

Law Reform Commission of Western Australia

Aboriginal Customary Laws

Project No 94

THEMATIC SUMMARY OF CONSULTATIONS IN THE GOLDFIELDS REGION

May 2004

The Law Reform Commission of Western Australia

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First published in 2004

Applications for reproduction should be made in writing
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ISBN: 1 74035 032 4

Printed in Western Australia

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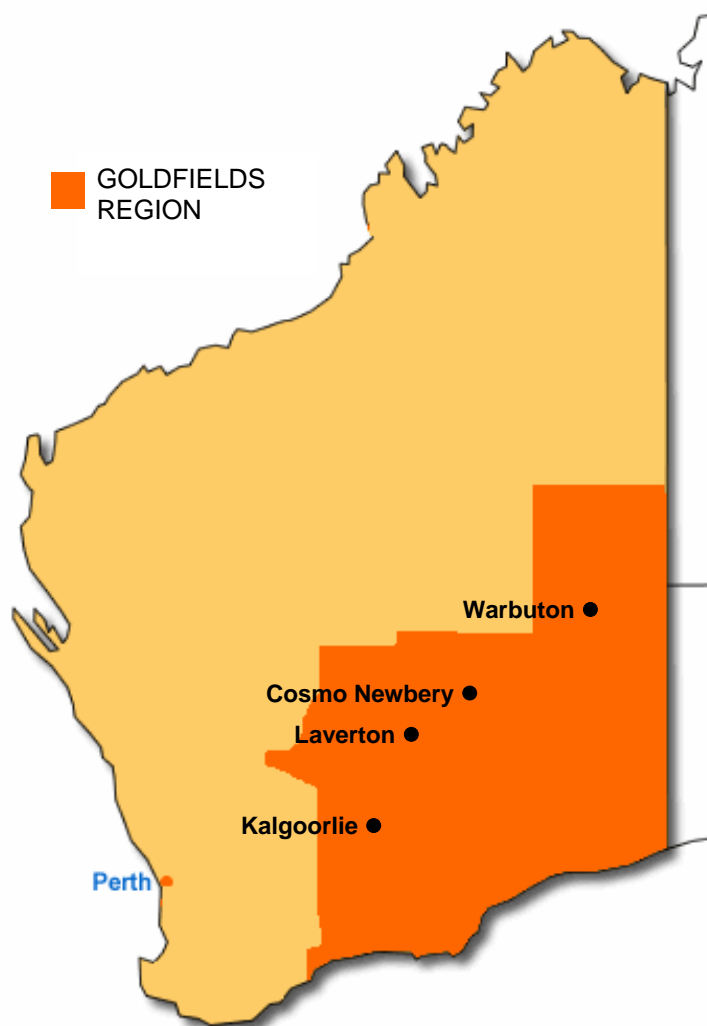
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Preface

The Law Reform Commission's community consultations on the Aboriginal Customary Laws project commenced in Warburton (in the Goldfields region of Western Australia) on 3 March 2003. Further community consultations were held progressively across the State throughout 2003 and were preceded by pre-consultation discussions and visits.

This report provides thematic summaries of the issues that were raised and discussed at each of the consultations in the Goldfields region. The consultations themselves and these thematic summaries have been conducted in accordance with the Memorandum of Commitment (refer Appendix I) and with protocols that were discussed and approved by the Reference Council.

All of the consultations commenced with a formal introduction, a traditional welcome and a presentation about the project by a Commissioner of the Law Reform Commission of Western Australia.

After the formal introduction and welcome, the consultations were opened up for contributions, comments and discussion by all who were present. These discussions sometimes occurred with the group as a whole, and sometimes within smaller discussion groups to reflect more specific concerns. The Directors of Research, in collaboration with the other members of the project team, produced a thematic summary which maintained the integrity of the consultations by utilising the colloquial language spoken during the discussions.

The reports were compiled by Dr Harry Blagg and Dr Neil Morgan with the assistance of Ms Heather Kay, Executive Officer of the Law Reform Commission of Western Australia.

Terms of Reference

Recognising that all persons in Western Australia are subject to and protected by this State's legal system; and there may be a need to recognise the existence of, and take into account within this legal system, Aboriginal customary laws:

The Law Reform Commission of Western Australia is to enquire into and report upon Aboriginal customary laws in Western Australia other than in relation to Native Title and matters addressed under the Aboriginal Heritage Act 1972 (WA)

Particular reference will be given to:

1. how those laws are ascertained, recognised, made, applied and altered in Western Australia;
2. who is bound by those laws and how they cease to be bound; and
3. whether those laws should be recognised and given effect to; and, if so, to what extent, in what manner and on what basis, and in particular whether:
 - (a) the laws of Western Australia should give express recognition to Aboriginal customary laws, cultures and practices in the administration or enforcement of Western Australian law;
 - (b) the practices and procedures of the Western Australian courts should be modified to recognise Aboriginal customary laws;
 - (c) the laws of Western Australia relating to the enforcement of criminal or civil law should be amended to recognise Aboriginal customary laws; and
 - (d) whether other provisions should be made for the identification and application of Aboriginal customary laws.

For the purposes of carrying out this inquiry, the Commission is to have regard to:

- matters of Aboriginal customary law falling within state legislative jurisdiction including matters performing the function of or corresponding to criminal law (including domestic violence); civil law (including personal property law, contractual arrangements and torts); local government law; the law of domestic relations; inheritance law; law relating to spiritual matters; and the laws of evidence and procedure;
- relevant Commonwealth legislation and international obligations;
- relevant Aboriginal culture, spiritual, sacred and gender concerns and sensitivities;
- the views, aspirations and welfare of Aboriginal persons in Western Australia.

Peter Foss QC MLC
2 December 2000

WARBURTON

3 & 4 March 2003

As individuals and as representatives of the Law Reform Commission of Western Australia, we acknowledge the custodians of the Ngaanyatjarra lands and thank them for allowing us onto their lands and for sharing information with us. We also record our thanks to the Ngaanyatjarra Council and the Shire of Ngaanyatjarra.

In accordance with our Memorandum of Commitment, we promise to take the issues that were raised to the Government of Western Australia through our reports of the consultations and to take account of the stories and issues in formulating recommendations to Government.

Introduction

The following people attended as representatives of the Law Reform Commission or as advisers to the Commission: Professor Ralph Simmonds (Chair of the Law Reform Commission); Ms Gillian Braddock SC (Commissioner); Ms Ilse Petersen (Commissioner); Ms Beth Woods (Special, Commissioner); Ms Cheri Yavu-Kama-Harathunian (Project Manager); Dr Neil Morgan (Research Director); and Mr Charles Staples (Consultant).

A significant number of people (in excess of 40 over the two days) attended from Warburton and a number of other communities.

The consultations took place on two days and took a variety of formats. The main meetings were held outside in the meeting place near the community office on the mornings of Monday 3 March and Tuesday 4 March 2003. Some of the discussions involved both men and women and others involved men or women alone. In addition, there were occasions when further information was only given to selected members of the Law Reform Commission team. For example, on the afternoon of 3 March, senior male community representatives gave a confidential briefing to Dr Neil Morgan and Mr Charles Staples.

This paper is a thematic summary of the issues that were raised, not chronological minutes. It aims to cover all the major themes that were raised. The paper has been developed in a format that best allows the Law Reform Commission to use the ideas as a source for its future discussion papers and in considering future recommendations to government. The footnotes arise out of matters that were raised during the consultations and are provided by way of further explanation.

The discussions embraced a wide range of issues, covering the following broad areas:

1. General context and themes
2. Constitutional issues and limitations
3. Consequences when Aboriginal law is not carried

4. The impacts of imprisonment
5. Balancing aboriginal and white law punishments
6. Transport and travel arrangements
7. Policing issues
8. Are there issues that should be left to Aboriginal law and issues that should be left to White law?
9. Governance and by-laws
10. Culturally offensive behaviour and language
11. Substance abuse and family violence
12. Family relationships
13. Cultural training
14. Interpreters
15. Artwork

After outlining these issues, the notes conclude with a summary of the main proposals that emerged from the discussions. These proposals are divided into two categories: those that would require legislative change and those that would involve changes to practices and protocols.

This paper reflects only the issues that were considered during the brief consultation period. The Law Reform Commission would welcome any further submissions on these issues or on any other matters.

1. General context and themes

The Law Reform Commission has no doubt whatsoever that Aboriginal Law is a reality that is lived by people at Warburton; and that Aboriginal law rather than white law provides the primary framework for people's lives, relationships and obligations. The Commission also recognises that there are important differences between male and female laws, obligations and responsibilities.

The consultations illustrated very clearly that a holistic approach must be taken to considering what is seen as "white-fella's law" for the purposes of this project. When talking about law with non-Aboriginal organizations, the focus is generally on legislation and court practices. However, "on the ground" in communities, it is not confined to what is written in legislation or what happens in formal courtroom settings. It firmly embraces, too, the policies and practices of a range of government agencies (most notably, at Warburton, the police and the Department of Justice). There was a strong sentiment that many of these practices need to be addressed in order to respect and reinforce the authority of the community and law.

Many of the themes emerge from the following comments:

*"Aboriginal Law - older and stronger, from sky to earth and sea.
Whitefella law - new, small, come lately."*

"We need a balance - now Whitefella law taken over."

"We didn't put our law in paper, we put it in our brains."

"We are not happy. We want to see the law strong. We are upset that it is not recognised - no respect."

"The old people are sad: used to be proud."

"Our law is still there but white men don't respect our law"

"Our people do respect your law: look at them shivering in court"

"Respect for the law is like the Constitution: it is right at the bottom of law."

The Royal Commission into Aboriginal Deaths in Custody made us sad: our people must have been so brave to hang themselves: but where have we come since then?"

"The number one issue is the Constitution"

"Your Attorney General - the problem is, he's not just a law man but a vote man."

2. Constitutional issues and limitations

The Ngaanyatjarra Council asked that it be formally recorded that the "Number One issue is the Constitution" and stated that Aboriginal law **must** be recognised in the Constitution for the following reasons:

- there is a lack of respect for Aboriginal laws across Australia; and
- the lack of formal recognition weakens the authority of Aboriginal law

The Council also expressed its concern that State and Territory boundaries place artificial limitations on the Law Reform Commission's project: 'Here, Aboriginal law applies across State boundaries and is the same in South Australia and the Northern Territory.' It would be wrong to have different rules about recognition in the different jurisdictions.

Community representatives were concerned to understand the position of the Law Reform Commission in the structure of government as a whole. The Chair of the Law Reform Commission explained that it is an independent body that makes recommendations to the government. It is then for the government (not the Commission) to decide on what changes, if any, are to be made. He pointed out that the Commission has a successful track record in that many of its recommendations are acted upon but that the realities of the political process should be recognised.

One participant encapsulated the situation with the remark that: "Your Attorney General - the problem is, he's not just a law man but a vote man." Another said: "We are patient people. We have waited a long time and we can wait. But we want something done and you must push hard."

3. Consequences when Aboriginal law is not carried out

The discussions were wide-ranging and covered a range of issues that would broadly fall under the heading of "civil law", such as issues relating to family laws and copyright (see below). However, by far the greatest focus was on broad issues of community order (and disorder) and the role of criminal justice agencies.

The strongest concern was that the white system does not allow Aboriginal law to take its course in a timely manner. This undermines the authority of

Aboriginal law and creates consequences in terms of harmony and good order in the community. There was a strong view that there needs to be more of a balance between the two systems.

- “White law is slow, Aboriginal law is swift.” This creates problems when Aboriginal punishments are not carried out before the person is taken away by the white system: “The police should wait until a person has been through punishment”. The fact that the police take people away before Aboriginal law has taken its course shows that “the white system does not respect Aboriginal law: it is crucial to get punishment done first” and “we have no power, no rights to get the police to bring a person back.”
- Sometimes, Aboriginal law may require a person to face a number of separate families. For example, if 7 people are in a car and there is an accident in which some of those people are killed. All of the survivors must face all of the families of those who were killed; even if the families are in different places.
- “Lots of sadness” and anger is generated when people escape punishment. One example that was given was where a woman had “gone after” her husband in a car (deliberately driving the car at the victim) but ended up killing another man (whom she had mistaken for her husband). She pleaded guilty to manslaughter. The community considered that she should have been tried for murder, not manslaughter. When released from prison, she was taken from Kalgoorlie to another community by plane (though the road trip would have brought her through Warburton). This was done “all behind our back.” “She should have had her punishment at Warburton.”
- Cases such as this create ill will; not only because she should have been punished but also because those who are harbouring her should also be punished.
- Where a person has not been punished (for example, if the person is in prison), other family members may well end up being punished. One example that was given was where a woman from Warburton travelled to Kalgoorlie where her husband had gone. On the way, she picked up another woman at Laverton. They both went to Kalgoorlie and found the husband drinking. In the course of an argument and fight, the Laverton woman was killed by the Warburton woman’s husband. He was imprisoned but she has now been blamed for taking the victim to Kalgoorlie: “She’s got a hiding because he is in jail. She will carry on getting it. This creates family problems and feuds.”
- This example led to discussion of the question of when Aboriginal punishment is regarded as “finished” and what processes apply. It was said that there are not always set limits and that this is largely a matter for the victim’s family rather than a matter for the general community. Many senior people expressed concern that punishments sometimes “go too far”. In the previous example, “The family blame her and we can’t stop them.” More generally, it was said that: “blaming is bad; sometimes it goes on for years and years.”

4. The impacts of imprisonment

Community members outlined several ways in which they believed that the community itself could be involved in administering punishments imposed by the courts (see below). There was support for the use of imprisonment in

necessary cases but concern at impacts of various practices and policies on both individual prisoners and the community:

- There are “too many people in prison.”
- Prisoners are often serving time in prisons a long way from their homes and country. “The Department of Justice tells us it’s prisoners’ choice which jail they go to - but it isn’t.”
- Placement in prisons a long way from home leads to dislocation from family and to family problems.
- Such placements are destructive of Aboriginal law and culture: “All teaching gets left behind when people are going through law but then get sent to prison - they miss out on law and knowledge.”
- “You get no rights and no respect in prison.”
- The “worst thing is being strip-searched - having to stand and walk naked.” Prison staff “stare, mock and make fun of us.”
- Prisoners are not allowed to attend funerals.
- Prisoners are not given proper help in getting home. Families or community are expected to pick them up and transport them at their own expense.
- Infidelity can occur when men are separated, by imprisonment, from their partners. This can lead to disharmony and violence; this, in turn, can lead to further imprisonment, creating a complex cycle of abuse and incarceration.

5. Balancing Aboriginal and White law punishments

Community members made several suggestions as to how they would like greater legal authority to be given to Aboriginal law; and how they would like to be more involved in the administration of court-based punishments to give them cultural relevance and authority.

(a) Spearing

There was considerable discussion of spearing as a punishment under Aboriginal law. Speakers emphasised that this was not the only option and that they wanted to use a range of approaches to work with offenders (especially young people). However, spearing clearly has major symbolic and cultural significance.

Most of the senior men who were present acknowledged that they had been involved in spearing people in the leg or had themselves been speared in this way. They made it clear that, properly done, spearing was something to which offenders agreed and used the phrase “offering a leg.” They also emphasised that, properly done, it was a formal and regulated process (and that it is quite different from alcohol-related violence).

It was pointed out that the government had already intimated that it would not change the laws to legitimate such punishments. The men were therefore asked if there are any alternatives. They stated, unequivocally, that in some cases “there is no alternative.”

(b) Recognition of Aboriginal punishments when sentencing

Community members felt strongly that there should be stronger recognition of punishments under Aboriginal law when white courts impose sentences. It was suggested that this should be done in two ways. First, by more formal recognition of Aboriginal law and, secondly, by giving greater weight to the realities of Aboriginal punishment in deciding the actual sentence.

Some suggested that this could be done by stating a formal “split” (eg 50/50) between Aboriginal and white law components of a punishment.

(c) Managing prisoners in the community

There was strong support for an approach under which people would serve part of a prison sentence in a community - based facility rather than a normal prison. It was said that this would give the community greater authority and power with respect to the management of offenders, especially when the offences are essentially against the community.

Speakers suggested that such an approach could also serve as a bail facility.

It would be necessary to consider developing separate camps / facilities for men and women.

If such facilities are established, older community members should be given formal jobs and responsibility (and should be paid)

(d) Community based punishments

A large number of community based punishments exist under the Sentencing Act and related legislation. These include Community Based Orders, Intensive Supervisions Orders, Parole Orders and Work and Development Orders (to work off a fine).

During the consultations, several suggestions were made as to how such punishments could be better used to reinforce community responsibility and respect for culture and law: “Lots of money goes to prisons but not enough back into the community.” “More resources to the community could help stop people going back to prison.”

The proposals included the following:

- The Department of Justice should ensure that they employ both male and female officers - this is “very important”. At present, they tend to be females.
- Currently work done under WDO’s etc is demeaning and sometimes seems to replace what would otherwise be proper paid jobs. Work under court orders should not replace paid work; and the focus should be on work that “reinforces respect for culture, law and learning.”
- Under court orders at present, “community work” is measured by “hours”. Consideration should be given to revising this so that the offender must complete a task (not measured in hours) under the supervision of Elders. This would give support to the way in which things were done historically.
- Magistrates should pass sentences that give responsibility to Elders and allow them to take offenders to the bush. Magistrates should order the offenders to follow the law and what the Elders tell them.

- The Elders would then look after the offenders and, if they did not do the right thing, would take action to have them returned to court.
- “The government should understand” that the Elders will not “keep with” a person if the person runs off. They will take action in such cases.
- In fact, now, when people don’t do their community work, it may take a long time before Community Corrections Officers (based in Kalgoorlie) will take action.

6. Transport and travel arrangements

A number of concerns were raised with respect to the processes by which people are transported by the police and others, and the consequences of the current arrangements:

- The police often take people to Kalgoorlie or elsewhere but do not bring them back when court is over.
- This frequently means that groups of community members must go to pick the person up and sometimes they then get into trouble - for example, for driving without a valid licence or when they get to town.
- As noted earlier, there are poor arrangements for prisoners returning home. It is “no good” being taken such long distances in police vans.
- Prisoners also face long journeys in the back of vans / trucks.

7. Policing issues

The Ngaanyatjarra Council identified the “Police Act” as the second most important issue after the Constitution (see above). This was recognised to be a difficult area; as one person put it, “sometimes the police are too slow, sometimes they are too fast.” However, there was also a view that community/police relations need to be reconsidered and that lines of communication and responsibility need to be developed and improved:

- The Ngaanyatjarra Council argued that the Police Act should be amended so that the police operate under the Community Council - to “make clear who is the boss here.”
- “The police come - don’t ask permission from the community and don’t tell us the reasons. They say “just open the door and let us in”. “We are still waiting to work properly with the police.”
- The role of Aboriginal Police Liaison Officers (APLO’s) is unclear.

8. Are there issues that should be left to White law and issues that should be left to Aboriginal law?

In order to explore the roles of the two sets of laws, and to consider whether a different balance is appropriate, there was discussion of whether some areas are essentially matters that should be left to white law and others that should be left to Aboriginal law.

No firm consensus emerged on this issue. However, it was suggested that the main role of white law would be in areas such as stealing and driving offences

(such as dangerous driving) in the lands. Some suggested that the community should be seen as having the main role in areas involving death or serious violence.

9. Governance and by-laws

There was a clear view that it is necessary to build community justice mechanisms to make and keep Aboriginal law strong. There was detailed discussion of the role of the Aboriginal Communities Act and by-laws enacted under that Act.

At present, Warburton's community by-laws cover three main areas: "grog", petrol sniffing and permits for access to the Lands.

Many people said that community by-laws should be strengthened so that communities can more effectively police and govern their own affairs and address problems of social disorder. The following problems were identified:

- The by-laws are being "broken too much" and there are problems with some non Aboriginal people and community workers bringing alcohol into the community. "These people need to be punished - white or black."
- The by-laws were weakened in 1996 when short sentences of imprisonment were removed and people could only be fined. Fines are not a strong enough penalty.

Community members expressed some frustration that they have made many representations to government on these issues but there has been no action.

There was a discussion about what new by-laws might be appropriate. However, no specific recommendations were made, with the important exception of a proposal to deal with "culturally offensive behaviour and language".

10. Culturally offensive behaviour and language

There was much concern (especially amongst the men) about the problems caused when people behave or "swear" in a culturally offensive manner - in other words, in a way that shows disrespect for the law. It is important not to underestimate the importance of this issue (especially to the men). As one put it: "Respect for the law is like the Constitution: it is right at the bottom of law."

It was pointed out that there are many ways of swearing - some far worse than others. The particular concern is not with "Whitefella" type swearing; but with situations where people swear in a way that is deliberately disrespectful, insulting or offensive on matters of law, initiation or family.

When such behaviour / language occurs, the person to whom it is done will "choke" because it cuts to the core of their being. More than this, it offends everybody: "When you swear at one man, you are swearing at all men. They all feel hurt."

For this reason, problems arising from culturally offensive behaviour are generating problems of disorder and disharmony in the community.

It was said that “in the old days”, such incidents had sometimes resulted in death.

Nowadays, if an issue of this sort arises between two adult men, it will generally be resolved by the older men. However, when younger people or women swear in such a way, it is not easy to resolve. Unfortunately, it can sometimes result in violence but “the white law doesn’t understand this context and just treats it as domestic violence.”

11. Substance abuse and family violence

It was said that, although family violence is an issue, it is less prevalent than in many Aboriginal communities because Warburton is dry and remote. Also, it was said “Warburton women strong and men strong.”

Where there is fighting, other family members (especially grandparents) try to resolve the problem.

It is also possible for people to seek assistance through the Administrator’s office and there are women’s groups, including the Ngaanyatjarra Women’s Council.

12. Family relationships

There was some discussion (especially amongst the women) of marriage practices. It was said that some children are still “promised” and marry in that way. This is based on skin groups and is the parents’ decision. People must marry “the right skin way.”

However, a lot of young people now marry “for love”. Sometimes, this works out but it sometimes leads to fights.

13. Cultural training

There were strong calls for increased respect, training and awareness within the white legal system. Speakers gave many instances where this is a problem. Some told of police and prosecutors saying words to the effect of “your law is gone”. Strip searches in prison are a cause of distress (see above); and “their attitudes suggest they see us as stupid”.

14. Interpreters

There was concern that more provision needs to be made for interpreters throughout the justice system (not just courts but also pre-trial and after sentence). “Other races get them and they are paid for their work. We are not properly paid - like trackers in the old days.”

15. Artwork

Warburton has produced a wealth of magnificent artwork, some of which was on display at the Shire Offices at the time of the consultation. Other artwork is not on public display and some includes sensitive cultural detail.

Artwork is done by both men and women but is especially strong amongst the women.

There was some confusion over a number of matters relating to issues of ownership, decisions about what paintings would be displayed and possible sale of art works.

This was identified as an area in which further discussions may be needed between interested groups in order to clarify and explain the legal position in terms of copyright and other legal rights and relationships.

16. Summary of the Warburton proposals

The Consultation provided a valuable starting point for the Commission in understanding the main issues that face Warburton and a number of other communities. It was also possible, despite the relatively limited consultation period, to identify a number of proposals for change from the Community.

The proposals all reflect the Community's desire to see a "better balance" between the two systems of law that are operating; to increase the formal recognition and role of Aboriginal law; and to enhance respect, reduce cultural dislocation and improve community harmony.

The proposals are broadly divided into two categories: those areas that would require legislative attention if they were adopted, and those areas where the changes would be to the practices and protocols of government agencies.

Areas that would involve legislative change

- The Constitution must be amended to give recognition to the existence and reality of Aboriginal law. Ideally, this should involve changes to the Federal Constitution and not merely the State Constitution because Aboriginal law is not based on State and Territory boundaries.
- Consideration should be given to legislative amendments (which would be mainly to the Criminal Code and the Sentencing Act) to give formal recognition to spearing as a punishment.
- Consideration should be given to amendments to the Aboriginal Communities Act and to whether new by-laws and procedures are required (for example, with reference to the problem of "culturally offensive language or behaviour").
- The Sentencing Act and the Sentence Administration Act should be amended to allow courts to impose community based sentences that give authority and responsibility to community members; and this would include measuring "work" by reference to a task rather than a number of hours.
- The Police Act needs consideration.

Areas that involve changes to practices and protocols

- The development of police protocols to reinforce the authority of community elders when the police come into communities.
- More "work camps" style facilities (both male and female) to allow prisoners to be remanded on bail or to serve their sentences closer to home.

- The Department of Justice to reassess prisoner classifications and placement to reduce cultural dislocation and isolation.
- Transport of people by police and Department of Justice to pay more attention to getting people safely home.
- Department of Justice to consider all areas of the treatment of Aboriginal prisoners, including the culturally demeaning processes surrounding strip searches and travel to funerals.
- More assistance and explanations to community members of elements of the white legal system, including issues of governance, art work and criminal law and procedure.
- Increased cultural awareness training for all those involved in the justice system.

As noted earlier, these proposals are simply those that emerged from the consultations. The Law Reform Commission strongly encourages and welcomes other submissions and proposals.

Introduction

Ms Ilse Petersen (Law Reform Commissioner), Ms Beth Woods (Special Commissioner) and Dr Neil Morgan (Research Director) attended on behalf of the Law Reform Commission. Mr Richard Collard (Department of Indigenous Affairs, Kalgoorlie) also helped to assist in facilitating the discussion.

The meeting commenced at around 10.00 am and concluded at around 1.00 pm. It was attended by 30-35 people. Women were more strongly represented than men. Discussions took place both in a large group and with men and women separately.

These notes represent a thematic summary of the issues that were raised, not chronological minutes.

The discussions embraced a wide range of issues, covering the following broad themes:

1. General context
2. Stolen generation
3. Court procedures and evidence
4. Punishment under aboriginal law
5. Punishment under white law
6. Police and aboriginal patrols
7. Prisoners attending funerals
8. Language
9. Welfare agencies
10. Government agencies
11. Hotels and other businesses
12. Restricting alcohol
13. Dogs and the impact of baiting on culturally significant sites
14. Car licensing
15. Mining / pastoral leases

The main issues that were raised on these topics were as follows:

1. General context

- The Law Reform Commission was criticised for not allowing enough time for the consultation - need to look at how people lived, how culture was and how to sort it out. It was said that this is often the case - that people come and discuss matters but do not spend enough time or come back later.
- However, the participants did welcome the opportunity to talk about culture and law.
- Aboriginal law is strong and is being actively practised. But white law does not recognise this and does not respect Aboriginal customary law.

2. Stolen generation

- The stolen generation issue needs to be addressed: “Our children, grandchildren and great grandchildren are still in pain.”

“Mr Howard won’t apologise. This is not nice and discriminates against our people.”

3. Court procedures and evidence

“We had to tell our private lives for everyone to see and hear”

“Lawyers have three ways of saying something: We only have one”

“People want to give evidence but get very frightened.”

There was a forceful discussion of issues surrounding court procedures. It became clear that the Native Title hearings in Laverton had caused some anger and distress. Although native title issues are outside the terms of reference of the Law Reform Commission’s Customary Law project, the perceptions of the people at the consultation raised matters of direct relevance to the Commission’s work.

People voiced the following criticisms:

- Native title court proceedings had been very degrading and are still causing pain for Aboriginal people because of matters that were revealed and the hearing processes.
- Lawyers asking about family history had caused particular distress given the stolen generation: “It is degrading to be asked who you think your parents are when you were taken away”. “I know my biological father but my relationship with him is different from with the man who brought me up.”
- It was particularly difficult to answer these questions when many Aboriginal women had also been raped - this meant that “half caste people” had the worst of the Native Title hearings.
- It was difficult to understand questions and there was a need for interpreters.
- Aboriginal people were not allowed to tell their story in their way. Lawyers (often from pastoralists or mining companies) would interrupt too much and would sometimes force people to say things that were painful and which should not have been said.
- Aboriginal people could even be endangering others and themselves by saying some things
- Private matters and family were discussed publicly: they were not only recorded but also (in an example given) were also broadcast on a PA system to people outside the court: “We kept telling them this was wrong but they wouldn’t listen.”
- Women and children were therefore hearing evidence from men that was inappropriate for them to hear.
- Some people felt that lawyers “kept twisting” their answers and putting words into their mouths.
- Insensitivity to family members (one woman being told off for “giving information” to her mother when she was simply sitting next to her as she was sick).

- The court set-up was off-putting. The Judge sat “up top” and then there were “loads of lawyers with laptops”.

A number of suggestions were made for improvements to processes for giving evidence, including:

“They should talk to us first, not just come.”

- Consider the development of a court akin to the Koori Court
- More consideration to be given to the court room structure
- Consider more closed hearings where necessary
- More consideration to culturally sensitive and confidential information
- Allowing space for Aboriginal ways of telling stories
- Less intrusion by lawyers when stories are being told
- A call for Aboriginal Judges / Magistrates, Justices of the Peace, Court officers and so on.

4. Punishment under Aboriginal law

“The court system weakens our culture and protects offenders.”

“Culture is with a clear mind, not drunk.”

- Payback should not be confused with alcohol - related violence: “you can’t drink and do those things” but lawyers and Aboriginal Legal Service officers sometimes use customary law as an excuse / mitigation in the wrong cases and where the person was drunk.
- Payback has sometimes got carried away - for example when people are drunk or the person who is being punished has diabetes and cannot heal.
- Some important and useful comments were made as to how to differentiate customary law from alcohol-related “violence”. For example, courts should consider whether Elders were there; whether the person had gone back to the community or family; and whether there was a clear mind.
- However, there will be differences with different groups that will need to be worked through.
- When a person is in prison and has not been punished under customary law, their family receives punishment instead.
- The police should therefore bring offenders to the appropriate family for traditional punishment. A number of examples were given of people who have escaped punishment, including the following:

Woman and defacto drinking and arguing. She stepped into 4 wheel drive...the de facto tried to stop her driving...she ran him down.. she killed her de facto...she was jailed for 6 months...but now “she is free as a bird”...The Aunt feels hurt...because she wanted the police to bring the woman to Laverton...The woman did the damage...her family now harbour her and police arranged for a plane to take her back to Blackstone... The nephew’s wife got a hiding as he was there at the time, however, she has not been punished.

- It was also commented that sometimes, the punishments can be excessive. Reference was made to a case in which an offender's sister was hit for nearly two weeks and received open wounds - more punishment than the offender himself would have received.

5. Punishment under White law

"Too many people get picked up for minor stuff - causes cultural dislocation and disharmony: they never get jobs or back on track."

- Some suggested that minor offences should be dealt with by "white law" and major matters should be left to Aboriginal Law.
- Deficiencies in the current system were identified and suggestions were made about how to enhance community responsibility and cultural input where behaviour is to be dealt with by white law:
 - Fines and Work and Development Orders do not work;
 - Juvenile Justice Teams do not work - "offenders just phone Kalgoorlie";
 - Cautioning should be used for adults and juveniles;
 - Aboriginal people should be engaged in providing structured programs;
 - A work camp / hostel would be a good idea provided it was Aboriginal - run and concentrated on work skills and reinforcing the cultural context.

6. Police and Aboriginal patrols

- There are apparently 11 police officers at Laverton (one of whom is Aboriginal) and one Aboriginal Police Liaison Officer (APLO).
- There were many comments about alleged "heavy handed" tactics by the police - especially in cases involving disputes at the pub and arguments in public ("Aboriginal people have nowhere to hide when drinking and arguing").
- There was a strong view that the roles of the police and the Wongatha Wonganara Patrol needed discussion. There was a feeling that the police at times would be quick to respond to "less serious" incidents such as "drunk and disorderly", but would leave the Patrol to deal with some serious cases (examples were given of a female assault victim who was urinating blood and of a drunk driver "running amok").

7. Prisoners attending funerals

There was strong criticism of the Department of Justice (DOJ) for not allowing people go to funerals and the procedures that apply when they do attend:

- DOJ questions family connections and does not understand Aboriginal family relationships.
- Aboriginal people arrive at the funeral in handcuffs (including children). Sometimes they are even shackled. This is not acceptable and undignified.
- Even if allowed to the funeral, they are not allowed to the wake.

8. Language

- People need to learn Aboriginal language and Aboriginal culture.
- The language is different now as white man not writing the language correctly.
- When you read it, it is a different language to the spoken word.
- There is a recognised need for community language and cultural training.

9. Welfare agencies

- There is a great deal of fear (dating back to the stolen generation) of welfare agencies.
- Still lots of issues about non-Aboriginal welfare workers not understanding family networks.
- If the mother gets money for children and if the child is not with the mother, then Centrelink should see whom the children are with.
- Extended family: Aboriginal people automatically recognise the extended family (eg sister's children call the Auntie mother). This should be understood.
- White law has a need to write things down but Centrelink forms are no good.

10. Government agencies

- Government agencies tend to come with policies they've already decided on and not to consult first. This is not respectful.
- Should stay with no time limit and go around and meet all Aboriginal people in Laverton.
- ATSIC is "totally unattached" from the community and does not put enough money into community programmes.

11. Hotels and other businesses

- People complained of incidents where Aboriginal people had been charged higher prices than non Aboriginal people at the pub and where Aboriginal people had been refused service [Aggrieved persons on this and other issues can contact community groups, the Aboriginal Legal Service and/or the Equal Opportunity Commission: "They let dirty miners and drillers drink but Aboriginal people are barred."
- It was said that the Hotel sells cigarettes for 50 cents each - can this be legal?
- It was also said that, at the hotel in Kookyine, people leave their bank keycard for alcohol then have no clothing and food for children. Despite publicity, this is still happening.

12. Restricting alcohol

"Social problems result from people coming to Laverton to drink. We respect them...they have to respect us".

A number of suggestions and questions were made about limiting the use of alcohol.

- Limit people from the communities and lands that come to Laverton to drink.
- The holiday period was described as the worst.
- Can the police be of more help when a family member is drunk and disrespectful? (At the moment police say it is a family matter).
- It was said that the community has proposed the following restrictions:
 - 10.00am - 2.00pm allow Aboriginal people to drink in Pub...2.00pm - 7.00pm...limited to sales only and cans only, no hard liquor.
 - At present the pub closes at funeral times, the day before and 10.00am - 2.30pm on the day.
- Can by laws be amended / implemented under the Local Government Act 1995?
- What authority does the Alcohol and Drug Authority have?

13. Dogs and the impact of baiting on culturally significant sites

- Dog licences are needed under white law but not under Aboriginal law. Our law says we let roam.
- This brings problems when people are fined for not having a licence or where dogs are taken away.
- Aerial baiting has seen 37 dogs die within 3 months. Stations may be involved.
- Baiting also has other bad consequences. Baits have been found around rock pools and creek beds. "We have been unable to drink water or follow cultural practices."

14. Car licensing

- "Daft rules: Lots of people end up in trouble". Car licensing, transfers and infringements cause fines and imprisonment. This just creates further problems in the community.

15. Mining lease/pastoral leases

- Even for cultural reasons, permission is needed to travel on leases -this is wrong.
- Mining companies do not take proper care in looking after land.
- Safety is also a concern: on one mining lease, there is a big pit, 4 levels, not fenced off.

COSMO NEWBERY

6 March 2003

Introduction

Professor Ralph Simmonds (Chair of the Law Reform Commission), Ms Gillian Braddock SC (Law Reform Commissioner), Mr Charles Staples (Consultant) and Project Manager Cheri Yavu-Kama-Harathunian attended on behalf of the Law Reform Commission.

The meeting, which was held outside the Community Office, commenced at around 11.00 am and concluded at around 12.30 pm. It was attended by 25-30 people. The meeting led to further meetings with a number of groups.

These notes represent a thematic summary of the issues that were raised at one or more of these several meetings, not chronological minutes.

The discussions embraced a wide range of issues, covering the following broad themes:

1. General context
2. Recognition of difference
3. Criminal justice issues
4. Understanding Aboriginal law and European law
5. Family violence
6. Substance abuse and community by laws
7. Marriage and inheritance

The main issues that were raised on these topics were as follows.

1. General context

- Speakers strongly emphasised that “the old ways are important and are followed”.
- A fair balance is needed between the two systems.
- “We in our community are still trying to understand the nature and purposes of your project.”
- With everyone related to everyone else, it can be hard to have a sensible community meeting without it breaking up into personal exchanges.

2. Recognition of difference

- One speaker commented that there should really be one law for everyone. But this is difficult when there are both Aboriginal and other laws operating.

- Aboriginal customary law would undoubtedly be different in different places. That would present a messy picture for recognition purposes.
- Aboriginal Customary Law varies considerably in strength from community to community, such as between Perth and Cosmo Newbery, and between Cosmo Newbery and Warburton.
- With the introduction of formal recognition of traditional law, wouldn't other ethnic groups want their own law? Wouldn't they resent recognition of our law? And how do people living in the city get their tribal punishment?

3. Criminal justice issues

- Much of the discussion focused on how to achieve a balance given that, in practice, two forms of law are often operating. A number of points and suggestions were made, including the following:

(a) Policing

- Aboriginal Police Aides (APLO's) think they are policemen, not a liaison with the community. They are sometimes not from the community, and so do not understand local ways.
- There is a need for special training for police aides in local ways.

(b) Aboriginal law punishments

- Tribal punishment is long lasting.
- Aboriginal customary law is about family satisfaction. Through retribution, it ends the anger, which offending causes. It enlists the family to prevent the offending in the first place, because of the prospect of retribution against the family if a member offends.
- Under Aboriginal customary law, family members can appropriately receive punishment for the offender who has been imprisoned. This suffering is accepted as a duty under Aboriginal customary law.
- By comparison with imprisonment, payback is often easier punishment: "three spears is pretty soft for murder".
- Consideration should be given to offenders doing some time in prison as well as spearing - balancing the two laws.
- As to payback, there will not be a spearing in every case. Sometimes the offender will threaten those who would otherwise spear (one man stating that he had guns in his car). Also, offenders often never know if they will be speared. Further, diabetes and treatments for heart conditions may make a spearing fatal.
- It was said that formerly, families could more readily discipline children physically without fear of legal repercussions. That prospect made for better children. That punishment in earlier days was out of love, not hate.

(c) Prisons

- The separation of prison is very hard and relations can't help the imprisoned as they are so far away.
- Local prisons should be built, alongside local police stations. This would help to improve the concurrent administration of European and traditional law. It would allow the community to be involved in education, children to see their fathers and so on.
- The community had taken note of the failed "boot camp" experiment. The concept, it was said, could have been a good idea. The facilities should have been retained, employing Aboriginal officers. Properly run, this would not have been a prison, but would have been recognised as a form of punishment where community members could have participated in programs of reparation and rehabilitation.
- Anger management courses are done in prison but when the person comes home, the same issues are there.
- After a person is dealt with at court, they are simply left to find their own way home. This is a serious problem, as they may have no money for food or travel.
- The same problems arise when people are released from prison and have long distances to travel.

4. Understanding Aboriginal law and European law

- It was suggested that there is a need to educate the community better about European law.
- However, it was also said that the community understands European law better than police and other officials as well as psychiatrists and psychologists understand Aboriginal law. This can create trouble when the community dismisses as "rubbish" uncomprehending officials or service professionals.
- Aboriginal people all know their responsibilities without books or writing or police or courts: "We don't think of our law in terms of hypotheticals."
- It is hard to explain our system to others. The payback system still works, and does keep us in line, for fear of the repercussions for our families.
- The example was given of a car accident. The smashing of the car, it was said, will go under European law. If anybody dies, that will be dealt with under both that law and Aboriginal customary law: "Nobody needs to debate the jurisdiction of Aboriginal customary law, because everyone knows it."
- Everyone involved in a fatal car accident is liable to Aboriginal law punishment - not only the driver.

(a) "Growling"

- If a person is upset, growling is a good way to show such feelings and to let off steam. However, if it is done in town, you are seen as "mental."
- In one case that was described, one member of the community responded to a cousin's complaint of unruly children by shutting up the shop and going to the school to "growl" at the children. This vented the anger felt

against them. The teacher didn't complain, as that teacher knew the culture.

- Cultural barriers may cause unnecessary fear (as when an uncle with a spear was growling at members of a family where his nephew was being treated by a nurse. The nurse was fearful she would be speared, but that was not being threatened.)

5. Family violence

- It was said there is a cycle of repeated punishment of men for mistreating their wives. The courts don't seem to understand the context of such violence.
- People may undertake anger management courses in prison but they face the same problems when released.
- Some women also use violence - not just the men
- It was said Aboriginal customary law and European law sometimes clash over domestic violence norms. The European law may cut across what Aboriginal customary law says a husband can do to a wife.
- Prison doubles the suffering for traditional peoples, in communities where control is hard to imagine apart from physical punishment.

6. Substance abuse and community by-laws

- Alcohol is a big problem because of the proximity of the community to Laverton. Community by-laws ban alcohol but they are not strong enough. They lead to a fine, not imprisonment, apart from overnight stays in a lockup.
- The law is weak now, ever since the removal of terms of imprisonment of 3 months or less. A week in a lockup would be a good punishment. Alcohol is being brought into the community now, even by Council members.

7. Marriage and inheritance

- It was said that people now get married for love and that this is not always "the best way."
- It was said that inheritance issues are handled here through Aboriginal customary law and skin groups. The relations arrange the funeral, and dispose of the property. When our young people get married, it is in the traditional way.

Introduction

This consultation had originally been scheduled for 6 March 2003 but had to be re-arranged when the project team was delayed in its return from Warburton by poor weather and closed roads. It was therefore rescheduled to 25 March. It was held at WMC Conference Centre, School of Mines, Curtin University.

Professor Ralph Simmonds (Chair of the Law Reform Commission), Special Commissioner Beth Woods and Project Manager Cheri Yavu-Kama-Harathunian attended on behalf of the Law Reform Commission.

The consultation commenced at 9:00 am and concluded at 3:40 pm. Around 33 different people attended at different times, all but a handful of whom were Non-Indigenous.

These notes represent a thematic summary of the issues that were raised, not chronological minutes.

The discussions embraced a wide range of issues, covering the following broad themes:

1. General context
2. Constitution
3. Family relations and the law
4. Children and youth
5. Elders
6. Substance abuse and aboriginal law
7. Education, training and employment of Aboriginal people
8. Criminal justice issues
9. Reconciliation and racism
10. Deaths, coronial inquests and inheritance

The main issues that were raised on these topics were as follows:

1. General context

- Aboriginal customary law is what makes people strong, inside, in who they are and what they believe. It is very powerful, through the skin group. If there is a breach, an important sanction is the way the offender suffers inside.
- It is most important to realise what tribal punishment is not: it is not wanton destruction of property, nor is it done drunk, and it does not produce feuds. It is ritualised, measured, final and relentless, without limitation periods.
- The diversity in Aboriginal circumstances provides the key to understanding the place of Aboriginal customary law, and means that

caution is required in addressing the issues. It was said that some Aboriginal people do not live in the traditional way, and should not be seen to be subject to Aboriginal customary law.

- However, this does not mean that people who do not live in a traditional way do not respect Aboriginal law. There is a difference between respect for such law and being bound by it.
- When those who are not normally subject to Aboriginal law visit the lands, they would consider themselves subject to it. This has significance for Kalgoorlie, given it's a place of diverse Aboriginal communities and European cultural origins.
- It was suggested that there may be a need for new forms of recognition of Aboriginality that get away from the concepts of 1/4 and 1/2 caste (which, it was said, are still used in parts of the law such as the Public Trustee). A new term to replace "Aboriginal" was a possibility, much as the Eskimos had taken on the word "Inuit".

2. Constitution

- It would be highly desirable for there to be an acknowledgment of Aboriginal people in the state constitution as a way forward in providing for Aboriginal identity.
- It was strongly suggested that there was a need to address the paternalism in the Aboriginal Affairs Planning Authority Act 1947 and previous legislation. It could be asked whether or not there was a need for the Act at all if the state constitution were to recognise Aboriginal peoples as the first peoples of the land.

3. Family relations and the law

- The discussions revealed some of the differences and tensions that exist between Australia's general family laws on the one hand and the reciprocal relationships, roles and responsibilities of Aboriginal people on the other. Participants raised the following points:

(a) General protocols

- Aboriginal law has a complex set of protocols governing family relationships.
- These include avoidance protocols to govern dealings between sons-in-law and mothers-in-law. For example, the son-in-law must have respect for the whole tribe / clan. This is just as much "the law" as a boy going through an initiation so that he might acquire respect for the whole culture.

(b) Skin groupings

- Nowadays those marrying into skin groups often don't respect these parts of the culture, particularly when the marriage occurs off the lands.
- Skin groupings within Aboriginal law determine relationships within the family. Marriage outside the permitted relationships would generally result in punishment.

- Skin groups keep bloodlines while determining relationships within the group and identity outside it.
- It is determined that infants are promised for marriage within skin groups when they come of age.
- Non-Indigenous people and Indigenous people from outside an area may be given a skin group by an Elder or law person. The person may be accepted as a relation into a family.

(c) Extended family relationships

- The extended family is the immediate family.
- There is a lack of recognition of the place of grandparents in Aboriginal society. They play the role of carers of children and have a key role in issues relating to skin groups.
- Extended family relationships have particular significance. For example, where a mother's brothers take on the care and rearing of her child, particularly in cases involving death of the parents. This gives the child a place of belonging.
- These extended family relationships lead to prisoners making applications to attend funerals in cases involving the death of relations. The authorities seem to find this difficult to understand and this casts a heavy burden of justification on the claimant. It was said that in one case where a number of prisoners needed to attend a funeral, the prison authorities held an election to determine who could be sent, given that resources dictated not all could.
- There are similar problems for government departments dealing with Aboriginal people through lack of understanding of the extended family.

(d) Carer arrangements

- It was said that the European law of carer arrangement involves too much paperwork and insufficient support for Aboriginal people. The case was given of a grandmother who took over the care of the grandchildren but was not supported by the current law and was, in fact, punished by it.
- Carer law dealing with the care of children needed to be more supportive and respectful, as well as less intrusive.
- Grandparents who bring up children should be paid foster care payments.

4. Children and youth

- Aboriginal youth need to be involved in Aboriginal Customary Law.
- This requires the support of Aboriginal family units, in their extended forms. Differences between urban and country settings should be noted.
- Aboriginal Customary Law is, in part, about values that should be passed onto children through the family.
- Discipline can include corporal punishment of a severe kind. Strong supportive families can nurture children so as to avoid the need for discipline.
- If all Australian families need to understand their responsibilities for their family members.

5. Elders

- In small group discussion, it was noted that it was hard to answer the question of who are Elders, without knowing why the question was being asked because Aboriginal people know whom the Elders are.
- Aboriginal Elders are those with reliable and respected understandings of traditional ways. This creates problems in places like Kalgoorlie, where community nominated Elders are not recognised. Kalgoorlie is a traditional meeting place for many communities on the move.
- Reinstatement of the Commission of Elders.
- The process of native title has clouded the issue.
- The process of native title is undermining the status and recognition of Elders.

6. Substance abuse and Aboriginal law

- There was considerable discussion of the problems caused by substance abuse in the context of both Aboriginal law and the general Australian legal system.
- There is insufficient recognition of the seriousness of the problem at the governmental level. The causes need to be recognised. Sniffing, which is endemic, is a costless way of escaping abuse, hunger, deprivation and problems caused by the family being unable to cope.
- Aboriginal law has no simple answer to problems of alcohol or drugs. The Aboriginal Communities Act provides one way of addressing problems, at least on the lands. But once they come in from the lands, children and adults can run amok. Also, on occasion, run amok in the communities.
- If sniffing were legislated against, children and adults would get more government help, supplemented by identifiable support.
- Sniffing becomes a problem for future generations: when mothers become pregnant, they often cease sniffing but return to it after giving birth.
- Aboriginal law does not cover conduct in the form of forcible disciplinary action, committed while the person was drunk or drugged, even if the person says that such conduct was appropriate in the name of Aboriginal customary law.
- Drugs are also an issue for Aboriginal people.

7. Education, training and the employment of Aboriginal people

- It was suggested that an educational task is for Aboriginal people to understand European law, as they already understand Aboriginal law.
- There is a need for more employment of Aboriginal people in government agencies given the extent of their Aboriginal clientele. The classic case was the justice system.
- It is important to give people encountering the judicial system an understanding of how the adversarial elements worked, and of the language used in court.

- More Aboriginal people helping out in courts, prisons and police.
- More interpreters and registry staff should be Aboriginal, with more of a gender balance.
- Policies affecting Aboriginal people's aspirations should not change with a change in Government.
- There is also a great need for Aboriginal people to be trained as interpreters in hospitals, schools and courts. They could advocate on behalf of children and teenagers and to assist them to understand and be able to respond to bureaucracy.

8. Criminal justice issues

(a) General

- It was asked, how would one determine the law under which an offender's punishment would come? If Aboriginal people have a choice, it is up to the individual to decide.
- It was said that understanding that Aboriginal people live in accordance with traditional ways can be most important to judges or others trying to understand an Aboriginal person's conduct. The example was given of an elderly Aboriginal man who had put licence plates on a car without appreciating that this was illegal.

(b) Policing

- Training in Aboriginal Customary Law should be provided as part of the curriculum at the Police Academy. This might help avoid disrespect of sacred sites and undue interference in punishment.
- It was said by Aboriginal Police Liaison Officers (APLO's) that there are cases of white man's rules getting in the way of community processes and showing disrespect for Aboriginal people.
- APLO's also stated that it was sometimes hard, when they confronted injustice to Aboriginal people, to know to whom to complain effectively. There might be a place for a Board or Committees (which, it was noted, had existed at one time).
- The role and function of APLO's needs to be reviewed. Currently it is to verify that Aboriginal suspects understand the charges against them and to explore the evidence. However, this role is being compromised by the use of APLO's as ordinary police. The original conception should be restored, by suitable provisions in the Police Act, excluding ordinary policing.
- It was suggested that Police Standing Orders might be revised to require other police officers to bear in mind the advice of APLO's.

(c) Courts

- Language cannot be separated from culture, and thus it is important to recognise language. This poses a problem because of the barriers to the use of local Aboriginal interpreters in court proceedings. Those barriers include cases where Aboriginal speakers are not accredited by NAATI (National Accreditation Authority for Translators).

- There must be culturally recognised representation of Aboriginal ways. This was most emphatically not the case when a lawyer recently told the judge that his client's violence towards women was the Aboriginal way. Violence to women is not the Aboriginal way.
- It was said there was a need for protocols to guide lawyers in their dealings with Aboriginal clients and reference was made to the "Anunga Rules", the film "Black and White" and the Report of the Royal Commission into Aboriginal Deaths in Custody.
- It was said that better arrangements need to be made to respect cultural sensitivities in the extraction of evidence in court proceedings, as in rape cases.
- Experience should be recognised for the purposes of qualifying someone as an expert witness, as an alternative to more formal qualifications. The legal system tends to recognise non-Aboriginal professors with titles after their names but not to recognise the experience and knowledge of Aboriginal people themselves.
- There needs to be recognition and acknowledgment of Aboriginal customary law in the form of more visits to communities by court officers, so as to build capacity and understanding in and of those communities. A model for such visits was that of the Coroner to a local community.
- It is most important for Aboriginal Customary Law to have Aboriginal judges who can deal with Aboriginal Customary Law on its own terms. (Note it is important to recognise who an Aboriginal Judge is - more Aboriginal Elders than white Judges).

(d) Prisons

- Prison rules cause difficulties in the context of funeral applications (see above).
- Another example is where prisoners want to speak to persons outside the prison in their own language, or give as a phone number that of a box in their community, where they would be relying on members of the community ensuring the message got through to the right people. The prison authorities might be concerned in both cases, in the first because of fear of escape planning, and in the second because of concern about not having a private phone number.
- More co-ordination needs to be made to assist released prisoners to return to their homes. This can be a costly matter and, at present, prisoners or their family or community often have to bear such costs.

9. Reconciliation and racism

- It was said that since the visit of Bill Jonas, the Social Justice Commissioner, and HREOC to Kalgoorlie there had been progress, albeit slow, on the matter of reconciliation. A mediator had been appointed to help with the development of a consultation protocol with Aboriginal communities. (Further material provided at the feedback stage 10/2/04).
- Changes are occurring, such as the disappearance of the former policy whereby adults were required to accompany Aboriginal teenagers into supermarkets. But racist attitudes also persist, as in the case of real estate agents telling clients with property to rent of how it is possible to ensure there would be no Aboriginal tenants.

- It is very important to counter racism effectively. Many Aboriginal people are caught between two worlds, in a very difficult position. The only solution is for Aboriginal people to have respect for themselves, as a means to effective action by Aboriginal people.
- In Aboriginal community there needs to be reconciliation amongst themselves before they can reconcile with the broader community.

10. Deaths, coronial inquests and inheritance

- Speakers identified a problem when Aboriginal people die suddenly and their bodies are sent to Perth for coronial inquiry purposes. The family then bears the considerable costs of retrieval of the body. It was asked why the government did not undertake responsibility for the retransportation of the body, to help the family concerned to make funeral arrangements and to cope with their grief.
- The traditional approach to the disposition of personal property on death is to destroy it. This creates problems under European inheritance law
- More work needs to be done in terms of education and awareness about making a will, with provisions on matters such as where the deceased should be buried. There is also a need for community help groups. The issues are so complex that they involve more than simply education, however.

APPENDICES

Appendix I: Memorandum of Commitment

Appendix II: Format for Submissions