, but I do want us to take a more realistic look at this.

Our community is full of episodes such as this. This youth did his time, got out, got married, and now has a family of kids. Do you think he instils in his kids a 'proper respect' for the law or for the legal system? Or do you think that his contempt for a system that ripped him off spills over to the next generation? Because that is what we are now dealing with - the end result of many generations of abuse of the Black community by the justice system. We can not at this stage deal with that by calling for changes in the Black community.

We used to have a very strong traditional authority in the Black community. It has been eroded over many generations, but it is still there, a dull ember. The problem is that the justice system is, even now, trying to put out that ember. The arrest a couple of years ago of so great a personage as MumShirl (Smith), whose name and reputation must be known to most of you, is a perfect example. The respect she commanded in the Black community, the countless times she intervened in really dangerous situations and defused them, the tireless energy she spent mediating between the system and the Black community - and then two police officers feel free to take an elderly lady like that behind a wagon and beat and kick her? Following her arrest, she took out charges against these two officers, but you know how these things go. It is the lack of morality displayed by the other members of the police force and the legal system, who go into motion and perpetuate injustice by ignoring the truth and the over-riding concerns implicit in this sitation, by hiding behind 'due process' and thereby condoning these activities, that is really disturbing.

The structures and motivation for renovating Black community life exist. The structure is in tatters, and it consists of people such as the now-adult youth who did his time for stealing car parts and is now the head of a family; of MumShirl who feels she will probably never recover her former stature and authority in the community following such a public humiliation, and of others equally burnt, whose memories are sharp, and who are cynical of what we see happening now. We admit that <u>our</u> motivation for change is self-interest. We know our community, our children, can enjoy a quality of life in the future which we have not had in the past. It is that simple - and that complicated.

But while authorities pretend to us that they are acting in our best interest, very little can be achieved regardless of motivation. We recognise when we are being patronised, and do not like it. Patronisation is not a relationship which exists between equals. It carries with it the continuation of a power-relationship which is meant to keep one part powerful and one party powerless. We would be fools to co-operate on such a basis.

However, we can accept, if the authorities can admit, that they are also acting in self-interest. We know that since the head-counting started, the criminal justice system has been embarrassed. In a country that decries cricket players who will play cricket in other racist countries, we have our own institutions that are embarrassed because they find themselves locked into a process which they now recognise as based on racism. They are interested now in cleaning up the system, and demonstrating to the world how equal things are in Australia. They have only as a secondary interest the alleviation of pain in the Black community. But Blacks can deal with that - because we can deal with honesty. However, those who represent the system must admit that, because without such an admission we cannot proceed together with honesty. The notion that criminal justice policy makers are acting out of charity is inhibiting the development of a good working relationship between themselves and the Black community.

The machinery of legal discrimination and oppression has been in place for so long now that those who have inherited the system no longer know how each piece works, and are baffled by which bit causes which result. It seems the only way to unravel this mess is by working backwards - by asking Blacks where they hurt, and by isolating those parts of the machine which are causing pain at any particular point. We can understand the difficulty policy makers have in even formulating the right questions, and I am sure you can appreciate the problems we face in trying to yell out our answers across a chasm which has been carefully constructed by the system over the past 200 years. We do not even have a language in common. English, yes, but the White folks involved in criminology speak the English of the powerful, and we Blacks have been well schooled in the language of the powerless.

The aggressive recruitment of Blacks into the very lowest level of police work, the creation of a special category of police 'aide' - these solutions will achieve very little. We have to work out methods whereby Blacks can have immediate and profound influence on policy and practice. It is my contention that it does not matter very much what colour a police officer is - what matters is who he or she is accountable to! I start with the police because the police are the outreach program of the legal system. Judges and prison warders are not out on the streets, and their dealings with Blacks occur only after the police have made their decisions.

I once witnessed two police officers responding to a call about theft of milk money. They apprehended two white youths aged about 18, from an upper middle-class suburb, who were stealing from their own neighbours. Instead of arresting the youths, the police officers went around and told their fathers. In

counselling Black prisoners and ex-prisoners, I have spoken to more than half a dozen Black males whose 'criminal activities' and whose 'criminal records' began with milk money thefts. I weep to remember those two white boys. Selective prosecution has been a tremendous burden to the Black community. So, too, is this business of police records.

I have a friend in Queensland who sat on a barstool in a hotel that did not serve Blacks. Of course this occurred before 'citizenship' but there have been incidents since, as Al Grassby can confirm. The publican called the police, who came in and arrested my friend for disturbing the peace. He was sitting quietly at the bar, refusing to leave until he had been served. When the police ordered him up, he continued to sit, so they also charged him with resisting arrest. They then had to drag/carry him out to the wagon which I suspect embarrassed them in front of all the White patrons, so for good measure they also charged him with assaulting police. He got a month in gaol, and no mention of racism by the hotel was made on his record. This man is an amazingly peaceful man, a leader and Elder in our community, who has initiated a number of community programs now in that town. He is inhibited in how much he can achieve because the authorities constantly refer to his 'criminal record' which consists only of that one event. Young police transferred into this town who hear his name go into their files, and the next thing you know they are leering at him 'knowingly' in the street. The police force turns over, the Blacks do not.

We keep being told we have to move forward and co-operate with change. We are asked to co-operate with, for example, the establishment of the Police Aboriginal Liaison Unit, and to go to the police training institutes and help train new police recruits to learn something about the Black community before they work amongst us. We are told not to look backwards and to think only about how nice the future is going to be. Even though any thinking person must admit that we have a right to be angry about our grievances from the past, we are not permitted to express our anger because our righteous anger upsets White folks.

On the other hand, the police have their 'records' and they can look back. They, and the courts, can pull out their pieces of paper today to hold against us their earlier interpretations of our behaviour. While admitting to a racist system in the past, and to racist practices as normal process, they can still take seriously their system's formulations and pronouncements of an era which they keep telling us to forget.

I have used this personal perspective in an attempt to scratch the surface of the incongruities which exist within the methodology currently being utilised to examine Black involvement with the criminal justice system. If the Black community continues to be offered bottom-of-the-ladder types of involvement, such as police aides or 'advisors' to the courts whose advice is not necessarily taken, then the criminal justice system will not get the type of changes which it appears to seek. And if the policy-makers continue to tell themselves that these types of innovations are in the Black community's best interest, then they will continue to make these types of mistakes. I am particularly concerned when I hear plans to involve Blacks in powerless positions, who will still be expected to carry the full weight of responsibility for the success or failure of liaison-type projects.

The whites' problem is not the Black community. The whites' problem is that their institutions and practices are racist. The white system of operations is racist. The end result is that disproportionate numbers of Blacks end up in whites' prisons, and sully Australia's reputation as non-racist. That is the whites' problem.

If we are to give meaning to 'self-determination', then means must be established to support that concept. Although there has been talk about another workshop to be held in the future which would consist of a majority of Black participants, reversing the order of these workshops would have made much more sense. A meeting of expertise, such as this, held to consider the means by which resolutions made at a Black workshop could be implemented may have been valuable.

The community has, to my knowledge, a couple of projects operating with crime prevention as their basis. It would have been valuable to explore these concepts with other people from the Black community. I do not feel authorised by these communities to inform you about them. They are the sorts of community-initiated projects that other Black communities elsewhere might like to look at, adapt, and experiment with, but should these ideas appear to come from outside the Black community then they are immediately robbed of their community-initiative component. This is a lesson which should have been learned from the Aboriginal medical and legal services. The community-initiative and community-control inherent in these services is the proven point of their successful operation. Anything other than community initiative and control falls into the area of outside imposition - no matter how well meaning.

Criminal justice policy makers now have the task of analysing what is meant by community-control and self-determination. They must struggle to come to grips with these concepts, and transform them into practice. Being supportive of self-determination is attitudinal and behavioural, so there is no handbook or set of commandments to make the task easier. At each point along the way, policy makers must ensure that their work is guided by determinations made in the Black community about the Black community's welfare. Anything less is not self-determination, and the principle of self-determination is non-negotiable.

ABORIGINAL LEGAL SERVICE:

A Problem of Representation

Craig Somerville,
W.A. Aboriginal Legal Service,
Perth, Western Australia.

This morning I will be discussing the problems that the Aboriginal legal services, and in my case particularly, the Western Australian Aboriginal Legal Service, have in the delivery of legal aid. The problem with the Aboriginal legal services is that it has a requirement to meet the demands of three areas. First it has its clients. The Aboriginal legal service of Western Australia covers the whole of the State, and therefore has a potential clientele of roughly 20,000 people.

As an Aboriginal organisation, our second responsibility is to self-management. Whilst we are also performing our duties to our clients we must make sure that the service remains Aboriginal. It is not the people employed by the organisation that should be deciding its major directions, but the Aboriginal management of our organisation. We must foster forums for them to actively participate in its administration.

We have a third responsibility to the organisation that funds us: the Department of Aboriginal Affairs. Without the funds from that organisation we cannot fulfil our first two responsibilities. Now all of these areas put demands on us. The demands overlap each other and they sometimes pull in opposite directions.

A vast majority of our clients, in their lifetime, will come into conflict with the law, and will require legal assistance. We have a staff of around 37 to 40 who must cover the whole of the State. As far as providing legal representation, we have a staff of solicitors and our field officers. Most contact with our clients from the legal point of view, occurs in a very unsatisfactory environment. Our field officers will contact them at the police lock-ups. They will see them for maybe five or ten minutes before they are due to appear in court. We never know, until the morning, how many people we have to represent. They will know the situation of their events, and we have only that short time to get their instructions and take the matter further.

Our responsibility to clients is not just in the area of court representation. The legal service should also be involved in legal education, and in representing Aboriginal wishes and concerns to government agencies. We should also be assisting not only Aboriginal individuals, but Aboriginal groups in their legal needs.

What is happening at the moment, as I see it, is that the pressure of just providing basic court representation, and our lack of resources, means that we are not covering the very important areas of legal education and making representation to government. We are putting bandaids on the injuries but we are not being effective in making those long-term changes.

On the aspect of self-management, the Western Australian Aboriginal Legal Service is managed by a very large executive committee of 40 people, because we are a very large State. We have had criticism over the size of the executive but we feel it is very important that we have proper representation from all regions of the State and from all levels of Aboriginal politics within our community. Two or three years ago our executive committee was comprised of six or seven people, who had been elected by meetings of maybe 20 or 30 people. In this former situation representation was restricted to only one geographical area: that was the Perth area. However, we had a lot of pressure on us from communities in other areas to actually start listening to what they required from the Aboriginal legal service. So with the co-operation and the involvement of the Department of Aboriginal Affairs, our constitution was revamped. Today we have representation from fourteen delegates elected by our legal service, the members of the National Aboriginal Conference in our State, and the members of the State Aboriginal Advisory Council - which is comprised of delegates from communities all over the State. That is a very large executive.

It would be very easy for those of us working in the organisation to continue performing our services, make changes wherever we saw fit, and to leave that executive behind; to say 'look we are just too busy doing our job to involve you in deciding what our job should be'. But instead we spend a lot of our resources on providing for executive input. Some people say we spend more of our resources than we should on this. The Department of Aboriginal Affairs has actually said that we should be spending more resources in the other areas and less on our executive committee. We totally disagree because once you do this you move away from what is proper Aboriginal self-management.

The third area of responsibility, as I mentioned before, is to our funding organisation. Our involvement with the Department of Aboriginal Affairs means that we have to spend resources on making applications for funds and accounting for those funds. We also seem to have biannual reviews of the Aboriginal legal service which involves people from within the organisation providing large numbers of documents to the Department. I am not very sure what actually comes out of these.

So, the funding organisation makes its demands and they conclude that the Aboriginal legal service is not doing its job as effectively as it could, which is true. I have spoken to people about this and their first reaction is that it is a management

problem, and that we should rationalise our resources. But I have outlined to them that we cannot reduce our responsibilities to our clients and I do not think we can do this with self-management either. It is quite certain that the funding organisation will not allow us to pay less attention to their requests. So I think it is a matter of firstly providing the Aboriginal legal services with more resources; and secondly, taking positive action which will reduce our workload. Simple things, like the decriminalisation of street drinking and drunken charges, are a whole area in which we are involved in providing court representation and trying to keep people out of prison.

We know that prison is no answer to the problem and that is why we are so very keen on action. I think that the problem is only going to increase for Aboriginal legal services. Although I have asked for more resources I know we will probably not get them. So, unless we start to have those changes to the law, the ability of the Aboriginal legal services to assist Aboriginal people with their problems is not going to improve. More than likely our effectiveness will decrease as time goes by.

THE RELEVANCE OF IMPRISONMENT?

Patricia Lowe
Clinical Psychologist
Broome Regional Prison
Broome Western Australia

The following is a report written by a prison officer on the 12 February 1982, and addressed to the Superintendant, Broome Regional Prison. It refers to a man who had been discharged from prison the previous morning. Only the man's name has been changed.

Sir,

Re: Billabong T.

Whilst midnight to 8 a.m. Officer on 11.2.82 at approximately 2.55 a.m. I heard someone pounding on the front gatehouse door. Upon investigating, I noticed Billabong T. standing there repeatedly pounding on the door and asking me to unlock the door. I refused this request and told him to leave the premises. He continued to hit the front door with his hand and kept repeating 'Let me in, I won't fight you, phone the cops I want to go to Fremantle Prison. If you don't let me in I'll jump the fence and break into the kitchen'. I asked Billabong T. why he wanted to go to Fremantle. He stated 'My brothers and sisters are there, Prison is the only home I got'. Billabong T. was quite visibly under the influence of alcohol. I then told Billabong T. to leave the premises. He started to go then turned back to the door and shouted 'If you're not going to let me in, I'm going to jump the fence, phone the cops, I don't care but I'll get in'.

At approximately 3.05 a.m. I called in Officer L. (nearest officer to the prison) for assistance and also informed Sergeant J. of the Broome Police. Officer L. arrived at approximately 3.07 a.m. and a search of the prison yard area was conducted.

> Whilst behind the new block, a crash was heard near the kitchen. As we approached the side of the kitchen, I noticed that Billabong T. had climbed over the fence and was walking towards us. He stated 'See I told you I'd get in'.
>
> Billabong T. had sustained minor cuts to both hands and right foot whilst climbing over the fence. We then escorted Billabong T. to the gatehouse where I attended to his injuries.
>
> At approximately 3.15 a.m. Sergeant J. and Constable R. arrived at the prison. Upon seeing the police officer, Billabong said, 'Arrest me, send me to Fremantle. How long am I going to get?'.
>
> Sergeant J. and Constable R. left the prison with Billabong T. at approximately 3.23 a.m. Whilst walking out Billabong T. stated 'I'll walk quietly with you. Good, this is what I wanted'.
>
> Yours respectfully,
>
> M. R.
> Prison Officer

Most of our prisoners come back. Not all take the direct approach of Billabong T., and not all, though certainly some, come back the night after their release. But over a three year period we can boast a 90 to 95 per cent rate of return for Aboriginal prisoners.

What makes Aboriginals so apparently eager to return to prison? Casual observation and the simple expedient of asking people suggest some possible answers.

Among casual observations I include that of a friend from Perth who happened to call at the prison during weekend visiting hours. She remarked how clean and healthy and well-fed the prisoners looked, hair shining, skin glistening, and in contrast how poor, undernourished and down-at-heal most of their visitors.

I have seen a similar transformation take place in men and women released from prison. They go out looking spruce and cared-for and in a very short time they are reduced to the condition of their visitors, often carrying fresh injuries to boot.

As for prisoners' own perceptions, I often ask them, both individually and in groups, whether they actually like coming to prison. A few of our most regular customers give an unequivocal yes. Fewer say no. Most see both advantages and disadvantages in coming to prison, and welcome occasional short visits. Amongst the attractions they list the peace and quiet, the good food, the regular life, and the chance to catch up with friends and relations and to meet people from other places. Prison also affords opportunities to travel. My informants even appreciate a spell off the grog, getting dried out and healthy again.

Now Broome Prison, though a fairly easy-going low security institution, is not the Ritz. Conditions there are poorer than in most other prisons in the State and it offers little in the way of industry, education or recreation. That such a high proportion of young Aboriginals seem to enjoy a spell in Broome Prison says less to me about the comforts of prison life than it says about the hardships of life outside.

So - is prison a deterrent, or does it reform anyone? With a 95 per cent recidivism rate for Aboriginals, obviously not. Can it even be classed as a punishment?

Retribution is the one irreducible reason for locking people up; those that have been wronged demand a quid pro quo. If prison is not even experienced as punishment, what justification remains for it?

Remember that what I have said above applies to prisoners serving short-term prison sentences, say between one and six months. As the length of sentence increases, satisfaction diminishes. Long sentences, particularly those of several years, can be experienced as very punitive indeed. Apart from the difficulties many of our clients have in measuring the passage of time, long sentences necessitate lengthy periods of time in southern prisons, in a much colder climate, away from friends and family. Because not many people read and write fluently, and families are unable to visit, communication may virtually cease. Prisoners show their unhappiness by making anguished requests for transfer back to the north.

Does this mean that at least for serious offences imprisonment serves its supposed purposes of retribution and deterrence? Long-term imprisonment is certainly experienced as painful. But for a punishment to be relevant the offenders must recognise that they have offended and that they therefore owe the wronged person or group some penalty. In cases where the offenders have seriously transgressed Aboriginal law, they owe a penalty not to the European legal and prison system, but to their own people. Imprisonment in such cases becomes an additional burden, or may sometimes become a means of postponing or avoiding tribal

punishment, but in any event it is not the 'real', significant penalty owing to the offended group. More often than we Europeans may care to recognise, Aboriginal offenders do face a second punishment after their release from prison. Allowance may sometimes be made for the fact that an offender has already served a substantial prison sentence, and, of course, passions cool with time. But such prisoners, while serving their sentence under European law, remain throughout uncertain of their fate after release and even while in prison they may be under threat of punishment by sorcery.

To illustrate: quite recently a prisoner was released from Broome Prison after serving five years of a life sentence for wilful murder. He was a nomad and already an adult when he came in from the desert with a remnant band to settle at La Grange in 1967. Frequently during his sentence he became fearful of tribal punishment, either through the mediation of strangers who came into the prison, or through sorcery. Several times we had to call in a local Mabarn or medicine man to treat him for mysterious maladies. Largely because of his mental state he was given an early release. Arrangements were made for him to spend his parole period at an outstation of Strelley, in the Pilbara region. A Strelley elder drove the 600 or so kilometres to Broome to pick up the old man. He told me the first stop would be at La Grange, where the killing had occurred. There was to be a big meeting, and the old man would have to face the family of the deceased. In the ordinary course of events, a spearing would be the appropriate reprisal. However, the Strelley elder had taken the precaution of calling a meeting at La Grange before he reached Broome, and pleaded for leniency on the grounds of the offender's ill health and suffering while a prisoner. Because of his position and authority, he anticipated only a public shaming and possibly a mild beating for the old man. The stop at La Grange, incidentally, was not scheduled as part of the parole plan; it was seen as purely tribal business. Not all prisoners released after a long sentence are fortunate enough to have someone with authority to mediate for them.

So much for a case in which guilt is clear and unequivocal. Now I would like to cite two other cases, also of murder, which illustrate the quite different criteria of guilt and blame applied by Aboriginal people. The main difference between these two cases and the one cited above, from the European perspective, seems to be the absence of intent in the latter. These two were cases of murder rather than wilful murder.

In both cases there was no dispute about who struck the (fatal) blow. However, in each case sorcery was a possible, or actual, factor. Aboriginals have a strong sense of, and belief in, the orderliness and justice of events. Untimely deaths, whether from accident, injury or illness, are never seen as having natural

causes. They need an explanation over and above the obvious one, and are usually attributed to sorcery. The unintentional factor in some killings, acknowledged in European law in the lesser verdicts of murder or manslaughter, are not recognised. Either a killing was intentional, or the agent was simply an unwitting tool of the sorcerer. This fits in with the Aboriginal belief that a person can be killed by sorcery then brought back to apparent life, to be disposed of properly later by some other means. Where there is doubt about the 'real' cause of death a traditional inquest is held. Pieces of the deceased person's hair may be burnt, and the omens read to determine the identity of the murderer.

In the first case the alleged murderer, Peter, had a dispute with an old man who had caught Peter with his wife. Peter struck the old man with a stick and left him, apparently still alive. The old man dies, however, and Peter was subsequently charged with and convicted of murder. Throughout his period on remand and his sentence Peter maintained his innocence. His tribal group had divined him innocent also, and attributed the death to sorcery. Three other men were blamed, and while Peter was serving his sentence another drama was being enacted on his home territory. At least one of the guilty parties dies, as a result of revenge sorcery, it was said. Whenever I discussed Peter's case with people from his area, I was told the same thing: he did not commit the murder, the people knew who did, and one of those guilty had since died. So strongly did people feel about Peter's innocence that they tried several times to have the case re-opened. When Peter was finally released from prison he returned home to a big welcome, and significantly, was not required to face any further tribal punishment.

The second case is less clear-cut, and in some ways therefore more interesting. Adrian, aged 21, was charged with the wilful murder of his young wife. Again, he did not deny the facts, and gave a statement to the police acknowledging that he had punched his wife in the face and chest, knocked her down, and kicked her in the guts. He then took her home in a taxi, carried her into the house, and went to sleep. Some time later the wife's mother came in and found her dead. Adrian was on remand in custody. He was worried about this trial and its possible outcome, and had been trying to grasp the distinctions made in European law between the different categories of killing. More than this, however, he was preoccupied with his guilt or innocence in tribal law. He explained to me that this would have to be decided at a traditional inquest such as that described above, and he anxiously awaited the verdict. He knew he may be the guilty party. But equally, he may not. It remained possible that his wife was actually killed by sorcery, to which he was the unwitting accomplice. If he was found guilty, he could then expect to be disposed of by sorcery himself. His mother had told

him that, if his demise was planned, he would feel hot inside. Then he would know he would die. So far, he had not noticed this inner heat, but he was filled with dread at the thought of it.

I do not propose to make any recommendations. Recommendations are usually the least convincing part of any paper, if only because it is always so much easier to see what is wrong than to find solutions. But to conclude I would like to suggest a small exercise. First, I would like you to imagine what an Aboriginal audience composed of my clients and their familis would make of this gathering. Most of us are, in one way or another, engaged in the processes associated with getting Aborigines locked up. Most of us thus engaged draw handsome salaries. Yet here we are, at considerable expense, once again beating our breasts over the 'problem' that provides our livelihood. A straight-thinking Aboriginal person could be forgiven for finding us guilty of hypocrisy. He or she could also, I suspect, offer some pretty direct and simple solutions to the problem we purport to be trying to solve.

Secondly, let us go on to imagine a group of tribal Aboriginal people calling their own meeting to discuss the 'problem' of Aboriginals in the European criminal justice system. I think they would see the problem in quite different terms. To them the problem would surely be one of how to stop the European from locking so many of them up; of how to counteract such an undermining of their traditional methods of social control; of how to regain command of their own affairs.

It seems to me that as long as we Europeans consider Aboriginal problems as our 'problem', a variation of the 'white man's burden' for which only we can find solutions, the problems will remain. Not until we are sufficiently respectful of a people to return to them power over their own destiny, and the territory in which to wield it, will that people be free to function once again with dignity and integrity.

II POLICING

POLICE/ABORIGINAL RELATIONS

IN SOUTH AUSTRALIA

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My topic is police/Aboriginal relations in South Australia. Police/Aboriginal relations have been the subject of a South Australian Police Department project over the past 15 months. I will firstly give an outline of the project and the changes that will arise from it, then talk specifically about initiatives in the communities of the Pitjantjatjara Lands. Rather than talk about issues, I intend to concentrate on describing the action already taken and further proposals for action.

The Commissioner formed a project team in early 1984 to examine police/Aboriginal relations, with the following brief: to define areas of tension, develop an improved perception of these areas of tension, from both police and Aboriginal perspectives, and recommend programs of action to alleviate problems. I was one member of this team, Fred Trueman was another, and the third member was an experienced member from the Aboriginal Liaison Section of the Police Department, Ken Duffield.

The project team was given the resources and freedom to travel wherever necessary. A point worth mentioning is that the support and involvement of the person at the top is vital to a project like this. The project team travelled throughout South Australia, visiting most of the larger Aboriginal communities, and also several Aboriginal communities in the Northern Territory. We met with Aboriginal people in about 40 places. We also spoke to police and other local people such as city councillors and government employees.

The extensive consultation with Aboriginal people was one of the most important features of our work. The response of Aboriginal people was generally positive, but there was a fair degree of skepticism. The nature of some of the problems that existed meant that the project team returned to some areas such as the Pitjantjatjara Lands, Yalata and Port Augusta on many occasions. These repeated visits, which included some extended stays in Pitjantjatjara communities, helped overcome the initial skepticism and generated Aboriginal participation in the project.

The project team found that many of the issues in police/Aboriginal relations could be roughly grouped into three areas. These being the so called Tribal Lands, that is the Pitjantjatjara Lands, the Maralinga Lands and Yalata; other country areas; and Adelaide city.

We used these three groupings because there were problems that were unique to each area, and policing methods differed between the three areas.

In April last year, a paper summarising the project's findings was issued to all the Aboriginal people and groups that had been consulted. This paper was intended to invite comments generally, and also determine the level of support for certain proposals that had been developed in response to the areas of tension that were found.

Aboriginal support was strong for a trial Police Aide Scheme. As a result, development of the Police Aide Scheme began immediately. I will discuss police aides in more detail later. Work began on other proposals late last year. To improve police/Aboriginal relations in South Australia, there has to be action taken in a number of areas. I will give a very brief outline of these.

The first is training. The Police Training Branch is currently reviewing training for police in Aboriginal affairs, and is developing a training strategy for police at all levels. It is essential that the quantity and quality of training be increased. Second, education. Educational courses in Aboriginal studies are being examined, so that the police force can give sound advice to police officers who intend to do Aboriginal studies courses.

Third, liaison. Our Aboriginal liaison system is being completely reviewed, with direct involvement of Aboriginal people. The aim is to make liaison more effective, particularly at 'street level'. We are rather critical of bureaucratic-type remedies and structures, which do not seem to reach the people who matter most - the operational police and the Aboriginal people they deal with.

Other proposals yet to be commenced, include changes to police recruitment procedures aimed at increasing Aboriginal representation in the police force, police involvement in education programs for Aboriginals, and a review of police operational instructions pertaining to Aboriginals. All the proposals outlined probably will have to be implemented within the existing resources of the South Australian Police Department and most proposals will commence during this year.

We have some quite definite views on all these proposals - in relation to what should and should not be done, but I will not go into these now. Perhaps these can come out in the discussion. These changes are seen as being long term, that is, positive results cannot be expected to come quickly.

An area where results can be expected in the short term, is police/Aboriginal relations in the remote Aboriginal communities of South Australia, in particular the Pitjantjatjara Lands. Note that I am referring to a limited part of criminal justice - that is, police/Aboriginal relations - and that the operation of the criminal justice system in these areas fails to meet Aboriginal needs, in many ways.

Improvements to police/Aboriginal relations in the Pitjantjatjara Lands can come about in two areas - the first is in changes to the current policing service; and the second is in the development of Aboriginal participation in policing, on a community basis, through the Police Aide Scheme.

I will talk firstly about the changes to policing of the Pitjantjatjara Lands. When the project team first visited the Pitjantjatjara Lands, the Pitjantjatjara were demanding a full-time police presence in their communities, to help solve their social problems such as drinking and petrol sniffing. The Pitjantjatjara were critical of the amount of time that police spent in their communities. They were keen to have police stay longer and visit more often. Obviously, police cannot solve the social problems of the Pitjantjatjara, but the police service can be improved, with some relatively simple changes.

The project team had found that the system of patrolling the Pitjantjatjara Lands relied heavily on using an aeroplane based in Adelaide, which considerably reduced the time that police were able to spend in the communities. As a result, it was recommended to the Commissioner that police patrols be extended in response to Aboriginal demands.

It was also recommended that a female police officer participate in regular patrols, about once a month, to develop relationships with Aboriginal women, as part of an assessment of the policing needs of women in both the Pitjantjatjara Lands and at Yalata/Maralinga. These two changes commenced earlier this year.

Further changes which are yet to be implemented related to the selection and training of police personnel for duty in remote areas. These, I believe were resolutions of the previous workshop here at the Institute. Some Pitjantjatjara have offered to take over part of this training - something that will be seriously considered.

I will now turn to the second part of the proposals for the Pitjantjatjara Lands, which is the Police Aide Scheme. The Pitjantjatjara have expressed considerable interest in police aides, based on the concept operating in the Northern Territory. From our observations, the Northern Territory scheme has been quite a success, from the police point of view and from an Aboriginal point of view. The main evidence for this is the response of Aboriginal communities, both those with and those without police aides. Our Commissioner has observed the Police Aide Scheme in operation in the Northern Territory and his personal commitment to the concept is very strong.

The Northern Territory Police Aide Scheme has expanded considerably during the past two years and now includes several Central Australian communities. The Northern Territory police aide concept is currently being adapted for South Australia, to be run on a three year trial basis.

In very general terms, the Police Aide Scheme enables specially trained Aboriginals working as police aides in their own communities to assist the police to provide a policing service that is suitable to those Aboriginal communities. The Pitjantjatjara communities in the trial are Amata, Ernabella, Fregon and Indulkana.

A police officer who is very experienced at working with Aboriginals will have responsibility for the correct operation of the scheme, and is known in the Northern Territory as the police aide liaison officer. Selection of the police aide is a very careful and often time consuming process. The police aide liaison officer has to ensure that all sections of the Aboriginal community have been consulted about the nominees for the aide's position. Nominees must be acceptable within the traditional social structure and be acceptable to the whole community. The Police Aide Liaison Officer assesses the nominees and recommends a suitable candidate for selection from each community.

After selection, the aides will attend a four week training course which teaches the basic policing tasks which are relevant to the Aboriginal communities. This training has been developed after consultation with both the Northern Territory Police Aide Liaison Officer, and the Pitjantjatjara communities. The training will be very practical and mostly conducted outdoors. Training stresses group participation and co-operation towards achievement of training aims, rather than competition between trainees. The training strategies are based on traditional Aboriginal learning methods. The course is only four weeks, because the Northern Territory police have found that to be the optimum length. The course recurs annually. During the course the police aide liaison

officer assesses the demonstrated abilities of each trainee and recommends the scope of powers and duties that each aide should be able to perform.

Each aide will learn as much as they can, without pressure, to reach any pre-set, uniform standards. Attendance at the annual training courses will provide the opportunity for reinforcement of what trainees have already learnt and the acquisition of new knowledge and abilities.

After training the aides will return to their communities to work. A police officer will work in each community with the aide for the first year. This officer will reinforce what the aides learnt on the training course and make sure that they can do their job correctly. You have to bear in mind that the training course only teaches the basics and that each trainee will probably be at a different level. This police officer will also have to educate the community about the aide's correct role - their capabilities and their limitations. It is vital that the people have realistic expectations of their aide. The aide has limited powers - suitable to the work in their community and to their level of development.

The key to the police aide's role is flexibility. The policing service must be suitable to the Aboriginal community. One of the main functions of an aide will be liaison between police and Aboriginal people. This will help the police service to be more effective by overcoming some of the cultural barriers that currently exist. Another of the aide's functions will be in crime prevention and aspects of public safety. A very important part of the police aide's work is in helping to maintain a peaceful and stable community. There are certain to be times when police aides will be confronted by violent situations. In any given situation, an aide has several optional courses of action - they can intervene themselves or with other people in a way that is appropriate for Aboriginals, or they can take no action, they could record events and report later to police if necessary, or they could call in a police patrol.

South Australian police aides will <u>not</u> be at the bottom rung of police hierarchy. They will be experts in their own right, who will be paid accordingly.

We recognise the potential personal conflict that could confront an aide. We will provide police aides with support so that their social position is not compromised. We recognise that if the aide <u>is</u> compromised, their value will be diminished. As an example of the police commitment, if an aide is in a potential compromise situation, they can call the police patrol, as I mentioned

previously. Another example of the department's commitment to the police aides will be the continual personal training and development program for each aide.

We do not say that the Police Aide Scheme will be without problems - they are bound to occur, but with proper support and commitment from the Police Department, including willingness to listen and act on Aboriginal opinion, the scheme can work.

We are aware of the failures of other indigenous police forces including, in Australia, the notorious Native Police. On the other hand, we also have the advantage of the Northern Territory Police experience and we believe that the Pitjantjatjara deserve to see some action in the criminal area (at long last).

I must point out that we do not see that police aides, or any other police initiatives, as being the total answer to the criminal justice-related problems that the Pitjantjatjara are experiencing.

In summary, our aim is to improve police/Aboriginal relations in South Australia. The Police Aide Scheme is only one aspect of a broad range of important issues in the area.

BRIDGING THE GAP : Practical Application and Obstacles to Change and Co-operation, New South Wales

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THE NEW SOUTH WALES POLICE ABORIGINE LIAISON UNIT

Background

Evidence of recognition of the need for dialogue to be developed between Aboriginal representatives and senior police in New South Wales can be traced back to 1975 when meetings were held to discuss community development and an apparent increased involvement with police in the Redfern area of Sydney. It appears, however, that nothing of a continuing nature developed from these meetings and although an awareness of a need for developing relationships with Aboriginals and other ethnic communities was apparent at the time, a general policy of reactive policing throughout the community seems to have been adopted.

During the period 1978-80 a Parliamentary Select Committee of the Legislative Assembly of New South Wales, under the Chairmanship of Maurice Keane MP, conducted a general inquiry concerning Aboriginals within the State. On the subject of Aboriginal/police relations a recommendation was developed that the New South Wales Government examine the possibility of implementing a Police/Aboriginal Liaison Scheme within the State. This recommendation was in line with a theme senior police were discussing at the time, with regard to the concept of proactive community policing.

Superintendent John Avery, in charge of the Police Training Development and Examination Branch, had the responsibility of assessing the value of such a section within the police force. The specific function of the section was to provide a communication facility between the police and the estimated 45,000 Aboriginals (depending on data source, estimates vary between 35,000 and 48,000) resident in New South Wales. The author was appointed to assist in that task.

It was necessary to determine the value of such a section, in terms of the impact that it would have on the Aboriginal community, the operation of the police force, and the total

community. A tour of the State was undertaken during which the concept of proactive community policing was discussed with individual Aboriginals and operational police in the field. Aboriginal representative groups were spoken to as were people involved in general community issues on a day to day basis. A visit was later made to South Australia to examine the Police/Aboriginal Liaison Scheme operating in that State for some years.

In 1980 the New South Wales Police/Aborigine Liaison Unit was established as an operational section directly responsible to the Deputy Commissioner of Police. This line of responsibility was necessary at the time to ensure that determined centralised policy was maintained during developmental stages. Since that time the Unit has developed from one police officer, to a staff of eleven, including one public servant. The structure of the Unit now is three sergeants, six senior constables, one constable and one clerical assistant. Three members of the staff are female, one is Aboriginal and two are able to relate to an Aboriginal background. Care is taken to ensure that staff appointed to the Unit possess qualities conducive to the continuation of positive development and operation of the Unit.

In March 1985 the Aborigine Liaison Unit officially became a section within the Police Community Relations Bureau. As the New South Wales Police Force is concerned, the establishment of this Bureau represents a major initiative. It involves a staff of up to 250 and bases its operation on the concepts of community involvement and proactive policing.

Basic Philosophy

Circular No.82/171 sets out the policies of the New South Wales Police Force as far as discrimination in dealing with members of the public is concerned.

> The policies of the New South Wales Police Force are non-discriminatory. All persons irrespective of race or ethnic origin will be treated similarly. It is not the policy of this Force to discriminate in favour of Aboriginals anymore than it is to discriminate against them.

The affirmative action taken by this police force in establishing and developing the Aborigine Liaison Unit is the initial step in a long term objective designed to cater for the needs of the entire community irrespective of cultural lifestyle or racial origin. Indeed at this very time the Community Relations Bureau is preparing to directly address itself to other significant minority groups within the society.

An awareness of the principles of Australian multi-culturalism and the need for the police to develop an understanding of the background, cultural traits, and lifestyle of those that make up the community, in which they perform their duty, is a fact prominent in the minds of senior officers, particularly those responsible for the development of training curricula.

The basic objective of the Aborigine Liaison Unit is to provide a communication facility and generally improve relations between Aboriginals and police. It is the Unit's function to:

(a) assist police with duties affecting Aboriginal people;

(b) take responsibility for police liaison with organisations and representatives of the Aboriginal people;

(c) assist in the provision of police services to Aboriginals and the community generally;

(d) liaise between investigating police and Aboriginal communities and negotiate where applicable;

(e) assist with minor misunderstandings of a local nature and conciliate where appropriate;

(f) address Aboriginal groups, and discuss and explain aspects of the law and police practice and procedure;

(g) actively seek and encourage Aboriginal applicants for police employment. To provide preliminary discussion and familiarisation meetings, and subsequently monitor the progress of the applicant through the system;

(h) arrange and conduct lectures at the Police Academy In-Service Training Scheme. Topics include:

- Role and function of the Aborigine Liaison Unit in the police organisation,
- Aboriginal historical and cultural issues,
- Police/Aboriginal relationships,
- Traditional, transitional and contemporary Aboriginal lifestyles,
- Topical issues of concern to the operational police officer, such as The Land Rights Act (NSW) 1983, the Aboriginal struggle for land rights, elements of racial disorder;

(i) represent the Police Department at seminars, conferences and inter-departmental meetings on issues concerning Aboriginals; and

(j) develop a resource centre on Aboriginal matters for police information.

While Unit members are encouraged to discuss minor misunderstandings when approached in the field, and assist wherever possible, it is made clear that they are not seeking complaints about police officers. An established procedure has been adopted for the furnishing of such complaints, and involvement in this procedure is not a function of the Aborigine Liaison Unit. Misunderstandings of a local nature in which Unit members may become involved, might include minor disputes between Aboriginals and police, between Aboriginals and members of the community generally, or between separate factions of Aboriginals. It is realised that any such disturbance involving Aboriginals will eventually involve police and the inherent problems that follow. The aim is to identify the underlying causes and eliminate problems before they develop into serious situations.

In developing an overall worthwhile function, as distinct from a tokenistic or cosmetic effort, it was necessary to make a number of realistic assumptions. These include:

(a) a generally poor relationship existed between police and Aboriginals within New South Wales;

(b) generally speaking police have an inherent dislike for Aboriginal people;

(c) likewise, generally speaking, Aboriginals have an inherent dislike for police;

(d) the situation in both (b) and (c) has developed from historical factors and is regularly reinforced;

(e) Aboriginals do not see police as providing a community service but rather as representing the oppressive arm of the white Anglo-Saxon authority; and

(f) police, as members of the general community, have little, if any, knowledge of Aboriginal history, culture and lifestyles.

Mechanisms

The Unit is based in the vicinity of Police Headquarters in Sydney. On regular non-urgent matters members use motor vehicles specially fitted for travel throughout the State. On other occasions commercial or police aircraft are utilised and vehicles made available on location as required. Aboriginals are generally dispersed throughout the State while larger groupings may be found in the northwest and metropolitan areas. The possibility of regionalising the Unit is under consideration, although some senior officers feel that an efficient and effective service is being maintained from a Sydney based operation. One argument in favour of the present situation is that of centralised policy development and maintenance. The Community Relations Bureau recently appointed a District Community Relations Officer to each of the 20 police administrative districts within the State, and where appropriate, these personnel may be utilised to supplement the efforts of the Aborigine Liaison Unit.

Under normal circumstances, at least one team from the Unit may be found visiting country areas at any given time. Regular visits are made to Aboriginal areas throughout the State, and in addition to arranging meetings with Aboriginal representatives and groups, informal discussions are sought with people on a face-to-face basis. On field trips, Unit police wear casual plain clothes and an emphasis is placed, where possible, on an informal non-official approach. The presentation of this personal non-enforcement type role has met with considerable success and is generally appreciated by the Aboriginals. It must be understood that to improve police/Aboriginal relationships, in the overall situation, effort must be forthcoming from both sides. To use a cliche - 'it takes two to tango'.

Unit members, when in the field, must clearly establish themselves, as far as both the local police and the Aboriginal community are concerned. The 'link-pin' image in the true sense of 'liaison' is an acceptable position. To identify more readily with one group than the other, makes the entire exercise counter-productive. Both the police and the Aboriginals regard the Liaison Unit as a facility. The fact that Unit members are initially police is generally balanced in the minds of Aboriginals by a value based on experience of previous assistance rendered. Members of the Unit generally approach Aboriginals in their own environment following invitation or mutual arrangement. Particular care is taken not to adopt an authoritative approach.

Noticeable Changes Since Formation

It is difficult to adopt any objective measure to determine the success or failure of the involvement of the Aborigine Liaison Unit in the police aspect of the criminal justice system. From the onset a low key approach has been maintained gaining little publicity.

The problem that we are addressing has no short term solution. The more noticeable successes must be regularly weighed against occasional incidents, sometimes of a spontaneous nature, which maybe more a feature of modern day society. Overall the success and value of the Unit can only be determined by the people that it most effects. Comments to date in this regard have been most favourable.

One prominent change that has taken place is the apparent willingness to become involved in dialogue, particularly at a local level. In addition, the Unit is fulfilling its function as a communication facility. Aboriginal education programs both in the police academy, and as part of external courses that many New South Wales police are being encouraged to undertake, have meant an increased awareness and understanding in recent years. Young police, in particular, are exhibiting a greater understanding, and this must be attributed in part to the fact that nowadays they are representative of a greater multi-culturally based society. Increasing participation by Aboriginal people also assists to bring about positive change as the organisation becomes more reflective of the community that it serves.

Generally, a worthwhile degree of attitude modification is apparent throughout the police force, in accordance with departmental policies supplemented by general societal attitudes. Aboriginal people have shown an increased tendency to approach police on day-to-day matters and become involved in community issues. Police have commented on the responsible effort taken by Aboriginal communities, in some areas of the State, to address the problem of juvenile crime.

Problems Hampering Success

In more recent times, most of those problems previously regarded as hindering the progress of improved police/Aboriginal relations have developed a more positive direction. It is no secret that individuals associated with the police and with various Aboriginal organisations had little faith in the purpose of a liaison scheme during its embryonic stages. A perhaps not unnatural air of suspicion and mistrust greeted Unit members in both camps as they sought to establish credibility. The value of police/Aboriginal liaison has been established in New South Wales, and a continued positive approach by all concerned will ensure further development. Continued emphasis on education, and opportunity for dialogue and communication, will eventually bring about a result worthwhile to all.

CURRENT DEVELOPMENTS IN ABORIGINAL/POLICE RELATIONS IN WESTERN AUSTRALIA

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INTRODUCTION

The Special Cabinet Committee on Aboriginal/police Relations was set up after the Skull Creek/Laverton incidents of 1974/75. To understand current developments in Aboriginal/police relations in Western Australia it is necessary to look briefly at the genesis of the committee, and its activities over the years.

The committee, consisting of senior personnel from the police, Aboriginal Affairs, Community Welfare and Education Departments, as well as the Aboriginal Legal Service, first met in July 1976.

Its terms of reference were far reaching with a catch-all clause at item 14 (the consideration of any other relevant matters) reflecting the committee's optimism about its capacity to effect change. That optimism and the energy of a few members, like the late John Huelin, then principal legal officer of the Aboriginal Legal Service, could not counter the strong resistance to change which saw many of the committee's recommendations rejected out of hand, or filed for consideration in the apparently mythical future.

Its achievements in concrete terms were minimal. The Ruddock report (1980, p.76) says:

> Although [the Committee] provides a forum in which Aboriginal people can express their views, it is confined to an advisory role and the Police Department is under no compulsion to implement its recommendations.

The committee lacked real power. Set up by the government of the day at a crisis time in Aboriginal/police relations, the Special Cabinet Committee was a means of demonstrating or at least of giving the impression that 'something is being done' while ensuring that the status quo was not endangered. Its limited Aboriginal representation (two members at this time) also minimised the effectiveness of its central role of providing a forum where Aboriginal people could express their views.

Over the years the committee has continued to resubmit its proposals and recommendations at what it hoped were more opportune times. This tenacity seems to have paid off. The committee is now working in areas which were met in the past with closed doors, but where the police are now responsive. Police training in Aboriginal culture and issues is one area where the Police Department has responded positively to the committee's initiatives.

The committee began after Skull Creek and the Laverton Royal Commission. Its regeneration was also tied to a crisis time: the Roebourne incident of 1983, when John Pat, an Aboriginal man, died in police custody. While still lacking 'teeth' in a statutory sense, the committee has been revamped in such a way that the political requirement for 'something to be done' may now be reconcilable with real action. The 'John Pat' case led to two Aboriginal/police relations summit conferences in 1984. Phoenix-like, the soon-to-be-restructured committee played the major role in making sure the summit recommendations were taken seriously.

The committee itself emerged with an expanded name, an independent chairman, equal Aboriginal representation, a full-time secretary/research officer, and a blueprint for regionalising its activities. These changes were backed by the police, Aboriginal groups and government.

Given this kind of support, I believe the committee is now better suited to its task than it was nine years ago. Decision-making and action are not impeded by a heavy bureaucratic apparatus and there are direct lines of access from the field to the Minister and Commissioner of Police.

In regionalising its activities the committee is more able to approach Aboriginal/police relations issues as they occur in a particular place - to implement a microcosmic approach where centralised talk-fests have so often failed.

The Special Cabinet Committee on Aboriginal/Police and Community Relations (SCC) has survived the unfruitful years. With its new stature, direction and increasing support from the Police Department the SCC now has the opportunity to respond appropriately, whether this be formally or informally, directly or indirectly, regionally or locally. I believe the SCC has started to function non-politically. That is, these new circumstances have dictated a move beyond the window-dressing role. Time, once again, will judge its achievements.

WHAT ARE GOOD ABORIGINAL/POLICE RELATIONS?

Definitions of what constitutes good Aboriginal/police relations are not easy to come by, yet there is an acknowledged need for more research into factors affecting these relations and the need for improvement is obvious (see, for example, F. Cohen, D. Chappell and P. Wilson, 1975 : p.66, and M. Foley, 1984 : p.183).

In defining new directions for itself, the SCC has had to address the question 'what are good Aboriginal/police relations?'. There are many views on what makes for good relations. Criminologists, Aboriginals, police, welfare workers and others all make their own assumptions and approach the question from different perspectives.

Many see alcohol as the root of it all: abolish Aboriginal drinking rights - problem solved. Others believe it is necessary to change police and/or community attitudes before any improvement can happen. The Laverton Joint Study Group Report (1975 : p.77) says, 'an authentic desire for harmony must exist in the hearts of all Laverton residents'. How this is to be achieved is another matter. Others take a behaviourist approach: forget about attitudes, change behaviour. This refers to either police or Aboriginal behaviour depending on the point of view.

Some police officers believe good relations are indicated by a scarcity of resist arrest offences - perhaps despite an increase in the overall number of charges against Aboriginal people. Other police officers point to a decrease in total arrests of Aboriginals and say that this reflects good Aboriginal/police relations. This latter state of affairs sometimes, but not always, reflects a coinciding Aboriginal point of view.

I do not know what the right answer is, but I do know that there is some consensus on the need to develop a good working relationship between police and Aboriginals. The SCC has concluded that that can best be defined and developed in an operational sense and a local sense. According to this approach, it is appropriate to talk of 'improved' or 'better' rather than 'good' Aboriginal/police relations. The factors responsible for improvement are seen as varying from time to time and place to place.

I want to illustrate the above by giving some examples of what I believe to be good, or at least improved Aboriginal/police relations.

The Strelley Experience and its Implications for other Communities

In 1946 a group of Pilbara Aboriginal station workers walked off their jobs, on strike for better wages and conditions. For nearly thirty years this group survived - to feed itself and finally buy Strelley Station in 1972 - largely through the hand mining of various alluvial metals in the area.

The intervening years were hard ones, but during that period the group developed a cohesiveness and an independence which enabled it to be clear about the direction and control of its own destiny, in particular, the socialisation of its adolescents.

In the years immediately preceding the purchase of Strelley, the group developed a method of policing themselves known as 'the ten men'.

The Strelley mob, as they became known, were reluctant to let the maintenance of law and order and the control over youth slip from them. They had seen the effects of other groups too often in the past. Through protracted meetings aimed at achieving consensus - the traditional way of decision-making - a flexible group of ten men (in reality the number often exceeds this) was designated to deal with the maintenance of the law, both traditional and European. The ten men have, over the years, dealt effectively with Aboriginal people who break traditional and European laws (often in connection with drunkenness in Port Headland, the major port and the nearest town) and occasionally with the breaking of tribal laws by non-Aboriginals.

One of the ten men, the 'boss', is responsible for liaising with the Port Hedland police. This man has his role by virtue of his senior position in the (Aboriginal) law. One of his community-designated tasks is to negotiate with the police over Aboriginal community members wanted for 'white-fella' offences. His role is to ensure that dialogue takes place and that unjust charges are not laid through any lack of cultural knowledge or language barriers.

The group maintains that traditional laws have no mandate over most 'white-fella' crimes, such as car theft, and generally that these should be dealt with by European authorities. Major offences against European law stemming from drunkenness are also considered the business of the European justice system. Drunkenness however, because it is such a threat to Aboriginal law and authority, is dealt with by the community, through the ten men. Drunks, frequently from other communities but with traditional kinship links to the Strelley group, will be collected from town, taken back to the Strelley community and rehabilitated, usually by removal to a distant out-camp for a substantial period.

The effective operation of the ten men relies on their being given status by the police, and on the community's continued awareness of its own directions and dealings. The community feels strongly that its success in the law and order area should be reflected in reciprocal co-operation and respect by the police. In one case where white trespassers had desecrated sacred objects at Strelley and been let off with a warning after the police had been called, the Strelley group in an about face, declined to assist police to apprehend a youth in its care, wanted for car theft.

That is, there have been occasions when the operations of the ten men have not received the respect and status they deserve. New or inexperienced police officers, unaware of the substantial amount of (unpaid) police work done by this group throughout the Pilbara, tend to overlook or under estimate them. Such is the fate of many informal relationships in Aboriginal affairs.

Nevertheless, there are some police who do recognise the vital role of the ten men and hold them in high esteem. These police officers are usually experienced officers, aware that law and order in many Aboriginal communities is beyond the power of the police on their own to maintain or restore. The Strelley experience points to the worth and also to some of the weaknesses of an informal style of police and Aboriginal community co-operation. I believe, with judicious use of available structures, that other less independent communities can adapt the 'ten men' concept to their own needs.

Aboriginal/Police and Community Liaison - a more Formal Approach

Non-Aboriginal structures have always been imposed on Aboriginal people and communities and continue to be a feature of Aboriginal affairs. For example, the Laverton Joint Study Group Report (1975: p.102) refers to the failure of the Docker River experiment in administration with its non-traditional incorporated council making decisions in a non-Aboriginal way. It goes on to warn of the likely failure of other ventures based on similar lines. Yet despite this, most traditionally-oriented groups in Western Australia are administered in precisely this way. Similarly, there is a plethora of committees and so-called consultative groups in Aboriginal affairs, many of which pay little more than lip-service to Aboriginalised decision-making.

Nevertheless, these structures are generally accepted as the means by which most Aboriginals and government deal with each other. Some Aboriginals know the system well and use it to advantage. It can provide a forum for people to speak out, and, mindful of the times when Aboriginals have come off second best in their encounters with white officialdom, it can offer protection for individuals.

Therefore, the SCC cautiously embarked on the process of establishing regional Aboriginal/police and community liaison committees, a task dictated by the 1984 summit recommendations.

It began with a Kalgoorlie-based pilot committee in the Goldfields region. Background research indicated a high level of local interest in and support for the proposal. The membership evolved through a series of talks and meetings with interested people. Most members have decision-making status in their own organisations and the authority to implement the committee's decisions at the regional level. Of the total membership of eleven, six are Aboriginal. The Regional Superintendent represents the police; the Aboriginal Legal Service has a lawyer and a field officer.

Antagonism is often a feature of Aboriginal Legal Service/police interaction because of the nature of the jobs involved. However, as part of the wider membership of the Goldfields Aboriginal/Police and Community Liaison Committee, the police and Aboriginal Legal Service are able to work towards liaison without becoming over-familiar with each other and losing sight of their respective functions (see M. Mansell, 1984).

This committee meets monthly, and sends its minutes through the SCC to the Minister for Police. It undertakes trips to outlying towns on its own initiative or by invitation and is able to carry out small-scale research. Its terms of reference give it similar scope at a regional level to the SCC.

In six months of operation, the committee has made small but real advances in improving relations between Goldfields' Aboriginal communities and the police. Through improved communication, the police, the Aboriginal Legal Service and Aboriginal groups have started to act in concert to solve problems of mutual concern. A sub-committee acts in a crisis-avoidance role.

Complaints about individuals are sometimes brought to the committee's attention. Although it has no mandate to investigate individual complaints, the regional committee likes to be kept informed and often a general discussion is held. It is important for it to be aware of the general state of Aboriginal/police relations at any given time, and such complaints can often reflect this or indicate a trend in Aboriginal/police interactions. The complaints themselves are then referred to the appropriate people. The police representative will usually suggest a further discussion away from the committee, and between the interested parties. Aboriginal representatives will often take up such an invitation where they are reluctant to initiate a visit to the police station.

The regional committee has also monitored Aboriginal/police and community relations in outlying towns and assisted with attempts to resolve conflict situations involving Aboriginals and non-Aboriginals. It has established a local liaison group in another town where Aboriginal/police relations were particularly tense.

The situation at the remote Aboriginal settlement of Warburton is a further subject of deep concern to the members of the committee who are keen to ensure accountability by government for any action to alleviate that community's desperate plight.

The Goldfields committee has a vested interest in improving Aboriginal/police and community relations in the region. Its decisions and actions arise from real situations, the resolution of which improves the lot of both Aboriginals and police in a particular place.

The Regional Aboriginal/Police and Community Liaison Scheme is expanding, slowly, to ensure that new regional committees are structured according to local requirements. The Kimberley region in the north of the State is currently being canvassed. Southwest Aboriginal groups have met on their own initiative to discuss the liaison needs of the region in the light of the Goldfields pilot scheme, and are currently putting proposals to the SCC.

The Pilbara region, where Aboriginal/police relations are widely acknowledged as being most problematic, is being approached from a different angle. An attempt to establish some common ground for improving relations is described below.

Pilbara Study - An Action Research Approach

The Pilbara region of north Western Australia has been the setting for police/Aboriginal conflicts over many years. One of the more recent serious examples being the death of John Pat in police custody, at Roebourne in 1983, mentioned earlier.

The SCC acknowledges the tense state of Aboriginal/police relations in the region and is researching ways of improving them. The research project will look specifically at the situation in two very different communities, Roebourne and Jigalong. It is based on the assumption that the quality of Aboriginal/police relations can only be improved if those who determine it work in concert. An Aboriginal research officer will work with a police consultant to collect data to ascertain the major issues affecting Aboriginal/police relations. The focus will be on Aboriginal and police perceptions of the factors determining the nature of their interactions and how these can be made more positive. It is aimed to develop recommendations which have the support of both the police and Aboriginals involved as participants in the project.

The research process will be recorded on video which will be used to acquaint the participant communities with the results and recommendations of the project. These are likely to be concerned with mechanisms for change and liaison at the local level as well as with such things as the role of the police in Aboriginal communities and the operations of the Police Aides Scheme.

There has been very little of this grass-roots type of research done in the area of Aboriginal/police relations. Both the Jigalong and Roebourne communities see the need for this kind of research and have given the project their backing.

The Pilbara research is a pilot study. While the process itself should help liaison at the local level, it may also provide a research model for adaptation in other communities where Aboriginal/police relations are in high conflict or where there are issues of law and order similar to those experienced at Jigalong and Roebourne.

CONCLUSIONS

Promoting Accountability

It is often argued that the heirarchial structure of the police force and the tradition of closing ranks to protect the interests of individual police officers allow little scope for accountability of police to the wider community. The SCC, and more specifically, the regional liaison committees, provide a means for this accountability to be extended and encouraged. Further, while the actions of individual police officers become more widely accountable, the decisions of the Police Department become more open to public input, in a non-threatening and non-confrontationist way.

The views of an individual get lost in the system; if an Aboriginal expresses concern about the role and function of Police Aides, for example, it is likely that his/her opinion or complaint will not go beyond the local sergeant. The fact that many other individuals might make the same complaint in the course of time or hold the same view is never known by the decision and policy makers higher up the ladder.

The regional liaison scheme provides a vehicle for such views to be sought, expressed, recorded and channelled through the SCC to the Minister or Commissioner for Police. What the police hierarchy may have previously seen, if seen at all, as an isolated complaint can now be seen for what it really is: a more widespread concern about a particular matter under police control.

There is more onus on the police to respond to information gathered and presented through this semi-official channel, and more scope for people to insist that their views are considered when policy and programs are being examined. Reforms to the police training program, the Police Aides Scheme and police procedures for interrogating Aboriginals can only occur if views other than police views are heard and considered.

The Goldfields Regional Aboriginal/Police and Community Liaison Committee as a whole seeks to encourage accountability by government in its decision-making. The fate of the Warburton community, which is suffering severe social disintegration, is an issue the committee has recently examined. Each member has a personal and/or professional interest in the Warburton Community, and many of these involvements are long-standing. In the experience of members, decisions about the future of Warburton have not necessarily been made in the community's best interests, nor with adequate and appropriate knowledge or consultation. The committee has a self-appointed task of insisting on a higher level of accountability.

Its means of insistence are meagre: it can only request to be consulted before action is contemplated, it can only attempt to make itself attractive as a resource group and co-ordinating body between the government and the community. However, I believe that the time is right for such de facto authority to be granted.

Improving Relations

The above examples of how Aboriginal/police relations may be improved show how the SCC approaches its task. It does so on two levels.

First, as police gain more knowledge of Aboriginal customs, cultures and aspirations, and as a two-way communication develops, the SCC tries to influence decisions made by the police on training and other matters and hence aims for improved Aboriginal/police relations in the long term. With the establishment of its regional liaison scheme, the SCC now seeks support for its efforts from the regional committees. They can add weight to the SCC's recommendations by presenting a consensus of local opinion.

This long term approach to improve relations at a policy-making level has always been taken by the SCC, though with little success in the past. If change is expected to come solely through this approach it is understandable that people lose patience and become either disillusioned or overwhelmed with the enormity of the task.

Second, the SCC believes changes can and must be made at the local level. Aboriginal/police relationships can improve if they are viewed as being actual (rather than theoretical) relationships, involving real individuals. If effort and top level support are given to establishing good liaison in a region, town by town, a good ground is prepared for police and Aboriginals to treat each other with respect. Attitudes can change in this way too, and it is faster than waiting for policy changes to be reflected in the field.

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III

COMMUNITY REGULATION IN FIJI, PAPUA NEW GUINEA, NEW ZEALAND AND CANADA

SELF-REGULATION IN THE FIJIAN VILLAGE:
Its Loss and Proposals for Reintroduction

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I will begin with a brief synopsis of recent Fijian historical events so we can put the present situation in proper perspective. By late 19th century growing foreign interests in Fiji were causing much uneasiness among the Fijian chiefs. Through the intermediary of the governor of New South Wales, here in Australia, the Fijian chiefs decided to cede Fiji to Queen Victoria in October 1874.

Among the things in the deed of cession the chiefs expressed the desire that the Queen should spread Christianity throughout the land and promote commerce and industry. Fiji was not annexed by force, or colonised in the traditional sense. The British administration had the attitude that it was the 'keeper of the Fijian trust'. In deferrence to that trust an administrative system was devised to ensure the preservation of the ownership of Fijian land, traditional life-style, the social structure and the culture and practices of the indigenous Fijians. This new approach was no doubt due to the influence of Lord Lugard on Britain's contemporary foreign policies as regards to the administration of colonial people. Europeans came to settle in Fiji and started a plantation agriculture of various kinds. However, these plantations had limited impact upon Fijian commercial and industrial development, and as they did not come upon sudden deposits of gold and other minerals, Britain did not see how it could fulfil the aspirations of the Fijian chiefs, in terms of promoting commercial industry. There was also a pressing need for the local people to finance the cost of the administration of the new parliament.

Sugar was one commodity with reasonable commercial prospect. After some initial failures, sugar cane plantations were established. But the expansion of the sugar industry was dependent upon the supply of cheap labour. Rigorous and sustained labour in the cane plantations, for small cash reward, did not prove sufficiently attractive to the Fijian population for them to leave the self-sufficient, traditional life-style of the village. The European planters could not, themselves, provide the kind of sustained labour which was required in the cultivation of the sugar cane on commercially viable scales. Slavery was no longer a practical proposition. When indentured labourers were brought in from India the sugar industry was

established on a permanent basis and has since been the backbone of the Fijian economy. When the indenture system ended, a vast majority of Indian labourers remained in Fiji. Most of them had lost their links with India through the passage of time and had established kinship ties in Fiji. Those who had money or funds available settled in Fiji as small shop keepers. Some Indians became tenant farmers, cultivating sugar cane and others found employment in the urban centres. In due course Indians moved into a variety of trades and occupations. They set up their own schools in centres of population. Later various Christian missions also established schools for the Indian population.

The Indian population made steady economic and social progress, whilst a fair number of the Fijian population remained largely dependent for their development on the colonial administration and the Jesuits. Jesuits at that time were very active in the Fijian villages. They had set up schools to educate and Christianise Fijians because it was one of the conditions in the deed of cession that Christianity be spread. Predominantly it was the Roman Catholic Church and the Methodist Mission Church which spread throughout the country. They had schools and churches in virtually every village. We had a situation of two separate population groups developing at quite different levels.

Many tend to decry the breakdown of Fijian traditional ties, but they also forget the profound effect of the 1939-45 War. The common struggle brought a lot of Pacific people from a variety of backgrounds and cultures together. In Fiji there was an American base and there were Australian, American and Canadian soldiers in the country, as well as New Zealanders. When peace returned Fijian expectations and aspirations had undergone a dramatic change. Custom and tradition were seen as impediments to economic advancement. Village life, and the communal responsibilities it imposed, were also seen as obstacles to advancement. The essential ingredients for modern advancement were considered to be individualism and economic competitiveness rather than communalism. The tide of disenchantment with the traditional system contributed to this and before independence in 1970 we dismantled the complete structure of Fijian administration which had evolved since cession in 1874.

Before 1970 the Fijian structure had been comprised of the village (mataqali) each with its own chief (turanga-ni-koro). You could roughly equate this position with the mayor of a little town. The chief was recognised officially as the head of the village and allotted work to the villagers - building of homes, planting of crops, building and maintenance of the school - and decided the division of labour. A number of people were assigned these duties in the village. The turanga-ni-koro was the authority and the moral and spiritual philosopher in the village, and also worked very closely with the village priest and the school teacher. These were the three essential ingredients of the village structure.

A number of villages were amalgamated into what was called a tikina and a number of tikinas made up a province. There are thirteen provinces in Fiji. These provinces sent a representative to the Council of Chiefs in Suva, to a 'meeting of chiefs' (Tikina Council). Elders of the Tikina Council would sit and discuss matters brought from the villages - needs for funds for a school, social problems, crime - and make resolutions on them. Sometimes the buli, or preciding officer of the Tikina Council, would be sent to investigate a problem or to offer the Council's suggested remedy.

There was an established process whereby, if government funds were required to carry out some reforms at the village level, the monies would be given to the Provincial Council to administer. As the administrative head of this system, the Provincial Council distributed these funds for the purpose of providing health services or other kinds of social develoment at the village level. The situation of rapidly developing disparity between the two resident societies caused a degree of envy. The Fijians saw many Indians living in better houses with better education and entering higher paid professions. Indians were free of village obligations and were under no village control. As individual farmers they could put their income and resources into their own businesses - the freedom of choice was theirs. But a child growing up in the Fijian community was subject to a lot of control by the village elders - they decided his or her future.

The provinces collected money for the local administration of the villages. For its day-to-day administration the Provincial Council did not depend on central government grants, they financed themselves just like rates are collected in towns. Those councils were responsible for the enforcement of a whole range of social service regulations and orders. They included the enforcement of the criminal offences code, the levy of provincial rates, and the distribution of land rental income.

Although the Fijians are land owners, their land is all administered under trust. The Fijian interest has been the actual land occupied by each village and the land allocated for crops, the rest is rented out. Business executives and tenant farmers pay rent for this land and this rent is collected by the Native Land Trust Board. After the Board has paid for its administrative expenses the rest is distributed to the mataqali, or land-owning clan of the village. The Fijian people cannot be removed from the land themselves as I think the legal title to the land is actually vested in the Native Land Trust Board.

The mataqali also looked after deserted persons, to ensure that the child and the mother were looked after and properly treated by the father. Canoes and boats were inspected to see to the safety of the passengers. Other regulations were administered to protect young people from the drinking of yaqona (traditional alcohol), communal service regulations, tree planting and harvesting. If they harvested the native forest they had to replant them - land clearing, cemetery regulations, road construction, the registration of births and deaths, school regulations, health regulations - they performed a whole range of services which is now provided by the central government.

Step by step we repealed the legislation which provided for this Fijian administration. Later on, some of the villagers pressed to be relieved of their communal obligations. They were allowed to work in urban centres but they had to pay a contribution to the village in cash. This was later considered very repressive. It was a special tax which they saw the Indians and Europeans did not have to pay. For the sake of equity it was considered by the government that that should be removed. If the Fijians were not allowed to venture out into the industrial and commercial world they would not develop that kind of individualism which is compatible with commercialism.

By the 1970s the tikina, the position of buli, and the official recognition of the position of the village chief were all abandoned. Provincial and tikina courts, which acted as law enforcing agencies and forums, were abolished. Nothing was left in its place. The Fijian people became subject to the normal regulations and acts of Parliament and there was nothing distinctively separate for Fijian administration or customary law. In the process of building a nation with a common identity we brought the entire population under one central administration. We thought that in the process of building a nation we could not discriminate. So we dismantled the former administration and brought everyone under one law. This was the kind of plastic surgery where it is assumed, that in the establishment of a common administrative system, this would automatically bring about universal conformity.

On Independence we brought in social welfare experts from the United Kingdom to devise a national welfare service program. In view of their background, quite naturally, the experts devised a system which was completely unrelated to the economic, cultural and political circumstance of the Fijian people. They started from the premise that no social welfare system existed prior to European arrival in Fiji. They did not examine the social welfare system which was an integral part of the traditional life of the Fijians.

A budget provision was made by the central government for welfare allowances to be paid to destitutes. This was largely for the Indian community, old people who had no one to look after them. Family ties in the Indian community were not as strong as the Fijian's clan ties. Whilst the Fijian villagers looked after the widows, the elderly, the decrepit and the disabled, in the Indian community this was not so. So the central government tried to fill this gap by making small provisions for a destitute allowance. The expert advice after Independence was that we should extend this aid to the Fijians. The central government should now substitute money for the kind of social welfare service that the villagers were providing. It was recommended that there be a payment of social welfare allowances to all destitutes, deserted wives, disabled and so forth.

For its dependents, the Fijian village welfare system had an important human dimension. The delivery of social welfare had been done in the context of kinship and village cohesion. Cash grants were never able to compensate for that aspect of village social welfare. No western society has been able to match that system, despite the investment of enormous resources in government welfare service programs. This was an ideal system and we regret very much that we gave it all up.

As rural-urban migration gathered momentum deserted families were provided subsidised flats in urban centres. They had no land available, as they would have had in the village, to supplement their small social welfare payments. They lived in the urban situation where large masses of other people had moved from the rural areas and lived in their concrete jungles: flats run by the Fijian Housing Authority. Frequently I saw deserted wives unable to buy school books for their children. In the village situation all those things would have been provided for by the community. Each child was given fresh food from the garden grown by the people of the village, and attended the village school. There was a sense of dignity about the village system. Whereas, in the urban situation no such thing existed. This had a very profound effect upon the dietary habits of the people as well. You can see the difference in the physique of the Fijian people in the villages and those in the urban centres.

The government also provided hostels for old people who had been working as endentured farmers and had no means of support. Before Independence we did not have any Fijians in these old peoples homes. The census in 1970 showed that there were far greater numbers of Indians in old peoples' hostels and schools for the disabled. For the Fijian this had been the responsibility of the village. However, at the end of the first decade of our Independence we took steps to evaluate the effects of the changes which had taken place. We have found that we can no longer support the welfare program as it is, and all the ramifications

of it which I outlined like subsidies and urban flats, the desertion of the town centres and villages, health services and the building of schools. All of these things which have devolved to the central government had been provided by the community in the past.

We found that we could no longer support this kind of program. Indeed, the situation was so ridiculous that the budget provisions for the delivery of social welfare services to the entire population was equivalent to the budget provision for the development of tourism in Fiji. This might have been calculated at $4 per head of tourists visiting Fiji and we could not afford this for our social welfare program. Neither from the point of view of the development of tourism, nor from the point of view of reasonable resources for our needy, was the situation satisfactory. Almost 12.5 per cent of the economically active age-group in the Fijian population were in prison. The reform schools for children had to be expanded to cater for the growing juvenile offenders. The old peoples' homes had no more room for new guests.

Another aspect of this problem was the growth of crime, as a side effect of urban migration, because of the loss of the authority of the elders. In the urban situation we could not afford the close supervision of a population which consisted mainly of rural migrants. From the point of view of law enforcement it became more and more costly. The courts could not hear the cases as quickly as they should. There was a long waiting period before cases were heard. Prisons needed more funds and resources and so did policing. The Commissioner of Police is still complaining bitterly about the kind of resources available to him. We have brought all these things upon ourselves, through being advised by so-called experts from overseas, without evaluating our own system first. The structures for the enforcement of customary and traditional regulations were all dismantled. The whole of the village structure was taken apart. The official recognition of the village chief was withdrawn. This authority was vested in the local police. But the police do not fulfil all the functions of the village elder.

Following a series of cabinet papers presented in 1980, including a report from the Centre for Development Studies at the Australian National University, it was recommended that there be a complete reinstitution of the Fijian administration which had been formerly discarded. The predominant idea is to revamp the traditional structures for the delivery of welfare services and community regulation, as an important part of this development plan.

Under this revamped system we are proposing the turanga-ni-koro (village chief or village head) will be given official recognition, and will be a paid servant. This payment will be supplemented by the Provincial Council. The authority for village regulation - like planting, building of homes and roads - will revert to the turanga-ni-koro, whose authority to enforce these regulations will be recognised by the law courts of Fiji. The basic structure of the Provincial Council and the takinas will have a buli, law enforcement officers, health officers and a legally recognised status. This structure will be linked to the central government through the Ministry of Fijian Affairs.

The position of the village head, and other positions in this organisation, will be granted by election, just like you elect local government. The development plan is to create a structure similar to the traditional hierarchy of chiefs, but tailored to a modern purpose. A team of development officers will be attached to each council to assist and advise them on development processes.

The law and order issue is only one aspect of this problem. The Indian population is slightly larger than the Fijian population (about a 60/40 per cent split), but a lot of Fijians are coming in contact with the law. Even in the village situation we have problems. Many of the young children that are coming to our reform schools are also coming from villages, because there is no law recognised at the village level. If village chiefs are going to exercise their authority then they need official recognition. At present when they try they are told to 'shut up' or 'buzz off' because they have no real legal power. It is not just a law and order problem, it is a whole range of social issues, like looking after the deserted wife in the village, help of the children in the urban situation, and diet. The idea is a total approach in the delivery of services through the agency of the village. Health care and education is neglected in the urban situation. In the village situation you do not have the same kinds of urban distractions for a young growing girl. Prostitution is common. These situations are giving very real concern to the Fijian people. But Fijians were by far the most represented in prison.

In the framework of the village we could introduce corrective programs. What we are proposing is that when offenders are discharged by the prison they are received by their community leaders and taken back to the village. They are terribly ashamed. Normally they would not want to go back to a village because they would not be acceptable after committing a crime. Under the new system, prisoner rehabilitation and social worker services will be delivered through the village. Depending upon how much land they have, and how much assistance they will need from the government, the village will have the resources to provide a

house and garden plot for offenders and their families, to assimilate them into village society again. Social welfare payments will be administered by the chiefs on behalf of the whole.

From a feasibility study we are told that we have not got sufficient backbone to our economy to sustain the present central government welfare system. But we can revitalise and help sustain a good economy and life-style which we abandoned at the village level.

I think Fijian society generally is quite shocked at how things have developed since they dismantled the village system after the War (World War II). Villages started disintegrating because their whole structure had been removed. Law and order has broken down. The village subsistence economy had been a far better buffer than the hard commercial, competitive world outside. If they went out there they could always come back to the village. They have discovered that the community-group approach was far more successful than the individual commercial one. There are, of course, a few isolated exceptions and these people are free to carry on their business in this way. But on the whole the Fijians see they work better in the group situation: this is the general feeling.

There will be a certain amount of resentment, as if we are trying to turn back the clock. Perhaps there will even be allegations that we are trying to deprive them of the fruits of modern life. But we hope the negative aspects of prison costs and the indignity of urban life-style will change. No one will be forced to return to village life. But the structure for these reforms, the legislative means, and the resources will be laid there for the Fijians to decide for themselves whether or not to take advantage of them.

VILLAGE COURTS IN PAPUA NEW GUINEA

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What I have to say may be of relevance at the stage where we consider legislative steps to give formal recognition to dispute settlement mechanisms in Aboriginal communities in Australia. The Australian Law Reform Commission has of course had this matter under consideration since early 1977, and its final report is imminent. If the past record of implementation is any guide, legislative action may well be some time away. The experience in Papua New Guinea (PNG) may show that it is possible to cut through these problems far more quickly and more simply than has been the practice so far in Australia.

For about a hundred years, during the colonial period, the government was against any kind of village court, or any kind of judicial power exercised by local notables of any kind (see Bayne, 1975; and Chalmers, 1982; passim). That stood in great contrast to the British system of administration in other parts of the Pacific. The British used a system of 'indirect rule' whereby they invested local notables with judicial authority, although that authority was exercised in close co-ordination with government officials. But the policy in Papua New Guinea was very different. The policy there was that local notables would not have any judicial authority at all. In fact they were occasionally put in jail for attempting to exercise authority over their own villages. Rather, power was given to the local Australian government representative in that area, who was often just a patrol officer - colloquially called a kiap.

The kiap system was by the 1950s coming under criticism from the Australian government on the ground that it did not fit well with the Anglo-Australian conception of justice which the government had decided should apply to the whole of Papua New Guinea. The kiap system meant that the person exercising judicial authority was also the person who was the police officer and the prosecutor, the health and sanitary inspector, all rolled into one. A report by Professor David Derham in 1960 recommended that there be a separation of power in the sense that there be discrete judicial authorities. He recommended firmly against the notion of any authority being exercised by local notables, as such. Rather he said there should be a system of local courts who would be assisted to some extent by lay magistrates. In time, Papua New Guineans would be trained as the magistrates who exercised judicial authority.

If the system recommended by Derham had been taken seriously, that is, if resources had been put into it, it may have meant that by Independence there would have been a system of primary or local courts run by Papua New Guineans who had had some training. That was the situation in the ex-British African countries; they did have local courts by Independence. But because there were few resources put into the scheme proposed by Derham, it never really got off the ground. Kiaps continued to exercise judicial authority. By late 1971 it was becoming apparent to the Australian government that this was not working. There was, in particular, a concern about the breakdown of authority in the rural areas, and an awareness that the kiap system could not survive after Independence.

The Australian administration began to turn its attention to the possibility of having some kind of village court, in which formal or State-backed judicial authority would be invested in village magistrates. Some progress was made in 1971, and the move received a fillip by the change of government which took place after the 1972 elections. These were the last pre-Independence elections and everyone was conscious that this was the run up to Independence.

At that time the Pangu Pati led by Michael Somare came to power and they decided to do something about village courts. What they did was fairly straight forward. They simply appointed two people, one a Papua New Guinean and one an Australian, both of whom were magistrates, to make recommendations for a scheme. They took a few months to produce a set of recommendations. Another government committee, which again worked very quickly, also made suggestions for village courts with criminal jurisdiction as a means for dealing with tribal fighting.

It should be noted that from some perspectives the issue with which these committees grappled was more complicated than the issue in Australia. They were dealing with a country of nearly 3 million people - an enormous variety of societies, with 700 plus discrete languages. There is also tremendous diversity in geography and in social development. The Papua New Guineans living near towns are much more assimilated in the western ways than the people who live in the rural villages. Despite that enormous diversity they recommended a scheme which was fairly simple in its structure. There was no time to fine tune it, to work out exactly what jurisdiction to give to these courts and what their relationships to each other and to other courts would be. It was felt that it was not desirable to fine tune anyway. If you are going to get a system off the ground very quickly the structure has to be very simple.

I am going to briefly describe what that structure is as reflected in the Village Courts Act (see Chalmers, 1982; Paliwala, 1982; and Oram, 1979). I am not suggesting that it is immediately transferable, but perhaps some of the ways things

were done might be applicable here. Certainly, most of the matters dealt with by that Act will need to be considered in Australia.

Setting up a Village Court

Formally, a court is created by proclamation of the Minister for Justice. Its jurisdiction is over a specified area. In practice, the courts were created as a result of local initiative from the villagers and the local government council. Given the complexity of Papua New Guinean society, the spread of the courts across the whole country has been remarkable. By 1980, there were some 754 courts covering some, 1,750,000 people.

There is flexibility concerning the boundaries of the court areas. The practice has not been to simply aggregate the villages which were closest together to form a basic unit. The villages put into an aggregate were chosen on the basis of political alliance patterns, so you might have a village actually separated from the others by distance, but they would be aggregated because of alliance with the other people. (The alliances were traditionally for the purposes for warfare, defence, exchange, etc.) This is a factor to be considered. There should be some basis for harmony between the villages in a court area.

There are not less than three and no more than ten magistrates for each village court. They are appointed by the Minister for Justice on the recommendation of the Provincial Supervising Magistrate (PSM) for the Province in which the court is located. The PSM must consult with the relevant local Government Council.

In practice, at least with respect to the initial appointments, the villagers elected the persons to be recommended as magistrates. (The term of appointment is three years.) There are no qualifications in terms of training or literacy. Short courses for those appointed are however provided.

A court can sit at any place within the court area, and adjourn from time to time and from place to place. When it exercises its compulsive jurisdiction a court must be constituted by an odd number of not less than three magistrates, but may add further magistrates at any time during proceedings before it.

Jurisdiction

There is formally no distinction between civil and criminal procedure in the courts. There are no procedural steps which distinguish a criminal from a civil case. Nevertheless these concepts are relevant in terms of jurisdiction (although the one case can involve elements of both).

It is easier to distinguish criminal jurisdiction. A court can determine whether a person has committed an offence as prescribed in the Regulations. These offences deal with a wide range of matters likely to cause disturbances of the peace in the villages. The practice of sorcery is included, as indeed is the offence of 'failure to perform customary duties or to meet customary obligations after having been informed of them by a village magistrate'. Most of the offences partake however of the flavour of the old Native Regulations (which were of the kind that were applied to Aboriginal communities in Australia). The old regulations were disliked intensely by the people and very few of them survived Independence. Interestingly enough that idea of having a discrete body of criminal law for the villages has come back through the village courts in the sense that there is now a discrete list of offences which are administered by them.

The courts also have jurisdiction over offences relating to the proceedings, etc. of the courts. Further, the courts have jurisdiction 'in respect of contraventions of or failures to comply with a local Government Council rule that provides that an offence against it may be dealt with by a village court'.

The village courts do not have any direct power to imprison anybody, but they can make imprisonment orders which can then be enforced by the 'official' magistrates. The village courts have the power to fine, and they have the power to order that compensation be paid to victims. They have the power to order the performance of community work. This criminal jurisdiction is enforced with the assistance of the village peace officers.

In essence, civil jurisdiction may be exercised in respect of any other matter. There is no notion of a range of recognised 'causes of action' which define what kinds of dispute can come before the village courts. Whether a court has jurisdiction depends on factors such as the place where the dispute arose, or the residence of the parties. There is potential here for complex 'conflicts of law' problems, and frequent jurisdictional challenge, but the allowance for joint sittings of one or more courts can be used to resolve difficulties. In practice, there are few problems.

There are however some matters in respect of which the village courts do not have jurisdiction. The significant ones are matters involving the ownership of land, and disputes involving the driving of a motor vehicle. There is however a separate system of land courts, and villagers play a critical role in this system as mediators. The inclusion of motor vehicle driving disputes may seem odd. Such disputes often spark off wide scale disputes in Papua New Guinea. Often one of the causes of a tribal fight is the fact that someone has been run down by a car.

That is viewed by the clan of the person killed by the car as an occasion warranting a pay-back on someone or a number of persons of the other clan, irrespective of the nature of the accident. These kinds of disputes are not placed in the hands of the village courts because they often involve complex inter-relationships between different villages. So there has been a sensitivity to those kinds of problems in the decisions taken concerning jurisdiction.

There are significant limits to the kinds of awards a court can make in the exercise of its non-criminal jurisdiction. Generally, it can only award compensation up to 300 kina. Work orders to the benefit of another party can also be made. This limit does not apply to matters relating to the custody of children, bride price, or compensation for death. In some areas of the country, such matters could involve many thousands of kina.

Law to be applied

When it came to the question of the law to be applied by these bodies, there arose a major problem. If you were appointing people who had no legal training at all, or were not able to speak English - which was the language of the law - you had a problem about what law these bodies were to apply when they adjudicated. Here a quite radical approach was taken. Apart from the provisions which attempt to ensure the application of 'custom', the courts are not bound to apply the regular law of the land. The only law they are bound to apply is that expressed in the Village Courts Act.

The primary duty of a village court is indeed to avoid the application of any law at all. Its primary function is 'to ensure peace and harmony in the area for which it is established by mediating in and endeavouring to obtain just and amicable settlements of disputes'. The Act enjoins a court (constituted for this purpose by a single magistrate) to attempt to reach a settlement by mediation before resort is made to the compulsive jurisdiction of the court.

In its compulsive jurisdiction, 'a village court is not bound by any law other than this Act that is not expressly applied to it, but shall, subject to (s. 27:2) and to section 26, decide all matters before it in accordance with substantial justice' (s. 27:1). In two ways, section 26 attempts to ensure the application of custom, but neither are a significant limit on the ability of a court to determine for itself what rule it will apply to a particular dispute. By section 26(1), a court 'shall apply any relevant custom as determined in accordance with sections 2, 3 and 7 of the Customs (Recognition) Act'. As most magistrates cannot read, it is unlikely that they bother to attempt to apply these complex provisions. By section 27(3),

local government Councils may make rules 'declaring what is to be taken as the custom relating to any matter, and such a declaration is binding on village courts'. This power has been little used.

Procedure

Generally, it is as determined by a court, although the Minister for Justice may publish 'recommended practices and procedures' (s. 36). There are some minimum procedures prescribed. A party is entitled to be represented by any person other than a lawyer. Subject to some exceptions, a court must not proceed in the absence of a party. The rules of evidence do not apply, and the court 'shall admit and consider such evidence as is available' (s. 28). By section 27(2), a person charged with a criminal offence 'shall be presumed innocent until proved guilty'. The court 'may recognise a number of persons having a common interest as a group for the purposes of proceedings before it', and orders may be made 'for, against or affecting the group as if it were a natural person' (ss. 56, 57, 58). A group cannot however be liable to a conviction for an offence.

One problem which arose when the Constitution was being drawn up was to what extent should these village courts be affected by the Constitution. Section 37 of the Constitution expresses a whole range of rights in the criminal process - rights about arrest, bail, information of a charge, burden of proof, etc. - a very comprehensive set of protections. It was realised that it would be pretty much impossible for village courts to operate according to that model. (The model of the Papua New Guinean Constitution is indeed rarely achieved in many western countries.) It set very high standards for the conduct of trials and for criminal procedure generally.

The solution adopted was to say that section 37 just does not apply to village courts. All that they are obliged to do is to accord natural justice, a concept which allows for great flexibility in procedure in the village court system. Nevertheless, one of the worries which people have had is that procedure of the village courts is fairly blunt. Sometimes they act on unreliable evidence, and may resort to the use of sorcery. This of course raises quite acute problems, for although it can be accepted that sorcery is a means of social control, it is not always used for socially beneficial purposes. The application of section 37 of the Constitution would not however have been a remedy. I mention all this because there may arise a need to adjust any Commonwealth 'Bill of Rights' legislation to accommodate measures for dispute settlement in Aboriginal communities.

Review and appeal

A person aggrieved by a decision of a village court can appeal orally or in writing to an 'official' magistrate. Further, such a magistrate can at any time review a decision. Under the Act, the process which follows is the same (review seems to allow independent action by the magistrate). On an appeal or review, the magistrate is advised by two village court magistrates on matters of custom 'and on other relevant matters within their knowledge' (s. 48). Section 49 limits the scope of the appeal or review. The decision of the village court must be confirmed unless, in effect, there was some excess of jurisdiction, and then only if there has been a substantial miscarriage of justice. There can be further review by the Provincial Supervising Magistrate (PSM).

The Act requires the PSM for the relevant Province to make regular inspections of each villge court and of its records, and to inquire as to its functioning. (Such visits could be the occasion for review of a particular case.) Shortcomings should be pointed out to the village court magistrates, the peace officers, and the clerks. This general supervisory jurisdiction of the PSM is regarded as a critical element of the system, and may be of far greater value than provision for appeal by individuals.

I will conclude with a few comments which will deal with some basic themes and mention some of the outcomes. It is commonly said that the village courts are a means of bringing customary ways into the judicial system, and that they were intended to apply customary law according to customary procedures. Even as a matter of what they are obliged by law to do, this is only partly true. It has been seen that while the Act does at points suggest this, the village courts may if they wish ignore custom. This conforms to the views of the politicians who introduced and supported the Act. Their major concern was to restore order in the rural and urban villages. To them, it was a question of giving the power of control to village leaders; whether the power would be exercised according to custom was secondary, although some of rhetoric of justification was couched in terms that custom would now be applied. The restoration or preservation of a fixed body of customary law was certainly far from the minds of the advocates of the courts. It would be foolish to think in these terms. It is quite clear that if you introduce change, if you introduce some formal mechanism into a situation where there are informal mechanisms working, the result is bound to be that the informal mechanisms will change.

It is also clear that some critical notions of Anglo-Australian justice were rejected. In Papua New Guinea, local government councils can make rules for their area, and the village courts can enforce them. At the same time, a councillor, a ward

committee member, or an employee of a Council can be a village court magistrate. In practice of course, such memberships often overlap. As a matter of form, the rule making is in the hands of the local government council, and the village court enforces the rules. But villagers themselves have not quite seen the distinction. It is an inevitable by-product of this system that these adjudicatory bodies are going to assert their right to determine what the rule is as well as to enforce it. The Act reinforces this attitude by the allowance given to the courts to determine a rule to be applied in a particular case, (see above). In one early episode, a village court decided that it was contrary to custom for women to smoke in the town market, and women were prosecuted for smoking. (Women had for years smoked in the market.) This sort of case points to the impossibility of insisting on these bodies operating in accordance with some separation of powers notion by which you separate rule making from rule enforcement. It is not going to be a distinction which is appreciated.

The rejection of separation of powers can be further seen in the relation between the courts and the village peace officers. Such persons are appointed by the PSM, but, again, local opinion is generally decisive. In form, they operate as a village police force, but will obviously interact closely with the magistrates. One observer noted that they sometimes harangued the court in the course of proceedings. If you have courts constituted by people who are local leaders, then obviously their introduction will have an effect upon local power relationships. They will be a means of access to power. In a situation where power relations are fluid, it is a means of advantage to get onto one of these courts. To be a village court magistrate will enhance power over people in the area, and will enhance power in other respects too. A magistrate will have greater ability to manipulate social and economic relationships. He or she might end up with more land, or a loan from the government. I think the Papua New Guinean experience has shown that the village court has facilitated the concentration and growth of power into the hands of those who obtain power from the system as magistrates and peace officers.

Some Marxist critics have seen the way the courts have operated as a reflection of the degree of penetration of the traditional mode of production by the capitalist mode, the latter dominated by international capitalism.

> The key changes [produced by the Act] are a greater involvement and control by the state and a degree of authoritarianism on the part of court officials. The result is relatively alienated dispute settlement with little scope for community involvement and party consensus. The transformation in rural dispute settlement corresponds to structural changes in rural

> society ... The development of capitalist production, strains on land through cash cropping, the effect of western religion and education and changes in political leadership were accompanied by the growth of unruliness among the young, an increase in disputes, and tribal fighting. In the circumstances, in the perception of the state, there was a need not merely to control the unofficial dispute settlement machinery but to strengthen it by giving state backing (Paliwala, 1982, pp. 191, 194-195).

This sort of analysis allocates a key role to a class of 'rich peasants', as the agents of the state (and, ultimately, who act in the interests of the international economy). They perform this role as the village court magistrates (ibid., p. 192).

There is too little evidence of just how the village courts operate to be sure that this model is an adequate account of the general course of their development. The fieldwork upon which such analyses are based is very slim, and some of the facts adduced to support it, (such as the desire by magistrates and peace officers for badges and uniforms), could well be explained by causes other than a desire to be authoritarian.

It is however well accepted that the village courts have modelled their procedures on what they perceive to be the procedure of the 'official' courts. But the results of fieldwork of two anthropologists who have studied the courts reveals that the operation of the scheme must be seen as the end result of an informal process of dispute settlement which operates in ways which are quite contrary to the model of the official courts. Scaglion concludes his study of one court with this comment:

> On the basis of 1975 data and village court caseloads, nearly 70 per cent of all conflict cases arising in the villages do not enter the formal introduced system in any way. Yet magistrates often mediate in their role as big men, and their status as village court magistrates gives more weight to their opinions ... Other than the fact that such mediation is not formally recorded, hearings of this sort fulfil the expectations of the Village Courts Act 1973. They are heard traditionally and are based on customary law and compromise. Only when such mediation is unsuccessful are cases brought before the full court (Scaglion, 1979, pp. 128-129, and see for similar conclusions in relation to courts in another area of the country, Westermark, 1978).

It is thus becoming clear that the village courts have operated in unexpected ways, and in ways, unexpected or not, which run counter to Anglo-Australian conceptions of justice. Corruption

and party partiality were perceived to be problems, and there is evidence that they have occurred. The observer must however exercise caution here, for 'the perception of problems relating to power is largely a cultural matter'. What appears corrupt to a European may not be so viewed by a Papua New Guinean. Marilyn Strathern found that Hageners were not concerned with 'corruption' as such, and that although individuals might complain of personal injustices they do not question the general principle that persons of public prominence will take care of their own interests in also taking care of others (Strathern, 1975).

The Village Courts Act was an attempt to invest in village people some direct control over their affairs. They were conceived to be and do operate as the basic level of government in the country. They were designed to return power to the villagers to control their own affairs. By whom and how their power will be exercised has varied over the country, and variations are responses to social forces. The results may appear odd and there are not doubt injustices according to any scale of values. But the overall result has been positive, and the courts have a secure place in the governmental system.

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THE TE ATATU MAORI TRIBUNAL:

Participation and Support of the Formal Court System

New Zealand

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It is with some trepidation that I stand to address you, certainly in the refined atmosphere of a research institution such as yours I am not able to present any detailed academic study, indeed the whole exercise about which I have been asked to speak is one devoid at this stage of any research material. Such steps as we have taken have been done largely on instinctual lines and solely on a pragmatic basis.

In addition I wish to make it clear at the outset that I have no knowledge of Aboriginal customary lore, traditions or culture. What relevance therefore, that of which I speak, is entirely a matter to be determined by yourselves.

It may assist if I illustrate one incident of the Maori Committee operating and then discuss its nascence and its association with the formal court procedure later.

Approximately five years ago shortly after my initial appointment to the bench at Henderson, there had been an incident at one of the local high schools where a number of push pikes had been stolen, cannibalised and parts sold. The subsequent police investigations identified the offenders all of whom were fellow pupils at the school and all of whom were Maori. The Youth Aid Section of the Police Department, which is headed by a far sighted and very experienced police sergeant, referred the matter to the local Maori Committee for consultation.

I would stress that at no stage is the committee involved in any determination of guilt or innocence and as with all other matters that it handles, that is always a factor that is acknowledged by the offender prior to their intervention. The committee members then spoke with the parents of the offending children and also with the parents of the pupils whose bikes had been stolen. By consent a meeting was arranged for the following Sunday morning at the local high school. Present there were the parents and all the young people involved, that is both victims and offenders, as well as the committee. In these circumstances the meeting place was treated as a Marae, that is, a meeting place.

(Generally this is the area of land in front of a carved meeting house where major discussion and debate is conducted. In modern times there have been major variations in school halls, church halls, car parks, etc. have been used for such a purpose.)

The meeting itself was dealt with on formal lines with mihis, speeches of welcome, which invariably welcome not only those present but also the spirits of the ancestors of the participants and reference to tribal affiliations, particularly with reference to any common identification. The chairperson then offered prayers.

The purpose of the ritual is to set the tone or an umbrella of aroha which simply translated means love but embodies a much wider concept of loving concern and also the purpose of rangimarie, which is peaceful reconciliation.

In addition the prayers acknowledge first the spirituality which is the essence of Maoriness. They also acknowledge the existence of a higher being and an expression of humility by all concerned acknowledging the group's recognition of its own limitations.

Although the above recital may appear somewhat banal or perhaps more fitting for an anthropological or sociological commentary it seems important to stress that this psychological environment is the major condition precedent before these schemes may operate.

Upon the completion of those formalities the whole incident was discussed with group participation, for example, two of the boys whose bikes had been stolen gave accounts of how they had saved up for these bikes including money from birthdays and Christmas and part-time jobs. The value of that particular aspect was of course bringing home to the offenders the personal indignation and hurt that is occasioned by offending. The questions of restitution were discussed with the offenders and their parents and arrangements were made for restitution following which the committee then retired and discussed some appropriate penalty. In this case it was for a number of hours of community service which was carried out with the permission of the headmaster of the school, on the school grounds during the weekends. The committee's decision was influenced to a certain extent by the obvious remorse being shown by the offenders, particularly after the two boys had spoken of their loss.

An important point is that the proposed penalty was discussed in the presence of, and after inviting comment by, the victims and their parents. Thus, to my view a great deal was achieved which is not possible in a formal court proceeding.

As you will see to this point the court in fact has had no involvement. What in fact had occurred was by an exercise that is at the discretion of the police that the matter was diverted to this community committee and indeed my own involvement was only peripheral in the sense that due to some bureaucratic bungle a prosecution was authorised against two of the offenders subsequent to the Maori Committee hearing and dealing with the matter. My attention was drawn at that stage to what had gone before by an indignant phone call from the headmaster of the college involved who outlined to me the above proceedings. This was subsequently confirmed from the chairperson of the meeting, who was the holder of a Doctorate in Anthropology, as well as from discussions with two other members of that committee. After discussions with those persons and with the police, when these charges were finally called in the Children and Young Persons Court, they were immediately withdrawn by the police. The court's participation, albeit in a negative sense, was quite important from the point of view of the committee in that it was an impressive acknowledgement of their jurisdiction as it were, as well as a minor imprimatur of the total diversion process.

One sidelight of the headmaster's indignation was his satisfaction that the matter, which of course was embarrassing to the school and one which perhaps would have been dealt with otherwise in expulsions, had been resolved.

That in fact was my first formal introduction to the workings of the committee. My predecessor at Henderson, Judge T.G. Maxwell, had previously and indeed continues to encourage community response of this nature. He has had particular success both originally in Western Auckland, where the Henderson Court is situated, and now South Auckland where he is the senior judge. Nevertheless I believe that for both of us, experience has shown that it is not simply sufficient to make it known that the court is amenable to approved diversionary procedures or informal community resolution, particularly with the Maori people.

One of the advantages that I enjoy is of course being identified as a Maori and arising out of that first experience there have been a number of subsequent references to the committee, not only with offenders from the Children and Young Persons Court, but also with older offenders. This can only be done with the consent of the offender who is offered the choice. The offender usually has a chance to discuss the matter with a member of the committee who generally is sitting in court, not only for this purpose, but also for providing para-legal assistance - a process which is specifically designated in their duties with the Maori Affairs Department. As well, informal reference from the police continues and that committee, together with one other which has subsequently been formed in the area, also provides assistance in an informal manner with budgeting advice and supervision, a great deal of marital counselling, supervising of informal

community service sentences and also in positive roles such as job hunting, cultural activities and sometimes mundane tasks such as accompanying a person to government departments (for example, to register as unemployed or applying for social welfare benefits).

The Maori Committee is a creature not created by statuteas in fact it recognises the original tribal authority which existed in New Zealand in pre-European days. However, it attained some recognition under legislation with the Maori Social and Economic Advancement Act 1945. That was subsequently repealed andreplaced by the Maori Community Development Act 1962. Under that legislatin a heirarchical structure was enacted with thehead being a New Zealand Maori Council which acts in an advisory capacity to the government. Certain very minor powers exist for Maori Committees to apply for prohibition orders and also to inter-alia impose on Maori offenders fines not exceeding$20 for limited specific offences, mainly in connection with licensed premises breaches.

Obviously the matters which I have previously outlined go beyond that statutory jurisdiction and derive the authority first from the consensual nature of the proceeding, but more importantly, from what is, I believe, an important psychological factor in the Maori make-up which recognises the group resolution of community problems.

Up until World War II, New Zealand Maoris were largely rural based and certainly up to that stage tribalism was a dominating feature of Maori life.

In discussion of this aspect the New Zealand historian, Michael King, in his photographic and social history simply called Maori, quotes Mr John Rangihau, who is probably one of, if not the best known authorities on Maoridom, and who himself is a member of the tribe called Tuhoe. Rangihau expressed it in this way:

> These feelings ... are my Tuhoetanga rather than my Maoritanga because my being Maori is utterly dependent on my history as a Tuhoe person ... It seems to me there is no such thing as Maoritanga because Maoritanga is an all inclusive term which embraces all Maoris ... I have a faint suspicion that [it] is a term coined by the Pakeha [European] to bring all the tribes together. Because you cannot divide the rule, for tribal people all you can do is unite them and rule. Because then they lose everything by losing [the] tribal history and traditions that gave them their identity.

With World War II came manpower regulations where some Maori families were relocated in urban areas. The War effort itself opened up employment opportunities which had not been available. Again Michael King gives these figures: In 1936, 11.2 per cent of the Maori population lived in urban areas. By 1945 this had risen to 19 per cent and by 1971 to 68 per cent. 'In the 1980s the figure rose to over 90 per cent and Maoris had become an over-whelmingly urban people.'

Urbanisation has carried with it the inevitable problems which one would expect in any event of accommodation and employment but also the breakdown of traditional leadership styles. Though, of course everyone would be aware of the dangers of generalisation. It is quite clear from existing figures that there are disproportionate numbers of Maoris in prison populations, a great deal of publicity has been given to poorer educational performance, lower incomes, poorer standards of housing and higher rates of crime.

Inevitably this leads, on an individual basis, to a lessening of self-esteem which in turn provides the bigot and cynics, evidence of general racial inferiority, but probably worse tends itself to be a self-perpetuating force.

I am not intending to create a dismal picture because in fact there are countless examples of progress and indeed the committee to which I refer is but one of thousands of examples of a growth in self-reliance.

Certainly from an official point of view and from the actions of successive governments there is a great deal of goodwill and increased understanding. Indeed within the last few weeks the present Minister of Justice has distributed a discussion paper on a proposed Bill of Rights for New Zealand in which it would be proposed inter alia rights of the Maori under the Treaty of Waitangi would be recognised and affirmed as part of the supreme law of New Zealand and as a foundation for a developing social contract.

I would stress that the Maori Committee is, and particularly this one in Te Atatu, not of my making but rather after the initial experience which was reinforced by my personal acquaintanceship with members of the committee, which stretches back from university days. The committee, and indeed the Maori community and culture, seem to provide, at least in one area, some relief from the frustrating inadequacy of the court system. I had felt this frustration, first as a counsel and later in my judicial capacity, in dealing with young Maori offenders whose own feelings of lack of self-worth was counter-productive to any attempts at behavioural modification. Even such commendable alternatives as periodic detention and community service seem to

have a very small rehabilitative component. The impersonal nature of our sophisticated court process is, in my belief, a general fault.

The value of the committee has been recognised both by the Social Welfare Department and Probation Services who are the two reporting authorities to the courts. Frequently they will recommend that the matter be adjourned and referred to the Maori Committee. In situations such as that, where you have the consent of the defendant, an adjournment for say a fortnight will be arranged. During this time the committee will convene and sometimes suggest deterrents such as prohibition orders, curfews - particularly for younger offenders - or non-association orders. The great advantage the local committee has is that by the very nature of their physically living in the are these orders can be enforced. I referred earlier to informal community services where a certain number of hours are recommended for some activity. When that is the case the proceedings are usually remanded for a period sufficient to carry out the agreed sentence and if that is completed the defendant may be discharged or perhaps formally placed on probation or even in some instances discharged without conviction.

In the White Paper to the Bill of Rights for New Zealand (p.35, para. 5.5) to which I have earlier referred, there is some reference to the apparent apathetic attitude to the law. In a note arguing for the inclusion of reference to the treaty, and the suggestion of its incompleteness without incorporating such reference, it is said, 'it could well be seen as simply one more Pakeha law, irrelevant to the deepest concerns of the Maori'.

Perhaps the area of greatest optimism has not so much been the committee itself as much as the increasing recognition of the strengths which the committee can bring and the general attitudinal change which acknowledges these cultural strengths.

Either as a result of or parallel to this growing confidence, I have seen in the West Auckland area a dynamism within the Maori community: a visible growth and confidence; self-reliance; a firming of decision making, and, a great deal of innovation and extension of the people's own volition. For example, work schemes have been set up under legislation introduced by the last government to combat unemployment. One unit in particular, the Horticultural Project, has reached a stage where they aim not only to be self-sufficient but also to commence export overseas of their produce.

It would be quite wrong to assume that all has been plain sailing and of course the success of such committees must invariably depend on the quality of its membership. As a result of some of the publicity attached to the scheme we have been visited by

groups from other areas of New Zealand, including, somewhat ironically, from the few remaining rural strongholds of Maoridom. It is quite clear that the scheme existing in West Auckland is not readily transferrable from all reports. It may well be that in other areas, attitudes are too entrenched, and in others, where the tribal ties are still very strong, a certain rigidity has set in.

As an adjunct to this work, efforts were made to set up a Pacific Island equivalent. This was initially met with enthusiasm but foundered. However, out of those ashes a pheonix has staggered to its feet. This time one was organised, not by the court, but by a Maori community officer, who was a very active member of the Te Atatu Maori Committee and other organisations. As with virtually all the Maori activities the committee is totally unfunded but has now reached a stage where, of its own volition, it is presenting reports to the court which have been most helpful, and particularly courteous. In addition, they have been providing alternative accommodation for offenders with the co-operation of the Social Welfare Department. That committee, like the Maori Committee, is able to provide channels of communication between young persons and their parents when often contact has broken down. This breakdown is particularly common between parents, who are themselves immigrants to New Zealand and who have retained a great deal of their own culture, and children who have either come to New Zealand at a very early age or indeed have been born in New Zealand.

Members of the Pacific Island group appear in court and I have always encouraged this practice. By appearance, of course, I do not mean legal representation, but rather feeling free to indicate that they would like to provide some information, which invariably has been constructive, and equally important, is always provided. As with the Maori equivalent, there exists the full knowledge that whatever is recommended, the court itself always has the final decision. The Pacific Island Committee members are able to provide casual interpreting which is never a problem with Maoris, all of whom are fluent in English. Most importantly all of these groups are, I believe, providing a bridge between the court and the community at large and the community's acceptance of some responsibility for the major problems which confront society.

For myself the resurrection of the Pacific Island community has emphasised the critical factor that these innovations cannot be imposed from above, as it were, but must emanate from within the community itself. It is my belief that it is then open for the courts, not only to provide the sympathetic ear and environment, but also to acknowledge in every possible way their efforts to lend to their work such prestige as the court is able, and to facilitate interaction between the bureaucracy and these community organisations.

My own philosophy, in this matter, I found to be most aptly articulated by one of Maoridom's most distinguished intellectuals, the late Harry Dansey. When, as Race Relations Conciliator, he spoke of that work in his Report to the New Zealand House of Representatives:

> In my work (as conciliator) I have been influenced by a love of justice and respect for the constitutional institutions which we have inherited, but as the vehicle by which they can be advanced I have chosen the richness and warmth of Maoritanga.

COMMUNITY CARE/COMMUNITY RESPONSIBILITY:

Community Participation in Criminal Justice Administration in New Zealand

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Synopsis

This paper focuses on a community justice program which has been functioning in West Auckland, New Zealand, since 1970. In the course of this presentation I will consider four main themes:

1. The potential of community-based programs to offer avenues of judicial diversion, particularly for young offenders.

2. The concept of community-based penance and reform.

3. The establishment of new help-networks linking the administration of criminal justice, welfare agencies, and the community for the purpose of crime prevention and rehabilitation.

4. The importance of reviving the 'community' so that neighbourhoods become less fertile ground for delinquency among the young and become instead supportive environments.

Among practitioners of social analysis there is a persuasive belief that, just as socio-economic causes of crime can be isolated, so too can their study lead to cures. In a report of the New Zealand Department of Social Welfare in 1973 it was noted that the traditional methods of social worker oversight and State institutional care of young offenders had not succeeded in stemming the tide of juvenile delinquency in that country. It was proposed that:

> ... delinquency may have no causes or cures that are not, in some measure, equally applicable to what those of religious persuasion call sin, which ... has managed successfully to defy both explanation and cure (Juvenile Crime in New Zealand 1974, p. 7).

If 'sin' and/or 'crime', are to be always with us, then perhaps we come too late with a search for 'cures'. We might be better to address ourselves to instituting preventative and pre-emptive measures designed to rescue 'at risk' youth and children before the pattern of offending has been established.

Criminological experts and ordinary citizens ask, 'Why is there so much juvenile crime?', and 'Why are so many indigenous people in jail?'. The theme of this paper is that we may have been looking for answers to questions of this kind in the wrong places. We have often identified personal guilt where we might more productively have examined the structure of social relationships. The criminal justice system traditionally treats offending as an individual problem, someone is guilty, rather than as a community ill. We have sought to cure if possible, and to punish if not, rather than seeking to revamp and rebuild family and community mechanisms which should be alert to the early signs of deviation in children. We have allowed a potentially supportive social fabric to deteriorate while relying on ever more exhausted and demoralised official institutions to deal with the consequences of family and community neglect and indifference.

My thesis is that we have invested too much of our faith in our specialised mechanisms for justice administration and have lost sight of the enormous resources within the community to handle many of these problems. Our institutions have, in fact, usurped traditional problem-solving functions and responsibilities of the community.

In recent years there has been a growing trend in the United States, Canada, Australia, and the United Kingdom to return some of this responsibility to the community at large. In New Zealand, attitudes have begun to move away from regarding the Maori community as merely the soil from which criminal behaviour has sprung, to the view that the Maori community itself may hold the key to the reduction of crime among its members.

Social and Economic Climate

By international standards New Zealand has had relatively low unemployment over the last decade, however, it has produced one of the fastest growing unemployment rates in the world. In 1975 the total number of registered unemployed were 4,166. By 1981 this had leapt to 48,313, and by December 1983, 81,062 were unemployed (New Zealand Official Yearbooks 1980/84).

In this sudden thrust into an environment of economic insecurity during the seventies and eighties the Maori population has been the most disadvantaged. Between the 1976 census and the 1981 census, Maori unemployment rose from 5,924 to 14,592. This represented 14.1 per cent of the Maori labour force in 1981, compared to 3.7 per cent of the non-Maori labour force. Maoris made up nearly a quarter (24.2 per cent) of the total unemployment figures (1981 Census of Population and Dwellings: New Zealand Maori Population, Department of Statistics Bulletin March 1983, p. 4).

Economic recession coincided with a sudden expansion of the labour force. During the seventies the New Zealand labour market attempted, unsuccessfully, to absorb a mass migratory drift from the Pacific Islands, and the natural pressures of an increasingly younger population.

New Zealand is a young society. In the last twenty years the 10-16 year old age group has doubled. The Maori community is even younger. At the 1981 census, 53 per cent of the Maori population were under the age of twenty; 49 per cent, almost half, of the Maori unemployed were between the age of 15 and 19 years; a further 21.6 per cent were between 20-24 years old (ibid).

A significant proportion of the Maori labour force dominates the lower socio-economic occupation categories. Competing in the same semi-skilled, unskilled, job market are Pacific Island immigrants - hungry and ambitious for a better life in New Zealand.

Maori and Polynesian families are generally larger in size than European families, on substantially lower incomes, and more likely to be living in over-crowded housing. In order to make ends meet both parents may seek work - travelling several miles across town to factories or work sites and not getting home until the early evening.

Children of these families frequently experience a range of deprivations, emotional stress, inadequate supervision, parental alcoholism, and family break-down - the ingredients, sociologists tell us, for an early entry into a life of crime. From the early seventies, street gangs have attracted a membership from among teenagers and children as young as ten years old. A more recent

manifestation has been the 'street kid' phenomenon, where teenagers and even younger children have opted for the permanent company of their peers on the city streets.

In a national survey conducted by the Department of Social Welfare in August 1982, it was found that a total of 1,292 young people aged between 12-19 years were thought to be homeless, or unsuitably housed. Of these 53 per cent were male; 52 per cent were unemployed; 70 per cent were 16 years and under; and 60 per cent were of Maori or Pacific Islander extraction. It was thought by the department, however, that the sample greatly under-represented some areas, such as Auckland, Wellington and other major cities, where about 94 per cent of the street kids were thought to be Maori or Pacific Islander:

> These figures confirmed the impression of the working group that there were strong connections between homelessness and both employment status and race (Youth Homelessness: the Report of a Working Group of the Consultative Committee on Youth Affairs, Department of Internal Affairs, 18 August 1983, p. 25).

Increases in offending coincided with a rapid rural to urban migration, and the growth of cities. Ironically, the increase of affluence in the general population and improvements in welfare and unemployment benefits, has added to this problem. The much-of-too-many display and lavish advertising of goods, the direct pressure upon the young to participate in the consumer society, have achieved their goal in developing the public palate for consumption. The same forces urging young customers to buy affect other young people to acquire without purchase.

Children and young people have more mobility and greater freedom than before. Their capacity to congregate and to participate in 'teen' activities have increased. The temptations of their environment - where shopkeepers and neighbours have traditionally done little to guard against theft - have made these temptations even harder to resist.

Juvenile offending figures in New Zealand increased almost four times between 1950 and 1971. Over half of all Children's Court appearances were for thefts of bicycles, money, confectionery, cars, clothing, cosmetics, jewellery, and electronic goods. Young males dominated offending statistics; among them the likelihood of offending increased rapidly with age, and was markedly higher among Maori or Polynesian youth than among Europeans of the same age. Over 55 per cent of the more serious offences tried in the High Court are committed by males under the age of 30 years and Maori offenders are disproportionately represented in these figures (Justice Statistics 1982, Part A, 1984).

What is most disturbing, is that official rates of offending greatly understate the underlying reality. Thousands of young people are dealt with by the Youth Aid Section of the New Zealand police and never become a statistic. By the early seventies, of those who appeared before the Children's Court, more than 40 per cent were likely to reappear. These figures were comparable to statistics for juvenile crime in most other westernised countries. But in New Zealand, as in other countries, there was little indication that police or social welfare intervention were able to break the trends. The results of a five year experiment conducted in North America noted by the New Zealand Department of Social Welfare, revealed that young offenders, who had received the oversight of social worker's over a five year period, re-offended just as frequently as those who had not received such help. The Department of Social Welfare concluded that:

> In the face of these research findings and of our own experience, it is difficult to escape the conclusion that the traditional method of individual counselling or supervision of young offenders is making little, if any, impact on them (Juvenile Crime in New Zealand, 1973, p. 26).

The rehabilitation failure rate of those offenders removed from their homes by court order and committed to State custody (periodic detention, detention centre, borstal, prison) was also far worse than those not put under such supervision. In the mid sixties it was observed, that of the most troublesome 14-16 year old boys sent to the Kohitere training centre, 37 per cent were recorded as re-offenders within six months of their release; 61 per cent re-offended within two years; 85 per cent within three years; 90 per cent within four years and 91 per cent re-offended within five years.

Social workers attributed their failure to divert their young clients from crime as much to the sheer size of their case loads, as to the complicated nature of their clients' family backgrounds. It was clear that an average of 15 minutes a week of a social worker's time was simply not enough to produce the needed change of attitude or influence in the life of an 'at risk' youth or child.

Trans-sector Networking

One of the most salient and discussed features of modern society has been the process by which the individual has been progressively embedded in anonymous mass structures while being stripped of the sustaining influences of extended families and cohesive neighbourhoods. To some, their greatest enemy, to others the highest prize, urban isolation has been variously credited with protecting individual privacy, providing secure

boundaries for the nuclear family, dissociating individuals from their sense of community; and arousing a range of neuroses and fears experienced by single young people, suburban housewives, and elderly citizens.

Within living memory many more people even in big cities were able to rely upon friends, neighbours, and the extended family to provide economic, emotional, social, and moral support. Children were raised in a network of schoolteachers, grandparents, aunts and uncles, shopkeepers, and workmates. Members of the community were linked together by common knowledge, common problems, common interests and shared social, religious, and leisure activities. A mother with a worrisome child consulted her mother, her senior kin, a local clergyman or a neighbour known to have a knowledge for such matters. Sometimes she would be referred to another who had experience of this particular childhood problem. Family financial affairs, or needs for employment would be handled in a similar way through the use of one's connections.

From the turn of the century, and particularly after World War II, public and mental health, education and employment, social welfare, and so forth, became increasingly the responsibility of specialised government departments. But neither the influence of governments, nor the well meaning efforts of the professional agencies, have been able to replace the intimacy and responsiveness of community life.

In complex society the processes of referral and contact are still vital in professional and business arenas. But this process is considerably more specialised today. Doctors know other doctors, psychiatrists know other psychiatrists, jurists know other jurists but, in the urban setting, neighbours may live beside each other as strangers. Social networks in large residential areas today tend to be based on workplace associations rather than on neighbourliness. Between members of the professional and business sectors they are bounded and often jealously guarded. Only recently has there developed a realisation of the handicaps and limitations such sector elitism has placed upon information sharing and efficiency.

As a result of some soul searching in the early seventies the New Zealand Social Welfare Department began to work more closely with other community, government, court, police and penal institutions - schools, clubs, Maori and Polynesian community groups, church groups, and the Police Youth Aid Section. Out of the same necessity a similar process was occurring in the Police Department, and within the Maori community itself.

In West Auckland district, where this process appears to have been unusually successful, the structuring of new ties by no means replaced existing specialised affiliations. Rather the new

network was superimposed upon existing structures and took its strength from the diverse pools of expertise which it drew together.

The new affiliations appeared to create a special chemistry of their own. As each specialist sector expanded its ties into other sectors, and as the support and help resources were increasingly interlocked, there occurred not only a new structure of association, but a new dynamism as well. Participants spoke of being more informed, and of having their burden lightened. They felt that they were able to handle their responsibilities more efficiently and more economically.

Judge Michael Brown of the Henderson Court said the community program was having remarkable success with young people. 'I feel creative for the first time in 20 years of law', he said (Tony Reid, New Zealand Listener, September, 1982). Innovation in one sector seemed to stimulate fresh thinking in others. The sharing of human resources, information and planning strategies, thus became a major factor in crime prevention in West Auckland.

The sense of liberation expressed by these participants is not really so mysterious. Trans-sector networking - that is, the conscious effort to establish working relationships across normaly bounded professional and community sectors - has the effect of breaking the grip of distance and helplessness which members of the community feel towards professional and government agencies, and which members of these agencies feel in their moments of frustration and lethargy when dealing with the community.

Community participation in community regulation programs has actually worked in West Auckland. The community has put down its guard of suspicion towards the anonymous 'they'. The professionals, perhaps with more difficulty, have had to share their knowledge, rather than guard it. They have had to listen to and incorporate the views of other professionals - with sometimes quite different experiences and perceptions from their own. The ring of confidentiality was expanded to include trusted representatives of other sectors.

At first this process is halting and half hearted. But quite quickly the benefits overcome the participants' sense of threat. The idea is 'sold' to the participants by their own participation. Common concerns and common pursuits bridge the perceptual gap. Shared action provides the fibres for a new kind of network - a help-network - which is seen to complement existing professional and social structures, rather than supplant them.

The trans-sector network is a useful tool in overcoming urban isolation, the highly abstracted and impersonal nature of specialised bureaucracies, and the severe loss of those human values which foster responses of community care and community

responsibility. In an environment where parents complain that they cannot control their children, nor compete with the more powerful influences of commercialism and the mass media; where social workers complain that they cannot devote the necessary time to each of their clients; and where police complain that parents too readily expect them to discipline their adolescent children; it is clear that there is need for even more supportive structures and relationships. But from where is this support to come?

The Police Youth Aid Section

In a report released by the New Zealand Police National Headquarters in March 1985 Commissioner K.O. Thompson stressed the need for the police to consider all public, professional, and governmental resources at their disposal. The community, he said, was still a relatively untapped source:

> Consideration of this resource implies the concept of a contract between the police and the public to work together in the maintenance of public order and the prevention of crime (Police/Community Initiated Crime Prevention, Commissioner's Circular, Police National Headquarters, Wellington, 6 March 1985, p. 1).

Without community goodwill and co-operation the role of the police would be impossible:

> ... all the laws and all the policemen in the world are not going to make that much difference. The real answer lies within the community (Commissioner Ken Thompson, 'Bringing Down Barriers', N.Z. Police Association Newsletter, August 1984, p. 59).

To help break down the barriers a Police Youth Aid Section was created in 1969. The main purpose of establishing a special police section to deal with young people was preventative. The section was to identify persons 'at risk' and to initiate appropriate action to assist them. This action might involve a simple visit by a police officer to the child's home, and the issuing of a warning; or it might involve a period of oversight by a social worker, the referral of the problem to a psychiatrist or some other help agency.

The Social Welfare Department (originally called Child Welfare) and the police have worked together at district and national levels since the establishment of the police Crime Prevention Section in 1958. This was later to become the Youth Aid Section. They attempted, by collaboration, to deal more effectively with the thousands of children whose misbehaviour did not warrant court action.

The Youth Aid Section also attempted to work more closely with the Education Board and schools in their region. A police-run 'Law Related Education Program' evolved during the 1970s as a result of concerns being expressed by the public, educationists, and police at the rising incidence of juvenile crime in New Zealand. This program attempted to educate young people against unlawful behaviour. Officers visit the schools to deliver a series of pre-packaged programs designed to instil in the young an understanding of the law and of the role of the police in the community.

In their efforts to instigate preventative measures when dealing with young people, this specialist group of officers have expanded their influence and activities to include the Maori, Polynesian, and European communities. Their success in encouraging public co-operation in crime prevention can be seen, not only in the increasing degree of community reporting of juvenile crime but also in the increasing participation of the community in preventative policing programs and in the establishment of community initiated Neighbourhood Watch and Neighbourhood Support groups.

In the introduction of the New Zealand Police Law Related Education Program (1980) the popular stereotype of the police as merely a law enforcement agency and the only element in society with responsibility for law enforcement, was challenged:

> Such an attitude - that the police alone are responsible for dealing with crime - is totally unrealistic. Without community support they cannot do their job. All of us - the police, the criminal, the general public - are part of the same society, and all of us must bear our share of responsibility for a stable community. Crime is not just a police problem, it is society's problem.
>
> It is the product of the nature of our social structures, our cities, our family life, and our attitudes to one another. The community, through its unspoken controls and values, but with the aid of the police, must be the keeper of the law. It cannot work the other way round.

The largest percentage of police work in New Zealand, it was pointed out, was spent in areas unrelated to law enforcement - dealing with accidents, searching for missing persons, counselling children, aiding the sick and the insane, settling family disputes and rescuing the injured. It was claimed that '... the police are New Zealand's only 24-hour crisis-intervention agency' (ibid).

Community Policing in West Auckland

West Auckland is one of four divisions of the Auckland District Police Force covering an area of approximately 70,000 hectares, and a population of 130,000 people.

Since its first meeting in 1970, the West Auckland Youth Aid Section has tried to draw in the support of the community at large for its crime prevention activities. The aims of the project were three fold:

1. prevention: to change the environment or circumstances under which juvenile crime may occur;

2. policing: to encourage the community to police its own streets by organised community watch and self-protective strategies of person and property; and,

3. welfare aid: to expand the welfare aspect of police work and to encourage the community to take a greater responsibility for the welfare and rehabilitation of its members.

The project has a 'sharing the caring' emphasis. It was admitted that the job was too large for a handful of teachers, social welfare officers and police officers. West Auckland needed to police its own suburbs. Parents were encouraged to look out for truancy on their block and to offer moral and tangible support (food, clothing, advice or other contacts in the help network) to those families in need. The Maori community, already well organised through the marae and Maori Committee in that area, welcomed the opportunity to be involved.

The Youth Aid Section established a 'Youth Aid Committee' which was comprised of a collection of interested volunteers and professionals. Thus this committee was able to draw on the human resources of a number of government departments, statutory organisations and satellite community volunteer groups.

The Henderson Youth Aid Committee meetings may be attended by representatives from:

The Department of Maori Affairs
The Department of Social Welfare
The Education Board
The Childrens' Board
The Health Department
The West Auckland Neighbourhood Watch and Neighbourhood Support groups
The Youth of Christ City Mission

Various other Church groups
The Henderson House - a mental health outpost
District and Public Health nurses
Headmasters and teachers
Probation officers
The Te Atatu Maori Committee
The Polynesian Community
The Henderson Police Youth Aid Section

This action committee constitutes the core of a new trans-sector help-network being established in the West Auckland district which could respond more effectively to the diverse needs of its multi-racial population.

The people who have become involved in the Henderson program say the experience has made them come alive. Members of the courts, the Maori community, Maori wardens, social workers and the police force, uniformally expressed confidence in the project and seem to have been renewed by the creative process and new purpose of their work. The crushing sense of case work failure, or inadequacy to change things, has been lifted by the process of task sharing, more informed decision-making, and an expanded circle of moral support.

There were unexpected bonuses: frequent expressions of appreciation from the families and young people whom the committee had helped; offers of assistance from ex-offenders and a stack of Christmas cards from youths and children who had passed through the Youth Aid Section's hands. (At the rock concert riot, which exploded without warning in the streets of downtown Auckland last December, a youth who had been helped by Sergeant Cuthbert on a previous occasion rescued the sergeant from being thrown through a shop window by rioters.)

Sergeant Cuthbert did not give the impression of a great innovator. He was described in the press as a 'rather dour, unsmiling, middle-aged man who speaks in a rapid monotone' (Tony Reid, New Zealand Listener, 18 September 1982). But he was a man who believed in his project and whose day and night efforts with young people over the last fifteen years are largely responsible for the success and good relations between the police and the community in West Auckland.

Cuthbert's weekly conferences with the Youth Aid Committee, held around a table in the back room of the Henderson police station, are attended by 20-30 people. The atmosphere is casual and cheerful. People joke and tease as they work their way through Sergeant Cuthbert's stack of files. Most of these cases will never reach the courts and after some time will be destroyed.

A child has stolen a calculator from school. One member informs the committee that the child's family has just split up. The father has 'kicked the mother out of the house so he can keep the welfare cheque for booze'. The headmaster thanks the member, saying he did not know this. It is decided that the social worker will visit the family to see if the calculator can be located, and to see how its more serious problems can be attended to. The child will only get a warning.

Several cases of bicycle thefts had been reported. The Maori committee representative reveals that these thefts were related. The offenders belonged to a group of Maori children, aged 9-11 years, who had been stealing in the neighbourhood. The cases were referred to the Maori Committee representative, who agrees to have them handled by the Te Atatu Maori community court.

In May 1984 the West Auckland Division mounted a campaign, together with the community, to establish a labyrinth of Neighbourhood Watch Support Groups throughout the area. The response from the community was astonishing. Many meetings drew in over 100 people. By the end of 1984 support groups involving approximately 55,000 people; 1,510 street co-ordinators and 76 area co-ordinators in 24 sectors of the territory were established (Community Policing, West Auckland, New Zealand Police, Auckland District, February 1985).

The police found that they could more effectively police those areas where support groups had been established. Frequently offenders were more easily caught on the evidence noted down by alert neighbours. The visiting and telephone contact which the support groups established between neighbours introduced a sense of security quite uncommon in the normal urban experiences of the participants. It was noted by the police that crime rates dropped in those areas where Neighbourhood Watch Support Groups were functioning.

The West Auckland Police Youth Aid Section was the first to notice a decline in youth offending after the introduction of community programs. At the beginnng of 1980 the West Auckland Youth Aid Section was handling between 130-150 files on youth offences a month. By 1985 this had dropped to an average of under 50 files a month. Sergeant Glyn (Curly) Cuthbert, Sergeant-in-charge of the Henderson Youth Aid Section, attributed this decline to a number of innovations in his area.

In Sergeant Cuthbert's opinion, 'six out of every ten youth offences began with truancy'. When his section began to run a truancy control, in collaboroation with the Education Board attendance officers, petty burglaries and shoplifting declined among this age group. 'Our interest was to get the kids off the streets and back to school, before they became a statistic', he said.

The parents of a truant child, and the school, would be approached on the matter. If necessary a member of the community who knew the family or a social worker would be invited to help get to the bottom of the problem. It was often found that the child's behaviour had been sparked off by a more serious problem at school or at home.

On one occasion, for instance, a boy refused to attend a maths class. After getting deeper and deeper in trouble at school he chose not to turn up at all and was picked up on the streets as a truant. After some investigation it was discovered that the child's single-parent could not afford the new maths text books he required. The child was too proud, or ashamed, to confess this to his teachers. The books were hurriedly purchased and the boy quite willingly rejoined his class mates.

A similar case of truancy was heard over a boy whose parents could not afford to buy him a new pair of shoes. After some time of merciless teasing by the other children the boy simply ran away.

Sometimes the reasons for a child's truancy have been found to be embarrassingly simple, yet quite overlooked by either teacher, parent, or police officer. It was only through the process of talking with the family and the child, of calling in family friends, and by looking at the background of the misdemeanour that solutions have been found for a large number of these problems. It is disturbing to contemplate the harmful impact of processing such young offenders through the courts. 'Working on prevention', said Sergeant Cuthbert, 'is far better than seeking a cure after the crime has been committed'. This is done through truancy control, law-related education, and the identification of 'at risk' children, juveniles and families.

Where petty crime, especially first offences, have occurred there is much which the community itself can do. Recognition and sympathetic reassurance can help ease the loss of security and equilibrium suffered by the victim. Finding an appropriate means of retribution is part of the healing process. It compensates the victim psychologically, and helps to re-establish the self-esteem of the offender and his or her family. Of course neither party will be quite the same after the incident - there will be scars. But there is reassurance, even for the perpetrator of a petty crime, that about the offender there are mechanisms of social order and control. This is better than the psychological chaos which can result when an offence goes unnoticed. In young people many such acts of daring are a call for attention from peers and parents. Bitterness can quickly follow when it is discovered that nobody cares.

The Maori Committee Structure

The Maori Committee system is the local level of a national statutory superstructure, the New Zealand Maori Council, which was established under the Maori Social and Economic Advancement Act 1945 and functions today under the Maori Community Development Act 1962. The New Zealand Maori Council has a wide range of responsibilities for the promotion of the physical, economic, educational, social and spiritual wellbeing and self-reliance of the Maori people.

Maori Committees are expected to work with government departments, and other statutory and voluntary organisations on behalf of their community.

The Act provides for the Maori Committees to control 'riotous behaviour', drunkenness and other misdemeanours by Maoris within their jurisdiction. The committee is empowered to impose prohibition orders and small fines of up to $20 upon offenders. The New Zealand Maori Wardens' Association, which falls under the same statute as the New Zealand Maori Council, acts as the policing and community welfare arm of the Maori Committee system.

Occasionally subject to criticism, the volunteer work done by the Maori wardens is generally accepted and appreciated by both the Maori community and the New Zealand police. The wardens patrol city streets and pubs, visit Maori homes and help in crowd and traffic control at marae functions. The method wardens use in removing under-aged Maoris from pubs, encouraging members of the community to go home when they have 'had-too-much' to drink, or in settling family disputes is, in the main, the power of persuasion and the expression of aroha (sympathetic concern).

Under the Act a Maori warden is empowered to request a publican to refrain from serving a Maori any more alcohol (the publican can be fined if this request is ignored), and to retain the car keys of any Maori who appears too intoxicated to drive. Wardens are not, however, empowered to use physical force in the course of their duty. Although they frequently do restrain people I know of no case where a Maori warden has been sued in court by a fellow Maori for assault. Both the Maori community and the police have accepted the role of the Maori wardens and have sought to avoid bringing the institution into question.

Maori members of the community submit themselves voluntarily to the expressed concerns and authority of both the elected body of the Maori Committee, and its representatives - the Maori wardens and honorary welfare officers. An individual's responsibilities to the community are balanced by an endowment of rights and privileges. A Maori who does not wish such rights and responsibilities may opt to live 'like a Pakeha' (European New Zealander).

Participation in Maori community life is, for most Maoris, a source of considerable satisfaction and esteem. The community court, warden and welfare officer programs are all avenues through which selected members of the Maori community may volunteer their services to their people. They all fall under the auspices of the local Maori Committee. In times of trouble a person of Maori extraction always has the option of seeking help from a range of Maori institutions.

The Te Atatu Maori Community Court

The Te Atatu Maori Committee works very closely with the Henderson District Court, particularly with the Children and Young Persons section of the court. Judge Michael Brown was the first to encourage a judicial role in the Te Atatu Maori Committee. Of Maori extraction himself, he saw a special Maori tribunal as a possible alternative to the one-way-track towards conviction facing so many young Maoris. Although this function of the Te Atatu Maori community somewhat stretches its defined role under the Maori Community Development Act, under the Children and Young Person's Act a judge has considerable discretion.

This tribunal acts as a judicial diversionary scheme dealing with cases referred to it from several quarters. Local probation officers, social workers, schools, Maori wardens, the police, and the Henderson District Court, all make referrals to the Maori Committee in the course of their work. Irrespective of its source, however, each case receives the unique attention and scrutiny of the committee. Offences may range from petty theft to assault, with the exception of rape, incest, murder and drug offences.

The Te Atatu Community Court consists of five or six members from the local Maori Committee. Its hearings are also attended by Maori wardens and Maori honorary welfare officers.

Cases handled by the tribunal are not limited to young offenders. They may equally concern the child neglect by a married couple, or a drunken misdeed of a respected elder. The process provides the offender with a second chance - the opportunity to show remorse and to make restitution. It avoids the no-turning-back implications of the formal court hearing which might mar the reputation and harden the self-image of the offender for life.

Sentencing discretion and oversight remains with the committee and as long as the offender's performance of the sentence satisfies the committee, the offence does not go to police record. It is seldom that this second chance option is refused. The good performance of a community service order is rewarded with praise and longer term committee assistance.

After the sentence has been completed the committee supplies the court with a report on the case. If the Maori tribunal found it was unable to handle a particular case satisfactorily, for example, if an offender was still unco-operative in performing the community service order after several warnings, the committee had no hesitation in handing back the case to the court for formal processing.

In one of the earliest studies of a Maori community court, in Otara South Auckland, Dr Ranginui Walker of the University of Auckland observed:

> The Committee recognises there is only one law of the land, but under that law its members believe they have their own Maori way of ensuring its effective observance (The Social Adjustment of the Maori to Urban Living in Auckland, unpublished PhD Dissertation, 1970, p. 219).

The Hearing

The Te Atatu Maori Committee usually conduct their court sittings on a Sunday morning. These hearings essentially operate with the voluntary co-operation of the offender and his or her family. The tribunal usually receives cases where guilt has already been established by confession, but this is always verified at the opening of the sitting. The tribunal would not proceed to deal with a case in which innocence was resolutely asserted. The method of handling offenders, their families and sometimes the victims, varied according to the nature of the crime. Parents and other relatives or friends in attendance would be asked to offer their own understanding of the situation. They would often speak in defence of the offender, outlining for the tribunal favourable aspects of the offender's character. During this process the root-of-the-problem would be sought.

One case which I recorded involved two brothers aged 14 and 16 years respectively who had stolen a car. After a short joy ride they abandoned the vehicle leaving $200 worth of damage. The mother of the boys poured out her distress to the tribunal. It was found that her husband, a heavy drinker, had left her for another woman. Mrs W. had all her four children still living with her in a small three bedroomed house. The older two boys, one 19 years old and the other 18, were unemployed and had moved their girlfriends into Mrs W's house.

Mrs W. said that while she tried to support her children and their common law wives she was getting too old to tend the garden or mow the lawns. None of the young people helped her in the home, she claimed. A Maori warden, familiar with the family situation, confirmed that the house was shabby and the yard overgrown. The house, said the warden, 'could not have received

a coat of paint for over twenty years'. In addition to this, the young offenders had 'already been picked up' by the warden for under-aged drinking, having been 'lured to the pub by their father and older brothers'.

While the general approach of the members was stern, their tone was quite paternal. The committee appeared to cast itself in the role of an indignant father - a role which the youths had little experience of under their own father's influence.

Finally, it was agreed that the boys should do eighty hours of community service work each. Some of this work would return a small income from which the boys would reimburse the owner's costs in car repairs. An evening curfew was also placed on the boys, who were told to be indoors by 9 p.m. every night for the duration of the sentence.

The boys were warned that if they did not perform their sentence to the satisfaction of the Maori Committee their case could be handed back to the District Court. Behind the gruff facade was a determination to protect the boys from a criminal record, and possibly a life of crime and eventual imprisonment.

It was decided that the boys' family would be best served if most of the community service work was spent on their own environment. One of the wardens, a home decorator by trade, would teach the boys how to paint and wallpaper their home.

The older brothers were brought before the tribunal at a later session, on the committee's own charge of 'leading their younger brothers astray'. They were admonished for 'bludging off their poor mother', and called upon to help her more. It was the expressed hope of the committee that this community work would 'put some pride back into the boys for their home' and would perhaps 'knock a trade into their hands at the same time'.

With the organising efforts of the eldest son, and the supervision of the warden, Mrs W's house was completely renovated, the yard was cleaned up, and a new vegetable garden was put in. In return the committee commended the youths on the good job they had done and told them how proud they should be of their home. The committee also attempted to find the older brothers employment on one of the community employment schemes under the Labour Department - on the condition that they either asked their girlfriends to leave their mother's house, or that they moved out of the crowded household with the girlfriends themselves.

Analysis

The general psychology and process of the Maori tribunal hearings appeared to be structured in four intertwined stages:

1. Confession and Guilt

Following confession of the crime the offender would then be 'taken to pieces' by the committee. 'They would get a good growling.' This admonishing by the community leaders was designed to arouse a sense of guilt and shame in the offender.

2. Remorse and Purging

The expression of sorrow and hurt by the families, and of remorse and regret by the offender, had a purging effect upon all involved.

3. Sentencing and Restitution

Utu (revenge, or payment) is an ancient concept in Maori lore. Having established that a wrong had been done the offender and his or her family can only be cleansed of their shame by offering restitution to the victim and the community they have injured. This is normally done through community service work orders, settled by the tribunal in a private conference, then announced to the offender and his or her family.

4. Forgiveness and Reintegration

The forgiveness and reintegration process begins even before the offender leaves the tribunal. At the end of the hearing an offender is 'put back together again' by the community's representatives on the tribunal panel. The virtues of the offender and his or her family, are expounded. The positive aspects of their lives are pointed out. They are reminded that the tribunal hearing is an expression of the love and concern of their people for them, and how fortunate they are to have had a Maori hearing. They are re-embraced into the bosom of their whanau - their family, their community.

The Maori people are good practical psychologists. Ethnic solidarity, Maori values and culture, are potent mediums by which objectives of community self-preservation can be communicated to an endangered member. Not all offenders might understand that the community court signifies a closing of the ranks of the minority group about them. But most would have some intuitive grasp of the nature and purpose of the proceedings and the Maori Committee attempts to impress upon offenders that they are handling their cases in order to protect them from the dangers of the wider judicial and penal system.

The appeal to ethnic identity is an important part of the healing process. It is assumed that the offence has been committed because the offender has wandered away from the norms and values

of right behaviour held by the community. Moral rectitude, it is therefore deduced, is the result of an individual exercising his or her community rights, duties, and responsibilities. Waywardness is the result of the abandonment of these.

The purpose of the Maori community court is to reform offenders, and, where possible, their environment. It is not a punitive system but a rehabilitative one. On the whole, explained one community leader, the European justice system is designed to isolate and banish the offender, in order to protect society. The 'Maori Way', on the other hand, is to hold offenders accountable to the community; to convert their attitudes and to re-embrace them back into the community. As far as possible its purpose is to protect offenders from themselves. This is done by seeing that they acknowledge the full consequences of their anti-social behaviour; by showing them that they have not offended against some remote concept of society, but against real people.

It is understood that in cases of serious offence this system may not be possible. But there is a very large category of offenders who are far more likely to respond positively to the second method than the first. A Te Atatu Committee member expressed to me the desire of the tribunal to be given the opportunity to also handle cases of incest. Their method of community censure, he felt, would be far more effective in deterring incest than the impersonal nature of the formal court.

Unlike the District Court system, where cases must be heard swiftly, the Maori community court was able to take a holistic approach towards the offender and the environment under which the offence was committed. Not only was the family background of offenders taken into consideration, but where appropriate, their guilt was shared. The offenders were confronted with those they had injured - their families, their community and sometimes even their victim(s). They were made to acknowledge the shame which their actions had brought. Their actions, they were told, had in turn brought <u>all</u> Maori people into disrepute with the wider society:

> When you fall, we fall,
> When you stand tall, we stand tall.
> We, your Maori people.

Norms of good behaviour, mutual support, filial loyalty, of the roles and duties of parents to children and of children to parents, were expressed and reconfirmed. The offenders and their families were told to not leave the hearing with bitterness in their hearts, but with pride that their cases had been heard and handled by their Maori committee.

Juvenile Offending Patterns

In recent years the New Zealand Juvenile Justice System has attempted to find ways of dealing with cases of offending by children (up to 14 years) and young persons (14 up to 17 years) without resorting to prosecution and court appearances. Most cases which are diverted from the court process are handled by the Police Youth Aid Section, the Children's Board, or established community or church organisations prepared to take responsibility.

In its report, Patterns of Juvenile Offending in New Zealand (No. 1 and No. 2), the Department of Social Welfare attempted to compare official offending rates among juveniles for the years 1978 to 1982. Comparative rates were obtained from the combined records of the Children's Board, the Police Youth Aid Section, and the Children and Young Persons' Courts. There were several notable discoveries. It was observed that the incidence of juvenile offending, which had come to official notice, had declined between 1978 and 1981. A slight rise in 1982 still placed the rate lower than that between 1978 and 1980.

In each year official offending rates among boys showed a steady increase from age 10 to 13 years old, a considerable jump from 13 to 14 year olds, and a continued increase up to the age of 16. Rates for female juveniles increased steadily up to the age of 14 but from that point on remained relatively static. Offending among females dropped significantly between 1978 and 1982, widening the gap between male and female rates.

The decline in the overall figures of juvenile offending was, in fact, a phenomenon most characteristic of Maori youth. The decline in offending rates among Maori male and females was significantly greater than the decline in non-Maori rates.

> There has been a decrease in the overall Maori rate for coming to notice for offending. In 1978 the Maori rate was 1,580.0 per 10,000 which by 1982 had decreased to 1,413.8 per 10,000. This decrease has also led to a modest drop in the disparity between Maori and non-Maori rates for instances of coming to official notice. In 1978 the Maori rate for official notice was 6.3 times the non-Maori rate, while by 1982 the Maori rate was 5.8 times as high. Rates for non-Maori instances of coming to official notice have fluctuated over the period. From a height of 249.9 per 10,000 in 1978 they dropped to a low of 224.6 in 1980 and returned to a level only just below the 1978 high by 1982 (Patterns of Juvenile Offending in New Zealand, No. 2, Department of Social Welfare, 1984, p. 9).

Prosecution

The formal justice system is still very much in use for prosecuting young offenders. But its former role has been modified by non-prosecution referrals to various diversionary schemes within both the justice system and the community. The effects of these is shown no where so clearly than for the Maori. Many Maori communities have gone further than shouldering rehabilitative responsibility for their young. The Waititi Marae in West Auckland, for instance, runs a range of pre-employment, and employment programs, courses in Maoritanga - Maori culture, arts and philosophy, programs for pre-school children, and so forth. These programs are both preventative and rehabilitative - aimed at fostering Maori self-reliance, personal development, and employment.

Until economic conditions in New Zealand take a turn for the better it is unlikely that offending among juveniles will significantly decline. During this time it is the community which can take-up-the-slack between real rates of offending, and formal convictions. For some, the trail to imprisonment cannot be intercepted. But it is likely that many young people may be re-channelled into a more fruitful future within society through these community programs.

Rebuilding Community Infrastructure

In commenting on the Te Atatu Maori community court Dr Ranginui Walker summarised the essence of its success:

> If people are answerable to their real peers, they are much more susceptible to reform ... (personal communication March 1985).

It is clear that the Maori warden and community court systems represent the mechanisms through which the Maori people have sought to find a 'Maori way of upholding European Laws'. As one proof of success it was related to me that several individuals had offered their services as Maori wardens, after receiving the special attention of the Maori Committee. 'It was their way of showing their appreciation for the help they received during a family crisis. It also showed their belief in the system', I was told.

I will not, in this paper, attempt to apply the Maori community justice model to Australia, but only to suggest that there is a potential in this, and in other models presently being experimented with in Australia and overseas, which warrant further investigation.

There will be problems and obstacles in their application which will be unique to present day Aboriginal society and to the

Australian judicial and political systems. But experiences elsewhere may prove to be a useful guide to the development of Australian community justice programs.

Although other areas in New Zealand have attempted to establish action groups, similar to the West Auckland Youth Aid Committee, none appear to have had quite the degree of success as the West Auckland division. The greatest obstacles to the success of such a committee, I was told, stemmed from bureaucratic attitudes.

The philosophy of sharing information, even under the strictest confidence, defies conservative social welfare practices, for instance. After years of professional specialisation, such collaboration challenges our finer sense of 'professional integrity', as well as our baser sense of 'professional territoriality'. Community groups also suffer from similar feelings of distrust and boundary jealousies.

We have so abstracted western social structure that we hold accountable for all our problems the specialists whom we have put in place to deal with them. We have lost sight of the fundamental human art of working as a team, and the healing virtues of community problem solving, and community care.

Some of us have come so far down the road of scepticism and despair as to say, 'no matter what program you put in place, it will probably not make 0.01 per cent of a difference to our statistics on Aboriginal crime or juvenile offending'. 'If the statistics are to move in any direction', we say, 'it will always be in the direction to show that things have got worse!' Somewhere along the way, we have lost our faith to effect positive change. Yet, in my own experience in Canada, New Zealand and Australia, I have learnt never to underestimate the power of ordinary people to change their own environment.

In establishing a community justice project it is clear that we will need the support of the relevant government agencies, the police, the courts, and more particularly, the people it affects. In most Aboriginal communities there will be at least remnants of traditional mechanisms of social control. In some communities these mechanisms will be functioning quite well. It is upon these, and upon other community organisational structures, which the community justice programs can be built.

The jurisdiction of any informal court needs to be defined. It would presumably cover a range of minor offences, decriminalised offences (such as public drunkenness), and customary law. The range of penalties which a community court would be empowered to impose would also need definition - community service orders, small fines, supervision under particular elders etc. Certain penalties which would in themselves constitute offences under

European law, such as a-spear-in-the-leg, or tribal murder, would no doubt have to be excluded.

The community court is, what I call, a bridging structure - an institution which must span two very different and seemingly incompatible epistomologies of law. One end of that bridge must touch the legal and cognitive soil of the European. The other end must touch the legal and cognitive soil of the Aboriginal. Therefore, it is a new construction. A construction which must, of necessity, combine the use of new building materials and past experience. Some elements which are abhorrent and foreign to each must be excluded - some must also remain. Which ones these are to be would have to be negotiated.

Torres Strait Islander and Aboriginal organisers have shown innovative talent over the years in introducing bridging institutions in the areas of Aboriginal health, rehabilitation of alcoholics, economic development, legal aid, and political representation. It may only be a matter of time before the establishment of a network of community-based judicial programs is next on the agenda. Indeed, in some areas it is not a new concept at all. I hope, that when community initiatives in this direction occur, social welfare agencies, the departments of Aboriginal affairs, and the criminal justice administration will be ready to respond with commitment and support.

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THE OVER-INVOLVEMENT OF INDIGENOUS PEOPLE WITH THE CRIMINAL JUSTICE SYSTEM: QUESTIONS ABOUT PROBLEM 'SOLVING'

A Canadian Case Study

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INTRODUCTION

History of Review

This paper is based upon a critical review of a decade (1972-1983) of Canadian research literature which attempts to explain the gross over-involvement of indigenous people with the criminal justice system and to evaluate reforms in the criminal justice system to combat this. The review was conducted by a team housed in Prairie Justice Research, a centre for criminological and socio-legal research, at the University of Regina (Havemann et al., 1984).

The review was a minor component of the process of reform initiated by the Federal Government starting in 1975. The then Solicitor-General of Canada, Warren Allmard, convened a conference 'Native Peoples and the Criminal Justice System' (Canada, 1975, Michales and Badcock, 1975).

Warren Allmard's starting point was that:

> We share a determination to gain a better understanding of the problems we face and to move towards their solution (Canada, Solicitor-General, 1975).

The issues and recommendations of this conference were remarkably similar to those of the Australian Institute of Criminology's 1983 conference (Swanton, 1984).

The Prairie Justice research project set itself the task of attempting to see what could be learned from the way the diagnostic and evaluative literature defined the problem and isolated solutions.

Mandate of Review

Our brief was to evaluate the evaluations and challenge assumptions in a way that research institutions separate from government are particularly well placed to do. The Natives and Justice Unit in the Ministry of the Solicitor-General contracted us to:

1. Review all theoretical and empirical literature relating to Natives and justice. The criminal justice areas to be specifically examined include causes and prevention, law enforcement, prosecution and legal services, courts and sentencing, and community, institutional and post-institutional corrections. While the focus is to be on Canadian-based literature ... other material which has obvious implications for this issue as it relates to the Native condition in society is also to be reviewed ... ;

2. Provide a comprehensive synthesis of the material reviewed, including an assessment of its completeness, quality and relevance, so as to present a full picture of the state of social science knowledge with regard to Natives and justice, within a broad, multi-disciplinary theoretical framework;

3. Provide, as a separate section of the report, a discussion of the implications of existing research knowledge for current and future policies and programs relating to Natives and justice; and

4. As a final section, identify further research directions which could be pursued to usefully complement existing knowledge (Havemann et al., 1984, IX).

Ethical and Methodological Perspectives

Our ethical position was that we did not purport to be either able or justified in representing the views of indigenous people. As social policy analysts and members of the dominant Euro-Canadian society we did feel able to assess the degree to which outcomes reflected program objectives and political rhetoric matched concrete policy.

We felt that a conflict rather than pluralist or consensus model of social relationships best suited an analysis of the relationship between indigenous people and the colonial power.

This historical, economic and political model offers a context to accommodate the experience of and current aspirations of indigenous people. It acknowledges the military pacification of indigenous people, the appropriation of their lands, cultural genocide, the contemporary process of 'modernisation' and assimilation, the unequal exchange between the metropolitan Canada and the hinterland resulting in the 'development of underdevelopment' (Elias, 1975; Watkins, 1977; Amin, 1976; Petras, 1978). The legacy of these economical patterns includes the 'overinvolvement' of indigenous people with the imposed system of social control (Burman and Hartnell-Bond, 1979).

> I am persuaded that the incidence of these disorders is closely bound up with the rapid expansion of the industrial system and with its persistent intrusion into every part of the native people's lives. The process affects the complex links between native people and their past, their culturally preferred economic life, and their individual, familial and political self-respect. We should not be surprised to learn that the economic forces that have broken these vital links, and that are unresponsive to the distress of those who have been hurt, should lead to serious disorders. Crimes of violence can, to some extent, be seen as expressions of frustration, confusion and indignation, but we can go beyond that interpretation to the obvious connection between crimes of violence and the change the South has, in recent years, brought to the native people of the North. With that obvious connection, we can affirm one simple proposition: the more the industrial frontier displaces the homeland in the North, the worse the incidence of crime and violence will be (Berger, 1977).

Self-flagellation was not our purpose. We required analytical frameworks which were appropriate to this context to help us understand the roots of the problem, to evaluate explanations for it and to critically evaluate reform programs in terms of their objectives and outcomes.

The Order/Assimilationist Perspective

From the conflict perspective it quickly became apparent that the bulk of the research literature was pervaded by an 'order/

assimilationist' perspective. This perspective

> minimises the significance of power and coercion in everyday life between subordinate and superordinate groups, emphasising the social psychology of individual and group adaptation to dominant group values and practices. Society is viewed as made up of competing individuals who carry out their competition in the context of neutral social institutions. Thus everyone is equal and has equal opportunity (Reasons, 1977, p.255).

Among the other elements of this consensus or pseudo-pluralist view of society are the conflation of order with harmony and the assumption that the assimilation of minority groups into the dominant society is always a positive 'development'.

The ideology which under-pins this perspective includes the assumptions that the mechanisms to distribute social goods are reasonably just, that there exists a consensus about what constitutes right, wrong and fairness, that those who disagree are deviant, naive or dangerous, that economic growth is desirable, that technology is relatively autonomous. It has also been assumed that an essential function of the colonial and contemporary welfare state is the deployment of the government's monopoly of force and the use of other resources to facilitate the accumulation of wealth by the domestic and multi-national corporate sector and that this wealth will have a 'multiplier' effect and 'trickle' down to even the poorest.

The methodology of most contemporary social pathologists has been positivist. These assumptions have been accepted as the 'givens' into which solutions must fit:

> positivism which in its consensual aspects allows the world 'as it is' to remain unquestioned and, in its determinist notion of human action offers the possibility of rational planning and control (Taylor, Walton and Young, 1973, p.35.)

The necessity for providing a basis for 'rational planning and control' within the very limited parameters which this ideology permits has had a very inhibiting effect upon the solutions offered. Limited solutions abound in the criminal justice system, ranging from the legal miles governing the conduct of indigenous people to governments' overall socio-economic policies.

Due to the absence of alternative data, our review was confined largely to evaluations by governments or their agents of programs delivered to indigenous people in the process of the administration of 'justice'. This is top-down research and the weaker for that. The work of the Native Counselling Service of Alberta and the Ontario Native Council on Justice are the major exceptions to this generalisation.

We sought to highlight the consequence of using this methodology and data for the understanding of the problem of 'over involvement' which has been that:

> The majority of studies have focused upon a number of decision-making points in the criminal justice process without making any effort to relate the findings to the broader context of the status of Native peoples in Canadian society' (Verdun-Jones and Muirhead, 1979/80, 18).

As a result of the dominant society's increasing awareness of the unequal status of indigenous citizens and their immiserised state (Indian Conditions, 1980) there have been shifts in the government's philosophical posture towards indigenous people. Prior to 1969 Federal Government policy reflected a philosophy, which was wholly 'assimilationist'. After an abortive attempt in 1969 to consolidate this approach by abolishing the special status of Indian people as the 'wards' of the Federal Government, the Government has attempted to forge partnerships with Indian people through policies of integration and accommodation.

Greater 'accommodation' of indigenous self-management (Indian Conditions, 1980, p.99) has had little impact on policy in the criminal justice system.

'Integrationist' policies have evolved instead. These latter involve increasing the use of indigenous people in the front-line of the delivery of government services to control their own communities. 'Accommodation' policies, on the other hand, involve the delivery of services by autonomous agencies controlled by indigenous people themselves. Such autonomous services have evolved within the array of health care, child welfare and education services offered by the welfare State under local self-management programs. The recognition of a plurality of systems of social control and legal systems, however, remain at the level of muted rhetoric.

In our review we were particularly concerned to examine how well the imposed social control system, namely, the Canadian criminal justice system, has translated the shift from imposed order/ assimilationist programs to integrative programs and even ones which accommodated autonomy in some measure.

THE DOMINANT MODEL

The mode of thinking which has characterised the process of defining the problem of 'over-involvement' and prescribing solutions which emerged, revealed an attempt to reflect the shift from an order/assimilationist philosophy to an 'integrative'/assimilationist one.

We discovered a conceptual framework based upon some of the following general assumptions:

1. (a) The Canadian criminal code is a 'just' system of laws to apply to indigenous people; and

   (b) The criminal justice system is an inherently fair and effective system to enforce such law;

2. The disproportionate numbers of indigenous people enmeshed within the net of the criminal justice system can be explained by their conspicuous criminality which is understood in terms of 'conflict of values', culture of poverty theories or alcoholism, understood in terms of a 'disease' model; and

3. Contributory factors causing the disproportionate involvement of indigenous people with the criminal justice system are:

   (a) the discriminatory or prejudiced application of discretion against them by decision-makers throughout the system; and

   (b) indigenous people's ignorance of their rights (and presumably obligations).

The solutions within the criminal justice system which are derived from this explanatory model are:

1. The problem of discriminatory or prejudiced application of discretion can be alleviated by:

   (a) the cross-cultural education of non-indigenous decision-makers; and

   (b) the 'indigenisation of decision-making roles, that is the recommitment of indigenous police prosecutors, defence lawyers, 'go-betweens', adjudicators and workers in the correctional system.

2. Indigenous people's ignorance of their rights (and duties) can be reduced by public legal education targeted to their communities and the provision of legal representation or indigenous court workers as 'go-betweens' to interpret and mediate for them in the criminal courts.

QUESTIONS ABOUT EXPLANATIONS AND SOLUTIONS

The Law and Criminal Justice System

Is the Canadian Criminal Code and criminal justice system a 'just' system of laws and enforcement mechanisms?

The Code is an 'imposed system of law' (Kidder 1979, p.289). The law is that of the colonial power. Under the British North America Act 1967 and the Canada Act 1982 the Canadian Constitution recognises only those laws promulgated by the Federal Parliament provincial legislatures, and legal defences found in the Common Law of England and Wales.

The customary or indigenous common laws of indigenous nations within Canadian territory are not recognised (Grant, 1982), there are no Tribal Courts (Morse, 1980).

This monist system based upon the 'Westminster' model recognises as valid only the imported norms and procedures of Euro-Canadian society. Paradoxically, this contradicts the historical evolution of the 'Westminster' model itself. In the Anglo-Saxon tradition the jury system, the use of lay adjudicators, the recognition of custom, the development of law through the courts under the doctrine of 'stare decisis' all illustrate the sensitivity of this system to its 'indigenous' roots and popular notions of justice. As usual a double standard prevails, indigenous people must be ruled by our 'volkesgeist'.

Many States have accepted the value of recognising a plurality of legal systems both State and non-State. Even the United States with its 19th century policy and contemporary celluloid eulogies of genocide, recognises Indian Tribal Courts, Indian codes of law, for example, the Indian Child Welfare Act, and Indian nations. The Australian Law Reform Commission's Aboriginal law reference also constitutes a laudable beginning to the groundwork required to recognise Aboriginal laws (Hennessy, 1984, p.336).

The now constitutionally entrenched Canadian Charter of Fundamental Rights and Freedoms under the 1982 Constitution Act recognises existing Aboriginal and treaty rights and land claim settlements. As these rights do not currently include the right to an indigenous non-state legal system, the Charter may not represent progress towards self-government in this sense.

Indigenous people and the European settlers share some definitions of what is harmful and therefore what must be prohibited by law. Nonetheless, such wrongs are not enshrined in the laws of indigenous nations as recognised by the State or enforced according to their procedures. Instead indigenous people rely for their protection on the blunt-instrument of the very law which is embedded in apparatus of their own pacification.

Furthermore law enforcement rather than social investment (Indian Conditions, 1980, p.98) in the hinterland and urban slums is still the dominant mode of 'pacification' employed to maintain order among the indigenous populations (Havemann 1983, p.361).

If the subject matter of 'justice' is evaluating criteria to be used for distributing burdens and benefits, we must conclude that the imposed system of social control, that is the Canadian Criminal Code and the criminal justice system, have distributed benefits to the Euro-Canadian colonists and the burdens of 'pacification' - of being a subordinated people, upon the indigenous nations.

THE 'CAUSES' OF CRIME

How useful is the conspicuous criminality assumption?

This explainatory assumption flows from an order/assimilationist perspective. It is often couched in terms of culture of poverty, culture conflict theories or alcoholism. These are all explanations which, while liberating us from the 'individual wickedness' model of the criminal law, nonetheless 'blame the victim'. Such explanations tend to locate the causes of over-involvement within the victims' response to environmental forces but as William Ryan says in Blaming the Victim (1976):

> It is a brilliant ideology for justifying a perverse form of social action designed to change, not society, as one might expect but rather society's victim (ibid, pp. 7-8).
>
> The second step of applying the blaming of victim explanation is to look sympathetically at those who 'have' the problem in question, to separate them out and define them as a special group, a group that is different from the population in general ... that difference is itself hampering and maladaptive. The 'different' ones are seen as less competent, less skilled, less knowing - in short less human ... (ibid. pp. 9-10).

What makes indigenous people criminal, what makes them conspicuous?

Symptoms become confused with causes in these explanations of the causes of over-involvement. The social, political and economic consequences of unequal exchange between hinterland and metropole facilitated by the social control apparatus of the State are glossed over. Perhaps because of the magnitude of social, political and legal changes which would have to occur to redress this inequality and solve the problem?

Hugh Brody (Indians on Skid Row, 1971), Edgar J. Dosman (Indians: The Urban Dilemma, 1972), Jim Frideres (Canada's Indians: Contemporary Conflicts, 1974) have all documented the immiseration of indigenous people when they are forced to migrate from the hinterland into the city.

Strangers particularly, if they are poor vagrants and different or conspicuous in appearance are the targets of police activity. Their lack of privacy and conspicuousness make them vulnerable to intrusion. Police are both the gate-keepers of the criminal justice system and the 'social hygienists' of the community. The police will find a certain variety of crime among the poor because that is where they seek it. Although the 'social harm' of crimes committed by tax evaders, polluters, frauds and corrupt governments is greater than that caused by 'street' people, it is 'street people' who populate the jails (Greenaway, 1980).

Jail based research on the crimes of indigenous people tends to explain their criminal activity in terms of their poverty, their anomie, their maladaptation and observes that some of them are institutionalised and prefer jail to the outside world. These may be fair descriptions of the inmates state of mind, but they are circular explanations of the causes of crime.

The link between alcoholism, indigenous people and under-development emerged as a wholly neglected area of research for some of these reasons. Only Harding (1978) argues that alcohol abuse as a means of managing contradictions is normal behaviour for those experiencing fundamental dislocation on the frontiers of corporate or agrarian expansion. Stress coupled with the 'territorial justice' offered by the State licensed marketeers of alcohol make its abuse very widespread among white and indigenous people. 'Disease' model and eugenescist 'genetic-predisposition' explanations are frequently advanced. It is important to recognise these for what they are:

> [B]latant and subtle racial explanations of community problems in the far north are equally erroneous, they have survived because they have a clear ideological function. If social problems can be explained by referring to race there is no need to look at historical and economic conditions. This supports those who try to equate development with corporate expansion. Since the concrete impact of such expansion on communities gets ignored. Instead of assessments of social impact we get generalities and rhetoric about 'northern development' and racist innuendo about the 'under development of people of Indian ancestry (ibid., p.33).

CONTRIBUTION FACTORS IN THE CRIMINAL JUSTICE SYSTEM

Is prejudiced discretion a 'factor'?

We have no doubt that discretion throughout the criminal justice system is excercised in a discriminatory fashion - sometimes with excessive leniency but more often with excessive severity (Greenaway, 1980, p.251, CCA, 1967, p.55, Hylton et al., 1979). Likewise we accept the assumption that indigenous people are ignorant of, and have difficulty enforcing their rights to due process as well as their social, political and economic rights (Morse, 1976; Havemann, 1982; Indian Conditions, 1982).

'SOLUTIONS?'

It is from respect of these shared assumptions about contributory factors located within the criminal justice system itself that some of our less global questions are raised about the 'solutions' which have been derived from the dominant model.

PREJUDICED DISCRETION - CROSS-CULTURAL EDUCATION

In Canada most cross-cultural education, that is, education about Canada's indigenous people, has been directed at police recruits (Hylton, 1981). Most of it tends to emphasise their 'differences' from the dominant society in cultural and customary terms. Canadian programs have either been delivered by white anthropologists or militant indigenous organisations. The programs at the RCMP Training Academy and the Saskatchewan Police College - tend to be rather atheoretical. No detailed attempt to describe and explain the process of pacification and its contemporary economic and social consequences are offered.

We would regard cross-cultural recruit education or in-service workshops as the ground work for a lifelong or career-long process. The combating of prejudice cannot simply be accomplished by juxtaposing the truth or rational argumentation against myth and irrational argumentation. Selection is a first step. Most important are the provision incentives for competent, that is, harmonious race relations, and the promotion of accountability through disciplinary penalties for discriminatory conduct. Such measures to combat prejudiced conduct must become a real part of the operating procedures throughout bureaucracies in the criminal justice system. No research came to our attention relating to these approaches.

Independent complaints procedures do not exist in Canadian police services or correctional institutions. Secret in-house disciplinary procedures and a professional ethos reeking with order/assimilationist assumptions, the 'blaming the victim'

ideology and simple racism (Hylton, et al., 1979), instead provide the dominant context. We believe that no amount of cross-cultural education alone will overcome this.

PREJUDICED DISCRETION AND INDIGENISATION

One of the results of a century and a half of 'assimilationist policies' including reneging on the treaties between Indian nations and the Canadian State, is a great official reluctance to give indigenous people autonomous control over services, particularly those involving overt social or crime control. At the same time it is well understood that 'consent', for example, consensus policing (Cowell, Jones, and Young, 1982) to such control is highly desirable. The compromise between 'accommodating' autonomous indigenous services and simply imposing control has been 'indigenisation' - the recruitment of indigenous people to staff the components of the criminal justice system which directly interface with indigenous people.

Each component of the criminal justice system and each region or community probably require specific analysis when discussing the merits and demerits of 'indigenization'. We have argued that it is an 'integrative' rather than 'accommodatory' approach which requires considerable questioning especially in the policing area (Havemann, 1983).

INDIGENISATION AND LAW ENFORCEMENT

Since the early 1970s Canadian governments have attempted to combat prejudiced policing by the integration of indigenous people into regular police forces. This approach (Option 3b) (Canada-Diand, 1973) is the most favoured compromise between indigenous involvement in, and indigenous self-management of, policing (Hale, 1974; Harris, 1977, Bryant, et al., 1978; Kirby, 1978). Government sponsored reviews have given little encouragement to the accommodation of indigenous-managed policing where it has been permitted to occur (Kirby, 1978; Singer and Mayer, 1981) such as band council constables, the Amerindian Police in Quebec and the Dakata-Ojibway Tribal Police in Manitoba.

Where indigenous organisations have evaluated the merits of indigenised policing they have been far less positive (Brass, 1979; NCSA, 1980). Instead they have urged that governments share power and promote Option 3a, namely, fully-fledged autonomous police forces for those communities, especially reserves, which want them.

Indigenised police forces have an historical association with violent pacification (see Rowley, 1972; Loos, 1982 in Australia, Hagan 1966 in the United States of America). They are not controlled by, or accountable to, their own communities as 'white'

police are in theory. They bear no resemblance to consensus policing (Cowell, Jones and Young, 1982) as long as they enforce the rules of the colonist's legal system.

Indigenisation in this historical and political context is unlikely to provide a bridge between dependency and autonomy. Furthermore the conflicts of loyalties and identity create stresses for indigenous officers. Some studies have found that such officers are not largely recruited from traditional families (Brass, 1979). Gunter's useful evaluation of the Australian situation draws similar inferences (Gunter, 1982, p.92).

INDIGENISATION IN THE CRIMINAL COURT PROCESS

Lawyers

Since 1974 the Native Law Centre at the College of Law, University of Saskatchewan has run the Native Law Student Program. This is a 'head start' compensatory educational program designed to augment the numbers of indigenous lawyers in the system. The first independent evaluation concluded that the program's success has been more in its symbolic value, in showing the Law School door was ajar and therefore had encouraged Indian people to apply to enter (MacLean, 1977). Only 46 per cent of those entering Law School through this door passed the first year. Many did not pass the NLS Program itself to get into Law School. Both categories of unsuccessful candidates may well define themselves as failures. Those who succeed may not want to serve indigenous people.

We would advocate a more broadly conceived program for affirmative entry into professional and other schools which included in and of itself a 'terminal' qualification. The University of Regina offers 'Human Services' education such as social work and human justice through the autonomous Saskatchewan Indian Federated College. This model also deserves exploration.

Adjudicators - JPs (See Havemann et al., 1984, Ch. 3).

Since 1881 it has been possible by a cumbersome process to appoint as Justices of the Peace to serve reserves (Morse, 1980). Band Councils are empowered to request the Minister of Indian Affairs to apply to the Governor-General through the Cabinet to make such appointments. Until relatively recent times the Indian Agent, a white bureaucrat, was the ex officio holder of this office. Indigenous people have not, therefore, seen it as a desirable role. Recent surveys of the use of indigenous Justices of the Peace found that they have been under utilised (Mewett, 1982; Maracle, McCormick and Jolly, 1982). An indigenous organisation, the Ontario Native Council on Justice, advocated the expansion of the Indian Justice of the Peace scheme, subject to the right of Band Councils to resolve who should be a Justice of the Peace and increased access to rigorous training and extensive assistance and support from the Ontario Attorney-General's Department (Maracle et al., 1982).

In contrast the review conducted for the Ontario Attorney-General at the same time reacted to the notion of self-government by stating that it would be unacceptable, 'that a duly appointed Native Justice of the Peace being in any way subservient to or answerable to a band council or clan elders (Mewett 1982, p.218).

Despite the fact that both evaluations supported expanding the 'indigenisation' of the summary trial system, the government sponsored report say this as an adjunct to the state legal system while the Ontario Native Council on Justice envisaged that it was one stage in developing an indigenous non-State legal system. The ambiguity of indigenisation as a solution again emerges. We must ask whether 'indigenisation' is a means of assimilating indigenous people into the imposed system or a means of changing this system to make it more appropriate to them? Fundamental to this is the clash of assumptions about the nature of authority, meritocracy versus gerontocracy, subjectivity versus objectivity decision-making. Australians are particularly alert to these issues (Syddall, 1984; Hoddinott, 1985).

The monism of the Canadian legal system is also reflected in the substantive law itself. Canadian jurisprudence in both the civil and criminal sphere lacks recognition of particular factors of custom, conduct, or circumstance, differentiating the indigenous person from her/his Euro-Canadian counter-part. The substantive criteria determining the degree of guilt and hence the severity or leniency of the sentence remain insensitive to indigenous peoples particular situation.

In discussing the criminal process we need to relate the absence of substantive indigenous laws to the absence of indigenous courts. Both the umpire and the rules of the game are biased in favour of the dominant society.

INDIGENISATION AND THE CORRECTIONAL SYSTEM

Evaluations of the indigenisation of staff in the correctional system were not available. Even indigenous organisations rarely questioned the merits of this integrative tactic.

The field of community corrections is one in which the policy of accommodating indigenous agencies rather than emphasising indigenisation of white institutions has taken place (NCSA, 1980; Jolly, 1982; Dubec, 1982; Heinnemann, 1978; Finkler, 1982).

Funding shortages or lack of co-operation from the imposed criminal justice system bureaucracies have hampered these programs. They seem like good solutions to both the problems of incarceration and prejudice. Funding and co-operation must be considerable and sustained. Otherwise they will become victims

of the self-fulfilling prophesy of failure which government is prone to make about agencies outside the ambit of its control and working on a shoestring budget.

In our view the indigenisation of correctional personnel when it places workers in the role of advocate and enabler of their people constitutes a compromise which is acceptable and desirable. However, if they are used as an extension of 'static security' then the same debilitating consequences which flow from the law enforcement and adjudication role will result.

DUE PROCESS AND THE MYTH OF RIGHTS?

Finally, how effectively can public legal education, legal aid and native court worker programs assist indigenous people to enforce their rights and thereby reduce their involvement with the courts and jails?

PUBLIC LEGAL EDUCATION

Some public legal education programs have been offered. In our view such programs must be integrated into legal aid or community development schemes. Information about rights and duties can be no substitute for the means to enforce these rights. Public legal education outside the context of community organisation or legal aid perpetuates the myth of rights. Sometimes it is covert advertising by lawyers. Indigenous legal aid schemes should be developed with the capacity to perform this educational and empowering role.

LEGAL REPRESENTATION

Unlike Australia's Aboriginal Legal Services (Lyons, 1984) there are no autonomous indigenous legal aid agencies (Morse, 1976). Two attempts to develop a special unit within existing provincial legal aid schemes have been attempted in Saskatchawan (Havemann, 1982) and Ontario (Fiewin and Masinula 1980). Neither has been very effective (Havemann et al., 1984, Ch.3). Indigenous legal aid schemes are required to try to equalise adversaries in the imposed system.

NATIVE COURT WORKERS

An integrative program developed to de-mystify the court process has been the Native Court worker scheme. Court workers are not part of legal aid schemes they are linked to the autonomous Friendship Centres. Nonetheless they 'indigenise' the interface between the indigenous accused and the court for the benefit of both. As 'go-betweens' court workers experience role, and identity conflicts and there is widespread confusion among court workers and their clients about the scope and limitations on their role (NCSA, 1982, Obonsawin and Jolly, 1980, Fearn and Kipfer, 1981).

However, judges and other criminal justice system personnel appreciate their services considerably (Fearn and Kupfer, 1981).

As they are not advocates we have questions about the short-term, personal and long-term political implications of this compromise. A need for this type of service is not doubted but the ethos which these workers operate should be more akin to that of a legal aid agency and not that of a probation or parole service.

CONCLUSION

The 'problem' of over-involvement takes courage to understand and courage to solve. Timidity about relinquishing power has characterised our thinking at both stages. Having evaluated the ineffectiveness of our attempts to understand and solve the problem how can we deny indigenous people the opportunity to do better? They surely will not do worse.

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IV

COMMUNITY REGULATION IN AUSTRALIA

COMMUNITY JUSTICE CENTRES IN NEW SOUTH WALES:

An experimental model that works

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I have been quite uncertain as to what I could contribute to this Workshop, as my experience is not specifically in this area. However, after the preceding discussions it is evident that this Workshop is seeking practical solutions, possibilities for change and an opportunity for some lateral thinking. I offer our experience in establishing Community Justice Centres as one way of dealing with one area that has long been a problem with the traditional European justice system. This is not offered as a panacea for all the problems of the justice system, but as a possible spring board for new ideas.

Community Justice Centres are not aimed at the Aboriginal community, or for that matter at any specific part of the community. We have, it seems, achieved a somewhat unusual result, in that Aboriginals are represented in our case-load in roughly the same proportions as they are in the catchment areas. Established in 1980 by the then Attorney-General, Frank Walker, Q.C., M.P., the Community Justice Centres have now handled over 8,000 disputes. It had long been acknowledged that the courts were frequently unable to deal effectively with a range of minor criminal or civil disputes. These disputes, regarded as 'minor' by the law and maybe to others, assume 'major' importance in the lives of those concerned.

Some disputes may not have a 'legal' solution, unless one party, or both, resort to more direct action. Even resulting legal action is unlikely to resolve the basis of the dispute, dealing instead with the incident that brought the matter to court. Often they return to the court on many occasions - the same parties to the dispute, and basically the same dispute -escalating perhaps from a dispute over a fence, or harassment, to threats, property damage, and ultimately violence. Community Justice Centres use mediation as the preferred method of dispute resolution.

What is Mediation?

Mediation is a voluntary process whereby an impartial third party aids the parties in reaching their own agreement. The parties must agree to the intervention of the mediator who may be

appointed by an authority, or approached by the parties. The mediator has no power to arbitrate or adjudicate.

In arbitration, both principals consent to the intervention of a third party whose judgment they must agree to accept beforehand.

An adjudicator is a third party who has the authority to intervene in a dispute whether or not the principals want it. An adjudicator is empowered to make a decision and to enforce compliance with that decision.

Both arbitration and adjudication have authoritative people making decisions on right and wrong, and determining the outcome of the dispute.

In negotiation, the two principal parties are the decision-makers, and the settlement is one to which both parties agree, without the aid of a third party.

Conciliation may precede any of these. An impartial third party acts to bring the principals together for the purpose of dispute settlement. A conciliator may continue to 'transmit' offers for settlement from one party to the other.

Mediation Preferred Mode of Dispute Resolution

The New South Wales Community Justice Centres project has opted for mediation as the preferred mode of dispute resolution. The aim of the Centres is not to make authoritative decisions for the disputing parties, but to help them to reach their own mutually acceptable resolution of the dispute, through a process of voluntary mediation. It does not arbitrate or adjudicate, nor does it give legal advice or counselling. Centre staff may conciliate prior to a mediation session being arranged and may bring about resolution of a simple dispute through conciliation.

The Community Justice Centres have a policy of using two mediators at each mediation session. Ideally, the mediators will reflect the ages, outlook and cultures of the disputants. Where possible, mediators who speak the first language of the disputants will be used.

Each Community Justice Centre has a panel of mediators, chosen to be representative of the community in which it is situated. The mediators were chosen on the basis of personal suitability rather than academic qualification. Amongst the ranks of mediators are boilermakers, psychologists, teachers, policemen, truck drivers, clerks, company directors, storemen, interpreters, journalists, students, and many more. Ages of the mediators range from 18 to 65.

About half the mediators are of ethnic origin, and between them, speak about twenty languages. Interpreters are provided by the Centres when necessary, but the use of bilingual mediators has provided a service that is unusually accessible to people whose first language is not English. Many mediations have been conducted wholly in a language other than English, including Greek, Italian, Yugoslav, Chinese, Arabic, Russian, Spanish and Portuguese. Most disputes handled by the Community Justice Centres are between neighbours, but significant numbers of disputes between family members, fellow-workers or people in other types of social and business relationships have been successfully resolved through mediation. All mediators complete a special training course conducted by some of the New South Wales TAFE Colleges.

Mediation is a logical process, informal in nature but not an unstructured, shouting match where the strongest or loudest emerges triumphant. The agreement made comes from the parties themselves, and is not imposed by the mediators. It is important that the mediators help the disputants to find a solution that they can live with. Agreements are usually written in the ordinary language of the disputants, not in legalese, and each party gets a copy. The mediators do not decide right or wrong, guilt or innocence. They do not apportion blame, award costs, or impose penalties. Community Justice Centres do not arbitrate or adjudicate.

Community Justice Centres operated as a pilot project for three years and have not been confirmed as a permenent part of government services. The Community Justice Centres Act 1983 confirms the voluntary nature of mediation and provides for confidentiality and privilege.

The Act provides:

(a) that mediation sessions shall be conducted with as little formality and technicality, and with as much expedition, as possible;

(b) that the rules of evidence do not apply; and,

(c) mediation sessions shall be conducted in the absence of the public.

Attendance at and participation in mediation sessions are voluntary. A party may withdraw from a mediation session at any time. Any agreement reached, at or drawn up pursuant to a mediation session, is not enforceable in any court or tribunal.

Community Justice Centre mediation sessions are privileged and evidence of anything said, or of any admission made, in a mediation session is not admissible in any proceedings before any

court, tribunal or body. This also applies to documents used for the mediation. Information obtained in connection with a mediation session may be disclosed only in certain circumstances.

The first year of operation of the Centres was evaluated by the Law Foundation of New South Wales, and following their report the New South Wales government has established the project on a permanent basis.

How Effective are Community Justice Centres?

Community Justice Centres are able to aid in the resolution of around half of all disputes brought to the Centres. Where both parties agree to mediate (approximately 33 per cent), about 85 per cent reach agreement. Approximately 20 per cent of all disputes are conciliated. Research in the United States indicates that the parties are much more likely to keep an unenforceable mediated agreement than they are to fully comply with an adjudicated, enforceable settlement.

Plural System

In a sense, Community Justice Centres demonstrate some of the possibilities for the sort of plural system that has previously been mentioned in this Workshop. Over 50 per cent of all disputes dealt with at the Criminal Justice Centres involve violence, serious threats, property damage or theft. In many of these, the disputants had already instituted legal action against each other. In some cases, police had become involved, and charges were pending. Mediation frequently results in resolution of the dispute and agreement that the legal action be dropped.

Where police charges are involved, the dispute is fully resolved, the Community Justice Centres may advise the Commissioner (at the request of the parties) and ask that consideration be given to discontinuing the action, or at least allowing the parties time to demonstrate that the dispute is in fact resolved. This process has provided for lasting resolution of potentially serious disputes that could have been perpetuated by proceeding with court action and punishment.

Although Community Justice Centre agreements are not admissible in court, the parties do sometimes advise the court of details of the agreement they have reached. The court may then 'impose' a settlement along the same lines. Mediation is not the 'cure-all' for the ills of the justice system. It is inappropriate if the goal is punishment. The goal of mediation is resolution of the dispute, or effective management of the conflict.

We do not see conflict as abnormal or wrong, it is the ineffective or destructive expression of conflict that causes trouble for people. Where the conflict can be effectively managed, and constructively dealt with, it can be an enriching and educative process for everyone.

One criticism of Community Justice Centres, (mostly by academics and never by users) is that mediation 'privatises' disputes; conflict that is caused by unequal positions in society is turned into an interpersonal dispute with all responsibility resting on the disputants. It has occurred to me, in listening to other speakers, that one of the concerns many people have expressed is almost the opposite - the State (police) becoming involved in private disputes - taking over the dispute, punishing one or all disputants, and effectively preventing the resolution of the dispute.

Mediation on the other hand is a re-empowering process. It gives people a chance to own their own dispute and puts back onto the disputants responsibility for the dispute - its escalation and its resolution. Community Justice Centres emphasise the necessity for the people to make the decisions at all points. From the initial contact with the presenting party, the users and not the Centre staff, make decisions about the dispute resolution process. They decide whether to try mediation; they decide the matters to be discussed at the session; and they decide the people to be involved. The parties remain able to decide about their continued involvement, and decide the ultimate outcome of the mediation.

Overwhelmingly, people in a dispute - involving 'victim/offender conflict' have things they want to say to each other. The legal system tends to prevent this - people are isolated from each other. They are told not to communicate directly, but through their lawyers. They may go through the court processes without any opportunity to say the things they need to say. Mediation gives them this chance. In fact, that may be all that is needed. It often turns out that all the 'victim' needed was to have their grievance recognised, to 'have a growl' and perhaps get an apology. In these cases the full glory of 'the Law' is an irrelevance and an expensive over-reaction.

Mediation is also an educative process; it tends not to breed dependence on the system. Indications are that participants in a mediation session are more likely to be able to resolve future disputes without assistance. Their experience of working through a dispute in an organised fashion points the way for them in other conflict.

Potential

The potential for mediation has not yet been fully realised in Australia, and many more disputes could be effectively handled by Community Justice Centres. Mediation is effective in resolving generation conflict, especially in ethnic families, where there are cultural clashes between parents and their young adult children. It may also prove useful in resolving certain complaints against people in authority, where it is a clash of personalities and misunderstanding rather than an abuse of power.

We are developing ways of dealing with multi-party disputes where there is a 'pool' of general disputing and friction within a small community or a community group. Mediation can help in the resolution of conflict between or within organisations, allowing the dispute to be settled with dignity and without humiliation.

We believe that mediation projects should not be established without regard for quality control. It is essential for disputants to have proper legal protection through enabling legislation. Mediators must be carefully selected, adequately trained, and well supervised. Mechanisms must be devised to ensure that mediators do not adjudicate or arbitrate, or begin to impose their own moral standards.

I offer this paper as our experience of estalishing an innovative project where the bureaucracy had to adapt its own practices to allow it to operate. It was not established without considerable difficulty, a measure of opposition and the passive resistance of the established order.

I would not presume to decide on the relevance of mediation and criminal justice centres for Aboriginal communities. Such decisions should be made by other people in other places. Our experience demonstrates one option for changing one part of a system that is currently not working. We welcome this opportunity to share what we have learned, and look forward to other developments in other places, not duplicating what we have done, but building on it, adapting it to suit local needs, developing the skills and ideas further, incorporating older, traditional skills thus promoting better understanding of conflict and its resolution.

EXTRACTS FROM THE 1983-84 ANNUAL REPORT

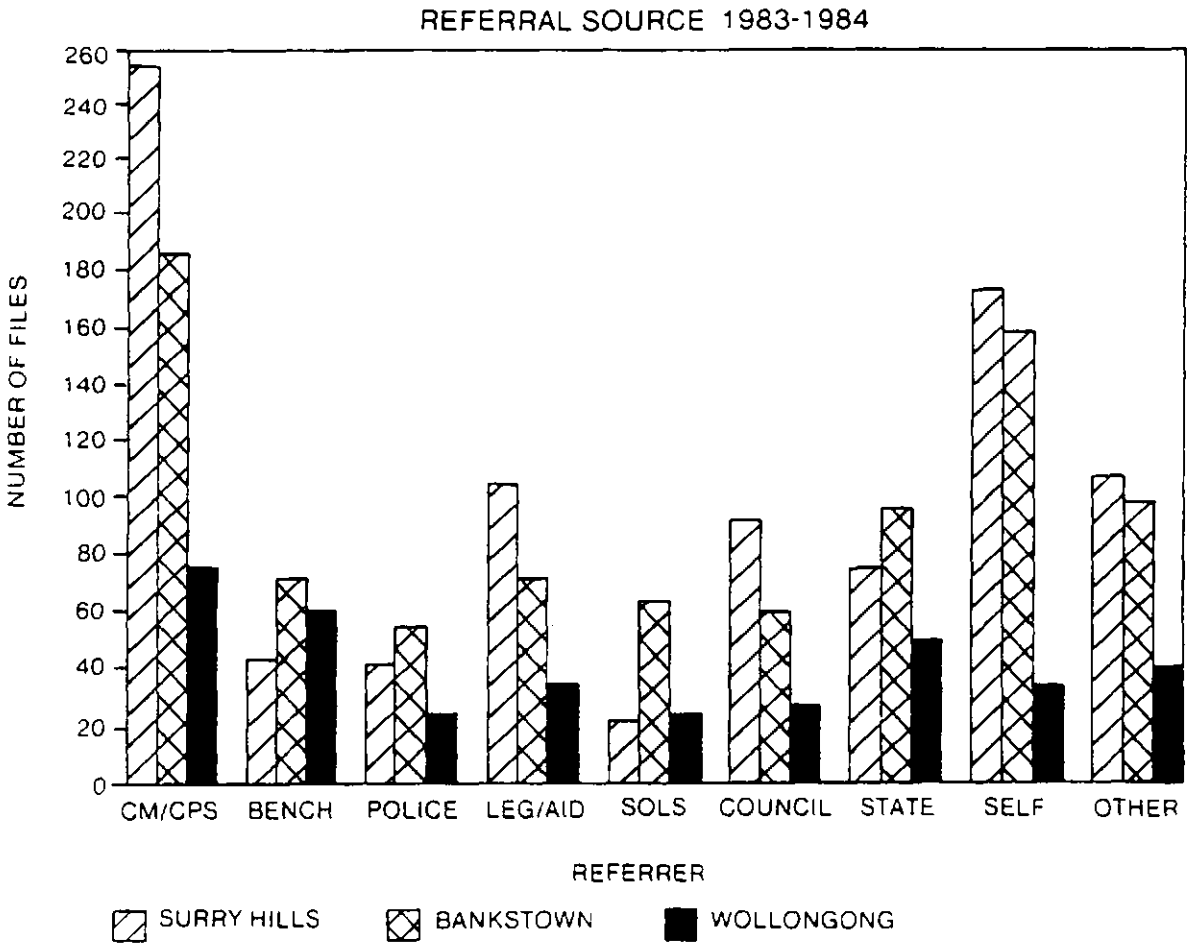
Nature and Complexity of Disputes

Staff of the Community Justice Centres have long contended that because of the complex nature of the disputes being dealt with, it was inappropriate to define the disputes by one category only (for example, 'fence' and 'violence'). The 'degree of escalation' was classified separately (see figure below) and up to six factors in each dispute were coded. It is interesting to note that 38 per cent of all disputes had four or more factors, with an overall average of three factors per dispute.

The 'nature of dispute' categories give some idea of the range of complaints made by disputants, from specific issues related to the physical environment, such as 'blocked light' and 'fences', to complex and less definable matters like the use of spells ('witchcraft') or rumour and gossip. They range from accusations of subtle sexual harassment, to acknowledgement of mutual shouting matches and hosing.

The factors identified in disputes most frequently at the Centres were:

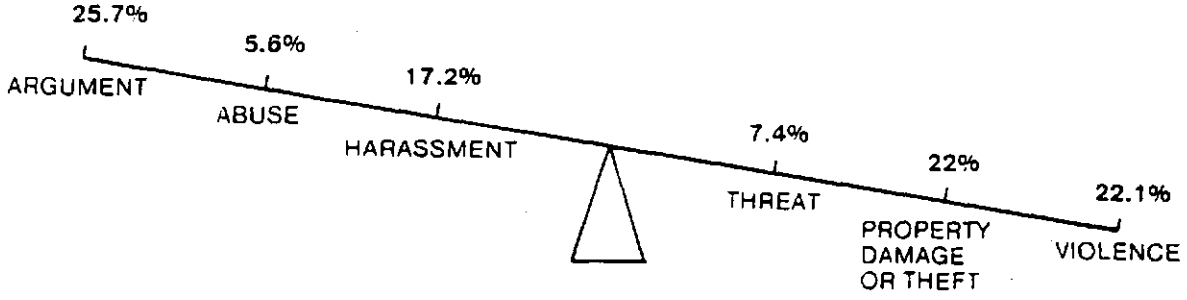
	Files Opened	Percentage
Violence or Threats	642	29.3
Abuse	495	22.6
Children, Children's behaviour	434	19.8
Harassment	415	19.0
Debt	400	18.3
Fences	389	17.8
Property/Damage/Theft	379	17.3
Trees	305	13.9
Noise (animals, tools, music, etc.)	230	10.5



Escalation of Disputes

In an attempt to determine the relative 'seriousness' of the disputes being handled, Community Justice Centres devised a scale of escalation from argument at the 'light' end of the scale to abuse, harassment, threats, property damage (or theft) with violence at the 'heavy' end.

The numbers of disputes are almost equally distributed between the 'light' and the 'heavy' end.



Outcome of Community Justice Centre Intervention

	No.	Percentage
A Withdraws. (Party A initially accepted CJC offer to mediate, but later withdraws.)	175	8.0
B Declines. (Party B contacts CJC in response to letter and declines offer to mediate.)	470	21.6
B No Contact. (Party B does not respond to letters from CJC.)	238	10.9
Conciliated agreement. (Agreement reached communicating through CJC staff.)	517	23.7
B Withdraws. (Party B accepts CJC offer to mediate, but withdraws before session.)	38	1.7
A No Show. (Mediation session arranged, Party A does not attend.)	18	0.8
B No Show. (Mediation session arranged, Party B does not attend.)	25	1.1
Both No Show. (Mediation session arranged, neither party attends.)	16	0.7
No Agreement. (Mediation session held, no agreement reached	120	5.5
Mediated Agreement.	541	24.8
CJC Withdraws. (After initially opening a file, CJC withdraws because dispute appears inappropriate for mediation.)	12	0.6
Referred to other CJC	10	0.5

(Note: Outcome pending 20 cases.)

COMMUNITY SERVICE PROJECTS ON ABORIGINAL COMMUNITIES IN QUEENSLAND

Senior Sergeant J.A. MacDonald
Police/Aboriginal Liaison Officer
Cairns North Queensland

At the outset I would point out that on each and every established Aboriginal community in Queensland, there is in existence a set of by-laws, relating to the orderly government of that particular community. These by-laws are not unlike by-laws in force in local county, city, and shire councils in other parts of Queensland, covering aspects of control of dogs, hygiene, etc. but they are unique in that they also cover a code of social behaviour and regulate drunkenness, fighting, causing disturbances, etc., within the relevant community. Breaches of these by-laws are offences and proceedings can be commenced by either arrest at the time or complaint and summons action at a later time. The majority of proceedings are by way of arrest, either by Aboriginal Police or Queensland State Police on the community.

These breaches of the by-laws are dealt with in what is called an Aboriginal court, formulated under the provisions of the Community Services Act, a recent form of Queensland State legislation replacing the Aborigines Act. These Aboriginal courts have been in operation on Aboriginal communities for some years and in the main have been most successful. They are comprised of two Aboriginal Justices of the Peace, residents of the community, or by a majority of the Aboriginal Council of the community, sitting in a similar manner to Courts of Petty Sessions or Magistrates' Court. However, the normal rules of evidence are not strictly required or followed, and proceedings are generally of a very informal nature. Section 43 of the Community Services Act creates the Aboriginal courts, and section 25(6) of the Act creates the penalty of a maximum fine of $500 for a breach of the by-laws. Although other Queensland statutes prevail and have full power and effect on the communities, the By-law offences and procedure are usually adopted for simple misbehaviour offences; first, because of being specially created for the Aboriginal community and being dealt with by Aboriginal persons, and second, because of the informality of charging, evidence, etc., resulting in a minimum of paperwork and intrusion of European influence in the form of police or legal service. Representatives of the legal service are eligible to act on behalf of an offender in the Aboriginal court but rarely do so.

Regulation 24 of the Community Services (Aborigines) Regulations 1985 provides for the Aboriginal court to impose a fine option order in lieu of monetary penalty, the same as the Magistrates' Court or Court of Petty Sessions is allowed. This option provides for a number of hours community service instead of fines, and operates under the supervision of an officer of the Probation and Parole Service in the normal Magistrates' Court. However, on the communities, such supervision has not been formalised and is subject to variance from community to community. For instance, on some communities, the community service is supervised by a community services liaison officer, on others, it is supervised by the Aboriginal police. It should be pointed out that at the present time the legality of the Aboriginal courts to impose community service is subject to a legal hiccup, and the Crown Law Department is studying the matter to either rectify the legislative provisions or delete it from the operation in the Aboriginal court system.

Community service at Aboriginal communities in Queensland, takes the form of general cleaning-up of the community public areas, assisting old age pensioners in their day-to-day provisioning, and other duties as directed by the relevant supervisor. The service is generally such that it does not intrude into specific employment positions on the community. It has a number of advantages:

(a) by fine optioning, the family of the offender is not deprived of money normally needed for living expenses;

(b) it avoids the possibility of imprisonment for non-payment of the monetary penalty, and the adverse effect upon the offender by such imprisonment;

(c) the economics of community service are attractive; free service for jobs which may have required payment from a limited funds supply, and less funding for imprisonment purposes;

(d) the 'shame' effect in some instances of having to work around the community, unpaid, and under supervision, and the resultant deterrent to commit further offences;

(e) the achievement of worthwhile projects which may have been delayed or not commenced at all due to lack of funds; and

(f) the relatively low cost of providing the supervision required for community service, making use of the existing Aboriginal police service or liaison officers.

It has been found that community service has been accepted as a popular alternative to fining and imprisonment on Queensland Aboriginal communities. The Aboriginal court justices of the

peace indicate that it is more acceptable for them to impose such a penalty in lieu of fining or imprisonment on their friends or relatives, and conversely, the offender does not feel such antagonism towards the justices of the peace when community service is imposed. Incidentally, the maximum period of community service provided for is 200 hours. Unfortunately, on some communities it has been observed that there is a limit to the extent of jobs requiring community service and there have been instances where there was simply just not enough to do around the community. It is, therefore, necessary to avoid any suggestion that being placed on community service is a 'good bludge', and authorities and councils must be vigilant in this regard or the advantages including the deterrent effect will be minimal.

Overall, the community service projects, as an alternative to fining or imprisonment, have been introduced into Queensland Aboriginal communities with a high degree of success. There are some handicaps in the lack of formal supervision, however, this is not of such a degree as to jeopardise the operation of the projects, and once the legal aspect of the legislation has been resolved I am confident that formal supervision will be implemented.

ABORIGINALS AND THE COURTS I AND II

(An Abridged reprint of two papers from B. Swanton (ed.), Aborigines and Criminal Justice, 1984)

Terence Syddall
Stipendiary Magistrate
Perth
presented September 1983

In 1970, after practising as a lawyer, I was appointed magistrate for the Kimberley region of Western Australia. My first contact with Aboriginals left me with a feeling of total inadequacy - I wanted to leave the place and get away from the violence, poverty, degredation, immorality and sickness which was everywhere - I had seen the effects of the 1930s depression but nothing like this.

The Broome Regional Prison was always filled to capacity with Aboriginals, as were the police lock-ups in all the other Kimberley towns, and I was at a loss to know what could be done. I wasted a lot of time talking to white people about the problem - each was an expert, delivering simplistic answers in the most profound manner. Of course, I was new to the region and had not met the many dedicated people who have devoted their lives to the mitigation of some of the hardships experienced by Aboriginal people in the Kimberley. Although Europeans had been unable to provide satisfactory answers to my problem it was clear something had to be done - too many Aboriginals were coming before the courts and many were sentenced to imprisonment for the most trivial of offences. The Department of Corrections informed me that although Aboriginals in Western Australia were less than three per cent of the population, they outnumbered considerably the white prison population of persons serving six months or less. There simply had to be an explanation other than those expressed by my European contacts.

I decided, therefore, to visit the prisons and lock-ups to speak to the inmates themselves.

Upon being questioned, the vast majority of Aboriginal inmates said they had been imprisoned for drunkenness whereas records indicated that they had been sentenced for such offences as assault, disorderly conduct, resisting arrest, stealing, unlawful

use of motor vehicles and non-payment of fines. Of course, a check of police files indicated that most of the offences were alcohol induced or related.

From these discussions and discussions with other Aboriginals it became clear that Aboriginal knowledge of European society was as abysmal as the knowledge whites had exhibited about Aboriginal matters. It seemed to the Aboriginals that Europeans were never punished when they got drunk whereas Aboriginals were. In this, of course, they were close to the truth because it was unusual ever to find a European charged with simple drunkenness, but whether this was explicable only on the grounds of discrimination or because Aboriginals are much more obvious when drunk it is hard to say - perhaps a bit of both. Certainly domestic fights between spouses usually had different consequences depending upon race. Europeans fought behind closed doors whereas Aboriginals gave vent to their feelings in open camps and their public show of violence led invariably to arrest for disorderly conduct or assault. To them of course their offence was being 'full drunk'.

Because many town-dwelling Aboriginals have little or no opportunity of practising their traditional customs they frequently use alcohol as a substitute. They sit in groups and pass bottles of fortified wines from one to another in a ritualistic way. From it they derive a feeling of bon ami, warmth and sharing which they miss because these things are central to their character. Naturally, the wine takes effect, and when they become a nuisance by European standards, they are arrested for disorderly conduct or something similar.

The common sanction in most unsophisticated societies is the public harangue and Aboriginal people use it frequently. If people feel aggrieved they will 'growl' at their victims in the presence of other members of the community and cut them down to size. The pub, is the obvious place to do this especially when alcohol has raised memories of hurts - real or imaginary. Quarrelsome behaviour is, in European terms, disorderly conduct and arrest and imprisonment often follows for doing what, in Aboriginal eyes, is their right.

When two people of the same skin group fight it is not uncommon to see a woman, whom they are required by their law to avoid, to divest herself of her clothing and stand naked between them. Naturally, the men cannot look at each other without looking also at her and the fight ceases. Unfortunately, if the women is seen by police she will be arrested for disorderly conduct or offensive behaviour and yet another Aboriginal method of social control takes a beating. Criticism was often levelled at Aboriginals for spending pension and welfare cheques on grog. Many Aboriginal men in receipt of unemployment benefits believed that no obligation existed in them to support their families with

monies received from that source. However, their attitude changed when it was pointed out that cheques received by them were indelibly marked with the names of the persons for whose benefit they were drawn in exactly the same way as a animal caught in the hunt is earmarked for consumption by traditionally designated kin. Government agencies must, I believe, be made aware of the nature and importance of the rules of kinship and government rules should be modified by them to take into account Aboriginal customary rules.

Another matter which I found puzzling was the lack of discipline amongst Aboriginal children in the Kimberley towns as compared with their counterparts in traditionally oriented communities. What I did not know was that women played an indispensible role in the education of all members of traditional Aboriginal societies. During hunting and gathering expeditions, the women taught children most of the skills required for survival as well as most of the customs and laws. The commonly held view that boys received all their training and discipline immediately prior to initiation is patent nonsense and pays no regard to the years of education given by women. The advent of the community store has, to a large extent, deprived children of the benefits of education and discipline formerly afforded to their predecessors during foraging expeditions and this, it is conceived, is a major contributing factor in the breakdown of traditional law and child delinquency.

Language often created difficulties and so sometimes did cultural differences. I was on my way to Halls Creek one day and a radio message diverted the plane to Balgo Hills Mission. When I arrived there the place was in turmoil because the headmaster had been assaulted. It appeared that the teacher had been standing at the blackboard in front of his class when an Aboriginal man entered the room and, without speaking a word, knocked the teacher unconscious with a blow from his clenched fist. The assailant immediately left the room. Naturally enough, the teacher laid a charge of assault again the Aboriginal and to this charge the defendant pleaded guilty. After the facts had been given by the headmaster the defendant was asked for an explanation but refused to give one and I sentenced him to a short period of imprisonment. Sometime later, it came to my knowledge that the defendant's son, whilst walking to school, had, on a number of occasions, been assaulted by another schoolboy from the same camp. The son complained to the headmaster who, in European fashion, told the boy not to worry him over his schoolboy squabbles. The boy then told his father who was a very traditional man. It appeared that the father had equated the teacher's role with that of an 'uncle' preparing novices for manhood and whose duty included arbitration on disputes between novices, default of which rendered him liable to punishment by the natural father of the injured novice. As the headmaster ('uncle') had refused to arbitrate between the

schoolboys ('novices') it followed that the father had to punish him in accordance with the law. Had the teacher been aware of the role assigned to him by members of the community the assault might have never occurred.

Avoidance rules make courts difficult to run when a witness is not permitted to look at a defendant and, unless one is aware of this, a person's credit may be doubted. Again, the name of a deceased relative cannot be mentioned and a witness may refuse to look at a photograph of a deceased. Sometimes people will plead guilty rather than have a matter go to trial and run the risk of revealing tribal secrets or of repeating words which provoked an assault. For example, the names of male and female sex organs, the names of dead persons, and sacred objects.

It is not easy getting information from Aboriginal people, their confidence in Europeans has been shattered many times and they guard their secrets jealously. I was tested on numerous occasions and had my leg pulled more times than I care to remember, but once they were sure that I genuinely wanted to help, they were generous and patient teachers.

After a while, I understood some of the problems facing Aboriginals and naturally they understood a great deal more about my law and the problems I faced in administering it to a multi-cultural society. From January 1971, I invited Aboriginal people to sit with me in court and to advise me on Aboriginal matters. In turn, I advised them of the requirements of the white law and this information was disseminated by them. In addition, in defended cases I explained to the defendant, the advisers, and others present in court, the substantive law and procedures as they arose. In consequence, less mistakes were made, Aboriginals began to feel less like victims of white society, and best of all, the prison population was reduced. Aboriginals started to draw analogies between the white law and their own rules of social control. It was a very useful experiment which ended when I returned to Perth in 1974.

Apart from experiments by me with court advisers in the early 1970s, the only roles Aboriginals had played in the European system of law had been as defendants or witnesses. They had no part in the judicial process and felt that law enforcement agencies collaborated against them. They were unable to distinguish between charge, arrest, trial and conviction and the high rate of recidivism reduced motivation to fight the system which seemed to, and very often did, oppress them. It is axiomatic that effective operation of law within any community requires a broad appreciation of its principles, functioning and objectives by the community which may then reasonably be expected to support it. Clearly, Kimberley Aboriginals did not approach these criteria. Eggleston made the same point when she wrote:

> In my view, any attempt to hand over more responsibility to Aboriginals in relation to the whole legal process is to be encouraged. Aboriginal defendants are more likely to feel that they have been accorded justice after trial by their peers than when they have been judged by members of the alien white society. To ensure trial by peers it would be necessary to provide courts staffed by Aboriginals, who are genuinely representative of the Aboriginal community, not of white administration. If this is considered impracticable or inadvisable, an alternative would be mixed tribunals of white judges or magistrates sitting with Aboriginal assessors. In this way, Aboriginals would be able to express their views and become involved in the legal system in a role other than that of passive defendants.

It seemed clear that it was not so much the law which caused difficulties but rather the problems derived from its administration and the atmosphere of that administration. The task, therefore, was to diminish many of the apparent injustices in the eyes of Aboriginals by their involvement in the administration of justice. Technical complexities of procedure could, it was conceived, be removed from the law without altering its basic structure. It was believed that by doing that, a reduction of fear and puzzlement by the Aboriginals would follow. Moreover, flowing from their participation in, and greater understanding of the law, it was felt that they themselves would co-operate in maintaining and upholding the law without resentment at its imposition on them.

Fears were expressed - almost exclusively by Europeans -that participation in the European system of law would result in diminution or total abandonment by the Aboriginals of their traditional law. No such fears were held by either the Aboriginal leaders or by me. On the contrary I envisaged fortification of their law within the wider ambit of the general Australian law.

Whilst in the south my contact with Aboriginals was maintained because of reports I did for the Commonwealth and State Governments on the iniquitous Skull Creek incident and other events which had occurred in the Goldfields and Central Reserve and, in 1976, I asked if I might return to the Kimberley to enable me, in my spare time, to do a comparative study of Aboriginal and European systems of social control. Sometime after my return the then Attorney-General Mr Medcalf, asked me to conduct an official inquiry into the question of Aboriginals and the law, with particular emphasis on the development of greater understanding and harmony between races. At the same time I was

to continue functioning as a stipendiary magistrate holding courts in situ with as much community involvement as possible.

With the knowledge that most European introduced experiments often result in failure, I determined to intensify my efforts to further familiarise Aboriginal communities as far as possible with the basic principles of European law and administrative procedures. I was not prepared to recommend the introduction of changes in the law or its administration until I was completely satisfied that there was a desire on the part of Aboriginals for such changes and a strong probability of success. It must not be assumed that this inaction was caused by timidity, it was rather because I knew that failure would have deep social ramifications. The 'failure syndrome', so prevalent amongst Aboriginals, would be reinforced; disruptive elements within the communities would be encouraged to continue their anti-social activities; traditional law would suffer, and the scepticism of some Europeans as to the ability of Aboriginals to control their own destinies would receive further confirmation.

Accordingly, research was intensified and the maximum possible consultation was conducted with every representative section of the Kimberley Aboriginals.

First, I went into the remote communities of the Kimberley to places like La Grange, Beagle Bay, One-Arm-Point, Limbadina, Christmas Creek, Fitzroy Crossing, Looma, Balga Hills, Forest River and Turkey Creek. I did not make suggestions but told them of my task and the problems I had. They, in turn, told me of their problems. After many many visits extending over a period of many months a greater understanding resulted. What was said at these meetings was passed on from community to community by traditional means and by the use of cassette-recorders which I supplied to group representatives.

At Fitzroy Crossing during a meeting of about 1,000 Aboriginals it was suggested that many more advisers be appointed to assist me in courts in the Kimberley. But this of course raised serious difficulties because although both the Police and Aboriginal Legal Service had co-operated in the experiments thus far the legal status of advisers was questionable to say the least. What advice should the court accept or reject? What difficulties would be involved in-so-far as defence and prosecution were concerned if advice were given to the court contrary to the wishes of the parties. Then it was suggested that Aboriginal justices of the peace be appointed, but this raised problems. In traditional Aboriginal societies there is a division of the entire population into sections. Everybody at La Grange for example is affiliated from birth with four named sections - Barrunga, Banaga, Baljarri and Karimba. Membership of any particular section is an element in the determination of status of other Aboriginals. These relationships, which display the

relative status of people to one another, are reflected by kin terms. Use of these terms is not limited to situations where consanguinial and affinial lines occur, but extends on a classificatory basis throughout Aboriginal society. Avoidance and other relationships are based on, and derived from, status. Implications of this situation are, that in order to meet the difficulty presented by the status position inherent in the kinship and section system in communities, there would be a need for the appointment of at least one justice to represent each section. In this way those, by virtue of their status, having a role traditionally in the imposition of discipline according to Aboriginal law to those standing in appropriate classificatory relationships to them (and correct sections) would always be available as justices to fulfil an analogous function.

Of course, there is, in the appointment of officials in Aboriginal communities by Europeans, the temptation to appoint literate and articulate community members in order to facilitate training needs and administrative requirements. Governments do this all the time and wonder why the practice so often results in social disruption and non-achievement of desired goals and waste. A further problem was that if Aboriginal justices were to be appointed they would be so only after their selection by the communities and they would come moreover from the largely illiterate community power base.

We were aware that the appointment of illiterate justices of the peace would raise eyebrows in many quarters particularly when it is remembered that justices are required to read and write complaints, take notes of evidence, read statutes and perform other administrative functions. However, we were determined to resist any move which cut across the right of communities to appoint the justices of their choice. Moreover, I was conscious that illiterate justices are not something new - in fact the majority of justices in the Merrie England of the Middle Ages were unable to read or write and relied on clerks to perform their administrative tasks.

It occurred to me, therefore, that if I were to train bench clerks drawn from the ranks of the educated young, they could do the reading and writing for the justices and, if this were to happen, it would have the added advantage of partly satisfying the complaints of the old people that the young were not helping them with their problem of coming to terms with the 20th century.

One of the things which intrigued me was not so much the difference between the substantive (as opposed to procedural) Aboriginal law and the common law but their many points of similarity especially when the common law was viewed from an historical perspective. Newly created rights, duties and obligations were invariably accompanied by ceremony so that all community members were immediately seized of the knowledge in

exactly the same way as fuedal incidents of tenure were publicly acknowledged. Moreover, whilst it is clear that strict liability exists in Aboriginal law it is also clear that the concepts of carelessness, negligence, recklessness and intention also exist. In discussions with Aboriginal men on the subject of culpability, distinctions were drawn by them concerning acts which occur by chance and those which are intentionally brought about. It is not known whether these distinctions are recent developments resulting from acculturation or otherwise, but informants indicated that such distinctions have always existed in some areas of their law. Certainly the traditional men who administer the European laws have no difficulty in understanding the difference between negligence and intention indeed, it is precisely because, to their minds, drunkeness often renders a person incapable of forming an intent to commit acts or bring about events which led them to believe that they could not, under their own code, punish breaches of traditional law committed whilst under the influence of alcohol.

But what of Traditional law? What, I was asked, does the white fellow law say about a man singing sacred songs in the wrong place? My answer was that if such conduct resulted in a breach of the peace it would be disorderly conduct and would be punishable by fine or imprisonment. Complaints of that nature were in fact dealt with and people were convicted for offences relating to abuses of secret sacred matters done in public. Questions were then raised about traditional violent punishment and I had to tell them that I did not think such punishment would be allowed by the Government. Much publicity has been given to these aspects of traditional law but I can honestly say that such sanctions are rarely used. It seems to me though, that the principles of diversion could be looked to as a possible answer to this problem. At times traditional sanctions are used to save face because a man does not know of any other way.

One day, I was asked to go to La Grange to hold court as I usually did, in a bush setting. The police had charged a man with assault by sticking a spear into another man's leg, - the wound was only about half an inch deep. I read the charge and he pleaded guilty. After the facts had been read he told me that he had been lying as if asleep on the verandah of his house at night when the man whom he subsequently speared crept in and stole his young wife away. After a while he brought her back. Next morning, he had punished the man by spearing him - but not properly, only symbolically. He said that he was sorry he had to do it that way, but white fellow law could not help him. I placed him on a bond in the sum of $50 to be of good behaviour for three months. He was pleased and surprised that, when I received a verbal complaint from him, the wife stealer was charged and convicted of being on the curtilage of the husband's house without lawful excuse. I am convinced that Aboriginals

know that violence in the form of self-help more often than not begets violence and would prefer to settle matters in other ways. This, I believe is particularly so in communities which are made up of desparate groups. I was asked what my law offered in the way of preserving traditional matters and again we had long discussions.

The use of probation orders seemed to be an answer. By this means, a consenting person could be given to an honorary Aboriginal probation officer to be 'grown-up' again and 'made to think straight' about the customs and usages of his people. Conditions as to residence could be made which gives power to banish for a period. Hunting, tracking and other bush skills could be taught and the stories, songs and other cultural matters could be learned or relearned. Community service orders seemed appropriate particularly in communities where the elderly and infirm needed help. Of course, if a person chose not to go on probation, he or she would be treated in the white way by fine or imprisonment.

Can we make our own laws? We want laws about grog, motor cars, vandalism, humbug offences, breaking up property - we want peace in our communities. I was, of course, able to explain that by-laws could be made if the Government passed an Act to allow it.

What about police? Contrary to popular belief Aboriginal communities asked for police protection. After discussions it was their wish that police aides be appointed from their number to help keep the peace. They wanted aides who knew the Aboriginal law as well as the European law.

With the assistance of two linguists at the United Aboriginal Mission at Fitzroy Crossing a pamphlet was prepared which simplified court procedures and explained some of the most common charges heard in courts of summary jurisdiction. The plan of the linguists was to:

- Limit the density of ideas. That is, to say more about each point than would be said for a person whose first language is English.

- Keep chronology simple. English frequently incorporates extra information by reference, and indicates this by grammatical markers. These are often not understood but the difficulties can be overcome by introducing events in the sequence in which they occur.

- Develop a background for each point before making it. References to new terms with explanations following would be changed to give the explanation first. Where a new concept is involved, it would be introduced by using known vocabulary and followed by an explanation of the new term.

- Avoid the use of grammatical structures known to be difficult for Aboriginals. The English passive is an example of this. Most Aboriginal languages have no passive mood and, therefore, confusion results when it is found in English.

More court advisers were recruited and, with the co-operation of Department of Community Welfare officers, Aboriginal Legal Service officers, police and Department of Aboriginal Affairs officers, efforts were intensified to encourage greater community participation at court hearings. Prior to a hearing, I would, whenever possible, explain to observers the nature of the complaints, possible defences and the social utility of the laws in question. During trials I explained procedures, evidentiary provisions and advocacy techniques. Reasons for decisions were also given in language appropriate for the audiences.

Advice as to penalties was sought not only from advisers but also from representatives of the community to which defendants belonged. In the case of fines, community representatives would often volunteer to ensure that weekly payments were made to the court by the offender, thus minimising administrative work and reducing the incidence of imprisonment in default of payment. Where, in the case of assaults, fines seemed to be the appropriate penalties they were often awarded to complainants by way of 'sorry money', a procedure analagous to a traditional Aboriginal sanction. Sometimes defendants were released on good behaviour bonds on condition that they returned to their communities under the supervision of nominated persons, that is, persons who, according to custom and the section system, possessed the authority to guide and educate.

The granting of bail to Aboriginal people charged with serious crimes has always raised difficulties. In the first place, Aboriginals are not time oriented and failure to appear at an appointed time was often attributable to this fact. This difficulty was, in most cases, overcome with the assistance of community advisers or councils. The problem of finding approved sureties, however, was not so easily resolved. The law requires that a surety be a property owner so that, in the event of an offender failing to answer his or her bail, forfeiture action can be taken against the surety. Most Aboriginals in community situations are not property owners, and consequently, could not, in the normal sense, be approved as sureties. This dilemma was discussed on many occasions and finally I began the practice of releasing defendants on bail with communities acting as sureties. Only in one case did this break down and it is worth relating the incident to show how seriously communities took their responsibilities as sureties and how determined one community, at least, was to incorporate European law into its own.

The defendant has been released on bail to the Christmas Creek community on condition that he remained on community land until

his next appearance at Fitzroy Crossing court. He did not appear on the return date and inquiries revealed that he was at Christmas Creek having been returned there by elders after escaping from their custody. The elders, it appeared, had placed the defendant under traditional restrictions for having broken the condition that he remain on community land until the return date and also because he had caused the community to break its promise (contract) to me (white law carrier). I was invited to hold court at Christmas Creek and on arrival there was met by a large number of men and taken to a sacred place where to the accompaniment of ritual chanting, sacred objects were exposed to my view. I was then taken to another previously prepared place where further ceremonial chanting occurred and speeches made in 'language'. The defendant was then summoned. He appeared, his body oiled and decorated, looking wonderfully healthy and bearing no resemblance to the man who, a few weeks earlier, had appeared in the Fitzroy Crossing court. I was then asked to begin court and make whatever orders were necessary. The defendant was again released into the custody of the community to appear for trial at the Supreme Court in its criminal jurisdiction to be held at Derby on a particular date. The chanting then resumed and my order repeated in 'language' after which, the defendant was despatched by an elder to a designated area. The elders then explained to me that by 'bending' my law in holding court at that special place I had shown respect for and recognition of their law and saved embarrassment.

The defendant's escape from Christmas Creek had been met with a sanction which involved banishment from the camp to a restricted area, dietary restrictions and board making. Moreover, during his period of punishment he was not permitted to look upon women. In imposing the penalty, however, the elders had overlooked the fact that the defendant was to appear at the Fitzroy Crossing court on a date prior to the completion of his punishment. Their dilemma was profound - they could not by their law, revoke the sentence and yet they felt they could not let me down. My action, in holding court at the sacred site demonstrated to them a respect by a European law man for their law which they had not previously experienced. Further, it opened the way to discussions concerning the synthesisation of both laws.

Greater involvement in the judicial process by Aboriginals had another effect. Defendants were made aware of the corporate disgrace their transgressions brought upon their communities. Women, in particular, invoked the traditional 'shaming' sanction by haranguing defendants upon their return to community campsites.

The development of the mutual respect for the two laws was exemplified on many occasions when Aboriginals sought my assistance to conciliate and arbitrate on disputes between Aboriginal groups and people. My opinions were often received by

remarks such as 'it is the same in our law'. More and more it became clear to each of us that there were many similarities between the two laws and that sanctions and procedures were the two major differences.

Following prolonged discussions with me, the Attorney-General and his government colleagues concluded that legislation be passed to permit Aboriginal communities to make rules to apply within community lands, with respect to:

- the taking of proceedings for breaches of community rules;
- the prohibition of nuisances or any offensive, indecent or improper act, conduct, language or behaviour;
- the prohibition, restriction or regulation of the possession or supply of alcohol;
- the apprehension of persons guilty of a breach of any community rule by any police officer; the removal of such persons from community lands, and the enforcement of community rules;
- the prohibition or regulation of the admission to community lands of persons, vehicles or animals;
- the prohibition or regulation of vehicles including provisions as to speed, manner of driving, class of vehicles, routes, entrances and exits, one-way traffic, noise, parking or standing, the removal of vehicles by persons authorised under that rule and for the regulation of traffic generally;
- the use, safety and preservation of buildings, structures, erections, fixtures, fittings and chattels;
- the regulation of the conduct of meetings and interruption of meetings by noise, unseemly behaviour or other means;
- the prohibition or regulations of the possession or use of firearms or other offensive weapons or of dangerous materials;
- the depositing of rubbish and the leaving of litter on community lands;
- the prohibition of the obstruction of persons acting in the execution of their duty under the rules or in the exercise and enjoyment by them of any lawful activity on the community lands;
- the prescribing of any other matter that it is necessary or convenient to prescribe for the purpose of securing decency, order and good conduct on community lands;

- the imposition of fines not exceeding $100 or imprisonment not exceeding three months upon conviction by a court of summary jurisdiction for any breach of the rules and compensation not exceeding $250 payable to the community or any person whose property has been damaged as a result of an offence; and,

- the payment of any pecuniary penalty exacted in respect of any breach of a rule to be paid into community funds.

On 17 May 1979, the Aboriginal Communities Act was passed. It was decided that its implementation be restricted to two Kimberley communities, namely, the Bidyadanga Aboriginal community La Grange and the Bardi Aboriginals Association Incorporated at One Arm Point. In this way, the effect of the Act and by-laws made pursuant thereto could be monitored and any defects remedied with a minimum of risk. Further, when and if the scheme proved to be successful it could, with safety, be applied throughout the Kimberley and, indeed, throughout Western Australia.

Prior to the passing of the Act, the Government gave consideration to the following:

- the appointment of justices of the peace;

- the appointment of bench clerks;

- the appointment of community rangers; and,

- the appointment of honorary probation officers.[1]

The pilot scheme at La Grange and One Arm Point was successful and similar schemes have now been introduced at Beagle Bay, Lombadina and Balgo Hills. Many other Aboriginal communities in Western Australia have requested permission to be involved but with limited human resources it is not possible at the moment to accede to those requests. It is clear that the La Grange and One Arm Point communities have had a reduction in the incidence of anti-social behaviour and, in consequence, at La Grange at least, people have returned there from fringe reserves. There has been a marked improvement in Aboriginal and police relations, due in no small part, to the co-operation of the district superintendents. Cases of by-law breaches have been dealt with in community settings by the Aboriginal justices under the supervision of the magistrate. Whenever called upon, the Aboriginal Legal Aid officers have appeared for defendants.

However, as foreseen, the La Grange community is now moving towards synthesis of the customary law and by-laws and referring to them as the 'Bidyadanga law'. It is the view of the community that they should, as soon as possible, have total control of the

Bidyadanga law without interference of Europeans unless called upon to assist. Instead of police officers enforcing the law they wish to have power to appoint 'witirr' or traditional police officers - two from each section to fulfil that role. The training of these witirr to be conducted, if possible by a suitable police officer who should visit the community at regular intervals. The magistrate should continue to attend at regular intervals and act in an advisory capacity until the justices are able to handle the law without assistance.

Without wishing to exaggerate, the La Grange community has achieved a great deal in the past four years and the majority of its members are striving to achieve much more. It is the policy of the Roman Catholic Church in the Kimberley to hand over control of the Mission lands to the Aboriginals as soon as possible and Father McKelson, the Mission Priest at La Grange is fostering and encouraging an attitude of independence in that community. Transition from a state of total dependence upon European organisation and control to total autonomy would, a few years ago, have been considered a pipe dream by anyone connected with the La Grange community. However, now that the traditional social control methods have been supplemented by the by-laws administered very largely by themselves, community autonomy in the not too distant future is a distinct possibility.

Differing standards and levels of acculturation of Aboriginals make it difficult presently to conceive of the precise needs of every community in the Kimberley. As each community becomes more experienced in the field of social control, its particular needs will become apparent and action can than be taken to enable them to achieve their desired goals.

In recent years there have been a large number of violent and ferocious clashes between Aboriginal families in the urban areas of Western Australia and these disputes are occurring at increasingly frequent intervals. According to community leaders these feuds have their bases in traditional payback procedures. What is needed is a complete investigation into the matter with a view to providing solutions involving something other than violence. Perhaps the Institute can help in that regard - and if it did, it would certainly receive the blessings of a large number of Aboriginal people who have no desire to be involved in these brutal and heartbreaking clashes. A positive measure which has been recommended by family leaders, and which appeals to me, is the appointment of them as justices of the peace with the object of adjudicating with a magistrate in cases where their customary laws are involved. Decisions handed down by such tribunals would, it is believed, be more effective than courts constituted in the usual way. Perhaps a pilot scheme is worth trying - I think it would be.

We need Aboriginal probation officers, alcohol counsellors, police officers and social workers in the urban areas as well as bail hostels and refuges - particularly for women who bear the blunt of alcohol induced violence and we need all these things now.

Greater mobility and contact between Aboriginal communities suggests a possibility that from their exchange of ideas and concurrent operations of similar by-laws a common standard in the application of the law by justices will develop across the Kimberley and ultimately result in a 'common law' in much the same way as the common law of England developed.

Any doubts in the minds of Aboriginal people as to the advisability of their exercising control over the administration of European law seems to have been dispelled. It seems likely that their involvement will contribute towards a harmonisation or relationships on a much wider scale by reducing the resentment felt when a law alien to their culture is administered by Europeans. Moreover, by administering European law to their own people, traditional contraints such as 'shame' are automatically invoked against offenders. This gloss is absent where proceedings are administered by Europeans. Further, it is likely that non-traditional offences contained in by-laws such as those relating to alcohol will become 'Aboriginalised'.

Agencies directed towards aiding Aboriginals such as Community Welfare, Aboriginal Affairs, Education, Prisons, Police, Legal Aid, Community Advisers, and Mission Authorities have a most important role to play in the scheme. Problems that contribute to social disintegration in communities are created, to some extent, by the lack of overall direction and the absence of any co-ordinated policy by government and other agencies involved in Aboriginal affairs.

From observations and discussions with European personnel, it is apparent that each individual seems to be concerned about achieving their own particular ends to the exclusion of all else and is certainly not guided or bonded in effect by an overall policy designed to bring about peace, order and good government. No one doubts the sincerity and industry of officers and organisations; however, the effect of unco-ordinated efforts on Aboriginal communities is both damaging and destructive.

The hierarchical divisions of European agencies involved at community level only creates barriers to better co-operation and open communication so essential for the proper administration of services and the sustained participation of community members. There is a need for healthy concerted action, free from this situation of rivalry and self-interest.

The community decision-making process, which ideally should involve close Aboriginal-European dialogue and consultation, is

invariably left to individuals in crisis situations and as a result action taken is often inappropriate and tends to cause disruption and disintegration.

The talent and expertise available in this country in the field of Aboriginal affairs is tremendous but, without co-ordinated effort based upon a policy acceptable to all concerned, achievements will always fall far short of excellence. The creation of such a policy can best be realised by bringing together those who control the personnel and resources in the area of Aboriginal advancement.

Note

1. For details on the Western Australia Community Justice Program, appointments and proceedings, refer to Syddall in Aborigines and Criminal Justice, B. Swanton (ed.), 1984.

ABORIGINAL JUSTICES OF THE PEACE AND 'PUBLIC LAW'*

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The Aboriginal Justice of the Peace Scheme

The Aboriginal justice of the peace scheme operates in the Kimberley region in Western Australia. The scheme, whilst promising in its inception, has developed serious difficulties in application. These areas urgently need to be rectified if the scheme is to continue. The purpose of this paper is to address these points.

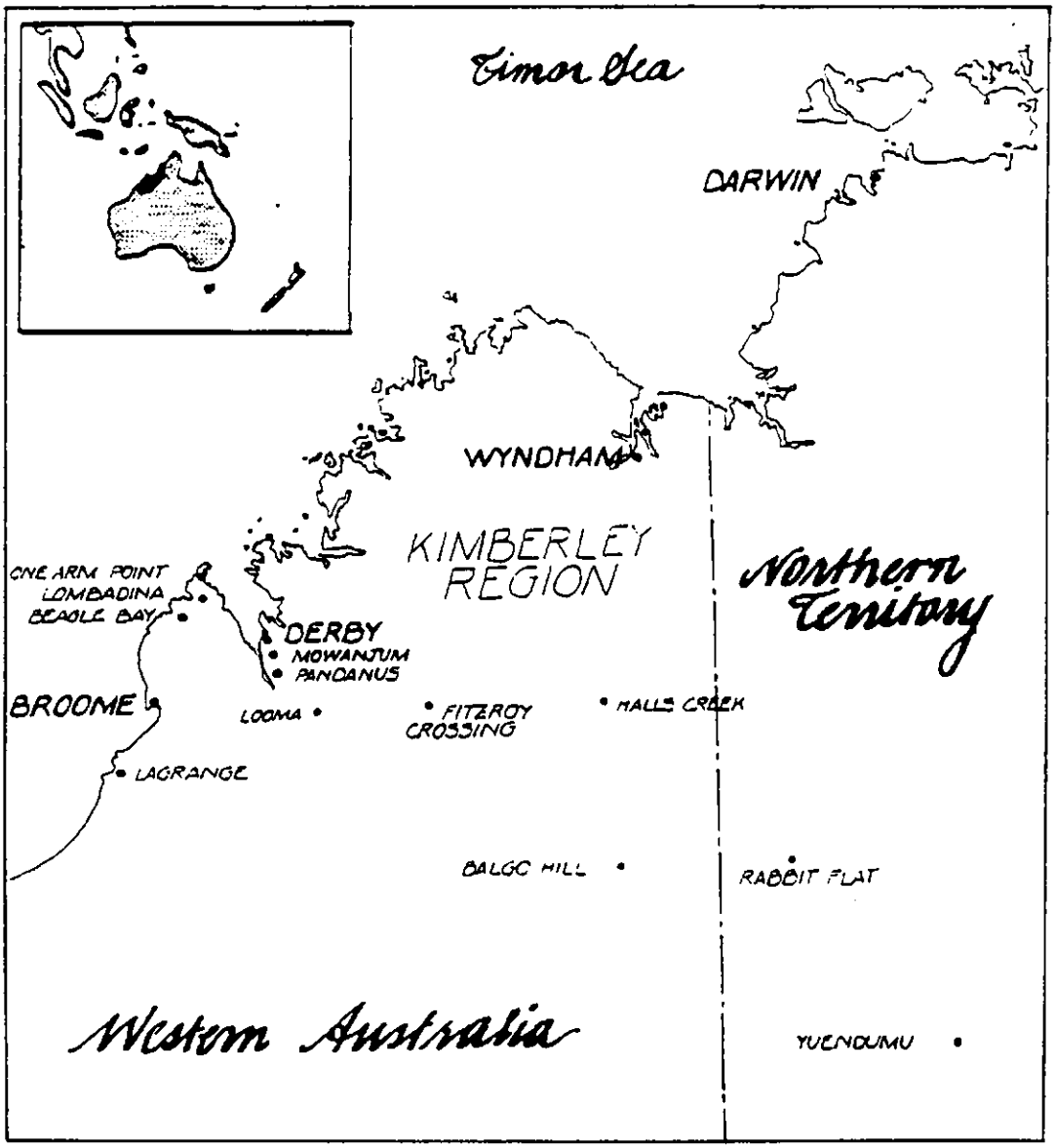
The justice of the peace scheme was originally devised by Mr Syddall S.M., who was based in Broome during the 1970s. He discovered that Aboriginals coming to court had, in the main, no understanding of Australian law. To counter-balance the inequality and promote a clearer understanding of the law, he introduced Aboriginal advisors to the bench. This proved to be an effective move. Some time later Mr Syddall was asked to conduct research on Aboriginals and the law which culminated in the Aboriginal justice of the peace scheme. The framework in which the scheme was to operate was the Aboriginal Communities Act 1979.

The Bidyadanga Aboriginal community at La Grange, and the Bardi Aboriginal community at One Arm Point were the first to participte in the scheme in 1980. Since then the Beagle Bay, Lombadina and Balgo Hills communities have joined the scheme.

Appointing Aboriginal Personnel to the Justice of the Peace Scheme

Previous discussions with Aboriginal communities all over the Kimberley region had indicated to Mr Syddall that it would be inappropriate to select justices from the younger community members. Traditionally, Aboriginal men gained stature as they grew older, acquired more experience, and had been initiated. Younger members had no real standing in the community except as potentials.

* 'Public law' is defined by tribal Aboriginals as being the mainstream of Australian law, including the Aboriginal Communities Act



Kimberley Region. Western Australia

Because Aboriginal kinship structure is intricate and divided into four 'skin' sections it was necessary to select justices who had a degree of tribal authority and who represented one of the four 'skin' groups. The tribal people selected as justices in the main, had a poor command of the English language which posed a number of administrative problems. These were overcome by selecting bench clerks from the younger, more educated ranks of the communities.

Honorary probation officers were seen as a positive move toward lowering the rate of juvenile offenders. In the main, officers were selected for their ability to re-educate young offenders. It was hoped that juvenile offenders would be redirected and find a new sense of tribal identity if guided by one of their own people.

All selected personnel were to operate under the terms of the Aboriginal Communities Act of 1979.

The Aboriginal Communities Act 1979

The Act, in essence, makes provision for the responsible management of the communities by appointed councils. Council members have the authority to make and enforce by-laws on community lands. A by-law can only be made by a unanimous vote of all council members and only applies within community boundaries. All persons are bound by the by-laws whether they belong to the community or not. Community by-laws do not have the authority to override other Statutory provisions. Should a community desire to withdraw from participating in the scheme encompassing the Act they may do so. The Governor of Western Australia will declare by proclamation that the Act no longer applies to that particular community.

Specific by-laws were made to cover:

- The regulation of admission of people and traffic;
- regulations for the traffic control;
- preventing damage to fauna and flora;
- regulations for noise, conduct, and keeping the peace;
- restricting the possession, use or supply of alcohol;
- regulations for the possession of, and use of firearms or other weapons;
- regulations for littering and rubbish dumping; and,
- regulations for securing law and social order.

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

Item 17 of the community by-laws makes a provision for customary law and states:

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

Justices of the peace have the power to fine a person a maximum of $100; up to three months imprisonment; and order compensation of no more than $250. Fines appropriated are paid to the community council and are for the use of the community.

Court hearings, within the mainstream of Australian law, are held daily in the Kimberley region when warranted. Courts operating within the framework of the Aboriginal Communities Act are held approximately every three weeks on a rotating basis.

Problem Areas Effecting Justices of the Peace

There are general feelings of discontent among community members participating in the scheme except at Beagle Bay. Many justices have indicated that they were unaware of the implications their new positions would have within their communities. Justices accepted the office hoping that the community as a whole would gain credibility and be more acceptable to the wider society. It had not occurred to tribal elders that superimposing one value system on another would pose difficulties.

One particular justice said:

> Every time I got to go to court I get sick inside my stomach. When I sentence my people I got to be easy - he my [relation]. It would be better to go back to 'one law' for all people.

To begin with, the ramifications of 'public law' are barely understood by traditionally oriented Aboriginals living on communities. Further, justices and offenders alike view 'public law' with a certain contempt, and feel that it is inferior to tribal law in terms of deterrence and learning.

The conflict in value systems is compounded when Aboriginal justices are torn between the two laws, tribal law and the Aboriginal Communities Act. Firstly, there are problems deciding which offence is applicable to which law. There are some

offences Aboriginal justices feel apply only to tribal law, and others, such as alcohol offences apply to 'public law'. The struggle arises, for example, when there is an offence of assault between family members. Which law does this offence apply to? Many justices feel that tribal arbitration should apply and not involve outsiders, in this case 'public law'. The dilemma here is, there is a sense of being ineffective in either law.

Secondly, sanctions under the terms of the Aboriginal Communities Act do not necessarily exempt an offender from tribal retribution. This in turn often leads to feuding between family groups, and 'payback'. Aboriginal justices, when applying 'public law' sanctions are subject to traditional 'payback', firstly, by the relatives of offenders, and secondly, by other justices who may belong to that particular 'skin' group, and finally, by their own relations if one of their own family appear before them in court. The method of 'payback', justice to justice, has been averted to a degree by covert peer manipulation. In court the rule is 'you go easy on my relations, and I'll go easy on yours'. The net result being that 'public law' is becoming even less effective. Many justices have also indicated that it is very difficult to live among a people as one of them in one respect and, as the dispenser of a foreign legal system in another.

Sanctioning illustrates how Aboriginal kinship structure is effected by the justice of the peace scheme. The whole social organisation of traditional Aboriginals rests on the kinship structure which is closely linked to expectations and obligations between kin. The justice of the peace scheme is creating havoc among tribal Aboriginals in terms of the expectations alone. Tribal laws are either being ignored or undermined by an alien value system. Further, Aboriginal justices feel they are becoming powerless both within their own law, and within the framework of the Aboriginal Communities Act.

Some justices have been involved with the justice of the peace scheme since 1980. Many justices have indicated that they are dissatisfied with the degree of autonomy they have when the court is in session. There is a lot of resentment and an increasing sense of impotency because they feel they are still advisors to the court. If these allegations have merit then two points are relevant. The first is that if Aboriginal justices, after administering the justice of the peace scheme for five years are still advisors to the court, then it would appear that they are not equipped to have autonomy at this stage. Or, due to possible paternalism on the part of those administering the scheme Aboriginal justices are seen to be ill-equipped and autonomy denied them.

Many justices have indicated that they would prefer to relinquish their responsibility as justices of the peace and return to the mainstream of Australian law. Another suggestion has been that

the younger initiated community members take over the responsibility for the scheme and leave the older men to deal with tribal business. As it is, tribal law, and 'public law' and the application of both laws simultaneously is seen as being incompatible.

The Beagle Bay Aboriginal community in many ways are in a unique position. Due to the missionary influence in the past, and the 'back to the land' movement in the present, the community at Beagle Bay are not tribally oriented. They are not subject to the pressures of tribal life as other communities participating in the scheme are. Many Aboriginals living at Beagle Bay have a reasonable command of the English language and a fair understanding of Australian law. Because Beagle Bay has attracted many Aboriginals from other parts of Western Australia a new feeling of Aboriginality has been generated. The justice of the peace scheme has added to that new sense of identity. Because of their level of acculturation to the wider society the community at Beagle Bay have had few problems applying the Aboriginal Communities Act.

Problem Areas Affecting Offenders

As outlined earlier in this paper, many Aboriginals do not understand 'public law'. For tribally oriented Aboriginal offenders who live on communities there are real difficulties when they are charged with an offence.

When an alleged offence occurs involving more than one offender, it does not necessarily follow that all offenders will be charged. Depending on the relationship the offender has with the complainant he/she may be charged or, if the offender uses the 'what about' technique, the charge may be dropped. The 'what about' technique is an argument Aboriginals use to counter any allegations. If the offender can cite a similar offence the complainant may have been involved with in the past the offender may well escape being charged.

Many offenders have indicated that they have not known what they were charged with until they came to court. Secondly, many offenders plead guilty for a quick decision, and others, following a sanction have said they still hadn't any idea what the charge was.

Thirdly, among the younger community members, going to prison is fast becoming a status symbol as has happened with the Groote Eylandt Aboriginals (David Biles, Groote Eylandt Prisoners: A Research Report, 1983). Many offenders see prison as a holiday camp and a place to escape to when they face tribal retribution for an offence against tribal custom.

Finally Aboriginal offenders are becoming resentful when they are charged with an alcohol related offence. Many offenders have

said that justices who sanction them for drinking offences are imbibing themselves, and therefore not in a position to sanction.

It is important to note too, that Aboriginal offenders have inadquate representation in Aboriginal courts. The Aboriginal Legal Service have indicated that they are not encouraged to represent clients who offend on community land. Prosecuting officers are State police officers who know their job. Aboriginal offenders have said that because they have no-one to speak on their behalf they often plead guilty.

If Aboriginal offenders are to face a prosecutor who is a police officer then the balance of power should be more evenly distributed by the defendant having equal representation if desired. During my research in the Kimberleys, Aboriginal bench clerks were not in evidence during the court hearings and probation officers are seldom called upon because probation is not seriously considered an option.

Finally, an interesting feature in Aboriginal Courts is the aspect of chiding. Chiding involves public 'shaming' and appeared to have more effect on the offender than the sanction imposed.

Conclusion

As early as 1939 the inadequacy of the Australian legal system as it applied to Aboriginals in Western Australia was recognised. Between 1939 and 1954 there was provision made for courts of Native Affairs to be conducted as required. The objective of these courts was to take into account tribal custom when punishing offenders for offences committed against the mainstream of Australian law. This applied only in terms of Aboriginal offences against other Aboriginals. Aboriginal elders advised the court if the offence included any infringement of tribal law and if they would endorse tribal punishment; the court then sanctioned accordingly. In 1985, Aboriginal justices are still essentially advisors to the courts rather than administering the law on their own people.

The most significant problems facing Aboriginal justices administering a foreign legal system are the Aboriginal kinship structures and the differing value systems. These two factors alone set off a chain reaction of resultant problems. The Aboriginal Communities Act as it was designed should not be applied across the board without taking into account the level of community acculturation and the degree of committal a community may have to its own value system.

The justice of the peace scheme in Western Australia, within its conceptual framework was very promising. Unfortunately, in practice it developed unforeseen difficulties. In terms of the Aboriginal Communities Act, Aboriginal justices have the normal powers of justices in the wider society. The Act in terms of sanctions, limits the effectiveness of that power.

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ABORIGINAL COMMUNITIES JUSTICE PROJECT:
Northern Territory

Stephen Davis
Darwin
Northern Territory

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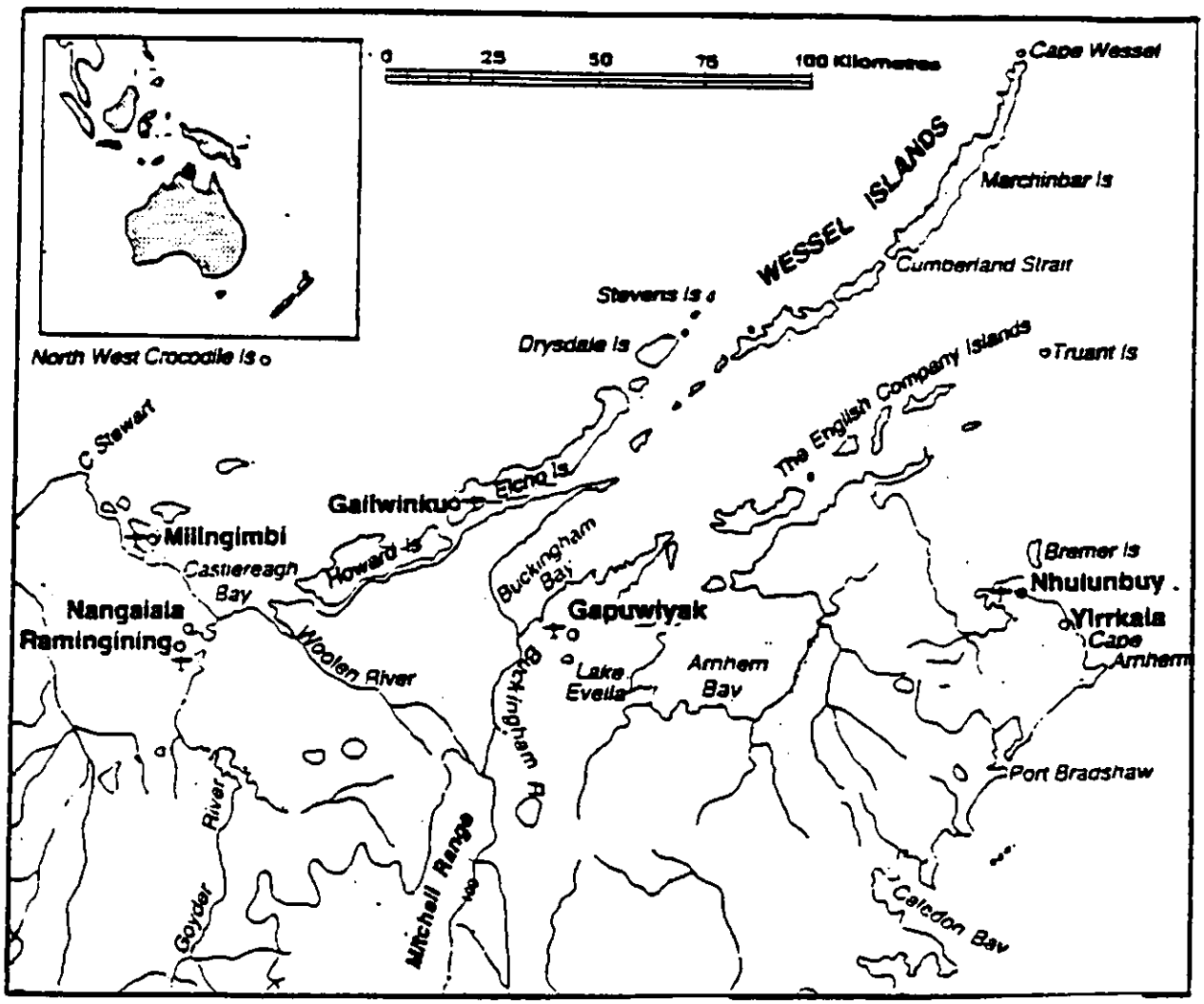
INTRODUCTION

History of the Project

In late 1982 the government approved the establishment of an Aboriginal Community Justice Project. This initiative followed earlier statements by the then Attorney-General, Mr Everingham, concerning the desirability of increased Aboriginal involvement in the administration of justice.

The Aboriginal Community Justice Project was initiated with the aim of providing a justice program which sought to accommodate wherever possible, Aboriginal law and social control mechanisms within the present judicial system of the Northern Territory.



Galiwin'ku, Elcho Island. Northern Territory

This has been implemented by involving senior Aboriginal custodians with the magistrate in discussion prior to sentencing an offender after close and detailed pre-court consultation with the defendant's nuclear and extended family.

The Aboriginal Community Justice Project sought to support existing social controls evident in the community and strengthen such mechanisms within the contemporary life of the community.

The Aboriginal Community Justice Project developed a genealogical index with the permission of the participating Aboriginal clans as a major tool for precisely identifying a defendant and then tracing, through genealogical links, specified kin whose traditional responsibilities toward the defendant included the exercise of specified Aboriginal social controls. This data is then selectively made available on a restricted basis to effect consultation with the defendant's family prior to court and to provide detailed social background reports to the magistrate.

The reports are also made available to the Northern Australian Aboriginal Legal Aide Service and the police prosecutor.

Choice of Community

A court had been operating at Galiwin'ku, Arnhem Land, prior to the inception of the Aboriginal Community Justice Project. The Galiwin'ku Community Council at Elcho Island was offered the option of participating in the Aboriginal Community Justice Project by the Department of Law at the direction of the Chief Minister in 1982. A police aide had been present at Galiwin'ku since May 1979. Senior Aboriginal men on Elcho Island were keen to discuss matters of law and reacted very positively to the proposed project.

The first court conducted as part of the Aboriginal Community Justice Project was convened in September 1983. The court has continued to convene at Galiwin'ku at two monthly intervals.

THE COMMUNITY COURT

As one of the aims of the project was to facilitate the strengthening of social control in the community it was considered practical to hear cases where offences have been committed in Darwin not before Darwin courts, but before the community court at Galiwin'ku. This provided an opportunity for the positive involvement of the defendant's family and social control group in hearing the case before senior Aboriginal leaders and the magistrate.

By hearing Darwin cases back in Galiwin'ku, it affords the opportunity for persons traditionally responsible for the offender and others from the wider clan group, to make their

wishes known to the court in regard to rehabilitation of the offender, and also affords them the opportunity of instituting traditional methods of social control with the backing of the court and the magistrate in particular. This may make possible a situation of positive social control which otherwise may not occur. It may then be possible to rehabilitate the offender back into the social control network of the clan group and strengthen the network. Such support may prove to be a critical factor perpetuating methods of social control which at present might be inadequate in some clan groups, or further enable modifications to traditional social control mechanisms to be effected, such as to make them more functional at the Aboriginal/non-Aboriginal cultural interface.

It became obvious early in the courts at Galiwin'ku that the Aboriginal Communities Justice Project had to get senior Aboriginal men to bring offenders to the court before taking action themselves within Yolnu (Aboriginal) law. Senior Yolnu men were taking the initiative in isolating offenders on outstations under the supervision of older people. Where such an offender had formally been charged and was required to be present in court, the senior men felt that they were indeed carrying out the Magistrate's wishes by pursuing punishment in terms of Aboriginal law or secluding the young man in the performance of a ceremony. Therefore it was not necessary, they assumed, for the offender to appear before the magistrate, but merely to tell him they were performing their duties as the magistrate would wish.

However, senior Aboriginal men were adamant that their ability and authority to pursue such social restraint and rehabilitation was dependant upon the authority of the magistrate and court being inextricably identified with Aboriginal law (rom) and the authority and power of Aboriginal men to administer it.

The senior men perceived Australian law and Aboriginal law (rom) as supplementary parts of the one legal system whereby Aboriginal law could no longer exist or function in exclusion to Australian law as it had done prior to sustained European contact.

One senior clan leader stated this as follows:

> My law and your law is the one thing.

The men were therefore very concerned at the possible termination of court proceedings and magistrate visits in the community. This they felt, could never occur, for it had become an integral part of the overall functioning of the law as perceived by Aboriginal people and they could never revert to a situation where only Aboriginal law existed to direct day-to-day life in the community.

Another senior clan leader stated the need for a duality in law as follows:

> In my opinion, this court case will never break, will never stop ... The equalship (equality) is here waiting ... mean not to stop ... Have to continue all the time towards the future.

Australian law perceived by Yolnu is that law which is non-Aboriginal. As identified with non-Aboriginal Australians it is 'balanda law'. It is significant that 'law' is used in conjunction with 'balanda' (European) and not the word 'rom' which generally translates as 'law'.

'Law' does not possess the intrinsic immutability that 'rom' conveys. No man can change or interfere with rom. It was decreed by ancestral beings to be retained intact by succeeding generations. Failure to fulfil custodial obligations in 'rom' simply leads to death and destruction. 'Law' may not be viewed as being binding over 'rom', a fact which has many far-reaching implications especially in the case of the death of young persons by natural causes - a situation which often necessitates reprisals.

The Magistrate

The way in which Aboriginal people at Galiwin'ku regard the authority of the magistrate is particularly significant. The magistrate is regarded much on a par with a very politically active senior ritual leader. He is a custodian of the law and is afforded great respect. Some common court procedures used by the magistrate may be seen by the community to be giving particular support to individual clans and subsequently often regarded as particularly prestigious for that clan and virtually the seal of approval of their power. This is one reason why it was important for the work of the court to be seen to be equally supporting efforts by any clan group to positively develop social controls within their clan and across the community.

It was imperative that the magistrate learn how to communicate with Aboriginal persons, learn what phrases to use to elicit particular information and how to evaluate responses of Aboriginal persons. This would eventually alleviate the need for an anthropologist to be present and would considerably strengthen the work in the courts in that the magistrate would subsequently be able to make his own assessments of information forthcoming from Aboriginal persons without relying on advice from the anthropologist.

Social Background Reports

The work of the community court cannot be divorced from work carried out by other agencies such as in the realm of alcohol rehabilitation. There is a considerable amount of work to be done in the communities and with families of offenders, prior to their appearance before the court. The Aboriginal Criminal Justice Project could not realise its aims without this work occurring between the court sessions.

Prior to the sentencing of a defendant in the community court there is afforded to the magistrate a reasonable assessment as to whether or not the clan group of the offender has the ability to rehabilitate him in the manner in which they wish, such as isolating him at an outstation, putting him through a ceremony subservient to the authority of older men etc. Although many clans may aspire to do this, the magistrate must have a realistic assessment as to whether or not the clan has the ability to carry out such actions and whether the wider community will allow it to happen.

It was feasible in some cases to have the offender bonded over until the next court hearing in approximately two months, in the charge of senior custodians identified by name and their relationship to the offender specified with a review of the situation at the next court hearing.

Therefore, persons with particular responsibilities to the offender are identified and consulted before the hearing such that they understand the situation of the offender and their wishes and ability in respect of rehabilitating the offender are realistically assessed for presentation to the magistrate. This would not be possible without extensive genealogical information.

Genealogies of each clan group in the Galiwin'ku area were subsequently constructed. Thus a number of persons with specific responsibilities in the social control of the defendant could be specified and consulted in the preparation of the social background reports. By this same means, persons making representation to the magistrate on behalf of the defendant, could be correctly identified and their responsibilities to the defendant specified. If the magistrate considered bonding the defendant to the care of a particular person then the genealogies again enabled an assessment to be made of the possible viability of the bond in terms of kinship responsibilities to the defendant.

OFFENCE STATISTICS

Offence Statistics

The PROMIS computing system was instituted by the Northern Territory Department of Law on 1 January 1983 and in conjunction with genealogical data, provides the statistical basis of this study. This information was supplemented with data from court records relating back to 1974 in some cases. (Editors note: Statistical tables 1-11 have not been included in this abridged version.)

Elcho Island Imprisonment Rate 1983-1984

Number of Prisoners		Imprisonment Rates (per '00 000 population)	
December		December	
1983	1984	1983	1984
12	7	278	162

(Table 12 Aboriginal Communities Justice Project Final Report, 1985)

The 1983 imprisonment rate for Elcho Island was approximately 4.2 times the national rate. The 1984 rate for Elcho Island had dropped to 2.5 times the national rate and was comparable to the imprisonment rate for Darwin and considerably less than that for the town area of Alice Springs.

Encouraging as these figures may seem as an indicator of the success of the project, such trends need to be evidenced over a considerably longer period and sampled much more frequently. However, these figures do reflect a general positive change of attitude in the Elcho Island community to the number of defendants appearing before the court as well as increased involvement and responsibility in related matters.

DISCUSSION OF DATA

Alcohol Related Offences

The project has found, and not unexpectedly so, that there is a vast network of persons necessitated in alcohol related offences. In such cases there needs to be a constant working relationship between community workers, Department of Aboriginal Affairs officers, Department of Community Development officers, police and other officers of the court.

Family Group Control

Experience has shown that as work is conducted with family groups in each community, not only do we achieve the stabilisation of the family and positive social controls which we hope will reduce the crime rate, or at least result in more effective Aboriginal controls on resultant crime, but other benefits will also become apparent. Initially such benefits may take the form of Aboriginal people questioning the role of other institutions in the community such as the council. This has already happened at Elcho Island (Galiwin'ku) where the community has redefined the council's role as one of strictly managing town facilities and being identifiably separate from the responsibilities of the family, whose primary responsibilities are social. Families therefore have taken up their social responsibilities to members of their respective lineages. This we hope will have a marked effect on the courts and crime in the communities.

Crime by Clan Control

The project has been fortunate to avail itself of data in these communities over the last five years making possible longitudinal studies of offenders in the context of their clan groups. For instance, it is descernible that many of offenders do not come from clans living on their own clan estate, rather they come from clans who are not living on their own clan estate but have been attracted to European settlements such as Milingimbi, Galiwin'ku and Yirrkala for services, food etc. By not living on their own clan estate, they generally have diminished power through subsidiary rights on someone else's clan estates upon which the communities were established.

Therefore, one obvious trend has been that the majority of offenders coming before the courts are from clans not living on their own estate but resident in major communities such as Galiwin'ku and Milingimbi, thus subject to considerable internal politics and an often dessicated authority structure.

Young men often come to Darwin and indulge in severe drinking bouts often resulting in court appearances. Attached to these young men is a large group of Aboriginal women from Central Australia who actively seek the attention of East Arnhem Land men and vice versa. These young men in their home communities are often too young to have wives through traditional bestowal. However, while in Darwin they openly have relationships with Central Australian women with access to alcohol and receive a good deal of money to continue their drinking habits. This money often comes from the work of their sisters engaged in various jobs around town so there is a support network for many of these people that come to town.

Thus access to women and goods which was a major means of traditionally controlling young men has been taken out of the hands of senior Aboriginal people to a considerable extent and eroded completely in some instances. The 17 years to 26 years of age group encompasses almost the entire number of males who flaunt such traditional controls. It is not coincidental that the same age group represents 64 per cent of all defendants and the vast majority of all offences committed.

The Lineage Authority Structure

In every case brought before the community court no structure beyond the lineage was recognised as having authority over the individual and thus was not considered in terms of either the responsibility of the defendant for his actions or as a mechanism for controlling the individual. The family or lineage then is the focal structural authority unit to which the individual is responsible and is the seat of the authority structure within any clan. The inordinate emphasis placed upon the community council for the development of Aboriginal people is very much a misplaced importance. The community council cannot be expected to work effectively until there is stability within each clan group and therefore within each lineage of which the clan is composed. Thus the rehabilitation of the Aboriginal offender is not merely a matter of counselling the offender but of counselling the families constituting the lineage.

In a number of clans there is a distinct void in the middle age range of men i.e. between 35 and 50 years. Most males are under 35 years of age with the few remainng older males being in excess of 60 years of age. Thus although there may be senior males with considerable ritual knowledge there are few if any middle aged males who would generally exercise social control over younger males. In such cases the mother's brother or mother's mother's brother who would be expected to exercise some form of social control, have either abdicated their responsibilities where they live in the same community as the defendant or live in other communities and are thus not involved in day-to-day social issues surrounding the defendant.

In the course of compiling the social background reports for the courts extensive genealogies tracing kinship relationships and responsibilities to defendants has enabled breakdowns in the application of social control to be located. Such breakdowns inevitably became the focus of discussion among Elcho Island residents and provide the impetus for family workers and those conducting alcohol rehabilitation to assist the community on a family and clan basis.

Pilot work to date has shown that Elcho Islanders can recognise such breakdown through the use of genealogical data and can suggest corrective action after discussion with other family and

clan memebers. Such self-discovery and self-motivation internalises the solution and maximises the possibility for effective rehabilitation of the defendant and strengthening of social control within the entire clan and community structure.

The Aboriginal Community Justice Project has been able to identify those clans to which offenders belong and indicate the level of disfunction within clans. Case studies constructed in the course of the project for some clans reveal some of the reasons for breakdowns in social control and general disfunction of the lineage within particular clans. A methodology for counselling defendants and their families has subsequently been constructed and commenced. Such strategies are of obvious importance to other government departments in order to make their efforts to meet the needs of Aboriginal people more effective.

Family Activities

There can be no doubt that over recent years family based activities among Aboriginal people in the Elcho Island area have diminished and been replaced to a significant extent by peer group activities. A younger age bracket of males constitute a considerable proportion of offenders. Youth programs have been initiated on a number of occasions. They have appeared to meet with reasonable success as judged by the number of youth involved. However, such programs have evidenced a diminishing involvement by local Aboriginal youth and a discontinuous interest. The strong emphasis of involvement by peer groups in such activities inevitably carries over into petrol sniffing and other substance abuse as well as criminal offences such as break and entering which appear to be characteristically committed in peer groups.

Programs which focus on family activities and strengthen relationships between members of families will have a more significant effect on reducing the number of offences committed by Elcho Island residents than purely youth centred programs.

Police

The Elcho Island Aboriginal view of police functions has moved away somewhat from the lockup and detention purpose as shown in Aboriginal sign language by crossed wrists indicating handcuffs. The presence of an Aboriginal police aide at Galiwin'ku drawn from the local community has removed much of the fear from a police presence and facilitated a better understanding of police functions. However, there must be a conscious effort by visiting police to work with the local Aboriginal police aide as an equal. This is not to say that he should not receive instruction or directions from senior officers, but that the authority of the police and that effectiveness of the police in preventing crime will be diminished if, in the view of the community, the police aide is generally given menial tasks and acts only as an orderly to senior officers when they visit the community.

There are indications that the effectiveness of the police aide could be increased by the presence of a second aide. This would alleviate to some degree problems a single aide sometimes experiences with persons of close kin affiliation and lead to a more professional approach through mutual encouragement. The functions of the police aide could be extended to enable him to inform community members of their responsibility in bond conditions which they have guaranteed for a defendant in the community court. Many breaches of bonds may be averted if the police aide instructs and reminds the defendant's family of their responsibilities. This could be incorporated in the police aide's training course.

Eliciting the name and address of a defendant has been carried out with outstanding success by the Gove police hence facilitating to a considerable degree the detailed statistical analysis contained in this report. Most notably, police elicit the given Aboriginal name and clan membership or clan surname where it is used. Clan membership often is a cross reference to place of residence. These procedures are to be highly encouraged and inevitably lead to more accurate identification of defendants. Police efforts to locate family members responsible for the defendant are commendable and obviously facilitated by the police aide's intimate knowledge of the community. Northern Territory police training courses have for several years incorporated a considerable Aboriginal awareness component dealing with these points.

The option of employing Aboriginal police aides in major population centres such as Darwin and Gove may prove of considerable benefit in handling problems with transient Aboriginal populations in such localities. The police aides need not represent every community but rather broad culturally and linguistically homogenous areas.

RECOMMENDATIONS

Justice Matters

1. The Aboriginal Communities Justice Project be extended to other selected communities in the Northern Territory.

2. Extensive genealogies be constructed for all areas upon which the Aboriginal Communities Justice Project may draw.

3. A genealogical data base be developed with the permission of Aboriginal clans for use in courts relevant to their communities.

4. Steps be taken to ensure the regularity of community courts.

5. Selected magistrates be nominated for particular areas of the Northern Territory in which community courts are held and thereby provide a continuity with Aboriginal people by building a functional background in knowledge of the people, culture and community.

6. Magistrates and police prosecutors participate in an Aboriginal Awareness course similar to that already used in police training.

7. The Department of Community Development continue its responsibilities for the provision of all court support work including Aboriginal family workers, the provision of social background reports.

8. Regular computer management reports on Aboriginal Community Courts be instituted immediately using the PROMIS system.

9. Aboriginal participation in the judicial system be officially monitored by a designated officer and a report be brought forth every two years.

Police Matters

10. The placement of a second police aide at Elcho Island be investigated immediately.

11. Police aide supervisors participate in Police Training Aboriginal Awareness courses and receive appropriate orientation to specific communities.

12. Police/Aboriginal liaison officer be identified to Aboriginal communities and councils as responsible for police aides and monitor police aide supervision.

13. Guidelines be drawn up to assist police in taking details of an Aboriginal persons' identity.

14. Ensure such details as outlined in 13 above are consistent with court details as recorded on PROMIS.

15. Police phonetically cross-check the spelling of an Aboriginal defendant's name, residence and date of birth against existing defendant identities on PROMIS before a new identity number is allocated.

16. A standard set of spellings of all Aboriginal communities be adopted by police, courts and department of law.

Other Matters

17. A report into petrol sniffing among Aboriginal children in the Northern Territory be commissioned immediately with specific reference to family disfunction and peer group activities.

18. A report into chemical substance abuse among Aboriginal people in the Northern Territory be commissioned e.g. it is suggested that issues to be examined should include:

    (a) clan affiliation;
    (b) age spread;
    (c) land owning status of clan; and,
    (d) clan social control mechanisms.

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THE YIRRKALA PROPOSALS FOR THE CONTROL OF LAW AND ORDER

(Reprint from H.C. Coombs, M.M. Brandi and W.E. Snowdon (eds) A Certain Heritage: Programs for and by Aboriginal Families in Australia, 1983. Centre for Resource and Environmental Studies Australian National University, Canberra)

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ARGUMENT

Socialisation processes are a necessary part of a group's system of social order, and contribute largely to the inculcation of an individual's self-regulatory abilities. Yet at times society has to enforce conformity to its norms and values, not merely expect it.

In Aboriginal society elaborate, complex and well-established mechanisms and procedures exist to maintain social order. These systems of customary law have been gravely interfered with by the legal system prevailing in wider Australia, to which Aboriginals have been made subject.

Aboriginals have been executed, imprisoned, and otherwise discriminated against, as a result of legislation alien to them, and yet have largely been uninformed and unaware of their rights and obligations under these same laws.

At Yirrkala, in Arnhem Land, a group of elders is working, with the Australian Law Reform Commission, towards defining a place for Aboriginal customary law within the Australian legal system. This chapter outlines their proposals. They are essentially modifications of traditional Aboriginal processes of organised social pressure to conform to accepted norms of behaviour and of dispute settlement. They bear some similarity to recent experiments with informal community courts in the United States of America and New South Wales, and with village courts now operating in Papua New Guinea.

SMALL-SCALE SOCIETIES

There is a strong tendency among members of our society to think of the maintenance of law and order exclusively in terms of our own processes - of a codified set of laws, enforced by a state police and judicial system, with the ultimate sanction of the state's exclusive right to impose punishment by violence and even death.

However many smaller societies achieve the order and regularity necessary for social life without such mechanisms, and in ways which place greater emphasis on self-regulation (Nadel, 1971) and consensus and less upon coercion. In such societies there is often no ruler or body exercising apparent authority and no clearly stated rules or laws. In them order depends upon an understanding of how the day-to-day activities are to be arranged, and of what are acceptable and unacceptable forms of conduct. There must, for instance, be socially accepted norms regulating inter-personal violence, sexual access, sharing of food, and the management of scarce and valuable resources. These norms reflect the structure of the society; how relationships between people are traced; whom they do and do not marry and the ways in which status and property devolve, and are backed by the values people hold to be important. This understanding develops in individuals as part of the process of growing up - the process of socialisation which leads up to the transition to adult status and continues through life.

Traditional Aboriginal societies were of this kind. In them an assessment by the person concerned of how other people will react was an important regulator of behaviour. Fear of disapproval expressed through ridicule, loss of prestige, physical retaliation, sorcery, the withdrawal of valued co-operation or even through total ostracism, provided the basis of 'self-regulated' conduct.

But of course all is not sweetness and harmony in such societies. They vary widely in the degree of conflict which is tolerated. In some, aggressiveness within acceptable limits is given a positive value, but generally those limits are clear and prevent cumulative violence likely to disrupt the unity of the group. But in all there will be disputes and processes for their resolution, generally based primarily upon social pressure upon the offender to conform to accepted patterns of behaviour, for no society can depend upon self-regulation alone (Nadel, 1971, p. 15). And in small-scale societies controls external to the individual cannot be too severe, because it is precisely societies of this kind which are weakened most seriously by the loss of their members. Thus such societies, like Aboriginal ones, are concerned to rehabilitate offenders.

Transgressors from within a group are rarely permanently

ostracised or killed, isolated or separated from their family, kin and society. Aboriginals regard prison and so-called rehabilitation institutions as inhuman, and motivated by the motion that some people are expendable.

ABORIGINALS AND SOCIAL CONTROL

Briefly, for Aboriginals, two types of sanction operate, one more formal than the other. Let us look first at more formal processes. Berndt and Berndt (1977, p. 335-66), discuss the maintenance of law and order in Aboriginal Australia, and should be consulted by the interested reader.

Thus, in a small traditional Aboriginal community an aggrieved man would rise early in the camp, parade up and down between the bush shelters, and proclaim loudly the nature of his grievance and his charges against those responsible, rattling his spears and beating on his shield to lend emphasis to his words. In all the shelters there would be discussion of this proclamation, and families would confer about what had in fact happened, who was culpable and what should be done about it. Leaders in the development of this consensus would include senior members of the families or clans of the alleged offender and of the aggrieved party (see Sansom, 1980). In due course the content of the consensus would be made clear and the action expected communicated to the parties. The consequences of failure to act in conformity with the consensus, in terms of disapproval expressed in a variety of ways, would usually be sufficient to resolve dispute.

Disputes between groups or communities, or between members or families belonging to them, were more difficult to resolve but occasions when groups came together for shared ceremonies were regarded as opportunities for their resolution. Senior men and women of the groups concerned met to discuss the issues in the conflict and to evolve a basis for agreement. The objective was, not so much to determine guilt and allot punishment as to restore normal relationships between the groups and to remove the source of potential conflict in the future.

Gossip is a more informal deterrent, a 'diffuse sanction' as Radcliffe Brown referred to it (1952). At the individual level the feeling of 'shame' is felt whenever an individual's sense of personal dignity has been attacked, by the behaviour of others or by the 'shamed' individual's own behaviour. When 'shame' is extreme, psychomatic symptoms of alienation appear and the blame for the person's disorientation will often be attributed to sorcery or malevolent power. It is worth noting that at Belyuen one treatment for human beings in a distracted 'shamed' state is to provide them with a constant, caring companion, and to expose the patient to children at play; perhaps an attempt to return to an earlier phase of the socialisation process so as to re-socialise the 'sick' one.

SOCIALISATION AND SOCIAL CONTROL

This example from Belyuen raises the issue of the complex relationship between socialisation and social control - both as theoretical constructs and in real life. Socialisation processes are a necessary part of the system of social order adhered to by a group, because a society depends on individuals internalising the preferred values, attitudes and behaviours in order to be as self-regulating as possible.

At the same time socialisation processes prepare individuals for activities and behaviours that lie outside social control. A human heritage embraces matters such as aesthetics, poetry, drama, emotional styles and behaviours, magical and ritual procedures that are not subject to the same degree of precise social control as marriage, schooling, kinship relationships and so on. In fact some of these matters are, with at least apparent deliberation, shaped in opposition to the prevailing codes.

DEFINITION OF SOCIAL CONTROL

The account of events at Yirrkala which follows raises several of the issues which theorists have identified as central to the definition of social control - or, we can add, in a wider sense to socialisation too.

Many theorists see the controls of society as external to the individual, who by nature will be in conflict with the social order. Freud, Hobbes and Rousseau are the prime exponents of this view.

Yet socialisation studies (Cook-Gumperz, 1973, p. 3) particularly in psychology, but also including our own, show that social control, if it is to be achieved, requires the individual to exercise self-regulation that is social in its form. In this context Durkheim saw social order as a moral order, where society's social controls are internalised by its members.

Bernstein (1965) and Cook-Gumperz (ibid, pp. 6-7) build upon Durkheim's view that society can exist only by and through its members (1953, pp. 54-6):

> From this perspective it seems that the antagonism or difference in interest, between man and society, which has often been assumed to be fundamental to the problem of social control, may be a false dichotomy ... . Men work (author's emphasis) co-operatively to produce the social orders that 'constrain' them (Cook-Gumperz, 1973, p. 7).

Bernstein and his followers see language as the medium by which this co-operation and internalisation is effected.

The exercise we describe below, undertaken by the Yirrkala elders, shows clearly the following aspects of social control:

- it is partly a control external to individuals, exercised by others;
- it is partly a control internalised by the individual elders who seek to explain it to others;
- they co-operate to codify the social orders that constrain them;
- they use language to articulate and negotiate this code.

In keeping then with what we have said so far, we define social control as:

> ... the mechanisms by which the society exercises its dominion over its component individuals and enforces conformity to its norms, i.e., its values (Coser and Rosenbert, 1955, quoting E.A. Ross).

LAW AND THE ABORIGINALS IN AUSTRALIA

The Yirrkala proposals to which we will presently turn are a contemporary Aboriginal reaction to over 200 years of social control by outsiders. First colonial, then later state and federal legislation has tried to enforce conformity to alien norms on Aboriginals throughout Australia.

While Aboriginals have been executed, imprisoned, and otherwise discriminated against as a result of this legislation, they have on the other hand largely been unaware of their rights and obligations under non-Aboriginal laws. A federal parliamentary committee of inquiry recently said:

> The injustices suffered by Aborigines in their interaction with the Law can be attributed in part to the existence of a centralist legal system which is not designed to recognise the laws and customs of different groups within a pluralist society. It is a system based on characteristically European concepts of justice alien to the indigenous people of Australia and, in the past, has been used almost exclusively to protect the rights of the majority society. The criminal law has been used as an instrument of social offending against the non-Aboriginal community, but has rarely protected or promoted their rights. The law is perceived by Aboriginals as part of the white community and culture which has not only alienated them but has also dispossessed and oppressed them (House of Representatives Standing Committee on Aboriginal Affairs, 1980, p. 9).

An examination of the relationship between Aboriginals and the criminal justice system, in particular, most clearly reveals the inbalance, the injustices that Aboriginals have suffered and continue to suffer. (See research on Aboriginals in Western Australia, South Australia, and Victoria by Eggleston, 1976; in the Northern Territory by Kriewaldt, 1960, and Tatz, 1964; in Western Australia by Parker, 1974; and elsewhere by Rowley, 1978; Daunton-Fear and Freiberg, 1977. A bibliography of Aboriginals and the law has been compiled by Brockwell, 1980.)

We should note here that, in accounting for the bad Aboriginal-police relations that prevail Australia-wide, the Australian Law Reform Commission consider them to be a product of a failure on the part of police to understand the values of Aboriginals (Australian Law Reform Commission, 1978, p. 45). The same could be said, of course, to account for Aboriginal ill-health, poor educational status and so on.

Lest we think that only Aboriginal men have incurred discrimination from the law, we must note that women (see Bell and Ditton, 1980) and children (see Franklin, 1976 and Sommerlad, 1977) have also suffered.

The by-now historically entrenched and tragic relationship (or misunderstanding) that Aboriginals have with Australian legal systems has had several destructive results on the once-effective Aboriginal measures of self-control:

- the power of Aboriginal families and groups to apply self-regulation has declined, sometimes because their social control mechanisms are viewed with repugnance or as illegal, and sometimes because their function has been usurped by Australian laws, but inadequately;

- our insistence, even in law, on the rights of the individual over the rights of the family or the clan has brought conflict at times, and distress between younger Aboriginals seeking to assert themselves and older Aboriginals seeking to assert Aboriginal law;

- Australian laws, applied against Aboriginals, use power without accepting responsibility for the consequences of its use;

- the high rates of imprisonment among Aboriginals and their consequent absence from the socialising influences of kin. The life of their families - parents, spouse, children - are likewise disrupted. Additionally, Aboriginals who value their rights to be with kinsfolk, regard with repugnance our punishment by imprisonment. Their repugnance is arguably better founded than ours, where corporal punishment is concerned. Death excepted, a physical punishment involves a

short term distress. Imprisonment, separation from one's social supports and isolation, physical and cultural, incur long-term distress;

- the anti-social consequences of imprisonment upon institutionalised Aboriginals where they are socialised into prison behaviour, not re-integrated or re-socialised as they would be under Aboriginal customary law;

- inadequate legal representation until the advent in the last decade of Aboriginal Legal Aid Services;

- the still inadequate linguistic representation in court for many people from remote Aboriginal communities; and

- the non-recognition of Aboriginal customary law has often resulted in an Aboriginal being punished twice for the same offence and, conversely, sometimes escaping punishment altogether.

Both the Law Reform Commission's Report on customary law (Australian Law Reform Commission, 1980) and the Parliamentary Standing Committee's Report on Aboriginal Legal Aid (House of Representatives Standing Committee on Aboriginal Affairs, 1980), document the points we have listed here and provide some thought provoking recommendations. Chapter 13 of this report (sic) gives some details of rehabilitating juvenile offenders from the Pipalyatjara area. But now we want to show how the elders of one community, Yirrkala, have set about correcting the inbalances in legal justice applied to them and their people.

THE YIRRKALA COMMUNITY AND SOCIAL CONTROL

The Yirrkala community has had some experience of applying in difficult circumstances the mechanisms and procedures of social control. It is composed of members of about 16 separate clans each with its own 'homeland' territories in the region. The clans were brought together at Yirrkala by the missionary authorities. Some of these clans were traditionally suspicious of others, and fears of sorcery, disputes over presence on and use of the resources of another clan's land, and rival marriage claims, intensified the problems of maintaining reasonable harmony. Over a period however, the traditional processes of resolving inter-group disputes were modified to enable these problems to be dealt with. When necessary clan leaders met in an informal Aboriginal leadership 'council' to resolve disputes: on the whole effectively.

These leaders in Yirrkala believe that Aboriginal and balanda (white Australian) law are broadly compatible and should support one another; that in the event of apparent incompatibility the process of search for consensus will be able to resolve it, and

that what is lacking in the present administration of law and order is trust in Aboriginal processes by white authorities who do not understand them, or are able to think about the issues only in terms of their own culture and its processes.

H.C. Coombs, one of the authors of this report, became aware of the views of the Yirrkala communities on these matters while Chairman of the Council of Aboriginal Affairs in the early seventies, and has acted in relation to them as a kind of intermediary between those communities and white Australian law enforcement agencies intermittently since then. The reference by the Commonwealth Government to the Commonwealth Law Reform Commission for a report on recognition of traditional Aboriginal law and the envolvement of Aboriginals in the administration of Australian law, made possible more comprehensive consideraion of the Yirrkala ideas. Since then there has been a number of exchanges between the Yirrkala communities and the Law Reform Commission in which he has acted for the communities as scribe and as a kind of cultural interpreter between them and the Commission. Thus in May 1980 at the request of the elders, he outlined for the Commission the arrangements for the administration of law and order which he understood those communities to desire. These were described (not wholly accurately) in the Commission's recent discussion paper (Australian Law Reform Commission, 1980). Since then the Commission has raised a number of queries about the proposals and these have been discussed by the elders of the clans and responses agreed to. H.C. Coombs has participated in those discussions.

The procedure which was followed in developing these proposals followed closely traditional practice. There were spread over a period of months a series of discussions among the elders of the various clans. These were essentially discussions about law and order problems which were giving the community concern and how they should be dealt with; and about the inadequacies and ineffectiveness of balanda (or non-Aboriginal) processes, particularly in their failure to resolve the disputes and to re-establish the offender within the society. From these discussions emerged the idea of community rules to supplement the traditional law and custom, and the establishment of formal procedure for their enforcement by the community itself.

H.C. Coombs' role in these discussions was to listen, assisted by the Council officer, to ask questions and to draw attention to relevant balanda attitudes and concepts. Thereafter he was authorised to try to write down what he understood the elders to want both in respect of community rules and of procedures for the enforcement of those rules, traditional law and balanda law.

This task proved difficult. His first attempt carried over too much of his own cultural inheritance of concepts, language and

institutions. This became clear when he sought to have it translated into one of the local languages. The interpreter found much of it impossible to translate and he was forced to revise the text so as to use the simplest possible language and to avoid concepts which would be alien to the elders. An acceptable text however, gradually emerged, and was both typed and recorded on tape.

The tape was used as a basis first for discussion with the elders and when their agreement with it, in modified form, had been achieved, with the community as a whole at a kind of 'town-meeting'.

THE YIRRKALA PROPOSALS

Briefly the Yirrkala proposals envisage:

1. A Law Council composed of elders of the clans in Yirrkala and the related homelands.

2. This Council would:

   (a) make (subject to community endorsement) rules governing the maintenance of social order;

   (b) name members of the community to constitute a 'community court' to seek to resolve any dispute or to deal with alleged breaches of those rules, or of traditional Aboriginal law;

   (c) name members of the community to be responsible for ensuring that punishments or settlements agreed upon by the community court are carried out;

   (d) advise magistrates or judges about:

      (i) the facts of any case before them involving a member or members of the community;

      (ii) the community's attitude towards the issues involved;

      (iii) the content of Aboriginal law which may have bearing upon the case;

      (iv) the form and degree of compensation or punishment; and of

   (e) with the approval of the magistrate or judge, conduct preliminary hearings of the case concerned so as to be able to advise the magistrate or judge appropriately.

3. The Council would also appoint and control a group of 'orderlies' with police functions which would include the power to arrest and imprison overnight any person believed to be threatening or endangering peace and good order.

4. A community court would be established for each dispute or alleged offence and would include senior members of the families or clans of the alleged offender and of the complainant as well as others chosen for their wisdom and standing in the community. The court's objective would be to devise a consensus settlement in which, ideally, both the offender and complainant and their respective families would concur.

5. If the settlement involved compensation to an injured party or punishment of the offender, it would, subject to the supervision of the Law Council, be the responsibility of the clan or family to which he belonged to see that the punishment was carried out or the compensation was paid, and that the terms of the settlement were adhered to.

6. The rules which the Law Council envisaged would be general and concerned primarily with the maintenance of social order, apart from some 'omnibus' rules relating to Aboriginal and balanda law. In discussions over a number of visits the community suggested the following rules:

   (a) it is wrong to do anything which will or could injure another person;

   (b) it is wrong to take or damage anything which belongs to somebody else;

   (c) it is wrong to go where other people have a right to be by themselves;

   (d) it is wrong to do anything which will cause great noise or violence and will make other members of the community frightened and unhappy;

   (e) it is wrong to behave outside the community in a way which will offend members of other communities or will cause trouble with them;

   (f) it is wrong to do anything forbidden by Aboriginal law or which will make that law weak;

   (g) it is wrong not to do those things which Aboriginal law and tradition says should be done;

   (h) it is wrong to do anything forbidden by balanda law.

The commonest breaches of such rules with which the community courts would have to deal are:

(i) violence and threats of violence while under the influence of alcohol;

(ii) offences against Aboriginal codes of behaviour while under the influence of alcohol, e.g., using the names of recently dead people; offensive language (Aboriginals are very puritanical about reference to sexual matters*); references to secret ceremonial; interference with sacred objects of other clans;

(iii) failure to carry out traditional obligations to relatives - especially care and nurture of children, old people etc.;

(iv) unwillingness to accept traditional marriage partners;

(v) desertion or neglect of marriage partner, adultery;

(vi) juvenile delinquency (e.g., petrol sniffing, petty theft); failure to perform parental and other family responsibilities.

* At least, in inappropriate contexts, as defined by Aboriginal codes.

ABORIGINAL ATTITUDES TOWARDS PUNISHMENT

Aboriginal attitudes towards punishment differ from those of white society. They see punishment as directed to the restoration of normal relations between the parties and within the community and to the prevention of future offences. It is therefore, in their eyes, important that an injured party should be satisfied that their injury has been 'paid for'. Traditionally, in inter-personal disputes therefore, a 'spear through the thigh', perhaps as the end to a ritual conflict, was a common form of resolution and in extreme and rare instances of offences of a sacrilegious nature, sometimes death was the penalty. The elders state that these forms of punishment have gone into disuse and that they do not seek authority to impose them.

It is possible of course that the 'spear through the thigh' could remain as an unofficial component in the settlement of inter-personal disputes. Our unwillingness to tolerate such punishment, it seems to us, is ethnocentric. Certainly

Aboriginals feel that prolonged imprisonment where offenders are isolated from their family and clan from which they would derive the influences likely to prevent future offences and which would expose them to alien and probably criminal associates is both counter productive and 'unconscionable', as we pointed out earlier.

There is an increasing tendency for 'pay-back' type penalties to be commuted to compensation, as the central component in the settlement or punishments of the kind which the community courts would impose. However to preclude wholly 'pay-back' in the form of physical injury would leave the risk that a dispute would remain essentially unresolved and therefore could recur, or alternatively that, if other forms of punishment such as imprisonment were imposed, the offender would in fact be subject to double penalty. It would seem wise to allow the passage into disuse of traditional forms of 'pay-back' to occur by the increasing use of other forms of compensation. If it is feared that recognition of this form of punishment would encourage its use it would be sufficient to provide a general appeal to a magistrate against any punishment on grounds of undue severity. The community courts could be required to inform the offender of this option. This would make it possible for relevant considerations to be taken into account by the magistrate - the possibility of double punishment and the risk of the dispute remaining unresolved. It is interesting that recently the Chief Justice of the Northern Territory imposed a 'suspended' sentence on an Aboriginal offender and instructed him to return to his community and face the procedures operative there. Furthermore the prospect of an appeal would mean that such punishments would be used only when they were part of an agreed settlement and were accepted by the offenders concerned and their family or clan.

Thus, already, compensation has become the standard resolution of the problem of a young girl who is unwilling to marry the man to whom she was 'promised', and persists in this refusal despite social pressure. The deprived 'husband' is compensated by the girl's family for what he has contributed to the girl and her family over the years since the betrothal, and probably with some addition for injury to his dignity.

A problem exists in relation to offences arising from alcohol abuse. Aboriginals at Yirrkala have a strong sense that such offences are subject to 'reduced responsibility' and the punishment is not appropriate. At the same time they are greatly concerned about their frequency and the disorder they cause. It is for this reason that they seek authority to arrest and confine overnight a person threatening or endangering the peace and good order of the community. They do not see this as punishment and generally no charge would be made against the arrested person.

FORMS OF PUNISHMENT PROPOSED

Apart from this 'protective' arrest and various forms of compensation, the Law Council envisages the following forms of punishment:

1. commitment to the care of an older member of the clan for re-socialisation; often combined with

2. compulsory residence at a 'homeland' settlement;

3. fines;

4. work on a community project;

5. temporary banishment from the community.

These emphasise either remedial action or providing time for 'cooling off'. They are in effect the return of the offender to an earlier stage of socialisation.

THE LAW REFORM COMMISSION

In its discussion paper the Law Reform Commission expresses interest in the Yirrkala proposals, but raises a number of issues about which H.C. Coombs sought further information. The most important of these were:

1. The possibility of community courts imposing punishments abhorrent to white Australian standards or in conflict with international conventions about human rights.

2. Whether the Commission has been sufficiently informed about the content of Aboriginal law to recommend its endorsement by white society.

3. Whether the authority the proposals entrust to 'elders' would be endorsed by all sections of the community.

4. Whether women are adequately represented in the proposals.

5. What would be the limits of the jurisdiction of the Law Councils and their rules?

6. How would the proposed community courts relate to the law enforcement agencies of Australian Governments.

7. What sanctions would stand behind the consensus upon which the proposals rest?

The following comments on these matters report the responses of the elders in discussion of the Commission's queries.

Punishments

Judgment about what forms of punishment are 'abhorrent' or 'unconscionable' are obviously ethnocentric, and there can be no objective basis for judging 'white' standards superior. However Yirrkala Aboriginals accept (at least ostensibly) that they must in this matter defer to the prejudices of preconceptions of the dominant society. They do not therefore seek authority to impose penalties involving physical injury or death (a privilege we ourselves have not wholly abandoned).

Content of Aboriginal Customary Law

Yirrkala Aboriginals reply that it would be difficult to codify Aboriginal law, and that it is not necessary to do so provided a procedure is established for determining what is the content of that law in the case under consideration. This they point out can be done by reference to those members of the Law Council best qualified by seniority and knowledge acquired by training and experience, (a procedure not different in principle from that followed in our own courts at least in respect of the common law). The query appears to reflect a desire to impose the concepts of our own law on Aboriginal society.

Authority of the Elders

The elders in Yirrkala assert that the community generally, including women and young men, endorse that in respect of the law - authority should be with the elders, subject to endorsement by the community in relation to rules and the decisions of community courts.

It is our firm impression that this claim would be validated by meetings of the whole community.

The Role of Women

The division of function and responsibility between the sexes in traditional Aboriginal society was clear and firm, although it has been affected by contact with white Australian society to the detriment of the status of women (see Bell and Ditton, 1980). However, the Law Council in Yirrkala confirms that there are important issues of law and order which are the concern of women. They assert that where these were involved they would confer with senior women and that any community court appointed in relation to offences or disputes arising from them would include or be composed of women. This view was endorsed by women, senior and younger. They did not think a separate women's Council necessary although H.C. Coombs specifically sought their views on this issue.

To some extent this might reflect their desire to keep women's

activities outside the area of white male political and bureaucratic intervention. Personally we would like to see any legislative action keep open the option of a separate women's Law Council if it is sought by women in a particular community.

Jurisdiction of the Law Councils

The Yirrkala proposals envisage the authority of the Law Council, its rules, and its community courts extending to the residents of Yirrkala and the 'homeland' settlements of its constituent clans. They presume that other communities would establish their own Law Councils and courts and make their own rules. Where the dispute or defence concerned only members of a homeland community, the community court would be constituted from the members of that community.

They believe that white residents and visiting Aboriginals should accept the authority of the local Law Council and its courts, and that acceptance should be a condition of a permit to enter or to reside in the community's territory.

Relationship with Australia Law Enforcement Agencies

The Yirrkala proposals envisage that the local machinery would be responsible for most law and order matters arising from Aboriginal law and from the Council's rules. This would not preclude action by police and other State or Commonwealth law enforcement agencies if those authorities considered the circumstances warranted it - especially in 'big trouble', for example, homicide.

However, the proposals envisage that in any case before a magistrate or judge in which Yirrkala Aboriginals are involved, the magistrate or judge would authorise the Law Council to appoint a Community Court to conduct a preliminary hearing and to advise him or her in relation to:

1. the facts;

2. community attitudes to the alleged offence or dispute;

3. Aboriginal law involved; and

4. form and degree of punishment or compensation.

If such a preliminary hearing were not conducted, the proposals would require that the Law Council should be asked to nominate members of the community to sit with the magistrate or judge so as to advise him or her on these matters.

Ultimate Sanctions

The proposals contemplate that the backing of white Australian law and its agencies would be given to the council, its courts and their decisions. This would not preclude the possibility of appeal in some circumstances, for instance against the severity of punishments, but the Yirrkala community doubt whether such appeals would be made. They trust in the desire to strengthen Aboriginal law, and the fear of social disapproval, to ensure this support from their own community - even from those on whom punishments are being imposed.

CONCLUSION

Our view is that the proposals are moderate, compatible with normal Australian practice, and likely to strengthen the prospects of orderly change and continuity in Aboriginal communities within Australian society.

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V FUTURE DIRECTIONS

FUTURE PLANNING NEEDS

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Over the past three days we have considered with great interest the comments made by conference delegates - all expert in their respective fields - on a range of topics. The topics have had in common an element of serious concern that Aboriginal people are most unfairly placed in the white-dominated and white-administered criminal justice system in Australia.

It is vital that before leaving Canberra we, and our good hosts the Institute of Criminology, address the messages given in those papers, especially those that are more warnings than messages.

The issues which we have discussed are not new, and solutions to the problems raised are not obvious. However that must not be seen as an excuse for any of us. We must share the responsibility and in some sense the accountability to give our every reasonable effort to effect positive and relevant change. Professor Harding, in his opening comments to this conference, referred to this role of ours as a 'ginger' group. I see it as being incumbent on us to at least set the directions for change if not make the changes themselves.

To emphasise the need for some specific action to set such directions as soon as possible I will refer to documents which relate to earlier reviews and studies into the matter of Aboriginals and the criminal justice system in Western Australia as far back as 1972.

> The most basic and fundamental safeguard for an adequate system of justice is the existence of a stable, egalitarian and well-informed society.
>
> While certain sectors of society remain under-privileged and liable to discrimination it is the duty of the political machinery of that society to provide special safeguards.
>
> The most immediate requirement for people of Aboriginal descent is the knowledge that they may stand in court armed with the best defence available against the abuse of the State's power.

Such public defenders should understand the special difficulties faced by Aborigines, so that they would be aware of the need for expert anthropological or linguistic help wherever necessary. Some realisation of Aboriginal needs and differences is being shown at the Law School within this University [University of Western Australia]. This realisation should be fostered so that a special course of lectures might eventually be given on traditional Aboriginal culture and on the handicaps facing Aborigines in our society. Lawyers should not be expected to be anthropologists, but they should at least be aware of the existence of differences in areas of language, beliefs and culture.

All these recommendations involve greater expense. The provision of legal representation throughout the State, the appointment of more magistrates, the special education of the judiciary of lawyers and of Aborigines - all these will involve more State expenditure.

But if we compare the expenditure on these measures with that of keeping a disproportionate and ever increasing number of Aborigines in prison, together with the social service payments which have to be made to the families of those prisoners, it is doubtful whether the new measures would entail a much greater expenditure of public funds (D. Parker, The Criminality of Aborigines in Western Australia, 1972).

In view of the importance of the Aboriginal population in the imprisonment figures it is appropriate to say a few words here about the problem. Aborigines are of course citizens of this country and like all citizens they have a duty to obey the law and if they fail in this duty then they cannot be granted some special kind of exemption. The problem is not a legal one but is caused by a combination of factors, some economic, some cultural and some related to the excessive consumption of alcohol. The Committee has made recommendations on this latter point which may produce some improvement but the other factors are far reaching and quite beyond the scope of this Inquiry.

> I refer in particular to the main recommendation which applies to this finding:
>
> The power to imprison for the offence of being found drunk in a public place be abolished (p.154, no.7) (O. Dixon, et al, Report of the Committee of Inquiry into the Rate of Imprisonment, 1981).

The resolutions of the previous seminar conducted by the Australian Institute of Criminology in 1983, and contained in the account edited by Bruce Swanton are also highly relevant in this regard (Swanton (ed) Aborigines in the Criminal Justice System, 1984).

In the papers presented at this 1985 workshop certain themes and emphases have clearly emerged. It is critical that with the time left we extract examples to maximise the opportunity of this important forum to take action on them. Unanimity of view, obviously, is unlikely, but agreement in direction of developing common policies should be possible. We must benefit from one another's experiences. We share the view, at least, that the rates of offending and imprisonment of Aboriginals in our society are unacceptably and disgracefully high. From that platform we must work together in close consultation with Aboriginal people.

We must start by bridging the gap: There have been a number of references to positive initiatives in this direction which could perhaps be brought to the attention of Commonwealth and State Ministers concerned with Aboriginal, legal and police matters. The concept of an Aboriginal/Police and Community Relations Committee, as operating in Perth and remote towns in Western Australia, is one such example. The activities and plans of the New South Wales Aborigine/Police Liaison Unit provide others as do the proposals being developed in South Australia. The recent submission to government by the Aboriginal Customary Law Committee of South Australia has a wealth of material to add to that collected by the Australian Law Reform Commission.

It is true that there is a very broad spectrum of Aboriginal situations and interests and any schemes must take into account regional and even town or community differences. But it is this forum which can set the parameters and directions for an improved communication and liaison system based on knowledge and experience. It is towards government Ministers in particular that the benefit of this experience and knowledge must be directed as a platform for action.

From our various perspectives and areas of interest we have not just responsibility to suggest directions for action but in fact,

as referred to in one of the earlier papers of the workshop, an accountability to Aboriginal people throughout Australia.

As a means of drawing the attention of workshop members to particular areas which present themselves for action, I submit the following future planning needs for discussion:

FUTURE PLANNING NEEDS

Aboriginal Police Aides

In view of (a) the decision by a number of States to introduce police aide or police assistant schemes, and, (b) the expressions of concern in respect of the existing police aide systems both in Australia and Canada, this conference should ensure that some examination of the situation is undertaken. This should especially take into account the opinions and perceptions of Aboriginal people.

Aboriginal Community Justice Systems

The Institute should consult with the Law Reform Commission as to its observations and assessments to date of Aboriginal community court systems presently operating.

This could lead to a workshop on the matter of community court systems and related issues in an area which will encourage and facilitate consultation with Aboriginal people involved in or seeking to have such systems of local authority/control introduced.

Justices of the Peace

A study of the methods used for the selection and allocation of Justices of the Peace used in both Aboriginal community courts and in towns where Aboriginals represent the main client group, should be undertaken.

Indigenisation

Further examination of the Canadian experience of indigenisation - as reported by Professor Paul Havemann - be undertaken under the auspices of the Institute.

Petrol Sniffing

Apropos Professor Harding's comments relating to the handling by governments of the petrol sniffing issue, the workshop should note that at the recent Australian Aboriginal Affairs Council meeting, held in Sydney on 29 March 1985, the Western Australia Minister for Aboriginal Affairs offered to host a conference of Aboriginal Affairs Ministers from South Australia, Northern Territory and the Commonwealth to examine the issue of petrol sniffing.

A particular reference will be the central reserves. The conference is tentatively scheduled for 12 June 1985.

Statistics

The workshop should encourage the Institute to increase its data collection on all aspects of Aboriginal involvement in the criminal justice system and indicate in the same way to Federal and State Ministers. I draw to your attention the recent AACC resolution in this matter.

A SUMMARY OF ISSUES:

Editor's Notes on Discussions and Papers

THE NORM RATHER THAN THE EXCEPTION

There is increasing evidence that short-term prison sentences are not a deterrent to many Aboriginal people. 'Why?' an Aboriginal participant asked, 'does an Aboriginal have to go to prison for a wash and a feed?'. The question has resounding implications for Australian beliefs about race and class.

The western justice system is in place to protect society and to discourage offending. But it is now widely understood that many young Aboriginal men commit offences as part of their 'initiation into manhood'. A large number of Aboriginals are also known to continue to offend throughout their lives in order to go to prison 'for a holiday', 'to be with their families', or 'in order to escape some personal problem within the community'. By Euro-Australian standards, such behaviour makes a mockery of the two pillars of justice, protection and deterrence. That the promise of imprisonment may be encouraging Aboriginal offending is perceived by criminal justice administrators as an Alice-in-Wonderland logic, to be denied and resisted.

It must be considered, however, that such high Aboriginal imprisonment and recidivism rates have introduced a unique element into the Aboriginal social experience. There is the very real danger that arrest, fines, and imprisonment will become a way of life. They have become so incorporated into the Aboriginal value system and world view that not to have been arrested at some time may put an Aboriginal's loyalties in question. A criminal justice system that serves to validate Aboriginal identity rather than to discourage unacceptable behaviour is plainly in need of reappraisal.

THE RELEVANCE OF FINES AND IMPRISONMENT

There are, of course, many Aboriginals who fear imprisonment and resent the disruption which it brings to family life. The ordering of fines frequently results in prison terms because of non-payment. The level of fining, compared to income, is often exorbitantly high, creating inordinate suffering for the dependent families of Aboriginal offenders.

Aboriginals are also seen to be coming to court with little understanding of court proceedings, or of their legal rights and obligations. Recidivism rates range between 70 and 90 per cent. These observations have been made by a cross-section of professions: magistrates, lawyers, police, anthropologists, and prison and probation staff.

It is now suspected that, for a large number of Aboriginal offenders, not only are fines and imprisonment counter-productive in relation to behavioural modification and community protection, they also appear to have little value as a means of social restitution or dispute settlement. Traditional communities still apply customary law to an offender, even though that member has already been sentenced under Euro-Australian law.

The relevance and effectiveness of fines and imprisonment should be further studied.

IMPRISONMENT AND THE COMMUNITY

All over the world the purpose and effect of punishment, imprisonment, deterrence, and rehabilitation are under debate. Nevertheless there are strong traditions which look to psycho-social or environmental explanations of individual criminal behaviour.

Marxists offer an explanation in terms of the structure of capitalist society and the 'alienation' of those who have only their labour to sell. Social reformers since the early 19th century, if not earlier, have pointed to unemployment, alcoholism, and chronic poverty as 'causes' of criminal behaviour. Essentially these are also 'class' explanations.

The modern school of psychiatry associated with R.D. Laing, as well as a host of other psychological schools, locate the troubles of individuals in the web of family and other relationships in which they are entangled.

The real point is that, whatever our conclusions about causes, treatment alternatives have been largely restricted to models that involve separation of offenders from the presumably unfavourable environment from which they come. Reform schools and the parole system both pre-suppose the desirability of removing offenders from bad influences. Reform or rehabilitation is supposed to take place in a special sanitised environment and the offender returns 'home' theoretically strengthened by new habits and a new outlook.

What this approach fails to tackle is the original environment. Case studies presented here, on the other hand, have strongly indicated that a community oriented response system would not only have an impact on the offender it could progressively improve and give new purpose to the home environment as well. Greater mutual commitment can arise out of the process of the offender confessing guilt to the community and pledging to improve; and of community self-criticism and conscious effort to seek ways of rehabilitating the offender and his or her environment.

It was clearly stressed by the indigenous participants, and a significant number of others at this workshop, that 'Aboriginal culture is the cornerstone of Aboriginal future development'. Translating this into practical terms for our purposes, there was a strong feeling that there should be an increasing transference of responsibility for the means of social control to Aboriginal communities over all areas of community disputes, minor crime, and rehabilitation involving their people and property.

Complete Aboriginal autonomy at this level may not as yet commend itself to all administrations; but there is growing acceptance of the value of a greater degree of Aboriginal co-operation and participation. The community is still one of our greatest untapped resources. Police who have been involved in Community Watch programs, for instance, become their most enthusiastic advocates. The expected benefits and advantages of community-based solutions - to the offender, the community, and the criminal justice administration itself - are increasingly being recognised and understood.

COMMUNITY POLICING

There is a growing trend in Australia, as well as overseas, towards 'pro-active' rather than 're-active' methods of policing. Community policing programs, efforts to improve police/community relations, and jointly sponsored preventative action - especially in relation to youth and children - are now being explored.

Destructive and self-destructive juvenile behaviour, particularly vandalism, alcohol abuse, and petrol sniffing, are urgent areas for preventative action. Diversionary and alternative systems which increase community responsibility for the prevention of juvenile offending and the treatment of juvenile offenders are needed without delay.

Community-initiated programs for children and youth should receive priority consideration, not just by the Departments of Education and Health, but by police departments as well. The police and the Aboriginal community have much to gain from their introduction. Police can also provide a focus for 'work-experience' and 'law education' programs as a part of their crime prevention activities. (When the Moree police and the community co-operated in the establishment of a summer cultural camp for young people in 1984 a drop in juvenile crime was recorded.)

However, participants generally felt that communities themselves should be encouraged to revive or develop local methods for 'growing-up' or socialising their young, preferably before they become criminal justice statistics. There was also seen to be a community role in ensuring that unjust sentences do not result from cultural or linguistic misunderstandings; and in providing the courts with sound alternatives to imprisonment or fines for the sentencing and rehabilitation of Aboriginal offenders.

POLICE AIDE/POLICE ASSISTANT SCHEMES

Differing views on the merit of Aboriginal police aide and police assistance schemes were expressed in the workshop. Police representatives found that, on the whole, these schemes had been a positive addition to policing in Aboriginal areas and had received strong community support. Other delegates expressed concern about the apparent moral conflict and conflicts of expectations experienced by Aboriginal police aides. Although it was agreed that they could play an important role in overcoming cross-cultural misunderstandings it was felt that there was a tendency for Aboriginal police aides not to receive the recognition they deserved. Their relegation to the lowest ranks and duties of the police hierarchy had been detrimental to their self-esteem and their status within their own communities. It had also reinforced beliefs about racial inferiority held by some police, particularly young police recruits unfamiliar with the specialised tasks of Aboriginal police aides.

It was clear that benefit from the police aide scheme should be equally distributed between the police, the community, and the Aboriginal participants. The status and remuneration appropriate to other police specialists, it was felt, should also be accorded to Aboriginal police aides.

The whole area of Aboriginal policing and Aboriginal participation in policing was seen to be urgently in need of study. One delegate drew the attention of the workshop to a recent publication which discusses problems encountered by the Aboriginal police aide scheme in South Australia (Children and Authority in the North-West: Report of the South Australian Aboriginal Customary Law Committee, Adelaide, August 1984). It was strongly emphasised by Aboriginal delegates that, until Aboriginals were employed at the higher levels of the police hierarchy, policy and operational reviews undertaken by the police would always be suspect to the Aboriginal community. There was also a need for some independent avenue of appeal and answerability to which Aboriginal complaints against police misconduct could be taken.

ABORIGINAL/POLICE LIAISON

In some States there has been a recognised need for dialogue between Aboriginal representatives and senior police personnel. The implementation of police/Aboriginal liaison schemes has, after some struggle, begun to open lines of communication between the Aboriginal community and the upper levels of the criminal justice system. The Western Australian Special Cabinet Committee on Aboriginal/Police and Community Relations has commented on the limits on their de facto advisory role between police, the government, and Aboriginals in their State. The New South Wales

Police/Aborigine Liaison Unit, on the other hand, reports that this function has been formally incorporated into the New South Wales Police Community Relations Bureau giving greater legitimacy to the unit's activities.

In addition to their activities as intermediaries, liaison officers can also perform a useful role in community peace making. Liaison officers are occasionally invited to sit in on community dispute settlement meetings as part of their preventative function.

The advisory/social welfare aspect of policing appears to be a largely unexplored area. As seen in the West Auckland case, community policing helps to break down community/police hostilities and seems to avoid the knee-jerk reactions characteristic of earlier policing styles ('re-active policing'). The decriminalisation of drunkenness, the greater involvement of the community in solving its own social ills, the institutionalising of formal or informal community dispute settlement mechanisms, should all relieve certain pressure points - such as the streets and other public places - where Aboriginals are most likely to be arrested.

COMMUNITY-BASED MECHANISMS

Innovations such as the introduction of community policing, police aide schemes, the inclusion of socio-cultural education in police recruit training, the employment of female officers to establish relations with Aboriginal women, or simply the increase of policing services to those communities requesting greater police protection, were seen to be only partial answers to resolving social and justice-related problems affecting Aboriginals.

The introduction of special policing methods in parallel with the legitimation of community-based mechanisms of social control was also discussed.

Examples of para-policing activities (community members employed by Aboriginal councils) can be found in a number of areas. Those communities where structures of authority and social control were evident appeared to produce more cohesive social life than those where community infrastructure was weak. There also appeared to be a greater degree of co-operation between police and Aboriginal leaders in more structured communities. The pros and cons of informal and autonomous systems of Aboriginal policing, as opposed to the more formal system of Aboriginal recruitment into the police force, were seen as deserving examination. Community-based systems need exploring in the context of Aboriginal thinking. The implications of seeking to accommodate them in the wider criminal justice administration will likewise require careful study.

STANDARDISING OF RECORDS

In dealing with Aboriginals there is a need for the drafting of police procedural guidelines in the areas of:

(a) the taking of personal details;

(b) police interrogation procedures;

(c) the use of Aboriginal confessions and police prosecutorial evidence in court; and,

(d) the availability of legal and/or personal support for Aboriginal offenders during interrogation and court proceedings (legal aid, responsible adults, interpreters, friends of the court, etc.).

With the possibility of establishing a long-term database for statistical analysis of Aboriginal crime and sentencing in mind, the standardising of spelling of Aboriginal names, and of recording procedures to be used by police should be consistent with those employed by court and correctional institutions. Governments wishing to design standardised procedures for state-wide data collection and analysis systems, may find it helpful to consider the PROMIS system that is being implemented in the Northern Territory.

In summary, many assumptions have been made by criminologists, police, welfare workers, and Aboriginals about what are 'good' Aboriginal/police relations. But there is at present no consensus about definitions or appropriate measures of success. As a senior Aboriginal Affairs official pointed out, the strong differences of opinion expressed about Aboriginal policing at the workshop demonstrated the complexity of the issues:

> Police aide schemes should be looked upon as a necessary evolutionary step in police forces. The presence of Aboriginal police will show advances in Aboriginal/ police relations ... We must look where the police aide scheme will lead us. Police have to accept Aboriginal recruits, even with police records. They should provide supportive services to Aboriginals, such as schemes to aid Aboriginals to be placed in universities and colleges through the police academy. We should be aiming at getting Aboriginals into top positions and we must accelerate the process to get them there. There is a lot of goodwill between police and Aboriginals, but it is a complex problem. Aboriginals need to be in top positions to execute orders and to frame orders. This will be a real advancement.

'Solutions' in this area will need to be in harmony with local needs and aspirations. Consultation between police and the community, and some degree of experimentation, will no doubt be required to fit local and regional variations.

COMMUNITY JUSTICE PROGRAMS

The police are in the position of gate-keepers of the criminal justice process - the frontline of contact, very often, between Euro-Australian and Aboriginal societies. There is an inevitable conflict of values, social norms, and customs at this point of contact.

Those points of cultural conflict, where most arrests are likely to occur, need to be understood by police in the field. It might be asked whether buffers, other than of the law enforcement kind - community councils, church groups, social welfare, cultural and recreational groups, liaison units, or community justice programs - might not be better employed as interpreters, mediators, and conciliators, forming a sizable strip of middle-ground which can absorb some of this conflict.

Minor offences, of the nuisance-crimes nature, such as 'drunken disorderliness', 'petty theft', 'disturbance of the peace' and their accompanying charges of 'resisting arrest' and 'non-payment of fines', for instance, could be better diverted to responsible community organisations for handling.

Proposals for the introduction of community justice programs appear to be a response to a range of problems both Aboriginals and administrators are encountering in the application of current Euro-Australian criminal justice practices.

In seeking practical solutions the workshop discussed Aboriginal liaison, employment, and autonomy in areas of policing, sentencing, and prisoner rehabilitation. While there was no whole-hearted consensus reached by the workshop on these matters, there was a general feeling that community justice experiments were worthy of further investigation, under the guidance and monitoring of those Aboriginal people they concerned.

In the establishment of a program it was felt that each individual Aboriginal community would need to be provided with information on a range of possible alternatives and should play the dominant role in the design, administration, and adjustment of these programs to suit their unique situation. What works in Redfern may not work in Moree. Aboriginal communities themselves must be allowed the time and space to make errors of judgment and to re-evaluate and adjust their programs. Experiment itself can be an ongoing educative process.

There are indications, for instance, that the Western Australian justice of the peace scheme works better in the less

traditionally oriented, less closed communities, than in communities which still function largely under the dictates of customary kin-group associations and tribal law. Traditional elders seem to encounter moral dilemmas in the role of justices of the peace. Where two systems of law co-exist, which law should apply to which offence? Such elder justices of the peace have suggested either a return to 'one law' (i.e. European law) or the transfer of responsibility for new practices to the younger (middle-aged) men of the community so that the elders might return to their traditional responsibilities.

In the more urbanised multi-tribal community, the Western Australian justice of the peace scheme seems to function well, without such dilemmas. Justices of the peace tend to be recruited from the middle-aged leadership sector which is less tied to traditional law and kinship obligations.

When local factors hamper the success of a project it is clear that the people must be empowered to either change, adapt, or even abandon the system if required. Problems are also encountered where Aboriginal people fill only an advisory capacity.

If these programs are to maintain the dynamism of a living system - one which is responsive to the changing needs of the people it affects - then they must engage Aboriginal commitment. Greater 'self-determination' would enshrine Aboriginal rights to incorporate vital elements and values of their society in a justice system whose goals of deterrence and protection also serve Aboriginal needs and interests.

AVAILABLE MODELS

Unilateral, bureaucratic remedies, which do not reach for support into the regions and communities they involve, have a long and sorry history for indigenous people in Australia and overseas. A less recognised transgression, however, is the procrastination which results from the search for the 'perfect solution'.

A range of minor offences and community disputes may be more effectively handled and resolved through informal community-based mechanisms which do not entail resort to legal action. The community, having been recharged with some responsibility for social control, is also able to provide ongoing attention to the problems of its members as both victims and as offenders. This personal and rehabilitative aspect of community life is a greatly undervalued resource, of which the formal justice system is characteristically deprived.

It was emphasised that, in the first instance, it would be quite inappropriate to generalise proposals for community justice models. Aboriginal communities vary greatly in size and

character. The rural/traditional and urban/modern dichotomy - itself a simplification that masks many variations - suggests the lines on which a number of models would need to be tailored.

A tendency was noted for governments to misinterpret a community's interest in one model as a request for the direct transference of the ready-made infrastructure. It was recommended that it would be wise to investigate situational variations, and to take guidance from local opinion. Ideally, each Aboriginal community should be provided with a range of options, with the right to adapt and to modify these according to community need. Likewise, what could work in one State may not work under the laws and practices of another.

Seven years of research undertaken by the Australian Law Reform Commission indicates that there is no single ideal model. The Commission representative related that the Queensland Aboriginal court was perceived by Aboriginals as being modelled on the 'white-fella' judicial system, the difference being that Aboriginal courts deal largely with minor law and order offences under their own facilitating legislation.

On the whole, these Aboriginal courts are not generally seen as dispute settlement mechanisms, or as Aboriginal community forums. Disputes are still being resolved in the streets by informal discussion, public shaming or more direct physical intervention. Since the introduction of new legislation in Queensland (Community Services Act) the role of the Aboriginal court has been expanded to include the resolution of community disputes. The success of the Aboriginal court as a dispute settlement mechanism will largely depend upon police discretion in matters of referral or prosecution, the trust of the community in their own court counsellors, and the degree to which the community is actually willing to use such a system.

Independent legislation, and/or the adaption of existing legislation (such as Human Rights Acts), may be required to allow for and to legitimise community initiatives. While facilitating legislation for the development of community justice programs may be desirable, it is unlikely that any uniform system could be implemented from the federal level. Rather, it was seen that State governments could take immediate action to facilitate regional developments. Local Aboriginal decision-makers could be encouraged to investigate, propose, and mobilise support for the establishment of alternative policing, adjudicative, sentencing, rehabilitative, and conflict management mechanisms at their own community levels.

Ultimately, the success of a program would depend upon its social 'fit'. That is, the degree of Aboriginal involvement in the planning and administration of the program, and their commitment

to its success; the degree to which the program complements, rather than contradicts, persuasive elements of Aboriginal social life, such as kinship and customary law; and the perceived benefit from the program by the members of the community. Community regulation and rehabilitation programs should be designed to heighten Aboriginal dignity and self-reliance. With their functions, jurisdictions, and obligations clearly defined, they could occupy an honourable place within the broader local government and criminal justice administrations.

INDIGENISATION VERSUS ACCOMMODATION

The Canadian representative explained that recent Canadian reviews of criminal justice administration for Indian and Inuit peoples, have raised some striking comparisons in the history of government policy formation between our two countries. Euro-Canadian government philosophy moved from the 'colonial-assimilationist' tradition to the more recent 'integrationist' approach. Integration policies involve the increasing employment of indigenous people in the frontline delivery of government services. Whether specialist indigenous innovations could be 'accommodated' into the wider system and allowed to undergo their own parallel development is the most recent question being considered by Canadian governments. At the furthest end of this continuum, Canadian researchers say, is the 'separatist' approach which has been widely rejected as an administrative model (Paul Havemann, Keith Couse, Lori Foster, Rae Montonovich, Law and Order for Canada's Indigenous People, Prairie Justice Research Consortium, University of Regina, 1984).

It was found that much of the Canadian literature on indigenous criminal justice issues appealed to 'culture of poverty' and similar theories as reasons for high indigenous imprisonment (poor housing, low education, unemployment etc.). Systemic research - where the country's structural and administrative philosophy and history is explored - had been comparatively neglected. These Canadian criminologists are now urging that the criminal justice administration itself be inspected for systemic faults, particularly for areas where indigenous disadvantage and discrimination have become institutionalised.

Proposals for reform today should not be made in a vacuum, but should be firmly grounded in the background and experience of our historical past. Without considering the history of the interaction between Aboriginal and western law we may not only be condemned to make the same mistakes, we may also be poorer in our comprehension of the present, and in our vision of the future.

In view of the limited involvement of Aboriginal people in Australia's criminal justice administration, it should not be surprising that its laws and processes are perceived by them as

mysterious, alien, or unjust. If the adage that 'one learns by doing' is true, then it must also be a fact that large scale paternalistic usurpation of all aspects of a people's social life - from child nurture to social control - by another people would undermine self-reliance and the capability and motivation of communities to manage their own affairs. In some Aboriginal communities social malfunction and self-neglect appear to be endemic.

The recruitment of Aboriginals into liaison and administrative professions was seen to be an important factor in the improvement of bicultural relations. In discussions, however, it was questioned whether merely to 'indigenise' the existing criminal justice hierarchy, by Aboriginal participation or collaboration, would be enough. It was suspected by many of the workshop participants that any genuine desire to revive and promote Aboriginal social cohesion would also require a gradual transference of some means of social control. One Aboriginal participant pointed out that, in the area of health, the acceptance of self-management roles has resulted in an acceptance of responsibility as well. Was there any reason why this could not also occur in other areas of social life?

Recent attempts to reverse what has amounted to a catastrophic loss of Aboriginal autonomy, in the areas of health, housing, local politics, and economic enterprise, have shown the way to a very long and painstaking road to social recovery. The return to Aboriginal people of an increasing degree of autonomy and participation in justice administration must be seen as a part of this restoration process.

The means by which customary and modern Aboriginal systems are harmonised with the wider justice system will likewise be slow, experimental, and tentative in the early stages. Save for a few exceptions, the two are presently characterised by hostility and mutual rejection. 'Accommodation', as such, necessitates a large degree of mutual respect and appreciation - too little of which exists between the two cultural groups at present.

The Maori representative stressed that it should not be seen as a dichotomous choice between the establishment of parallel Aboriginal justice systems and Aboriginal recruitment into the wider criminal justice system (i.e. between the accommodationist or integrationist model). It was important that Aboriginal people strive to have input into Euro-Australian policing, court and correctional processes which will, either directly or indirectly, continue to affect their lives. The end result of complete separation might be isolation and powerlessness to influence these developments, he said. Both paths should, therefore, be pursued. Shared solutions, both between Aboriginals and the criminal justice professionals and between governmental bodies concerned with this area, offer the greatest promise - but also the greatest challenge.

THE ROLE OF THE AUSTRALIAN INSTITUTE OF CRIMINOLOGY

A survey of existing literature on Aboriginal criminal justice and policy reveals repeated re-statements of the problem, scarce documentation of the practical issues, and sporadic proposals for reform (Hazlehurst, Ivey, Hill, Aboriginal Criminal Justice: A Bibliographical Guide. Australian Institute of Criminology, Canberra, 1986). Since the pioneering work of Elizabeth Eggleston we have seen few systematic studies of Aboriginal criminal justice.

Academically or administratively little has been furnished even by way of record of the range of criminal justice innovation over the last decade. Still less has there been any sustained study or persuasive argument for the wider application of innovations which have shown promise. There has been an abundance of critical and defensive scholarship but a coyness and lack of curiosity about answers and constructive approaches.

Much work needs to be done in the presentation and analysis of innovative models; the detailing of their form, powers, and procedures; their applicability, success, or failure in certain social settings; their methods of eliciting local and/or bureaucratic support and input; details of their methods of law enforcement, adjudication, legitimisation or accountability; and their formal or informal tone or style of administration. The Institute has, therefore, in this first Aboriginal criminal justice workshop, attempted to discover, discuss, and disseminate information about a variety of programs, too many of which have so far remained in relative obscurity.

It was not the purpose of this first workshop to formulate broad policy resolutions, but to use the collective knowledge and experience of a concerned and practically oriented group to identify issues most urgently in need of attention, and to suggest some guidelines for research and action.

Proposals for change in criminal justice administration for Aboriginals should be based upon systematic and careful review of that system: the initiation of research; discussion and exchange of practical knowledge and experience; and an awareness of historical, present, and potential socio-legal and political contexts which necessarily affect the success of such proposals.

Several key themes emerged from these initial discussions. It was proposed that research into these areas be encouraged, with a view to bringing Aboriginal and criminal justice expertise together for a series of more focused workshops. The purpose of these thematic workshops would be to facilitate the exchange of ideas, the formulation of more substantive practical recommendations, and the addressing of these findings to the appropriate levels of government and the community.

The Institute was also encouraged by the participants to promote State and regional level workshops and seminars and, if possible, to send Institute representatives in support of State initiatives when invited. There was a strong consensus that Aboriginal people should be included in any review of the criminal justice system, particularly at the higher levels of negotiation. The formal contribution of Aboriginal organisations and individuals at these workshops and seminars was particularly stressed.

Areas for future study

1. Indigenisation and accommodation: the training and recruitment of Aboriginals as criminal justice professionals; customary and contemporary Aboriginal means of social control and community regulation, and their accommodation in the wider legal system; the provision of real avenues for Aboriginal conceptual and practical input.

2. The nature of Aboriginal offending: the relationship between offender and victim, their socio-economic environment, and the application of Euro-Australian criminal law within these contexts.

3. Aboriginal policing and police aide schemes: meeting Aboriginal policing needs; the pros and cons of Aboriginal involvement in law enforcement; Aboriginal and police perceptions of these issues.

4. Regional variations and autonomy: the identification of existing community administrative practices, corresponding to different patterns of Aboriginal social organisation and residence (rural to urban); the actual or potential strength of these infrastructures to sustain the grafting of community justice administrative functions.

5. Community justice systems: the feasibility and facilitation of programs in Aboriginal community regulation, conflict management, and dispute resolution; current or possible Aboriginal participation in the design and administration of Aboriginal courts, justice of the peace schemes, special policing, and prisoner and post-release rehabilitation.

6. Solvent abuse and special needs of youth and children: current practices in, or the potential for the revival of, community responsibility in the socialisation of children and in their protection from criminal behaviour. Unravelling and defining the complexities of the urgent problem of solvent abuse.

7. Courts and due process: current and alternative models of sentencing and diversion (such as community service orders); the use of prosecutorial discretion in the application of Euro-Australian law to Aboriginals.

8. Correctional systems: Aboriginal and white perceptions of imprisonment: its purpose and its effect; community options for prisoner rehabilitation.

9. After-care: the least of all studied, yet perhaps the most important in the cycle of Aboriginal incarceration, are the issues of prisoner release, rehabilitation, and recidivism. This area seems ripe with possibilities for community-based initiatives.

10. Legal aid: Aboriginal legal aid organisations claim they can do little more than provide 'band-aid' representation to their clients; their desire to provide law-related education, to establish working relationships with law enforcement or judicial agencies or to have serious input into governmental and criminal justice reviews, they say, is frustrated by the lack of time and resources to do so. Has the Aboriginal legal aid system been assigned an impossible job? In what way can its functions be given greater support?

11. National crime statistics: data collection on Aboriginal involvement in the criminal justice process; possible depot points for data collection (such as Aboriginal legal aid service, police, court, and prison records); the standardisation of record-keeping throughout the system compatible with computer storage and analysis.

12. Systemic pressure points: 'asking Aboriginals where it hurts'; the analysis of legislative, bureaucratic, and organisational habits which institutionalise Aboriginal disadvantage and alienation from criminal justice administration; possible areas for some standardisation of practice at the 'pinching' points in the system (i.e. arrest, police interrogation); the consideration of what enabling legislation will be required to legitimise and facilitate reform. A full systemic analysis, highlighting decision-making points, could provide some direction to innovative administrators about where review may be timely and productive.

The provision of a relatively neutral forum for the gathering together of Aboriginal and criminal justice professionals to discuss these issues, was seen to be a useful role which the Institute could play. Hence, from the first workshop, some framework for the Aboriginal criminal justice workshop series

emerged. But the idea that this activity should be based upon the premise that Aboriginal offending alone was the root of all problems was unacceptable to many of the participants. 'Blame' for the problems, Aboriginal participants stressed, must also be shouldered by the justice system itself. An admission from government quarters that things were not right would help to secure Aboriginal confidence and co-operation in the search for ways of reducing Aboriginal incarceration. Criminal justice reform rather than 'Aboriginal criminality', was a more acceptable emphasis to the participants.

It was recognised that either the Institute or an independent umbrella organisation could regularise the linking-up and communicative process, and could act as a clearing house and disseminator of information upon regional, state and federal policy and program developments. Recommendations to governments, where adjustment to legislation or current practices may be needed to accommodate community mechanisms, could also be made at the appropriate levels by this body. Clearly, this was a matter which would receive further consideration, in response to the developing perceptions and aspirations of the workshop gathering. In the meantime, the Institute was encouraged to continue with its facilitating role in these discussions.

Under the auspices of the Institute's research section, some continuity in the analysis and monitoring of these developments will be possible. However, there is probably no better program of research and monitoring than one conducted at the regional level where such programs are being tried.

In the first instance the Institute will continue its research into community justice models presently being used in Australia and overseas. Institute publications on a range of these issues are expected to become progressively available over the next eighteen months. The Institute will also continue to promote the collection of Aboriginal criminal justice statistics for the establishment of a national database. Hard data are needed to give some benchmarks for this research and to enable the regions to measure the effect of new initiatives.

THE CATALYST FOR CHANGE

What is to be the catalyst for change? Will it be the Australian Law Reform Commission's report on customary law? Will it come from the brave and open-minded leadership of certain government departments? Will years of academic comment produce some practical outcomes? Will practical experimentation initiated by forward thinking magistrates, police units, or corrective institutions show the way? Or will the initiative come voluntarily from concerned Aboriginal individuals and communities?

If the presentations at this workshop are any indication, proposals with potential to spark significant reform have been seen to have come from all of these sectors. Recognising the value and legitimacy of many streams of initiative is itself a step forward.

Just as Aboriginal communities must desire, select, adapt, and maintain their own initiatives, so too must the Australian criminal justice superstructure maintain a discipline of self-analysis and review. Contradictions of purpose and effect - the purpose of criminal justice and the actual effect its administration is having upon Aboriginal people - should not escape investigation.

Initiatives such as Aboriginal/police liaison units have moved the two societies a little closer together, without implying threat. Bridging action, such as this, offers the most promise. By monitoring the development and function of community justice programs, needed areas for minor or major modification should be revealed.

Where traditional systems of law seem irreconcilable, greater autonomy and separation may need to be introduced. In communities more distanced from customary ways, the advisory/mediatory capacity of Aboriginals can influence the middle-ground where cultural misunderstanding is most prevalent. That urbanised communities may favour a greater element of inter-cultural liaison and reciprocity was an important observation delivered to the workshop, and one which requires further verification.

It is likely that impetus will come from many directions: from among Aboriginals, educationists, administrators, and governments. Specialised sectors could work more closely together by allowing the objective to act as the common denominator. Others will prefer to work within their own domains. Irrespective of the approach, it is better that action, and the encouragement of action, is the springboard of venturesome ideas. 'Solutions' may arise from experiment. They will not emerge from good intentions alone.

APPENDIX 1

Youth Aid Section

Purpose

Y11 The purpose of the Youth Aid Section is to co-ordinate Police activity in the prevention of crime among children and young persons by:

(a) Identifying persons at risk and initiating action to assist them.

(b) Initiating action by other agencies to rehabilitate young offenders.

(c) Assisting the Department of Education in its responsibility to provide children and young persons with an understanding of the law with special emphasis on the role of the Police service.

Employment in Youth Aid Section

Y12 (1) Youth Aid Officers shall only be employed at those stations where provision has been made in the Authorised Establishment Charts approved by the Commissioner.

(2) The personal prerequisites for employment in the Youth Aid Section are:

(a) Attainment of permanent appointment to the Police (subject to dispensation by the Commissioner in special cases).

(b) Twenty-two years of age or over.

(c) An aptitude for, and interest in, working with children and their families.

(d) Potential to become a proficient public speaker.

(e) Approval to drive police vehicles.

(3) All appointments to the Youth Aid Section shall be made by the Commissioner. District Commanders may deploy members to Youth Aid in a relieving capacity for any period not exceeding 28 days.

(4) District Commanders may, at their discretion and if they consider it necessary to ensure that Youth Aid staff are conversant with current general duties policing, redeploy any Youth Aid Officer on field duties for a period not exceeding five weeks a year at any time after 2½ years from the date of the member's appointment to the Youth Aid Section.

(5) Appointment to the Section may be made on a part-time basis. When a member is so appointed the District Commander shall ensure the appointee is allowed adequate time in which to effectively perform Youth Aid duties.

(6) In terms of section 26 of the Children and Young Persons Act 1974 all members of the Police who are appointed Youth Aid Officers are deemed to be designated "members" for the purpose of consultation under the section. This authority extends to any member who may be relieving in the Youth Aid Section in accordance with subclause (3) above.

Trial and Training

Y13 (1) A member for appointment to the Youth Aid Section will be on trial for a period of 6 months, after which, if favourably reported on by his immediate supervisor and the District Commander, the appointment will be confirmed.

(Replaces first text of "Youth Aid Section".)
Reprinted December 1980.

'Youth Aid Section', New Zealand Police Department, Police Act Regulations and General Instructions, Vol 2 (1980/82)

(2) Every full-time member and selected part-time members will be required to undertake such training as the Commissioner deems necessary.

Dress

Y14 (1) Members of the Youth Aid Section shall wear plain clothes when engaged on inquiries.

(2) Generally, plain clothes should be worn by Youth Aid members when carrying out routine patrols, but in special circumstances the District Commander may direct such members to wear uniform.

(3) All lectures and addresses to children at schools, kindergartens, and play centres shall be given in uniform.

Restriction on Police Identification

Y15 (1) Refer to General Instruction P51 on the wearing of plain clothes.

(2) Police vehicles bearing "Police" identification signs shall not be used on youth aid work when to do so would tend to defeat the purpose of the duty being performed.

(3) Police vehicles bearing "Police" identification signs shall be used when available for members carrying out their duties as Youth Aid Education Officers.

Co-operation

Y16 (1) Members of the Youth Aid Section shall act in such a way as to deserve and obtain the aid and co-operation of other members of police in preventing and dealing with delinquent behaviour. They shall encourage members to bring to Youth Aid attention children and young persons who, by their behaviour or because of their circumstances, are likely to come to adverse notice in the future.

(2) Members of the Youth Aid Section shall maintain close liaison with Crime Prevention Officers, Community Relations Co-ordinators, and Community Constables.

Member in Charge of Youth Aid Section

Y17 (1) In Youth Aid Offices of two or more members, one member shall be designated by the District Commander as being "in charge".

(2) The member in charge of a Youth Aid office shall carry out normal youth aid duties and in addition:

(a) Be responsible for the control, supervision, and training of members under his charge.

(b) Allot the work of his staff and ensure that it is promptly and effectively carried out.

(c) Ensure the work in an office is evenly distributed.

(d) Ensure that all records are kept correctly.

Duties of Youth Aid Section

Y18 Members employed in the Youth Aid Section shall:

(a) Undertake preventive action for the welfare of children and young persons in accordance with the purpose of Youth Aid as set out in General Instruction Y11.

(b) Patrol places frequented by young people particularly those which are known to be resorts attractive to undesirable elements.

(c) Undertake background inquiries and home visits where matters involving persons under the age of 17 years are referred to the section under General Instruction Y20. The purpose of these enquiries is to present a complete history of the young person and his family at the consultation with the Social Worker or to recommend a course of action to a member who is authorised to make a final decision concerning the child. Where the Youth Aid Officer concerned considers that in the circumstances, inquiries or follow-up action are unnecessary or inappropriate, he need not take the action prescribed in this provision but he must report the reasons for his action.

(d) Consult with Social Workers of the Department of Social Welfare and Maori Community Officers of the Department of Maori Affairs in accordance with section 26 of the Children and Young Persons Act to consider a recommendation for dealing with young persons who have offended.

(e) Warn children and young persons who have committed offences and for whom a warning has been approved.

(f) Co-operate with parents, guardians, Social Workers of the Department of Social Welfare, and other parties interested in the rehabilitation of children and young persons who have come under adverse notice but not accept a continuing casework responsibility.

(g) Refer to an appropriate agency, parents and/or children and young persons in need of specialised advice or assistance.

(h) Co-operate with ministers of religion, social workers, school principals, vocational and school guidance officers, other organisations, and people in the community interested in welfare and who are willing to assist children, young persons, and their families.

(i) Maintain a good knowledge of local youth, youth groups, and in particular children and young persons who are or may become offenders to enable them to carry out their preventive duties and to assist other members of the Police with enquiries.

(j) Where required, undertake the Law Related Education Programme in pre-school centres, primary, intermediate, and secondary schools.

(k) Provide assistance and guidance to other members of the Police who may be called on to address school children.

(l) On request give talks to groups at schools, institutions, and elsewhere.

(m) Through his supervisor forward to the Commissioner (Co-ordinator: Youth Aid) a monthly return of talks.

See New Y 19 Youth Liaison Notes 83/263

Youth Aid Section]

Y20 Investigation of Offences by Youth Aid Officers

Y19 Investigation of offences alleged to have been committed by children or young persons should not be undertaken by full-time Youth Aid Officers except in unavoidable circumstances.

Youth Aid Records of Children and Young Persons

Y21 (1) Records of all children and young persons who commit offences or otherwise come under the notice of the Police shall be maintained at each Youth Aid Office for the purpose of:

(a) Enabling Youth Aid Officers to carry out their duties more effectively.

(b) Providing a source of information for other members of the Police.

(c) To enable Youth Aid Officers to inform the Department of Social Welfare of previous minor to notice matters when a more serious matter is later referred to that Department for Children's Board, consultation or prosecution.

(2) These records will take the form of dossiers of each child or young person filed in alphabetical sequence, containing:

(a) The original copy of each Police 333 issued in respect of the child or young person.

(b) The triplicate copy of each Offender Report issued in respect of that juvenile.

(c) Any photocopies of appropriate Short Reports (Police 101).

(d) Any relevant material which in the opinion of the member in charge of the Youth Aid Section should be included.

(3) (a) Every three months, the member in charge of the Youth Aid Office shall ensure that the dossiers of those persons who have turned 17 years of age are removed from the Juvenile Dossier System.

(b) Each dossier is to be individually assessed by the member in charge of the Section. Dossiers of those persons considered likely to re-offend are to be despatched by post to the Commissioner of Police, Criminal Records Branch, MO Section, Private Bag, Wellington. These dossiers will be considered for inclusion in the National Dossier System.

(c) Dossiers of those persons unlikely to re-offend are to be transferred from the current to a separate series where they are to be retained until they can be destroyed under General Instruction D115 and Appendix 43.

(4) Youth Aid Section records are part of the official records of the Station and are to be available for inspection by any member of the Police who may need information from them.

Matters to be Referred to Youth Aid Section

Y22 (1) On completion of inquiries the following matters are to be referred to the Youth Aid Section:

(a) Offences alleged to have been committed by persons under 17 years of age.

(b) Missing children and young persons, who have been located.

(c) Located absconders from residences of the Department of Social Welfare.

(d) Truants.
(e) Children and young persons who are in need of care, protection, or control within the meaning of section 27 of the Children and Young Persons Act 1974.
(f) Children and young persons who are potential problems in the community, either because of their coming under notice as a result of their behaviour; or because they and/or their family are in need of guidance, support, or assistance.

(2) Where a child or young person comes under adverse notice for the first time and the reporting member or his supervisor recomends that no action be taken either under the Children and Young Persons Act or any other enactment, the reasons for which should be outlined on the file, it is unnecessary for the matter to be referred to the Youth Aid Section for action under General Instruction Y18 but a check should be made with the Youth Aid Officer to ensure the person has not previously come to notice. The file is to be referred for a decision to an authorising member as shown in General Instruction C146 (2). On completion the file is to be forwarded to the Youth Aid Section for recording.

Y22 Cancelled. See P.G. 1982/~~39~~. PG 1982/167

Y23 Cancelled. See P.G. 1982/~~3~~.

Y24 Cancelled. See P.G. 1982/~~2~~.

Law Related Education Programme

Y25 (1) A Law Related Education Programme has been established for the purpose of assisting the Department of Education to develop in children and young persons an understanding of:
(a) The role law plays in society.
(b) The role of the Police in the community; and
(c) Other law related topics of current or local interest.

(2) Members appointed as full-time Youth Aid Education Officers shall:
(a) Be responsible for implementing the Police Law Related Education Programme in primary, intermediate and secondary schools in their area, maintaining close liaison with principals and teaching staff.
(b) Prepare programmes to accommodate particular requests made by classes or groups.
(c) Implement, or assist with youth programmes which help young people in their understanding of how law affects them.
(d) Address groups, clubs, institutions, and parent/teacher organisations on the Law Related Education Programme, and such other Police matters as required.
(e) Visit pre-school centres, special education centres, and Department of Social Welfare Institutions where appropriate.
(f) Where applicable liaise with, and have a good working relationship with local Social Study Teacher Committees.
(g) In areas where there is a Teachers' College, become involving in promoting the Law Related Education Programme among staff and students.
(h) Undergo such training as required by the Co-ordinator: Law Related Education.

(i) Not apply for leave during school terms unless special circumstances prevail.
(j) Forward through their supervisors to the Regional Co-ordinator: Law Related Education, a monthly return of activities. Such report shall be in the format provided and include the number of classes and children spoken to, days off or annual leave taken, and details of other duties performed.
(k) Comply with the Police and the Department of Education's policy on drug education. Members must have sufficient knowledge to factually answer questions on drugs which arise during the course of a lesson or discussion.

Regional Co-ordinators of the Law Related Education Programme

Y25A (1) For the purpose of co-ordinating and monitoring the Law Related Education Programme, regional control areas embracing police districts as outlined hereunder are established:

Region	Districts
1	Auckland, Whangarei, Hamilton, Rotorua
2	Wellington, Gisborne, New Plymouth, Wanganui, Palmerston North,Napier
3	Christchurch, Nelson, Greymouth, Timaru, Dunedin, Invercargill

(2) Each region shall be monitored by the non-commissioned officer supervising the Law Related Education Programme in the first named district of the region.

Duties of Regional Co-ordinators of the Law Related Education Programme

Y25B Regional Co-ordinators of the Law Related Education Programme shall:
(a) Ensure that members appointed as Youth Aid Education Officers receive adequate induction training.
(b) Ensure that members attend training courses when appropriate.
(c) At the end of a member's first six months of duty, forward a report on the member's suitability through the District Commander to the National Co-ordinator: Law Related Education.
(d) Organise regional and local seminars and workshops to ensure the ongoing training of staff.
(e) Visit Youth Aid Education Officers as required in their districts, observing their classroom performance and ensuring they are carrying out their duties in accordance with General Instruction Y25.
(f) Discuss the implementation of the programme with supervising Police and Education staff.
(g) Monitor and check activity reports submitted in accordance with General Instruction Y25 (2) (k) to ensure a high level of involvement in school educational projects and activities. These reports are then to be forwarded to the Co-ordinator: Law Related Education at Police National Headquarters.

Law Related Education Resource Centres

Y26 (1) To increase the availability of educational aids to Youth Aid Education Officers, resource centres have been established at:

(a) Auckland (serving Whangarei, Auckland, Hamilton, and Rotorua Districts).

(b) Wellington (serving the remaining Districts in the North Island).

(c) Christchurch (serving all South Island Districts).

(2) The aids will be available to members other than Education Officers, but the latter shall be given preference.

(3) Equipment such as books, films, projectors, tape cassettes, and 35 mm slides will be supplied by the Co-ordinator: Youth Aid to the resource centres.

(4) The District Commanders at Auckland, Wellington, and Christchurch shall appoint a member engaged in the law-related education programme to supervise its operation and shall also allocate room for storing the materials.

(5) Application for the loan of material shall be in writing (including switched messages) to the supervisor of the resource centre. Applications should include name, station, period of loan sought, alternative dates if possible, and an indication of intended use.

(6) Equipment must be carefully packed to prevent damage and the most convenient form of transport used.

Duties of Member in Charge of Resource Centre

Y27 The member appointed in charge of the resource centre shall:

(a) Record bookings and co-ordinate requests for material.

(b) Ensure that all material and equipment requested is despatched to meet deadlines.

(c) Record inward and outward goods using receipt and delivery vouchers.

(d) Check equipment for damage or loss and take appropriate action.

(e) Arrange repairs to and cleaning of films in consultation with the Co-ordinator: Law Related Education.

(f) Ensure that staff using films have a current projectionist's certificate for the type of projector they are using.

(g) Keep districts advised of the resources which are available.

(h) Provide the Co-ordinator: Law Related Education with comments from users as to the suitability of materials.

Annual Report on Activities

Y28 By 31 January in each year the District Commander shall forward to the Commissioner (Director: Preventive Services) for each Youth Aid Section office in his District a general report on the activities of the Section for the past calendar year. The report is to give an evaluation of the year's activities and outline any unusual features. Recommendations for changes in law or procedures should also be included.

(Replaces fourth leaf of "Youth Aid Section".)
Reprinted December 1982.

Community Relations

Definition

C84 Police-Community Relations is the daily working relationship between the Police and the various classes and groups which form a community. They are also positive activities initiated by the Police to obtain public acceptance and co-operation to assist them in accomplishing their primary role of protecting the public.

Purpose

C85 The purpose of Community Relations is:

(1) To obtain support from all sectors of society.

(2) To prevent alienation of the Police arising from misconceptions, misunderstandings, anti-police propaganda or distrust.

(3) To reduce tensions that develop between active minority groups and the Police.

(4) To eradicate latent or open prejudices which may be held by some police members in respect to minority groups.

(5) To identify areas or situations of potential conflict and take remedial action to reduce or avoid such conflict.

General

C86 (1) While it is recognised that some specialisation in community relations is necessary, to be effective all members must actively participate on a day to day basis.

(2) When formulating, evaluating, or implementing any new policy or activity, the effect on community relations is a principal factor which should be considered. This is particularly so when special operations are being planned which may lead to conflict with minority groups or the public in general. In such cases, co-ordination between Operation Commanders and Community Relations Co-ordinators is vital to assess the likely effects of the operation on such groups or public. Such co-ordination should be aimed at implementing the necessary policy or operation with the minimum level of conflict with the groups concerned.

Appointment of Community Relations Co-ordinators

C87 (1) Community Relations Co-ordinators will be appointed by the Commissioner (Director: Public Affairs).

(2) At District Headquarters stations where there is no authorised established position for a full-time Co-ordinator, the District Commander, after consultation with the Director: Public Affairs shall appoint a Commissioned Officer or non commissioned officer to undertake the duties on a part-time basis.

(3) Where a member is appointed on a part-time basis, the District Commander shall ensure the appointee is allowed adequate time in which to effectively perform community relations duties.

(First leaf of "Community Relations".)
Printed March 1983.

Duties of Community Relations Co-ordinators

C88 Community Relations Co-ordinators' duties shall include:

(1) Encouraging and motivating staff to adopt attitudes and behaviour which will enhance police-community relations. It is important that all staff appreciate the purpose of community relations and give the programme their full support.

(2) Establishing liaison with representatives of ethnic groups, youth groups, welfare organisations, Government and local body agencies, student organisations, Parent Teacher Associations, and minority groups with a view to fostering and maintaining good relations between these groups and the Police.

(3) Ensuring that open days are held at appropriate intervals. Maximum use should be made of space available for police displays at trade fairs, exhibitions, agricultural and pastoral shows, school fetes or fairs, or other suitable venues where the public gather in large numbers.

(4) Keeping the District Commander, supervisors and field staff advised of developing community relations problems and of the programmes required to rectify the situation.

(5) Briefing District Training Officers on matters involving community relations for dissemination to staff.

(6) Endeavouring to co-ordinate and balance effort between crime prevention and other sections of the police.

(7) Ensuring that appropriate crime prevention material is available for distribution to the public and the news media.

(8) Ensuring consultation takes place with operational planners where specific operations are being planned which may lead to conflict with specific groups or the public generally. (See GI C86 (2).)

(9) Holding regular meetings singly or collectively (whichever is appropriate) with Youth Aid, Crime Prevention, Press Liaison, and Community Constables with a view to co-ordinating their efforts and supplying necessary support.

(10) Organising the delivering of public addresses by police members to as wide a spectrum of the community as possible. Police members should be suitably briefed and supplied with background material where necessary. Members giving addresses should encourage suggestions from the public on how the police can improve their service and image.

COMMUNITY JUSTICE CENTRES ACT, 1983, No. 127

New South Wales

ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

* *

Act No. 127, 1983.

An Act to provide for the establishment and operation of Community Justice Centres to provide mediation services in connection with certain disputes. [Assented to, 20th December, 1983.]

See also Justices (Community Justice Centres) Amendment Act, 1983; Ombudsman (Community Justice Centres) Amendment Act, 1983.

P 31548F (80c)

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

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Community Justice Centres Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on 1st December, 1983.

Arrangement.

3. This Act is divided as follows:—

Interpretation.

4. **(1)** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Community Justice Centre" means a Community Justice Centre established under this Act;

"Council" means the Community Justice Centres Council constituted by this Act;

"Director" means a person holding office or duly acting as Director of a Community Justice Centre;

"functions" includes powers, authorities and duties;

"mediation" includes—

(a) the undertaking of any activity for the purpose of promoting the discussion and settlement of disputes;

(b) the bringing together of the parties to any dispute for that purpose, either at the request of one of the parties to the dispute or on the initiative of a Director; and

(c) the follow-up of any matter the subject of any such discussion or settlement;

"mediation session" means a meeting in accordance with this Act between 2 or more parties who are in dispute on any matter;

"mediator", in relation to a Community Justice Centre, means—

(a) the Director of the Centre; or

(b) any person for the time being accredited under section 11 as a mediator for the Centre;

"member" means a member of the Council.

(2) A reference in this Act to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) A reference in this Act to the parties to a mediation session includes a reference to the parties to a dispute in respect of which an application for a mediation session is duly made, but does not include a reference to the mediator conducting the mediation session.

(4) A reference in this Act to the conduct of a mediation session by a mediator includes a reference to the conduct of a mediation session in the presence, or under the supervision, of the mediator.

PART II.

ADMINISTRATION.

DIVISION 1.—*The Council.*

Constitution of Council.

5. (1) There is hereby constituted a council, to be called the "Community Justice Centres Council".

(2) The Council has and may exercise the functions conferred or imposed on it by or under this or any other Act.

(3) Schedule 1 has effect in relation to the constitution and procedure of the Council.

Functions of the Council.

6. (1) The functions of the Council include the following:—

(a) to determine policy guidelines for, and give directions with respect to, the operation of Community Justice Centres;

(b) to make such reports or recommendations to the Minister on any matter relating to Community Justice Centres, or on any other matter to which this Act relates, as the Council considers necessary or appropriate;

(c) to report on and make recommendations concerning the need for an evaluation under section 26 and to assist with the making of such an evaluation; and

(d) to do such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its functions or the establishment and operation of Community Justice Centres.

(2) In the exercise of its functions, the Council shall have regard to the financial resources available for the establishment and operation of Community Justice Centres.

Directions to Council by Minister.

7. The Council is, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), subject to the control and direction of the Minister.

Use of facilities and staff.

8. For the purposes of this Act, the Council may, with the approval of the Minister and of the Department or local or public authority or organisation concerned, and on such terms as may be arranged, make use of the facilities, or the services of any officers, employees or other staff, of any Department of the Government or of any local or public authority or other organisation.

Delegation by Council.

9. (1) The Council may delegate to a member, sub-committee or Director such of the Council's functions (other than this power of delegation) as it thinks fit, and may revoke wholly or in part any such delegation.

(2) A function which is delegated under this section may, while the delegation remains unrevoked, be exercised by the delegate from time to time in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to conditions or limitations.

(4) Notwithstanding any delegation under this section, the Council may continue to exercise all or any of the functions delegated.

(5) Any act or thing done in the exercise of a function delegated under this section has the same force and effect as if it had been done by the Council.

DIVISION 2.—*Staff of Community Justice Centres.*

Directors.

10. **(1)** There shall be a Director for each Community Justice Centre and the same person may be the Director for more than one Community Justice Centre.

(2) A Director is, in the exercise of his or her functions, subject to the control and direction of the Council.

Mediators.

11. The Minister may, on the recommendation of the Director of a Community Justice Centre made subject to and in accordance with the policy guidelines determined by, and any directions of, the Council, accredit a person (other than the Director) as a mediator for the Centre and may revoke any such accreditation.

Staff.

12. **(1)** The staff of a Community Justice Centre (other than a mediator accredited under section 11) shall be appointed or employed under and in accordance with the Public Service Act, 1979.

(2) A mediator accredited under section 11 is entitled to be paid such remuneration as is determined in respect of the mediator by the Minister.

Delegation by Director.

13. **(1)** The Director of a Community Justice Centre may authorise a member of the staff of the Centre to exercise such of the Director's functions (including any functions delegated to the Director under this Act, but not

including this power of authorisation) as the Director thinks fit, and the Director, or any successor as Director of the Centre, may revoke wholly or in part any such authorisation.

(2) A function which is authorised to be exercised under this section may, while the authorisation remains unrevoked, be exercised from time to time in accordance with the terms of the authorisation.

(3) An authorisation under this section may be made subject to conditions or limitations.

(4) Notwithstanding any authorisation under this section, the Director may continue to exercise all or any of the functions to which the authorisation relates.

(5) Any act or thing done in the exercise of a function by a person authorised under this section to exercise the function has the same force and effect as if it had been done by the Director.

(6) Where the exercise of a function of the Director depends on the opinion, belief or state of mind of the Director and the function is in accordance with this section authorised to be exercised by another person, the function may, subject to any restriction imposed by the Director, be exercised in accordance with the opinion, belief or state of mind of that other person.

PART III.

COMMUNITY JUSTICE CENTRES.

Establishment of Community Justice Centres.

14. Community Justice Centres shall be established and operated in accordance with this Act for the purpose of providing mediation services.

Premises of Community Justice Centres.

15. Community Justice Centres shall be established at such premises as the Governor may determine by order published in the Gazette.

Place of operation of Community Justice Centres.

16. **(1)** The principal office of a Community Justice Centre shall be at the premises specified in relation to the Centre in the order under section 15.

(2) The activities of a Community Justice Centre may be conducted at its principal office or at such other places as the Director of the Centre may, subject to the policy guidelines determined by, and any directions of, the Council, approve from time to time.

Records.

17. **(1)** The Director of a Community Justice Centre shall ensure that such records relating to the activities of the centre are made and kept as are necessary or appropriate to enable a proper evaluation of Community Justice Centres under section 26 to be made.

(2) The Council is entitled to inspect any records of a Community Justice Centre.

(3) The records of a Community Justice Centre may be disposed of only in accordance with the directions of the Council.

Centres to be part of Department of Attorney General and of Justice.

18. Community Justice Centres shall operate within and as parts of the Department of the Attorney General and of Justice, and nothing in this Act derogates from the operation of the provisions of the Public Service Act, 1979, or any other law so far as they apply to that Department and any such part thereof.

Use of certain words or letters.

19. **(1)** The words "Community Justice Centre" or the letters "CJC" shall not be used in the name of any centre, organisation, body or group or any other place or establishment, or any part thereof, nor shall any centre, organisation, body or group, or any other place or establishment, or any part thereof, be held out as a Community Justice Centre (whether or not as established under this Act) by the use of the words "Community Justice Centre" or the letters "CJC" or in any other manner—

(a) unless in either case it is in fact a Community Justice Centre established under this Act; or

(b) except in either case with the consent of the Council.

(2) In this section, a reference to—

(a) the words "Community Justice Centre" includes a reference to those words whether or not they appear consecutively and to words that are substantially the same as those words; and

(b) the letters "CJC" includes a reference to matter that is substantially the same as those letters.

PART IV.

MEDIATION.

Provision of mediation services.

20. **(1)** The Director of a Community Justice Centre is, subject to the policy guidelines determined by, and any directions of, the Council, responsible for the provision of mediation services and for the operation and management of the Centre.

(2) Each mediation session shall be conducted by one or more mediators assigned for the purpose by the Director.

(3) No dispute shall be accepted for mediation under this Act except with the consent of the Director.

Conduct of mediation sessions.

21. (1) The procedure for commencing and conducting a mediation session at a Community Justice Centre shall, subject to the policy guidelines determined by, and any directions of, the Council, be as determined by the Director.

(2) Mediation sessions shall be conducted with as little formality and technicality, and with as much expedition, as possible.

(3) The rules of evidence do not apply to mediation sessions.

(4) A dispute may not be adjudicated or arbitrated upon at a mediation session.

(5) A mediation session shall be conducted in the absence of the public, but persons who are not parties to a mediation session may be present at or participate in a mediation session with the permission of the Director.

Disputes.

22. (1) The Council may determine that specified classes of disputes are not to be the subject of mediation sessions, or that specified classes of disputes may be the subject of mediation sessions, but nothing in this subsection limits any other provisions of this Act.

(2) A mediation session may be commenced or continued whether or not the dispute is justiciable before any court, tribunal or body and whether or not the dispute is the subject of any legal proceedings.

(3) For the purposes of this Act, persons may be treated as being in dispute on any matter if they are not in agreement on the matter (whether or not any relevant negotiations are still in progress).

Mediation to be voluntary.

23. **(1)** Attendance at and participation in mediation sessions are voluntary.

(2) A party to a mediation session may withdraw from the mediation session at any time.

(3) Notwithstanding any rule of law or equity, any agreement reached at, or drawn up pursuant to, a mediation session is not enforceable in any court, tribunal or body.

(4) Except as expressly provided in this Act, nothing in this Act affects any rights or remedies that a party to a dispute has apart from this Act.

Refusal or termination of mediation.

24. **(1)** The Director of a Community Justice Centre may decline to consent to the acceptance of any dispute for mediation under this Act at the Centre.

(2) A mediation session may be terminated at any time by the mediator or by the Director.

Representation by agent.

25. **(1)** A party to a mediation session is not entitled to be represented by an agent unless—

(a) it appears to the Director that—

(i) an agent should be permitted to facilitate mediation; and

(ii) the agent proposed to be appointed has sufficient knowledge of the matter in dispute to enable the agent to represent the party effectively; and

(b) the Director so approves.

(2) Subsection (1) does not prevent—

(a) where a corporation within the meaning of the Companies (New South Wales) Code is a party to a mediation session—an officer of the corporation;

(b) where a corporation that is a body corporate constituted under the Strata Titles Act, 1973, is a party to a mediation session—the proprietor or, if there is more than one proprietor, one of the proprietors, constituting that corporation; or

(c) where any other corporation is a party to a mediation session—an agent appointed by the corporation,

from representing that corporation.

(3) Where a Director approves of the representation of a party by an agent, the approval of the Director may be given subject to such conditions as the Director considers reasonable to ensure that any other party to the mediation session is not substantially disadvantaged by the agent appearing at the mediation session and, where the Director does so, the entitlement of the agent to represent the party shall be subject to compliance by the agent with those conditions.

(4) Contravention of any provision of this section does not invalidate any mediation session.

PART V.

MISCELLANEOUS.

Evaluations.

26. The Minister may cause or arrange for an evaluation to be made, at such times and in respect of such periods as the Minister thinks fit, of Community Justice Centres and of their operation and activities.

Exoneration from liability.

27. (1) No matter or thing done or omitted to be done by—

(a) the Council or a sub-committee of the Council;

(b) a member of, or a person acting under the direction of or with the authority of, the Council or any such sub-committee;

(c) a mediator; or

(d) a Director or a member of the staff of a Community Justice Centre,

shall, if the matter or thing was done in good faith for the purpose of executing this Act, subject any of them to any action, liability, claim or demand.

(2) A member of the police force, or any other officer or person, is not liable to be proceeded against in respect of—

(a) failure to charge a person with a crime or offence or to initiate or proceed with proceedings for a crime or offence, or any similar failure;

(b) the arrest of a person followed by such a failure; or

(c) failure to offer evidence at the hearing of a charge referred to in paragraph (a),

if the member of the police force or other officer or person satisfies the court that the failure was reasonable—

(d) by reason of the reference of the dispute to which the alleged crime or offence relates for mediation under this Act or by reason of an agreement reached by the parties to a dispute so referred; and

(e) in all the circumstances of the case.

(3) Nothing in this Act prevents a charge referred to in subsection (2) (a) from being laid or any proceedings so referred to from being instituted or proceeded with, or any evidence being offered in relation to such a charge, or any incidental act, matter or thing from being done by any person at any time.

(4) No person shall be concerned to inquire whether or not any circumstance has arisen requiring or authorising a person to act in the office of a member or of a Director, and anything done or omitted to be done by that person while so acting shall be as valid and effectual and shall have the same consequences as if it had been done or omitted to be done by that member or Director.

(5) In subsection (2), a reference to a crime or offence does not include a reference to a domestic violence offence within the meaning of the Crimes Act, 1900.

Privilege.

28. (1) In this section, "mediation session" includes any steps taken in the course of making arrangements for a mediation session or in the course of the follow-up of a mediation session.

(2) Subject to subsection (3), the like privilege with respect to defamation exists with respect to—

(a) a mediation session; or

(b) a document or other material sent to, or produced at, a Community Justice Centre for the purpose of enabling a mediation session to be arranged.

as exists with respect to judicial proceedings and a document produced in judicial proceedings.

(3) The privilege conferred by subsection (2) does not extend to a publication made otherwise than—

(a) at a mediation session;

(b) as provided by subsection (2) (b); or

(c) as provided by section 29 (2).

(4) Evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court, tribunal or body.

(5) A document prepared for the purposes of, or in the course of, or pursuant to, a mediation session, or any copy thereof is not admissible in evidence in any proceedings before any court, tribunal or body.

(6) Subsections (4) and (5) do not apply with respect to any evidence or document—

(a) where the persons in attendance at, or named during, the mediation session and, in the case of a document, all persons named in the document, consent to admission of the evidence or document; or

(b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made pursuant to section 29 (2) (c).

(7) A member of the Council or a sub-committee of the Council, a mediator, a Director, a member of the staff of a Community Justice Centre, a person making an evaluation under section 26 or a party to a mediation session is not liable to be proceeded against for misprision of felony in respect of any information obtained in connection with the administration or execution of this Act.

Secrecy.

29. **(1)** A mediator shall not commence to exercise the functions of a mediator without first taking an oath before a justice of the peace in or to the effect of the form set out in Schedule 2 or making an affirmation in or to the effect of the form set out in Schedule 3.

(2) A person who is or has been a member of the Council or a sub-committee of the Council, a mediator, a Director, a member of the staff of a Community Justice Centre or a person making an evaluation under section 26 or carrying out research referred to in paragraph (e) may disclose information obtained in connection with the administration or execution of this Act only as follows:—

(a) with the consent of the person from whom the information was obtained;

(b) in connection with the administration or execution of this Act;

(c) where there are reasonable grounds to believe that disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;

(d) where the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting any such parties in any other manner;

(e) where the disclosure does not reveal the identity of a person without the consent of the person and is reasonably required for the purposes of research carried out by, or with the approval of, the Council or an evaluation pursuant to section 26; or

(f) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Power to accept appointment.

30. **(1)** Where, by or under an Act, provision is made requiring the whole of the time of the holder of a specified office to be devoted to the duties of that office or prohibiting the holder of a specified office from engaging in employment outside the duties of that office, the provision does not operate to disqualify a holder of that office from—

(a) holding that office and also the office of a member of the Council or of a sub-committee of the Council; or

(b) holding that office and also the office of a mediator or retaining any remuneration payable to a mediator.

(2) The office of a member of the Council, a member of a sub-committee of the Council or a mediator is not, for the purposes of any Act, an office or place of profit under the Crown.

Annual report.

31. **(1)** As soon as practicable after 30th June, but on or before 31st December, in each year, the Council shall prepare and submit to the Minister a report on the activities, operations and use of Community Justice Centres during the period of 12 months ending on 30th June in that year.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament.

Repeal of Act No. 134, 1980.

32. The Community Justice Centres (Pilot Project) Act, 1980, is repealed.

Savings and transitional provisions.

33. Schedule 4 has effect.

SCHEDULE 1.

(Sec. 5.)

CONSTITUTION AND PROCEDURE OF COUNCIL.

Membership.

1. (1) The Council shall consist of appointed members and ex officio members.

(2) The appointed members shall be appointed by the Minister, and of them—

(a) one shall be a stipendiary magistrate nominated by the Chairman of the Bench of Stipendiary Magistrates;

(b) one shall be a person nominated by the Council of Social Service of New South Wales;

(c) one shall be an officer of the Department of Technical and Further Education nominated by the Minister for Education;

(d) one shall be an officer of the Department of the Attorney General and of Justice selected by the Minister; and

(e) not more than 4 shall be persons selected by the Minister by reason of their having such special interests or experience as the Minister considers would be of assistance in the administration of this Act.

(3) The ex officio members shall be the Directors of the Community Justice Centres.

(4) Where, for the purposes of this Schedule, a nomination of a person for appointment as a member is not made within the time or in the manner specified by the Minister in a notice in writing given to the body or person entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination.

SCHEDULE 1—*continued.*

CONSTITUTION AND PROCEDURE OF COUNCIL—*continued.*

Chairman.

2. (1) The Minister shall appoint a member of the Council as Chairman of the Council.

(2) An appointment under subclause (1) may be made by the instrument (if any) by which the person appointed as Chairman is appointed as a member or by another instrument.

Age of members.

3. A person who is of or above the age of 65 years shall not be appointed as a member.

Term of office.

4. An appointed member shall, subject to this Schedule, hold office for such term, not exceeding three years, as is specified in the instrument of appointment of the member, but if otherwise qualified is eligible for re-appointment.

Vacation of office.

5. (1) An appointed member shall be deemed to have vacated office if the member—

(a) dies;

(b) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post except on leave granted by the Council, and is not, before the expiration of 4 weeks after the last of those meetings, excused by the Council for being absent from those meetings;

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

SCHEDULE 1—*continued.*

CONSTITUTION AND PROCEDURE OF COUNCIL—*continued.*

(e) is convicted in New South Wales of a crime or offence which is punishable by imprisonment for a period of 12 months or more, or is convicted elsewhere than in New South Wales of a crime or offence which if committed in New South Wales would be a crime or offence so punishable;

(f) resigns the office by instrument in writing addressed to the Minister and the Minister accepts the resignation;

(g) declines office;

(h) is removed from office by the Minister;

(i) ceases to hold the office or position necessary for appointment as a member; or

(j) attains the age of 65 years.

(2) The Minister may, for any cause which appears to the Minister sufficient, remove any appointed member from office.

Vacancies.

6. On the occurrence of a vacancy in the office of an appointed member, the Minister may appoint a person to the vacant office so that the Council is constituted in accordance with clause 1.

Meetings of the Council.

7. (1) The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Council.

(2) The Chairman of the Council or, in the absence of the Chairman, the member chosen by the members present at the meeting to act as Chairman may preside at any meeting of the Council.

(3) Five members shall form a quorum at any meeting of the Council and any duly convened meeting of the Council at which a quorum is present shall be competent to transact any business of the Council and shall have and may exercise all the functions of the Council.

(4) The person presiding at any meeting of the Council shall, in the event of an equality of votes, have in addition to a deliberative vote a second or casting vote.

SCHEDULE 1—*continued.*

CONSTITUTION AND PROCEDURE OF COUNCIL—*continued.*

(5) A decision supported by a majority of the votes of the members present and voting at a meeting of the Council shall be the decision of the Council.

Minutes.

8. The Council shall cause full and accurate minutes to be kept of the proceedings at its meetings, and shall submit to the Minister a copy of the minutes (whether or not confirmed) of each meeting within 14 days after the day on which the meeting is held.

Sub-committees.

9. (1) The Council may establish such standing or special sub-committees as it thinks fit to assist and advise it in connection with the exercise of its functions or to exercise, pursuant to a delegation made under section 9, the functions of the Council that have been delegated to the sub-committee.

(2) A person may be appointed as a member of a sub-committee whether or not the person is a member of the Council.

Procedure of sub-committee.

10. (1) The procedure for the calling of meetings of a sub-committee and for the conduct of business at those meetings shall, subject to this Act and any direction given by the Council, be as determined by the sub-committee.

(2) A quorum of a sub-committee shall consist of such number of the members of the sub-committee as the Council determines, and any duly convened meeting of a sub-committee at which a quorum is present is competent to transact any business of the sub-committee and shall have and may exercise all the functions of the sub-committee.

(3) The person presiding at any meeting of a sub-committee shall, if the Council so approves in relation to the sub-committee, have in addition to a deliberative vote a second or casting vote.

SCHEDULE 1—*continued.*

CONSTITUTION AND PROCEDURE OF COUNCIL—*continued.*

(4) A decision supported by a majority of the votes of the members present and voting at a meeting of a sub-committee shall be the decision of the sub-committee.

Public Service Act, 1979, not to apply.

11. The Public Service Act, 1979, does not apply to or in respect of the appointment of a member, and a member is not, in the capacity of a member, subject to that Act.

SCHEDULE 2.

(Sec. 29.)

MEDIATOR'S OATH OF SECRECY.

I, of being a mediator within the meaning of the Community Justice Centres Act, 1983, do swear that I will not, either directly or indirectly, except as permitted under section 29 of that Act, and either while I am, or after I cease to be, a mediator, make a record of, or divulge or communicate to any person, court or tribunal any information, document or other matter disclosed during or incidentally to a mediation session.

SO HELP ME GOD

Sworn and subscribed at
this day
of 19
before me—

.....
Signature

.....
Justice of the Peace

SCHEDULE 3.

(Sec. 29.)

MEDIATOR'S AFFIRMATION OF SECRECY.

I, of being a mediator within the meaning of the Community Justice Centres Act, 1983, do solemnly, sincerely and truly declare and affirm that I will not, either directly or indirectly, except as permitted under section 29 of that Act, and either while I am or after I cease to be, a mediator, make a record of, or divulge or communicate to any person, court or tribunal any information, document or other matter disclosed during or incidentally to a mediation session.

Subscribed at
this day
of 19
before me—

.....
Signature

.....
Justice of the Peace

SCHEDULE 4.

(Sec. 33.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. (1) In this Schedule, "repealed Act" means the Community Justice Centres (Pilot Project) Act, 1980.

(2) A person holding office pursuant to this Schedule holds that office subject to this Act.

Membership of Council.

2. (1) A member of the Committee constituted under the repealed Act who was nominated or selected under clause 1 (2) (a), (c), (h), (i) or (j) of Schedule 1 to that Act and held office as such a member immediately before 1st December, 1983, shall be deemed—

(a) to have been appointed on that date as a member of the Council; and

SCHEDULE 4—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(b) to have had for that appointment the same qualification by nomination or selection as the member had for appointment as a member of that Committee.

(2) Subject to clause 5, the term of office of a member of the Council holding office pursuant to subclause (1) expires—

(a) immediately before 1st December, 1986; or

(b) on an earlier day of which the Minister notifies the member by instrument in writing,

whichever first occurs.

Chairman.

3. The person who, immediately before 1st December, 1983, held office as Chairman of the Committee constituted under the repealed Act shall be deemed to have been appointed on that date as Chairman of the Council.

Delegation to Director.

4. A delegation to the Director of a Community Justice Centre under section 8 of the repealed Act that was in force immediately before 1st December, 1983, shall be deemed to be a delegation on that date to the Director of that Centre under section 9 of this Act.

Directors.

5. On and from 1st December, 1983, a Director of a Community Justice Centre holding office under section 9 of the repealed Act immediately before that date continues in office under section 10 of this Act as the Director of that Centre.

Mediators.

6. A person accredited under section 11 of the repealed Act as a mediator for a Community Justice Centre and holding office immediately before 1st December, 1983, shall be deemed to have been accredited on that date under section 11 of this Act.

SCHEDULE 4—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Delegation by Director.

7. An authority in force immediately before 1st December, 1983, that was conferred under section 13 of the repealed Act on a person holding office as a member of the staff of a Community Justice Centre shall, if that person is a member of the staff of that Centre on that date, be deemed to have been conferred on that date by the Director of that Centre under section 13 of this Act.

Community Justice Centres.

8. Subject to this Act, a Community Justice Centre established under section 14 of the repealed Act, and being operated immediately before 1st December, 1983, continues on and after that date as a Community Justice Centre established under section 14 of this Act.

Premises.

9. An order made and published under section 15 of the repealed Act and in force immediately before 1st December, 1983, has effect on and from that date as if it were an order made and published under section 15 of this Act.

Records.

10. Records relating to the activities of a Community Justice Centre that were made and kept under section 17 of the repealed Act and were in existence immediately before 1st December, 1983, shall be deemed to be records made under section 17 of this Act in relation to the activities of that Centre.

Mediation.

11. (1) A dispute duly accepted before 1st December, 1983, for mediation under the repealed Act shall be deemed to have been duly accepted for mediation under this Act.

(2) A dispute may be accepted for mediation under this Act notwithstanding that it arose before 1st December, 1983.

SCHEDULE 4—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(3) A mediation session that was commenced under the repealed Act and had not been completed immediately before 1st December, 1983, shall be continued and completed as if it had been commenced under this Act.

(4) A determination made under section 22 of the repealed Act and in force immediately before 1st December, 1983, shall be deemed to be a determination made on that date under section 22 of this Act.

Agreement after mediation.

12. The provisions of section 23 (3) apply to and in respect of an agreement reached at, or drawn up pursuant to, a mediation session under the repealed Act in the same way as those provisions apply to and in respect of an agreement reached at, or drawn up pursuant to, a mediation session under this Act.

Exoneration from liability.

13. For the purposes of section 27 (2) (d), a reference to mediation under this Act includes a reference to mediation under the repealed Act.

Oath or affirmation by mediator.

14. A mediator who holds office pursuant to clause 6 and—

(a) has taken the oath specified in Schedule 2 to the repealed Act—shall be deemed to have taken the oath specified in Schedule 2 to this Act; or

(b) has made the affirmation specified in Schedule 3 to the repealed Act—shall be deemed to have made the affirmation specified in Schedule 3 to this Act.

Secrecy.

15. The provisions of section 29 (2) apply to and in respect of information obtained in the administration or execution of the repealed Act in the same way as those provisions apply to and in respect of information obtained in connection with the administration or execution of this Act.

SCHEDULE 4—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Annual report.

16. For the purposes of the report to be submitted by the Council in respect of the year ending on 30th June, 1984, a reference in section 31 to Community Justice Centres includes a reference to Community Justice Centres established under the repealed Act.

Saving of Act No. 4, 1897.

17. Nothing in this Act derogates from the operation of section 8 of the Interpretation Act, 1897.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 20th December, 1983.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

512

Queensland

ANNO TRICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 51 of 1984

An Act to provide for support, administrative services and assistance for Aboriginal communities resident in Queensland and for management of lands for use by those communities and for related purposes

[ASSENTED TO 15TH MAY, 1984]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Community Services (Aborigines) Act* 1984.

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided by subsection (1), this Act shall commence on 31 May 1984 or on such earlier date as is appointed by Proclamation.

(3) The date on which this Act, other than sections 1 and 2 commences as prescribed is in this Act referred to as the commencement of this Act.

3. Arrangement. This Act is arranged in Parts as follows:—

4. Repeal. The *Aborigines Act* 1971–1979 is repealed.

5. Savings. (1) An area that at the commencement of this Act is a reserve within the meaning of the *Aborigines Act* 1971–1979 shall continue as a trust area for the purposes of this Act.

(2) Every Aboriginal Council existing at the commencement of this Act shall, unless it is sooner dissolved in accordance with this Act, continue in being for the purposes of this Act until the first election of councillors held as required by this Act.

(3) Every by-law, resolution or order lawfully made by an Aboriginal Council before the commencement of this Act that subsists at such commencement shall continue to have force and effect as if it had been made pursuant to this Act.

(4) Every order and decision made by an Aboriginal Court before the commencement of this Act that is operative at such commencement shall continue to be operative as if it had been made by that court constituted pursuant to this Act.

(5) A person who at the commencement of this Act holds an appointment for the purposes of the *Aborigines Act* 1971 (or that Act as subsequently amended) shall, subject to the conditions of his appointment, continue to hold the appointment for the purposes of this Act, if the appointment is material to the purposes of this Act.

(6) A management of property of a person that was undertaken when he was an assisted Aborigine within the meaning of *The Aborigines' and Torres Strait Islanders' Affairs Act of* 1965 (or that Act as subsequently amended) and that is maintained at the commencement of this Act shall be deemed to be a management of property under this Act and, unless it is terminated in accordance with this Act, shall be maintained in accordance with this Act.

(7) A management of property of an Aborigine that is maintained at the commencement of this Act shall continue to be maintained in accordance with this Act unless it is terminated in accordance with this Act.

(8) The Aborigines Welfare Fund maintained pursuant to the regulations under the *Aborigines Act* 1971–1979 shall continue to be maintained by the Under Secretary in accordance with this Act.

6. Meaning of terms. In this Act, except where the contrary appears—

"area" means a trust area;

"by-laws" in relation to an Aboriginal Council, includes—

(a) by-laws made by the council as the authority charged with the functions of local government of an area; and

(b) by-laws made by the council as trustee of the area by reason of the land comprising the area having been granted in trust or reserved and set apart by the Governor in Council under the provisions of law relating to Crown lands and vested in or placed under the control of the council;

"Corporation" means the corporation sole preserved, continued in being and constituted under this Act by the name and style The Corporation of the Under Secretary for Community Services;

"Department" means the Department of Community Services;

"Aborigine" means a person who is a descendant of an indigenous inhabitant of Australia other than the Torres Strait Islands and includes any person who resides in an area as part of a community of Islanders;

"Minister" means the Minister of the Crown for the time being charged with the administration of this Act and includes any other Minister of the Crown for the time being performing the duties of the Minister;

"trust area" means land granted in trust by the Governor in Council for the benefit of Aboriginal inhabitants or reserved and set apart by the Governor in Council for the benefit of Aborigines under the provisions of law relating to Crown lands;

"Under Secretary" means the person holding the appointment of Under Secretary, Department of Community Services and includes any person for the time being acting in or performing the duties of that appointment.

PART II—ADMINISTRATION

7. Responsible officer. (1) The Under Secretary is the officer charged with the responsibility for the administration of this Act, subject to the Minister.

8. Corporation. (1) The corporation sole preserved, continued in existence and constituted under the *Aborigines Act* 1971 under the name and style The Corporation of the Director of Aboriginal and Islanders Advancement is further preserved, continued in being and constituted under this Act under the name and style The Corporation of the Under Secretary for Community Services.

The Corporation is constituted by the person who at the material time holds the appointment, Under Secretary, Department of Community Services, and under the name and style assigned to it by subsection (1)—

(a) has perpetual succession and an official seal;

(b) is capable in law of suing and being sued, of compounding or proving in a court of competent jurisdiction all debts and sums of money due to it;

(c) is capable in law of acquiring and holding (absolutely or subject to trusts), letting, leasing, hiring, disposing of and otherwise dealing with property real and personal situated within or outside the State and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

(3) All courts, judges, justices and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to any writing and, until the contrary is proved, shall presume that it was duly affixed thereto.

(4) With respect to the exercise of any of its powers and with respect to any matter arising in connexion therewith the Corporation has all the privileges, rights and remedies of the Crown.

9. Agents of Department. (1) The Under Secretary may make arrangements with any person holding an appointment under any Act, any officer of the Public Service of Queensland, any person concerned in the local government of any Area or any other person with a view to

the person who from time to time holds an appointment specified in the arrangements at a place in Queensland specified in the arrangements to be an agent of the department within an area described in the arrangements.

(2) An arrangement made under subsection (1) may include a provision for the payment to the agent or to the person with whom the arrangement is made of an amount by way of remuneration for the agent's services.

(3) An agent of the department shall discharge such functions and duties and may exercise such powers as are imposed or conferred on him by this Act or as the Under Secretary from time to time requests of him.

10. Power of delegation. (1) The Minister or Under Secretary may, either generally or otherwise as provided by the instrument of delegation, by writing delegate to any person all or any of his powers, functions and duties except this power of delegation or a function imposed on him pursuant to section 12 (1).

(2) A power, function or duty so delegated, if exercised or performed by the delegate, shall be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation may be made subject to such terms and limitations as the Minister or Under Secretary thinks fit including a requirement that the delegate shall report to the Minister or, as the case may be, Under Secretary upon his exercise or performance of the delegated power, function or duty.

(4) The Minister or Under Secretary may make such and so many delegations of the same power, function or duty and to such number of persons as he considers necessary or desirable.

(5) A delegation is revocable at the will of the Minister or, as the case may be, Under Secretary and does not prevent the exercise of a power or the performance of a function or duty by him.

11. Visiting justices. (1) The Governor in Council may appoint a justice to be a visiting justice to one or more trust areas.

(2) At least once in every period of three months the visiting justice shall visit every trust area to which he is visiting justice and shall—

(a) investigate any complaints by Aborigines resident in the area concerning the administration of the area;

(b) inspect the record of punishments imposed on Aborigines in the area by any Aboriginal Court that functions in the area;

(c) if he is a Stipendiary Magistrate, constitute a Magistrates Court there and hear and determine summarily complaints against Aborigines in the area in cases where an Aboriginal Court does not exist in the area;

(d) report to the Under Secretary as soon as is practicable after completion of his visit on—

(i) administration of the area; and

(ii) matters that in his opinion affect the welfare of residents in the area; and

(iii) such other matters as the Under Secretary requests.

12. Official inquiries. (1) The Governor in Council may authorize any person to make and hold such inspections, investigations and inquiries for the purposes of this Act as he considers desirable and for the purposes of such an inspection, investigation or inquiry the person so authorized may exercise and shall have the powers, authorities, protection and jurisdiction of a commission under *The Commissions of Inquiry Acts* 1950 *to* 1954 and of a chairman of such a commission, except such as are by those Acts confined to a chairman who is a Judge of the Supreme Court unless he is such a judge.

(2) A person who makes or holds an inspection, investigation or inquiry pursuant to subsection (1) shall, as soon as is practicable after its completion, furnish a full report thereon to the Minister, who shall submit the report to the Governor in Council.

13. Annual report on administration. As soon as is practicable after 30 June in each year the Under Secretary shall furnish to the Minister a report on the administration of this Act during the preceding 12 months.

The Minister shall table each such report received by him in the Legislative Assembly within 14 sitting days after he has received it.

PART III—LOCAL GOVERNMENT OF AREAS

Division 1—Aboriginal Councils

14. Requirement of Aboriginal Councils. (1) Subject to this Part, every trust area shall be governed by an Aboriginal Council.

(2) Where a community of Torres Strait Islanders exists in a trust area the Aboriginal Council that governs the area has no jurisdiction within that part of the area appropriated for use of that community.

15. Incorporation of Aboriginal Councils. (1) Every Aboriginal Council existing at the commencement of this Act is preserved, continued in being and constituted as a body corporate and shall continue as such until it is dissolved as prescribed.

(2) Every Aboriginal Council established after the commencement of this Act shall upon its establishment be a body corporate and shall continue as such until it is dissolved as prescribed.

(3) A body corporate referred to in subsection (1) or (2) shall have perpetual succession and an official seal which shall be judicially noticed and shall, under its name—being (name of the trust area) Aboriginal Council—be capable in law of suing and being sued, of acquiring, holding (absolutely or subject to trusts), letting, leasing, hiring, disposing of and otherwise dealing with property real and personal and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

(4) The persons who at the commencement of this Act comprise an Aboriginal Council shall continue in office until their successors are appointed as prescribed.

16. Tenure of office of councillors. Subject to this Act, every member of an Aboriginal Council shall hold office for three years commencing on the day of his election as a member and terminating at the conclusion of the next triennial election of members of the council.

17. Times for election of councillors. (1) In the year 1985 an election shall be held for the purpose of reconstituting the Aboriginal Council established for each area on the date on which are held the triennial elections in that year for the purpose of reconstituting Local Authorities pursuant to the *Local Government Act* 1936–1984.

(2) The term of office of every member of an Aboriginal Council established as at the commencement of this Act shall terminate at the conclusion of the election held pursuant to subsection (1).

(3) In each area a triennial election of members of the Aboriginal Council established for the area and existing for the time being shall be held.

(4) Every triennial election held pursuant to subsection (3) shall be held on the date on which are held the triennial elections for the purpose of reconstituting Local Authorities pursuant to the *Local Government Act* 1936–1984.

18. Voters' roll. For the purpose of every triennial election for an Aboriginal Council and, if necessary, for any other election for the council held pursuant to this Act there shall be compiled a voters' roll, which shall be in accordance with the provisions relating to voters' rolls of the *Local Government Act* 1936–1984 or, if the regulations prescribe with respect to voters' rolls, with the provisions of the regulations.

19. Relationship of Aboriginal area to Local Authority Area. Notwithstanding any provision of the *Local Government Act* 1936–1984—

(a) land within an area is not rateable land for the purposes of that Act;

(b) a person whose name is properly on a voters' roll for the purpose of an election of an Aboriginal Council—

(i) shall not be entitled to vote at an election of the Local Authority of the Area within the meaning of the *Local Government Act* 1936–1984 of which the area of the Aboriginal Council forms a part or at an election to fill any vacancy on that Local Authority;

(ii) is not qualified to be enrolled on the voters' roll for the purpose of an election such as is referred to in subparagraph (i);

(c) the returning officer, for the purpose of an election such as is referred to in subparagraph (b) (i), is authorized to make such eliminations from and corrections of any electoral roll in use for the purpose of the election as are necessary to give effect to paragraph (b).

20. Power to dissolve Aboriginal Council. The Governor in Council may—

(a) in his absolute discretion; or

(b) upon the petition of at least one-fifth of the electors enrolled on a voters' roll for the area to which the petition relates,

by Order in Council, if in his opinion circumstances have arisen that render it necessary so to do, dissolve an Aboriginal Council, whereupon the members of the council shall go out of office.

21. Appointment of Administrator. (1) By the order by which he dissolves an Aboriginal Council or by a subsequent Order in Council the Governor in Council shall appoint some person to discharge and exercise, for such period as is specified in the order, such of the functions, duties and powers of the council as are specified in the order.

For the term of his appointment the person appointed shall be deemed to be the Aboriginal Council and shall be charged with the functions and duties and may exercise the powers so specified.

(2) The person so appointed shall be known by the official title of Administrator of the Aboriginal Council concerned.

22. Order for fresh election. Where the Governor in Council has dissolved an Aboriginal Council he may, by the same or a subsequent Order in Council, direct that a fresh election for the council shall be held at a time appointed by him and such direction shall be given effect.

23. Executive officer of Aboriginal Councils. (1) There shall be an Executive Officer of each Aboriginal Council for a period of three years from the commencement of this Act or, in respect of a particular Aboriginal Council declared by Order in Council, for a shorter period specified in the order or, in respect of a particular Aboriginal Council that requests it, for a longer period agreed to from time to time between the council and the Under Secretary.

(2) In relation to each Aboriginal Council the Executive Officer shall be that officer of the Department charged with the responsibility for personnel and property of the Department assigned or allocated to assisting members of the community of Aborigines resident in the area for which the council is established.

(3) The person who is the Executive Officer of an Aboriginal Council shall cease to hold that office upon the expiration of three years from the commencement of this Act or, where the council is one declared by Order in Council under subsection (1), upon the expiration of the shorter period specified in relation to that council or, where the council is one that has agreed on a longer period for its Executive Officer, upon the expiration of the longer period agreed upon.

24. Role of Executive Officer. During the period for which an Aboriginal Council has an Executive Officer as prescribed, in the discharge and exercise by the council of its functions and powers of local government—

(a) personnel and property of the Department shall not be utilized for the council's purposes except with the Executive Officer's approval first had and obtained;

(b) expenditure shall not be incurred or approved against moneys appropriated by Parliament and allocated to the use or benefit of the area for which the council is established except with the Executive Officer's approval first had and obtained; and

(c) a bill of exchange, promissory note or acknowledgment of indebtedness purporting to be drawn on behalf of the council shall not be met from funds standing to the credit of the council or from accretions to such funds, if the funds represent moneys appropriated by Parliament and allocated to the use or benefit of the area for which the council is established unless the bill, note or acknowledgment bears the signature of the Executive Officer as a drawer.

25. Functions of Aboriginal Councils. (1) An Aboriginal Council has and may discharge the functions of local government of the area for which it is established and is hereby charged with the good rule and government thereof in accordance with the customs and practices of the Aborigines concerned and for that purpose may make by-laws and enforce the observance of all by-laws lawfully made by it.

(2) Without limiting the functions and powers of an Aboriginal Council, a council may make by-laws for promoting, maintaining, regulating and controlling—

the peace, order, discipline, comfort, health, moral safety, convenience, food supply, housing and welfare of the area for which it is established;

the planning, development and embellishment of the area for which it is established;

the business and working of the local government of the area for which it is established.

(3) Matters with respect to which an Aboriginal Council may exercise its powers and discharge its functions include—

(a) the provision, construction, maintenance, management, and control of roads, bridges, viaducts, culverts, baths and bathing places; the undertaking and execution of work in connexion therewith; the regulation of the usage thereof;

(b) health, sanitation, cleansing, scavenging and drainage, the removal, suppression and abatement of nuisances, public conveniences, water conservation, agricultural drainage, village planning, subdivision of land, the usage and occupation of land, building, the usage and occupation of buildings, protection from fire, boundaries and fences, disposal of the dead, the destruction of weeds and animals;

(c) works, matters and things that, in its opinion, are necessary or conducive to the good rule and government of the area or community for which the council is established or to the well-being of its inhabitants.

(4) The power conferred on an Aboriginal Council to regulate or control includes power to license or permit or to refuse to license or permit and to prohibit by by-law made in that behalf.

(5) Fees, charges, fares, rents, and dues may be imposed by by-law or resolution of an Aboriginal Council.

(6) A by-law of an Aboriginal Council may impose a penalty in respect of any breach thereof or of another by-law but any such penalty—

(a) shall not exceed $500; or

(b) if it is expressed as a daily penalty, shall not exceed $50 per day.

(7) For the purposes of exercising its powers and discharging its functions an Aboriginal Council may engage such servants and agents as it thinks fit.

26. Provisions concerning making of by-laws. (1) A by-law of an Aboriginal Council shall be made and shall take effect in accordance with the provisions of this section.

(2) A by-law shall be made by resolution of the council and shall be of no force or effect until it has been approved by the Governor in Council.

(3) Before proceeding to make a by-law a notice of intention to make the proposed by-law shall be exhibited in at least one prominent place in the area for which the council is established.

Every such notice—

(a) shall contain a copy of the proposed by-law; and

(b) shall specify a date by which or a time within which objections to the making of the by-law may be made to the clerk of the council.

(4) Where, after considering all objections duly made to the making thereof, an Aboriginal Council has proceeded to the making of the by-law it shall submit the by-law to the Minister for the approval of the Governor in Council.

Every such submission shall be accompanied by—

(a) a certificate of the chairman and the clerk of the council that the provisions of subsection (3) have been complied with;

(b) all objections to the making of the by-law that were duly made and lodged with the clerk of the council; and

(c) the representations (if any) of the council in respect of the objections.

(5) The Governor in Council shall consider every by-law submitted to the Minister and all objections and representations accompanying the submission and may reject the by-law or may approve the by-law wholly or in part.

(6) Where the Governor in Council approves a by-law or part of a by-law his approval and the by-law or part shall be published in the Gazette and thereupon the by-law as approved shall have the force of law and shall not be questioned in any proceedings whatever.

A by-law as approved shall come into operation on the date of its publication in the Gazette unless it specifies a later date for its commencement, in which case it shall come into operation on such later date.

27. Subsequent action as to by-laws. Where a by-law made by an Aboriginal Council has been approved by the Governor in Council the council—

(a) shall cause a copy of the by-law as approved to be exhibited for a reasonable time in at least one prominent place within the area for which it is established;

(b) shall cause a reasonable number of copies of the by-law as approved to be kept at the council's office and available to residents of the area for which it is established; and

(c) may at any time repeal or amend the by-law by another by-law made in accordance with section 26.

28. Area rate and other charges. (1) An Aboriginal Council may make and levy a rate upon such basis as is prescribed by by-law of the council.

(2) An Aboriginal Council may impose, demand and recover fees, charges, fares, rents and dues in respect of any property, service, matter or thing for the purpose of enabling it to discharge and exercise its functions and powers.

29. Budget of Aboriginal Councils. (1) An Aboriginal Council shall cause to be framed in a form acceptable to the Minister a separate budget for each fund established and kept by it, other than any trust fund, on or before its first ordinary meeting in the month of August in each year.

Every such budget shall be for the current year commencing on 1 July and terminating on the next following 30 June, and, if the form and manner of its framing is prescribed, shall be framed in the form and manner prescribed.

(2) Every budget shall be adopted by the Aboriginal Council on or before 31 August in the year for which it is framed and, subject to the budget being approved as prescribed, the rates and charges to be levied in that year by the council shall be founded on the appropriate budget.

(3) Every budget adopted by an Aboriginal Council shall be forthwith submitted to the Under Secretary for the approval of the Minister.

The Minister may approve a budget submitted or reject it.

If the Minister rejects a budget, the Aboriginal Council concerned may cause to be framed and adopt a fresh budget in place thereof and submit the fresh budget for approval by the Minister without regard to the time limits prescribed by this section in respect of the framing and adoption of a budget.

(4) A budget of an Aboriginal Council shall be of no force and effect until it is approved by the Minister.

30. Illegal expenditure. (1) If an Aboriginal Council makes any disbursement in any year from any fund, other than a trust fund, that has not been provided for in the budget for that fund for that year, except in emergent or extraordinary circumstances, all the members of the council who knowingly voted for the expenditure in connexion with which the disbursement was made shall be jointly and severally liable to repay to the council the amount of the disbursement and such liability may be enforced by way of action for a debt due and owing to the council in any court of competent jurisdiction.

(2) The Minister is hereby authorized to institute and conduct, as agent of and in the name of the Aboriginal Council concerned, action to recover the amount of a disbursement that is recoverable by the council under subsection (1).

31. Expenditure pending budget. (1) At the close of each year terminating on 30 June all authorizations of expenditure shall lapse.

(2) Any ordinary disbursement by an Aboriginal Council between 1 July in any year and the approval by the Minister of the council's budget in accordance with this Act is, subject to section 24, authorized and shall be included in the budget framed in that year.

32. Accounts and audit. (1) An Aboriginal Council shall keep proper accounts to record the receipts and disbursements into and from each fund of the council, including such accounts as may be directed by the Minister.

The Under Secretary or a person authorized by him is entitled to enter into and be in the area and premises of an Aboriginal Council, to inspect the records of accounts kept by that council and to make copies of or extracts from such records.

Upon the request of the Under Secretary or such authorized person, a person having custody of the records of accounts on behalf of an Aboriginal Council shall produce the records in accordance with the request.

(2) The accounts of an Aboriginal Council shall be audited by the Auditor-General or by a person authorized by him, each of whom shall have with respect to such audit and accounts all the powers and authorities conferred on him by the *Financial Administration and Audit Act* 1977–1981 as if the council were a department of government of Queensland.

(3) The Auditor-General shall certify whether the statements and balance sheet referred to in section 33 submitted by an Aboriginal Council—

(a) are in agreement with the accounts; and

(b) in his opinion, fairly set out the financial transactions for the period to which they relate and show a true and fair view of the state of the council's financial affairs at the close of that period.

(4) The Auditor-General shall, at least once in each year, report to the Minister the result of each audit carried out pursuant to this section and shall, if he thinks fit, include with the report recommendations to the Minister with respect to the financial statements and the accounts of the Aboriginal Council concerned.

A copy of such report and recommendations shall be furnished to the chairman of the Aboriginal Council concerned who shall submit the report and recommendations to the Council at the first ordinary meeting of the council held after the report and recommendations are received by him.

(5) The Minister and the chairman aforesaid shall give due consideration to the report and recommendations of the Auditor-General made pursuant to subsection (4).

33. Financial returns and statements. (1) At the beginning of each month during a period of three years after the commencement of this Act and thereafter at the beginning of each quarter the chairman of an Aboriginal Council shall cause to be prepared and furnish to the Minister the following statements in the form required by the Minister—

(a) a statement of receipts and disbursements with respect to each fund during the month last preceding;

(b) a statement of income and expenditure in respect of the month last preceding.

(2) On or before 31 July in each year the chairman of an Aboriginal Council shall cause to be prepared and furnish to the Minister the following statements in the form required by the Minister—

(a) an annual statement of receipts and disbursements with respect to each fund during the year terminating on 30 June last preceding;

(b) an annual statement of income and expenditure in respect of the year terminating on 30 June last preceding; and

(c) a balance sheet.

(3) The chairman of an Aboriginal Council shall certify whether the statements furnished under subsection (1) or (2) are in agreement with the council's accounts and whether the statement of income and expenditure and the balance sheet in his opinion fairly sets out the financial transactions for the period to which it relates and shows a true and fair view of the state of the council's financial affairs at the close of that period.

34. Borrowing powers. An Aboriginal Council has power to borrow money for the purpose of enabling it to discharge the functions of local government of the area for which it is established and the provisions of sections 22 and 28 of the *Local Government Act* 1936–1984 shall apply in relation to that power and the raising of loans in exercise of that power as if it were a Local Authority within the meaning of that Act and its area were an Area within the meaning of that Act.

35. Short term investment powers. (1) An Aboriginal Council may invest moneys that are temporarily surplus in any fund kept by it—

(a) in securities issued or guaranteed by the Government of the Commonwealth or of a State or Territory of the Commonwealth;

(b) with or on deposit with a bank or in securities issued guaranteed or accepted by a bank;

(c) with any authorized dealer in the short term money market with established lines of credit with the Reserve Bank of Australia as lender of last resort;

(d) in such other securities, investments or other financial arrangements as may be recommended by the Treasurer and approved by the Governor in Council,

provided that no such investment shall have a term in excess of 12 months except with the Treasurer's approval first had and obtained.

(2) Every security, safe custody acknowledgment or other document evidencing title issued in respect of any investment shall be held by the Aboriginal Council concerned or by the Treasurer on its behalf.

Division 2—Law and Order in Areas

36. Jurisdiction and powers of Queensland police. (1) Members of the Police Force of Queensland have and may exercise in any area and in respect of persons therein the functions, duties and powers imposed or conferred on them by law that they have and may exercise in any other part of Queensland.

(2) In respect of the discharge or exercise in an area of any function, duty or power a member of the police force has the protection accorded by law to a member of the police force in the discharge or exercise of that function, duty or power elsewhere in Queensland.

(3) Members of the Police Force of Queensland are authorized to perform such acts and do such things in an area as may be authorized or required to be done by Aboriginal police under the by-laws of the Aboriginal Council established for that area as if such by-laws were part of the law of Queensland.

(4) In respect in the performance in an area of any act or thing referred to in subsection (3) a member of the police force has the protection accorded by law to a member of the police force in the discharge or exercise by him of his functions, duties and powers elsewhere in Queensland.

37. Entry upon trust areas etc. A member of the Police Force of Queensland is entitled to enter on and to be in an area—

(a) for the purpose of discharging or exercising a function, duty or power imposed or conferred on him by law; or

(b) for the purpose of performing any act or thing that he is by this Act authorized to perform pursuant to an authority or requirement of a by-law of an Aboriginal Council.

and, in the case referred to in paragraph (b), he shall be deemed to be acting in the discharge of his duty as a member of the police force.

38. Places in trust areas etc. deemed to be public places. Right of access to or use of any place in an area by the general body of persons resident in the area shall be deemed to be right of access or use by the public and where any place would, but for its being in such an area, be

taken in law to be a public place, road, park or place of any other description it shall be taken so to be notwithstanding that it is in the area in question.

39. Aboriginal police. (1) The function of maintaining peace and good order in all parts of an area is that of persons who hold appointments for the time being as Aboriginal police for the area.

(2) An Aboriginal Council, with the Minister's approval, may appoint such number of persons as it considers necessary for the peace and good order of its area and the council shall equip the persons appointed with a uniform and such other marks of authority as it thinks fit to enable them to discharge their function.

40. Discharge of Aboriginal police function. (1) Aboriginal police appointed for an area shall have and may exercise within that area the functions, duties and powers conferred on them by by-law of the Aboriginal Council established for the area.

(2) If at any time a member of the Police Force of Queensland is, in execution of his duty, stationed in or present in the area for which Aboriginal police are appointed they shall discharge and exercise their functions, duties and powers subject to the direction and control of that member.

(3) It is lawful for an Aboriginal policeman to use reasonable force in the discharge of his function of maintaining peace and good order in the area for which he is appointed.

41. Other functions of Aboriginal police. An Aboriginal Council may by its by-laws or otherwise as it thinks fit charge Aboriginal police appointed for the area for which the council is established with responsibility for ambulance services, fire-fighting services, emergency services and such other services associated with the local government of the area as it thinks fit.

Division 3—*Determination of Matters of Complaint in Areas*

42. Aboriginal Courts. (1) For any area there may be constituted a court under the title, Aboriginal Court.

(2) An Aboriginal Court shall be constituted—

(a) by two justices of the peace each of whom being an Aboriginal resident in the area for which the court is constituted and being entitled to sit as a member of the court in a particular case; or

(b) where paragraph (a) cannot be complied with, by the members of the Aboriginal Council established for the area concerned or a majority of them.

(3) A person is not entitled to sit as a member of an Aboriginal Court constituted to hear and determine a matter in which he is a party.

43. Jurisdiction of Aboriginal Courts. (1) Subject to this Act, an Aboriginal Court has and may exercise the jurisdiction, powers and authorities conferred on it—

by this Act; or

by the by-laws of the Aboriginal Council established for the area for which the court is constituted.

(2) An Aboriginal Court has jurisdiction to hear and determine—

(a) matters of complaint that are breaches of the by-laws applicable within its area;

(b) disputes concerning matters within its area that are not breaches of the by-laws applicable within its area or of any law of the Commonwealth or the State; and

(c) matters committed to its jurisdiction by the regulations,

and shall exercise that jurisdiction referred to in provision (a) in accordance with the appropriate by-law having regard to the usages and customs of the community within its area and that jurisdiction referred to in provision (b) in accordance with the usages and customs of the community within its area.

44. Limitation of jurisdiction over persons. (1) The jurisdiction of an Aboriginal Court extends only to and in respect of persons, whether Aborigines or not, who are part of the community that resides in the area for which it is constituted.

(2) A person, whether an Aborigine or not, who is a resident in an area by reason only that he holds an appointment that requires his residence there shall not be taken to be part of the community that resides in the area.

(3) A person charged with a breach of a by-law applicable within an area who is not subject to the jurisdiction of the Aboriginal Court constituted for the area shall be dealt with according to law before a Magistrates Court and for that purpose the by-laws of the Aboriginal Council established for that area shall be deemed to be part of the law of Queensland.

45. Right of appeal against conviction. Any person aggrieved by his conviction of an offence by an Aboriginal Court shall have the same right of appeal against or review of the conviction and order made thereon as if he had been convicted and the order had been made by

a Magistrates Court and the provisions of the *Justices Act* 1886–1982 shall, with all necessary adaptations, apply in respect of that right and the exercise thereof.

PART IV—ABORIGINAL CO-ORDINATING COUNCIL

46. Continuation and incorporation of Aboriginal Co-ordinating Council. (1) The body known as the Aboriginal Advisory Council existing at the commencement of this Act shall continue in being under the name Aboriginal Co-ordinating Council and be constituted from time to time in accordance with this Part.

(2) The Aboriginal Co-ordinating Council shall be a body corporate having perpetual succession and an official seal which shall be judicially noticed and shall, under its name, be capable in law of suing and being sued, of acquiring, holding (absolutely or subject to trusts), letting, leasing, hiring, disposing of and otherwise dealing with property real and personal and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

47. Membership of council. On and from the commencement of this Act the Aboriginal Co-ordinating Council shall be constituted by the persons who are chairmen of the Aboriginal Councils.

48. Functions of council. The functions of the Aboriginal Co-ordinating Council are—

(a) to consider and advise the Minister and the Under Secretary on matters affecting the progress, development and well-being of Aborigines;

(b) to recommend to the Minister and the Under Secretary concerning matters affecting the progress, development and well-being of Aborigines and the administration of this Act;

(c) from time to time to select as prescribed four persons who are members of Aboriginal communities resident in trust areas in Queensland to be members of the Aboriginal Industries Board and four persons, being members of the Aboriginal Co-ordinating Council, to be members of an executive committee of the council;

(d) from time to time to select one person who is a member of an Aboriginal community resident in a trust area in Queensland to be a member of the Aboriginal Industries Board; and

(e) to attend to such other matters as are prescribed.

49. Meetings of council. The members of the Aboriginal Co-ordinating Council shall meet at such times and places as are approved by the Minister and may meet at such other times and places as they determine.

50. Divisions of Aboriginal communities. (1) For the purpose of the selection of members of the Aboriginal Industries Board and the executive committee under paragraph (c) of section 48 the Minister shall (and may from time to time) delineate, by such means as he thinks fit, the communities of Aborigines resident in trust areas in Queensland into four divisions.

(2) The membership of the Aboriginal Co-ordinating Council shall be deemed to be divided into four divisions corresponding to the divisions delineated for the time being by the Minister, each division being represented on that council by the members thereof who are members of communities of Aborigines resident in that division.

51. Selection of Board members. (1) For the purpose of the selection of members of the Aboriginal Industries Board and the executive committee under paragraph (c) section 48 the members of each division referred to in section 50 (2) shall select one person, being a member of a community of Aborigines resident in that division, to be a member of the Board or, as the case may be, the executive committee.

The appointment of a member of the Aboriginal Industries Board under paragraph (d) of section 48 shall be made by the whole of the Aboriginal Co-ordinating Council and the appointee shall be a member of any of the Aboriginal communities resident in trust areas in Queensland.

(2) A person selected to be a member of the Aboriginal Industries Board or, as the case may be, the executive committee under section 48 or to fill a casual vacancy in the office of such a member shall hold office as such member until he dies or resigns or a successor is selected as prescribed in his place or in the case of a member of the executive committee he ceases to be a member of the Aboriginal Co-ordinating Council.

(3) A successor to a member of the Aboriginal Industries Board or the executive committee selected under this Part may be selected at any time in the same manner as that member was selected.

(4) A person selected under this Part to be a member of the Aboriginal Industries Board or the executive committee shall be taken to have assumed office when his name is notified by the Aboriginal Co-ordinating Council to the Minister.

52. Casual vacancy in office of selected member. In the event of a vacancy occurring in the office of a member of the Aboriginal Industries Board or of the executive committee selected under this Part—

(a) if the member was selected by a division of the members of the Aboriginal Co-ordinating Council, the members of the division by whom he was selected shall select a person, being a member of a community of Aborigines resident in the corresponding division of Aboriginal communities, to hold the office; and

(b) if the member was selected otherwise, the Aboriginal Co-ordinating Council shall select a person, being a member of a community of Aborigines resident in a trust area in Queensland, to hold the office.

53. Particular functions of council. (1) The Aboriginal Co-ordinating Council shall apply property acquired by it (other than property acquired by it for its own use) towards the progress, development and well-being of the communities of Aborigines resident in trust areas by such means as, in its opinion, are best calculated to achieve the purpose.

(2) As soon as is practicable after the expiration of four years after the commencement of this Act the Aboriginal Co-ordinating Council shall furnish to the Minister a report concerning the operation of this Act and with that report shall submit its recommendation as to—

(a) changes in the provisions and administration of this Act that in its opinion should be made to assist the progress, development and well-being of communities of Aborigines resident in Queensland;

(b) such other matters as it considers appropriate.

(3) The Minister shall submit the report and recommendations furnished to him under subsection (2) to the Governor in Council within 28 days after they are furnished to him.

PART V—ABORIGINAL INDUSTRIES BOARD

54. The Board. (1) There shall be established a Board called "The Aboriginal Industries Board", which in this Act is called the "Board" or the "Aboriginal Industries Board".

(2) Upon its constitution the Board shall be a body corporate under the name "The Aboriginal Industries Board" and by that name shall have perpetual succession and an official seal, which shall be judicially noticed.

55. Membership of Board. (1) The Board shall consist of—

(a) the Under Secretary;

(b) three persons appointed by the Governor in Council by notification published in the Gazette; and

(c) the five members for the time being selected by the Aboriginal Co-ordinating Council.

The persons appointed to the Board by the Governor in Council shall hold office at his pleasure.

(2) For a period of five years after the commencement of this Act the chairman of the Board shall be the Under Secretary and thereafter the chairman shall be a member of the Board nominated by the members for the time being.

(3) The Board shall be taken to be duly constituted upon—

(a) the appointment as prescribed of the two members referred to in paragraph (b) of subsection (1); and

(b) the assumption of office as prescribed by section 51 by the five members referred to in paragraph (c) of subsection (1).

56. Casual vacancy in appointed members of Board. In the event of a vacancy occurring in the office of a member of the Board appointed by him the Governor in Council shall appoint another person to hold the office at the pleasure of the Governor in Council.

57. Board meetings. (1) A quorum of members of the Board shall consist of a majority of those members including the chairman or a person nominated by him as his delegate for a particular meeting.

(2) The chairman of the Board shall preside at every meeting of the Board at which he is present and a person nominated by him as his delegate shall preside at any other meeting of the Board.

58. Officers and employees of Board. (1) Subject to the Minister's direction (if any) in that behalf the Board—

(a) shall appoint a secretary to the Board;

(b) may appoint such administrative and technical officers and clerks and employ such employees and agents as it considers necessary to the proper exercise of its powers and discharge of its functions.

(2) The secretary to the Board may execute documents on behalf of the Board, and may affix the official seal of the Board to any document that requires the same and shall perform such duties as are assigned to him by the Board.

(3) Unless he is appointed to his position under the *Public Service Act* 1922–1978 the secretary to the Board and every officer, clerk, employee and agent of the Board shall hold his office or be so employed at the pleasure of the Board.

(4) The chairman of the Board shall be its executive officer and is charged with control of and shall control the affairs of the Board and of any business conducted by the Board.

59. Powers of Board. (1) The Board is capable in law of suing and being sued, of compounding or proving in any court of competent jurisdiction all debts and sums of money due to it, of acquiring, holding, alienating, leasing, conveying, surrendering, charging and otherwise dealing with property within or outside the State, and of doing and suffering all such other acts and things as bodies corporate may in law do and suffer.

(2) The Board may—

(a) carry on the business of banker, blacksmith, building, carpenter, commission agent, common carrier (by land or water), dealer (wholesale or retail), engineer, exporter, factor, farmer, fisherman (including the gathering of pearl-shell, trochus-shell, and Beche-de-mer), forwarding agent, freight contractor, general merchant, grazier, importer, ironworker, joiner, labour agent, lighterman, manufacturer, mining, money-lender, plumber, shipping agent, ships' chandler, shipbroker, shipbuilder, shipowner, shopkeeper, stevedore, storekeeper, timber merchant, tinsmith, trustee, warehouseman, wharfinger, and any other business incidental or ancillary to any of the businesses specified or which, in the Board's opinion can be profitably or effectually carried on in connexion with any of the businesses specified;

(b) acquire, lease, erect, maintain and renovate such buildings, wharves, vessels, tramways, plant and machinery, and undertake such works as, in the Board's opinion, are necessary or desirable for the proper exercise of the powers conferred on it by this Act;

(c) obtain and disseminate information with respect to the best manner of carrying on any business specified or referred to in paragraph (a) of this subsection, undertake the instruction of Aborigines and other persons in any such business and, for that purpose, establish, maintain and conduct such schools and classes as the Board considers necessary or desirable and enter into contracts of apprenticeship;

(d) for the purpose of carrying on any business specified or referred to in paragraph (a) of this subsection, exercise all such powers, authorities and discretions and do all such acts and things as a natural person conducting such a business in the State might exercise and do;

(e) cause investigations to be made and, from time to time, report and recommend to the Under Secretary concerning—

(i) any question touching trade, commerce or businesss carried on by Aborigines or in which they are interested or engaged;

(ii) markets for the produce of Aborigines, trade in and methods of marketing such produce;

(iii) the encouragement, development and protection of the trade, commerce and industries of Aborigines;

(f) finance any business specified or referred to in paragraph (a) of this subsection and, for that purpose, raise money on loan from the Treasurer of Queensland, the Corporation, the Corporation of the Agricultural Bank, or any bank, financial institution, or person and mortgage or assign by way of

security property of the Board (including the rights of the Board under contracts made with Aboriginals or other persons in connexion with any such business).

60. Profits of Board. No part of the profits of the Board shall be paid into Consolidated Revenue but shall be applied for the general welfare of Aborigines in such manner as the Board from time to time directs with the approval of the Governor in Council.

61. Audit of Board's accounts. (1) The accounts of the Board shall be audited by the Auditor-General or by a person authorized by him, each of whom shall have with respect to such audit and accounts all the powers and authorities confered on him by the *Financial Administration and Audit Act* 1977–1981 as if the Board were a department of government of Queensland.

The Board shall pay a fee for such audit in an amount determined by the Auditor-General.

(2) The Auditor-General shall, at least once in each year, report to the Minister the result of each audit carried out pursuant to this section and shall, if he thinks fit, include with the report recommendations to the Minister with respect to the accounts of the Board.

A copy of such report and recommendation shall be furnished to the chairman of the Board who shall submit the report and recommendations to the Board at its first ordinary meeting held after the report and recommendations are received by him.

(3) The Minister and the Board's chairman shall give due consideration to the report and recommendations of the Auditor-General made pursuant to subsection (2).

62. Annual report by Board. As soon as is practicable after the first day of February in each year the Board shall furnish to the Minister a full report of its operations during the twelve months period that expired on the last day of January then last past.

63. Administrator may replace Board members. (1) The Governor in Council may at any time, on the recommendation of the Minister, dismiss the members for the time being of the Board, whereupon they shall cease to hold office, and may from time to time appoint in the place of those members an administrator to administer the Board's affairs.

(2) A person appointed as administrator under subsection (1) shall administer the Board's affairs for a period specified by the Governor in Council, not exceeding in any case a period of two years, unless within that specified period his appointment is revoked by the Governor in Council.

(3) The continuity of existence of the Board as a body corporate shall not be affected by a dismissal of members under subsection (1) and, for so long as he administers the Board's affairs, the administrator shall be taken to constitute the Board.

(4) Upon an administrator ceasing to administer the Board's affairs by reason of the expiration of the period of his appointment or the revocation of his appointment the Board shall again be constituted by the persons referred to in section 55 (1).

64. Relinquishment of Board's assets to local control. (1) If the Board receives a request in writing from an Aboriginal Council established for an area in which are situated premises in which the Board's business is carried on that the conduct of that business be transferred to it or to one or more members of the community resident in the area, the Board may as soon as is practicable, enter into such contracts, transactions and arrangements as are necessary or desirable to transfer the conduct of the business to the council or to such member or members or other member or members of that community.

(2) In discharge of the obligation prescribed by subsection (1) the Board shall have regard to the resources of the person or persons to whom it is proposed that the conduct of the business in question should be transferred and may transfer the conduct of the business on such terms and in such manner as it considers appropriate and prudent.

(3) Any person aggrieved by the terms on which or manner in which the Board proposes to transfer the conduct of a business to him may apply to the Minister to review those terms or that manner.

(4) The Minister may, after receiving the representations of the Board and the applicant and making such inquiry as he thinks fit, either confirm the Board's decision or vary it to such extent and in such manner as he thinks fit.

The Minister's decision shall be final and binding and shall be given effect by the Board and all persons concerned.

PART VI—ENTRY UPON AREAS

65. Entry upon public parts of areas. (1) Any person is authorized to enter upon and be in any public place, road, park or other place of public resort within an area or any place of business within an area in the course of his visiting the area or doing business within the area, if he is there for a lawful purpose.

(2) Any person is authorized to enter upon and be in any place within an area, other than a place referred to in subsection (1), if he is there for a lawful purpose as a guest or at the request of a member of the community resident in the area who is entitled to be in that place.

66. General authority to be in area. (1) Subject to this Part—

(a) an Aborigine or other person who, in either case, is a member of the community resident in an area; or

(b) a person who is discharging a function under this Act or any other Act that requires his presence in an area,

is authorized to enter upon, be in and reside in that area.

67. Entry upon and temporary stay in areas. (1) The following persons are authorized to enter upon and to be in any area and to remain therein until the purpose of their entry to the area is fulfilled:—

(a) the Governor-General of Australia and the Governor of Queensland;

(b) a person whose purpose in the area is to bring to residents of the area religious instruction, material comforts or medical aid;

(c) a person whose purpose in the area is to instruct himself on affairs within the area as a member of the Legislative Assembly of Queensland or of either House of the Parliament of the Commonwealth;

(d) a person whose purpose in the area is to campaign as a bona fide candidate for election to the Legislative Assembly of Queensland or either House of the Parliament of the Commonwealth at an election for which a writ that requires its holding has been duly issued;

(e) a person who is assisting or is acting under the direction or control of a person referred to in the foregoing provisions, if such last-mentioned person is in the area.

(2) A person shall not be taken to have the purpose of bringing religious instruction to residents of an area referred to in subsection (1) unless he is a person or is of a class of person ordinarily used by a church or other religious organization, which itself is recognized as such throughout Australia, as a religious instructor.

68. Power of Aboriginal Council to regulate presence in area. An Aboriginal Council may—

(a) make by-laws that authorize persons of a class specified therein to enter, be in or reside in the area for which it is established; or

(b) make by-laws not inconsistent with this Act that exclude persons of a class specified therein from the area for which it is established or that prohibit or restrict persons of a class specified therein from entering, being in or residing in that area.

69. Excluded person entitled to reason. Any person who is aggrieved by his being excluded or prevented from entry upon, being in or residing in an area or by his entry upon, presence or residence in an area being restricted shall be entitled, upon his demand therefor, to be given by the Aboriginal Council concerned a notice in writing of the reason therefor.

70. Power of Aboriginal Council to eject. (1) In addition to all other powers had by it to remove persons from land of which it is trustee or occupier an Aboriginal Council may cause its agents to remove from the area for which it is established—

(a) any person who is there without authority conferred by this Act or the by-laws of the council;

(b) any person—

(i) who belongs to a class of person that is excluded from the area by its by-laws;

(ii) who belongs to a class of person whose entry to the area is prohibited by its by-laws;

(iii) who, being a member of a class of person whose entry to, being in or residing in the area is restricted by its by-laws, has contravened or failed to comply with the relevant by-laws.

(2) Any member of the Police Force, upon being requested so to do by an agent of an Aboriginal Council, shall assist in the summary removal of any person under this section and, while so acting, is authorized to be in the area concerned.

No liability shall attach to any member of the Police Force by reason only of the fact that a person in whose removal from an area he has assisted should not have been so removed.

(3) It is lawful to use reasonable force in the exercise of the power conferred by subsection (1) and in assisting therein.

PART VII—ASSISTANCE SOUGHT BY ABORIGINES

71. Grant of aid. (1) Subject to and in accordance with the regulations (if any) applicable to the grant in question, the Under Secretary may grant aid to any Aborigine who applies to him therefor and, where necessary, may apply therein money appropriated by Parliament for the purpose or money held for the benefit of Aborigines generally.

(2) Subject as prescribed by the preceding subsection, aid granted under that subsection may be of such a type (in money, in kind, or by way of services) and may be granted in such circumstances, on such terms and conditions and, where granted by way of secured loan, on such security as the Under Secretary thinks fit.

72. Deposit of savings with banker. (1) The Under Secretary is authorized to continue the facilities established as at the commencement of this Act in areas for the acceptance by him of money deposited by

Aborigines by way of their savings and both he and the Aboriginal Industries Board are authorized to establish in areas new facilities of a like nature.

In this Part the person providing such facilities is called "the banker".

(2) The banker shall in the first instance pay all moneys deposited with him by Aborigines by way of their savings—

(a) where he is the Under Secretary, to the credit of the trust fund established as at the commencement of this Act with the Commonwealth Savings Bank of Australia or such other trust fund or trust funds as he may from time to time establish for the purpose; or

(b) where he is the Board, to the credit of such trust fund or trust funds as it may from time to time establish for the purpose.

(3) The banker shall cause to be properly kept a separate record and account of all moneys deposited with him by each Aborigine by way of his savings and each such account shall be credited at least once in each year with an amount as interest earned by the amount standing to the credit of that account at a rate not less than the rate of interest payable by the Commonwealth Savings Bank of Australia in respect of its ordinary savings accounts.

(4) Money deposited with the banker by Aborigines by way of their savings together with all interest accrued thereon shall be repayable at call and upon receipt of an authority signed or otherwise attested by the Aborigine on whose behalf money is so held or by another person authorized in writing by the Aborigine the Under Secretary shall arrange the withdrawal of the amount sought from the appropriate trust fund and the payment thereof to the Aborigine or as otherwise requested by the Aborigine.

73. Continuation of management of money. (1) Where at the commencement of this Act property, being money, of an Aborigine is being managed under the *Aborigines Act* 1971–1979 the Under Secretary is authorized to continue that management.

(2) Moneys of an Aborigine under the management of the Under Secretary pursuant to subsection (1) shall be deemed to be moneys deposited with him by the Aborigine by way of his savings and the provisions of section 72 shall apply accordingly.

74. Investment of moneys by banker. (1) Moneys from time to time forming part of the trust fund or a trust fund referred to in section 72 (2) that are surplus to the immediate requirements of the fund may be withdrawn by the banker and may be invested by him or through the Treasurer of Queensland—

(a) with any authorized dealer in the short term money market with established lines of credit with the Reserve Bank of Australia as lender of last resort; or

(b) in such securities, investments or financial arrangements as may be recommended by the Treasurer and approved by the Governor in Council.

(2) No investment of moneys pursuant to subsection (1) shall have a term in excess of 12 months except with the Treasurer's approval first had and obtained.

75. Administration of Aborigines' estates. (1) Notwithstanding the provisions of any Act or rule of law or practice where—

(a) an Aborigine has died without appointing an executor or there is no executor resident in Queensland who is willing and capable of acting in the execution of the will of the deceased; or

(b) an Aborigine is missing,

the Under Secretary shall administer the estate of the Aborigine and if the nature of the estate requires a grant of probate or of letters of administration to be made, he shall be entitled to that grant in priority to all other persons.

(2) The Under Secretary may renounce the rights conferred on him by subsection (1) in favour of the Public Trustee who shall thereupon be entitled to an Order to Administer the estate in question or, as the case may be, to file an Election to Administer the estate in question to the exclusion of all other persons.

(3) In the absence of a testamentary instrument duly made by an Aborigine who has died or is to be presumed to have died and if it should prove impracticable to ascertain the person or persons entitled in law to succeed to the estate of the Aborigine or any part of it, the Under Secretary, whether or not he is administering the estate, may determine which person or persons shall be entitled to so succeed or whether any person is so entitled.

The person or persons determined by the Under Secretary to be entitled to succeed to an estate or to any part of it shall be the only person or persons entitled in law to succeed to the estate or, as the case may be, part and, if more than one person is so determined, to succeed in the order and proportions determined by the Under Secretary.

(4) A certificate purporting to be signed by the Under Secretary that the person or persons named therein is or are entitled to succeed to the estate or any part of the estate of the person named therein (being a person to whose estate subsection (1) of this section applies), or that there is no person so entitled shall be conclusive evidence of the matters contained therein.

(5) If, so far as can be determined, there is no person entitled to succeed to the estate or a part of the estate of an Aborigine who has died or is to be presumed to have died the estate or, as the case may be, part shall vest in the Under Secretary who shall apply the moneys or the proceeds of the sale of any property (less the expenses, if any, of such sale) for the benefit of Aborigines generally as provided by section 71.

PART VIII—GENERAL PROVISIONS

76. Supply of beer in areas. (1) An Aboriginal Council, with the Under Secretary's approval first had and obtained, is authorized to establish and maintain within its area premises for the sale and supply of beer and to conduct within its area the business of selling and supplying beer.

(2) If the authority conferred by subsection (1) is exercised by an Aboriginal Council, it shall be exercised as a function of local government.

(3) The provisions of the *Liquor Act* 1912–1984, other than section 81 thereof, do not apply in respect of the establishment or maintenance of premises for the sale and supply of beer pursuant to the authority conferred by subsection (1) or in respect of the conduct therein and therefrom of the business of selling and supplying beer pursuant to that authority or in respect of the consumption of beer so sold and supplied.

For the purpose of the application of section 81 of the *Liquor Act* 1912–1984 in respect of such premises in an area the premises shall be deemed to be premises of a licensee within the meaning of that Act and the person shall be deemed to be the licensee of the premises within the meaning of that Act.

(4) An Aboriginal Council may, pursuant to its power to make by-laws conferred by this Act, make by-laws with respect to the establishment and maintenance within its area of premises in and from which beer may be sold and supplied; with respect to the sale, supply and consumption of beer sold and supplied in and from such premises; and with respect to the conduct of such premises.

(5) Beer sold and supplied from premises established in an area established pursuant to this section shall not be taken away from those premises for consumption except in quantities that do not exceed a limit fixed by the relevant Aboriginal Council by its by-laws.

For the purpose of assessing whether a quantity of beer taken away by or on behalf of a particular person is in contravention of this subsection all quantities taken away by him or on his behalf during the period of trading hours on any one day shall be aggregated and he shall be deemed to have taken away that aggregate quantity.

A person who conducts or assists in conducting premises established in an area pursuant to this section shall not knowingly permit or suffer a person to take away from those premises a quantity of beer in contravention of this subsection.

(6) If the Under Secretary is satisfied that—

(a) the sale and supply of beer from premises established in an area pursuant to this section is, directly or indirectly, the cause of regularly occurring disorder or breaches of the peace in the area; or

(b) beer is regularly taken away from such premises in contravention of subsection (5); or

(c) the sale and supply of beer from such premises is proving to be—

(i) detrimental to the health or well-being of the members generally of the community of Aborigines resident in the area; or

(ii) a source of danger to the life or safety of members generally of the community of Aborigines resident in the area or to property generally in the area,

he may by notice in writing given to the chairman of the relevant Aboriginal Council call upon the council to show cause at a time and place nominated by the Under Secretary why such premises should not be closed down.

If sufficient cause is not shown to the satisfaction of the Under Secretary, at such time and place or at such time and place to which the matter may be adjourned, he is hereby authorized to take all steps necessary to terminate the conduct of the business of selling and supplying beer from the premises and to remove from the area all beer being the stock in trade of those premises, upon payment of a fair price therefor to the Aboriginal Council, and to dispose of such beer removed and to pay the proceeds of such disposal (after payment of all proper expenses of the disposal) to the Community Fund of the relevant Aboriginal Council for the benefit of the community of Aborigines resident in its area.

(7) After payment of or making proper allowance for payment of costs and expenses of conducting the business of selling and supplying beer pursuant to the authority conferred by subsection (1), surplus moneys arising therefrom may be applied for the welfare of members of the community resident in the area in which the business is conducted and for works and services directed towards such welfare notwithstanding that the purpose of such application is not a purpose for which an Aboriginal Council may lawfully apply, or does ordinarily apply, any of its funds.

77. Protection of fishing and hunting. (1) Notwithstanding the provisions of any other Act, a member of a community resident in an area shall not be liable to prosecution as for an offence for taking marine products or fauna by traditional means for consumption by members of the community.

(2) Subsection (1) shall not be construed to authorize the sale or other disposal for gain of any marine product or fauna taken by traditional means.

78. Obstruction, intimidation and assault. A person shall not assault or wilfully obstruct or intimidate, or attempt so to do, another in the discharge or exercise by that other of his functions, duties or powers under this Act.

79. General penalty for offence. A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and, except where another penalty is expressly provided by this Act for that offence is liable to a penalty of $500 or to imprisonment for six months or to both such penalty and imprisonment.

80. Proceedings for offences. (1) Except where it is otherwise by this section provided, proceedings to enforce a penalty for an offence against this Act shall be taken in a summary way under the *Justices Act* 1886–1982 on the complaint of the Under Secretary or a person authorized by him in writing.

(2) If it is prescribed by the regulations that proceedings in respect of a particular offence against a regulation shall be taken before an Aboriginal Court proceedings against a person who is subject to the jurisdiction of an Aboriginal Court in respect of that offence shall not be cognisable by a Magistrates Court.

(3) In any proceeding before a Magistrates Court in respect of an offence alleged to have been committed by a person who in respect of that offence is subject to the jurisdiction of an Aboriginal Court it shall be a defence to prove that the defendant has already been dealt with by an Aboriginal Court of competent jurisdiction for the act or omission that constitutes the offence.

81. Evidentiary aids. In proceedings to enforce a penalty for an offence against this Act—

(a) an averment in the complaint that a person named therein is part of the community that resides in an area shall be conclusive evidence thereof until the contrary is proved;

(b) it shall not be necessary to prove the appointment or signature of the Under Secretary or the authority of the complainant to lay the complaint;

(c) it shall not be necessary to prove the limits of any area.

82. Regulations. The Governor in Council may make regulations not inconsistent with this Act with respect to—

1. the functions, duties and powers of the Under Secretary and officers of the Department, and the manner of discharging or exercising those functions, duties and powers;

2. the extent of and the manner of exercising the jurisdiction of Aboriginal Courts and the procedures thereof; the manner of enforcing decisions of Aboriginal Courts;

3. the development, assimilation and integration of Aborigines;
4. the skills development, training and employment of Aborigines;
5. the composition of Aboriginal Councils; the qualification of candidates for membership of those councils; the franchise for elections of those councils and the conduct of those elections; the appointment, powers and duties of returning officers for those elections; the filling of casual vacancies in membership of those councils;
6. the selection of chairman and deputy chairman of Aboriginal Councils and the Aboriginal Co-ordinating Council;
7. the appointment of clerk of an Aboriginal Council;
8. the inspection of records of an Aboriginal Council by or on behalf of the Under Secretary;
9. the composition of Aboriginal Police forces and conditions of service of Aboriginal police;
10. the granting of aid to Aborigines; the conditions on which aid may be granted; the obligations of persons to whom aid is granted;
11. the management and control of the funds of Aboriginal Councils known as Community Funds; the payments into and disbursements from those funds;
12. the hours for trading in premises established in areas pursuant to section 76, the bringing of liquor into and the presence and consumption of liquor within areas or parts within the outer limits of an area that are reserved from the grant of that area or that are not reserved and set apart for the Aboriginal inhabitants of the State;
13. the establishment, maintenance, management and control of such trust funds and accounts as are necessary or desirable for the care of moneys of Aborigines deposited with the Under Secretary or the Aboriginal Industries Board or for the administration of Aborigines' estates or for the disposal of unclaimed moneys;
14. the establishment, maintenance, management and control of funds to indemnify Aborigines against loss of or damage to vessels, equipment or machinery, and to compensate Aborigines and their dependents for death or personal injury suffered by any person in the course of his employment in cases where compensation is not payable under *The Workers' Compensation Acts* 1916–1983; the basis on which such indemnity or compensation is payable;
15. the maintenance and application of the Aborigines Welfare Fund maintained by the Under Secretary;

16. meetings of the Aboriginal Industries Board and attendances thereat; the accounts and records to be kept by the Board, either generally or in relation to a particular business of the Board; the manner of keeping such accounts and records and of the performance of the Board's activities; the functions, powers and duties of the Board's officers, clerks and employees; the security and protection of the Board's property;
17. the forms to be used for the purposes of this Act and the purposes for which they are to be used;
18. the procedure to be adopted in relation to any application to be made under this Act;
19. the fees to be paid for the purposes of this Act and the purposes for which they are to be paid;
20. penalties for breaches of the regulations not exceeding in any case $200;
21. all matters required or permitted by this Act to be prescribed and in respect of which the manner or prescription is not otherwise provided for; and
22. all matters and things for which it is necessary or convenient to provide for the proper administration of this Act or for achieving the objects and purposes of this Act.

Regulations may be made so as to apply throughout the whole of the State or within such part or parts of the State as are therein specified.

PART IX—ASSISTANCE TO AND REVIEW OF ABORIGINAL COUNCILS

83. Assistance to Aboriginal Councils. (1) Each of them, the Minister and the Under Secretary is authorized to provide to any Aboriginal Council, from the resources of the Department, such assistance by way of—

(a) making available the services of officers of the Department; or

(b) financial aid,

as in his opinion is necessary to enable the council to adequately discharge and exercise its functions, duties and powers.

(2) A person who is assigned to perform work by way of assistance to an Aboriginal Council shall be taken to be discharging a function under this Act while he is engaged in that assignment.

84. Use of churches etc. for provision of assistance. Subject to subsection (2), the authority conferred by section 83 on the Minister and the Under Secretary includes authority—

(a) to make arrangements with any church or religious organization that works for the welfare of Aborigines with respect to the provision of assistance under that section; and

(b) to provide assistance under that section to the church or organization with whom the arrangements are made for application in accordance with the arrangements.

(2) Where the provision of assistance referred to in subsection (1) is for a particular area, the authority specified by that subsection shall not be exercised except with the approval of the Aboriginal Council established for that area first had and obtained.

ABORIGINAL COMMUNITIES.

No. 8 of 1979.

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

[*Assented to 17th May, 1979.*]

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

Short title.

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

Commencement.

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

84407—5500

Interpretation.

3. In this Act—

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

"section" means section of this Act;

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

Communities to which this Act applies.

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

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

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

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

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

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

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

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

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

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

(a) that neither the constitution nor the rules of the community contain provisions under which the council of the community has to consult with the members of the community and take proper account of their views before making, amending or revoking by-laws pursuant to this Act;

(b) that provisions of the kind mentioned in paragraph (a) of this subsection contained in the constitution or rules of the community are not being satisfactorily complied with by the council of the community; or

(c) that, for any other reason, the application of this Act to the community is no longer appropriate.

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

Community lands.

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

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

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

(a) adding any lands to or excising any lands from those community lands; or

(b) redescribing those community lands in a more precise or more informative manner.

By-laws.

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

(a) the prohibition or regulation of the admission of persons, vehicles, and animals to the community lands or a part of the community lands;

(b) the prohibition or regulation of the use of vehicles on the community lands, including provisions as to speed, manner of driving, class of vehicles, routes, entrances and exits, one-way traffic, noise, parking or standing, the removal of vehicles by a person authorized under the by-laws, and for the control of traffic generally;

(c) the prevention of damage to or interference with the grounds of the community lands and the trees, shrubs, bushes, flowers, gardens and lawns on or in those lands;

(d) the use, safety and preservation of buildings, structures, erections, fixtures, fittings and chattels on the community lands;

(e) the regulation of the conduct of meetings and the interruption of meetings by noise, unseemly behaviour or other means;

(f) the prohibition of nuisances, or any offensive, indecent or improper act, or disorderly conduct, language or behaviour;

(g) the prohibition, restriction or regulation of the possession, use or supply of alcoholic liquor or deleterious substances;

(h) the prohibition or regulation of the possession or use of firearms or other offensive weapons or of dangerous materials;

(i) the depositing of rubbish and the leaving of litter on community lands;

(j) the prohibition of the obstruction of any person acting in the execution of his duty under the by-laws or in the exercise and enjoyment by him of any lawful activity on the community lands;

(k) the prescribing of any other matter that it is necessary or convenient to prescribe for the purpose of securing decency, order and good conduct on the community lands.

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

(a) may empower a member of the police force—

(i) to apprehend any persons guilty of a breach of any by-law and to remove such a person from the community lands;

(ii) to remove any vehicle, animal or other thing from the community lands;

(iii) to request the name and address of any other person who, in the reasonable belief of the member of the police force, is on the community lands in breach of any by-law or has committed a breach of a by-law;

(iv) to take proceedings for any breach of a by-law; and

(v) generally to enforce the provisions of the by-laws;

(b) may be limited in their application to time, place or circumstance;

(c) may provide that any act or thing shall be done subject to the approval or to the satisfaction of the council or a specified person or class of persons and may confer a discretionary authority on the council or a specified person or class of persons;

(d) may impose as the penalty for a breach of a by-law a fine, or a term of imprisonment, or both, but no fine so imposed shall exceed one hundred dollars and no term of imprisonment so imposed shall exceed three months;

(e) may empower a court to order a person to pay compensation not exceeding two hundred and fifty dollars to the community or another person where the court has convicted him under the by-laws of an offence and, in the course of committing that offence, he has caused damage to property of the community or that other person.

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

Procedure for making by-laws.

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

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

(a) sealed with the common seal of the community;

(b) delivered to the Minister.

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

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

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

Application of by-laws.

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

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

Time limit on proceedings for offences.

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

Procedure.

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

Appropriation of fines.

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

Effect of by-laws in relation to other laws.

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

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

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

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APPENDIX II

AUSTRALIAN INSTITUTE OF CRIMINOLOGY

ABORIGINAL CRIMINAL JUSTICE WORKSHOP

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CRIMINAL JUSTICE AND THE COMMUNITY
29 April - 2 May 1985

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