

Law Reform Commission of Western Australia

Aboriginal Customary Laws

Project No 94

THEMATIC SUMMARY OF CONSULTATIONS IN THE GASCOYNE AND MID-WEST REGIONS

May 2004

The Law Reform Commission of Western Australia

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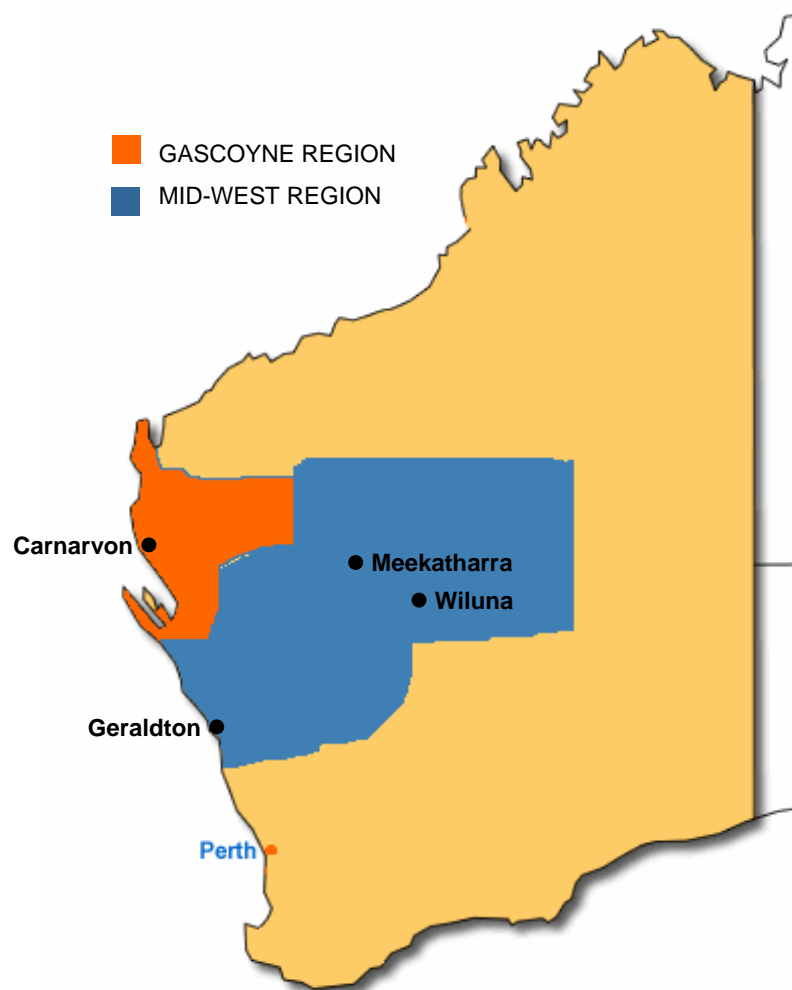
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Preface

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 Gascoyne and Mid-West regions. 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

CARNARVON

30 & 31 July 2003

Introduction

The Consultations in took place on the 30th and 31st of July 2003.

Commissioner Ilse Petersen, Special Commissioners Mick Dodson and Beth Woods, Research Director Dr Harry Blagg and Project Manager Cheri Yavu-Kama-Harathunian attended the consultations on behalf of the Law Reform Commission.

The field trips are an essential means of ensuring that the Commission hears first hand the views of Indigenous communities regarding Customary Law. The consultations have been guided by four key questions that together provide a focal point for discussion of law issues. Briefly, the questions ask:

- how is Aboriginal law still practised?
- in what ways is it practised?
- in what situations is it practised?
- what issues confront Aboriginal people when practising their law today?

The Commission has employed these questions as a general guide for discussion. However, these questions may not always be in direct alignment with the particular set of issues confronting Indigenous communities at this time. The community consultations have, therefore, not rigidly followed a pre-defined script, but have tended to adapt in accordance with the flow of local circumstances.

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

The Commission attempted to meet with a cross section of the community and relevant agencies involved with Indigenous people.

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

1. General context
2. Family relations and the law
3. Children and youth
4. Education and young people
5. Elders
6. Self-policing and governance
7. Traditional law and punishment
8. Women's issues
9. Men's issues
10. Substance abuse and mental illness
11. Community justice mechanisms
12. Criminal justice issues

13. Racism
14. Welfare and family violence issues
15. Feuding
16. Deaths, coronial inquests and inheritance

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

1. General context

- “Law is your life: you just can’t change that law that existed such a long time”

2. Family relations and the law

- The breach of law related to avoidance of wrong skin underpins some conflict. Youths from town have had inappropriate relationships with girls from outside town who they should really avoid. This has caused fights and conflict. The “skin” system is not practiced in town. Generally, the young choose their own partners. Whereas communities from out of town do try to stop “wrong way” relationships.

3. Children and youth

- Girls fare badly when they become involved with boys - it lowers their expectations, there is some violence involved in many of these teen relationships.
- Kids from communities speak their language but are too “shamed” to speak it at school. Most speak Ingada, language in Carnarvon, they also speak Wadjari.
- Children sometime deny their Aboriginality so they can fit into white society, this kills our culture.
- These children do not respect adults, why would they when they have to follow drunken adults round town?
- We need to start listening to our kids, ask them what they want. There is always a reason why kids play up.
- Adults should be made to front up to court when their kids play up.
- There have been “suicide epidemics” in town. There are no services for young people, lack of education and information for youth. Racist policing, racism in town, family violence and feuding, have also played a role.
- Sadly, young people may be safer on the street or in an institution than home. They learn about alcohol, violence, they become bored, some homes are no good. Others said that parents can’t discipline children, due to the legal restrictions.
- Prison has become a rite of passage for boys, pregnancy for girls.
- Girls exploit parents/grandparents, to look after their kids for them, while they go out and drink and play around. Too many old girls are looking after kids. “We have too many kids with kids.”
- Often it is the grandparents who are the primary care givers and they are not receiving enough support. They are abused verbally and physically and

this is very damaging. There is a lot of drinking and drugs with the younger people and the community will not “dob” them in.

- Some young girls are exploited (prostitution) by parents who use financial resources, gained by the young girls to benefit themselves especially for maintaining their own alcohol and substance use.

4. Education and young people

- There needs to be respect for law and culture in education, instead of learning about Captain Cook.
- They need to start at pre-school with language and culture.
- There used to be a truancy patrol that took kids to school. It used to be a good initiative. Today, there is a policy of shops not serving kids who should be at school, it seems to work. The patrol was good because it ensured that kids got to school in the morning.

5. Elders

- It is difficult to identify who the elders are. We can't define them easily. There is no interest from community in identifying who they are.
- How do you define an Elder? It must come from the Elders themselves. They must define the criteria under what they know about their law for who can take on this role in a community. Elders must answer.
- There is no Indigenous leadership, how can there be when they are all fighting each other?
- Many elders have no right to call themselves elders: how do we define who they are any more? We have no ceremonies for this anymore.
- There has been a serious breakdown of links between old and younger generations. Elders aren't respected.

6. Self-policing and governance

- We need mediation. But other people must want to let go. \$80,000 was given to AMS to establish mediation, allow Aboriginal people to do it, but other people didn't want Aboriginal people to do it, they wanted to fight instead.
- We only see ATSIC representatives at election time. Many of them only decide to appear Aboriginal to get power. Even their own kids don't identify as Aboriginal.
- Government departments fly in and fly out - new staff change, everything then leave - no consistency of policy - no community involvement.
- The majority of the ATSIC councillors are from one group, they are not representative.
- Corporations are also a barrier to progress. They have “captured our people again”. They create divisions and impose restrictions.
- The problem is: we can't even reconcile with ourselves. How can we do this? Through education?

7. Traditional law and punishment

- Aboriginal law was here first. When a man faces two punishments, black should come first. Aboriginal people have no respect for white law. We see all white institutions the same way.
- The young have lost the traditional law. They don't know right from wrong in our culture. How can they respect white law when they don't respect Aboriginal law?
- Many of us practise law every day, by observing our customs, for example by respecting parents and elders, looking after family.
- Keep our law separate, there is too much written law already. Ours is lore not law. We are already over-governed. There is too much law on the black-fella. We don't need written Aboriginal law as well.
- People will need to choose which law they live under, can't force people. Some kind of law council of elders might be good, but many would just ignore it.
- International treaties may outlaw spearing and physical violence as torture. These rights are individually rather than collectively based.

8. Women's issues

- There was recognition that women had to work together collectively although there are still an awful amount of obstacles, including the attitudes of Aboriginal men to make change.

9. Men's issues

- The "loss of role" for Aboriginal men is at the heart of men's issues. "Women don't need him, kids don't need him". We need some new initiatives, like the Men's Groups they are setting up in the southwest.

10. Substance abuse and mental illness

- The need for mental health services here are unmet, particular for young people. Alcohol is major problem and now drugs as well, for whites as well as black. Funding needed for adolescent mental health counsellors.
- Drugs are a serious issue: Kids are shooting up speed now, as well as drink and ganja. They need money, so they break into anyone's home, "black-fellas are now stealing off black-fellas", because of drugs. Blacks are now dealers as well. This is new. We have another lost generation.
- Some concern was expressed about the new sober up shelter being managed by church group. The Kardajili Night Patrol takes people home, that is not always a safe place and there might be family violence as a result. There clearly is the need for a shelter, but run by an Aboriginal organization, some believed. Others pointed out that the town is divided and fractionalized, with families in conflict over resources.
- Gambling is a serious problem. Like alcohol, it causes violence.

11. Community justice mechanisms

- Burringurrah Community wants to use an out-station to rehabilitate young people. They are talking to CALM about establishing the out-station and providing infrastructure. They want to use the camp as a means of giving more force to by-laws.
- There was a suggestion that there should be a justice reference group in each region with a representative from each family and they could determine issues within the community.

12. Criminal justice issues

(a) Courts

- The practice of JPs sitting alone was criticised as outmoded. In Mt Magnet the Aboriginal JP sits with the magistrate. Others requested more Justices of the Peace be appointed.
- Some Justices of the Peace are sympathetic and allow Aboriginal business to take precedence, even where this can lead to trouble with white-fella law. For example, someone may be due in court. The court knows he is off doing Aboriginal business. However, this cannot be taken into account and a bench warrant must be issued. This is the case even when he is going through law business.
- The RCIADIC made recommendations regarding advocacy in court and the need for interpreters. The Anunga Guidelines in the Northern Territory were identified by the RCIADIC as good practice, reducing problems associated with "gratuitous concurrence" and lack of comprehension. People speaking "Aboriginal English" may also require an interpreter not just those speaking "language".
- It is a requirement that an accused has an advocate in court and understands the process. However there are few interpreters. Those speaking Aboriginal English are disadvantaged in court; they need interpreters.

(b) Prisons

- The degree of violence that is routine in our criminal justice system is overlooked when discussing the issue of violence. Being taken from your country is a violent act. Strip searching law-men is a violent act - very degrading.

(c) Funeral attendance

- You have no choice about these matters: "If your face is missing, it will be noticed. People's attitudes to you changes if you do not attend".
- The practice of chaining prisoners at funerals was strongly condemned. It was a "bloody stupid thing". People would not run away, "too much shame". A man who worked as a prison officer in Bunbury said he felt shame being shackled to a prisoner at a funeral. It was disrespectful.
- There is a highly bureaucratic process involved in getting permission to attend funerals. The "next of kin" issue created problems.

- There is always a lack of cultural knowledge in prisons. The peer support officers are great, but there is too quick a turn over. There is a lot of pressure on them. Superintendents should seek Aboriginal cultural advice before making decisions about matters such as funerals.

(d) Other

- Prison doesn't work for sexual offenders - there needs to be community involvement in sentencing.

13. Racism

- There is still some entrenched racism. Resistance to establishing a sober up shelter is based on racism. The "old guard" in town still call Aboriginal people "natives", "boongs" and "niggers". They can't come to terms with multi-culturalism, think Aboriginal people are the "criminals" and that the purpose of crime prevention is to have them arrested and moved out of town.

14. Welfare and family violence issues

- Problems related to girl conflicts, are often both the cause and effect of family feuds. There is "cattiness" and fights, lots of jealousy and "jealousing up".
- Suicide is often linked to family violence and child sexual abuse. Kids come to school with bruises. Last year there were 2 successful suicides: this year 4. There was a period some years ago when there were 8 dead in a 6-month period. This was the time when there were calls for curfews, police repression etc, was "killing our kids". Aboriginal people believe that at least one Aboriginal child was directly driven to suicide by the police.
- Nothing seems to stop the anger. It creates domestic violence. Men come home from the pub and "smack" their partners in the mouth if there is nothing on the table. But they may have drunk away the money.
- There needs to be options for men, such as anger management and counselling. Aboriginal women tend to support initiatives, which respond to the problem but keep men out of jail.
- Restraining Orders are effective, even with Indigenous people, but the emphasis needs to be on "family healing".
- One Indigenous woman said that men do justify violence through customary law. "Men believe they can be violent according to law". Men use law "selectively", to support their own interests.
- Others said that extreme violence is a result of breakdown of Aboriginal culture: one woman said her parents "fought every night" on the mission, but would always get back together.
- "Violence is used in Aboriginal family issues", such as flogging people who get involved in "wrong way" relationships.
- There were some punishments "we can't discuss here", one woman said, this "punishment is lawful - men do have that right".
- Alcohol fuelled violence, "take grog away and it stops".

- Men will warn a brother in law who bashes their sister. This is law at work, an unwritten rule. Increasingly, though, people will tend to sort things out through British law.
- As a side issue, where there is property damage in a Homeswest house, the property cannot be fixed until the tenant puts in a police report. The police have to lay charges and in most instances the tenant does not wish to “dob” in a family member. There was a suggestion that Homeswest needs to address this issue.

15. Feuding

- Feuds go on and on. In the old days they would have been sorted out for good. Today people behave like savages. We weren’t savages when the white man came, but some of us behave like savages now. They go through wrecking people’s homes. That is not Aboriginal law.
- Girls feud over boys; this keeps the feuds alive.
- There are anywhere between 20 and 30 feuds going on (or have the potential to flair up) at any one time. It is a major problem. People are divided in factions. There was envy when one group was resourced. One reason for the lack of progress in town was that all the groups competed for scarce resources. There were over 30 different Aboriginal organizations, representing different family factions. There is deep bitterness and mutual suspicion.
- All the groups should pool resources. There is too much competition between groups. Elders don’t provide leadership on this issue. “Throw a dollar on the table, get forty groups after their share”.
- Feuds mainly involve kids, “jealousing up” each other and dragging adults into the conflict.

16. Deaths, coronial inquests and inheritance

- Some raised concerns related to the issue of body parts being removed - and not returned after the post-mortem, even though RCIADIC recommendations dealt with this matter. Also, the appropriateness of some autopsies and autopsy practices, in terms of Aboriginal spirituality, needs to be discussed.
- The Public Trustee’s Office has tended not to take Aboriginal values into account when making decisions. Aboriginal people know who property should belong to.
- The broader question of how Aboriginality is determined was discussed: the Tasmanian practice - a mix of self and community identification was mentioned as a possibility.

Additional meeting

Added at feedback from the meeting in Carnarvon on 16 February 2004

Youth

- Kids are shooting elders with “gings” (shangies). There is no respect for elders and parents are supporting the children.
- Elders want to find solutions for the troubled children.
- Elders cannot “growl” at the children or parents as it often ends in a fight if they do.
- The government policy “can’t hit kids” is detrimental to the cultural values of Aboriginal families.
- Truancy rates have led to a breakfast program being developed with CDEP agency at schools to give children a start for the day.

Education

- There is a mobile “Parenting/Education” van available to work with parents but there are problems of finding ways to work culturally and with trust issues.
- Police aides should be used more.
- Parents need to have support to find a way of controlling their children.
- Parents need support to learn ways of becoming strong male and female leaders in their families through educational programs that assist in bringing awareness to families about alcohol, drugs. Education process has to be strong in cultural knowledge.

Men’s issues

- Men also need a refuge. It is wrong to take women and children out of their family home and send them to a refuge. Take the men out of the home and into a refuge (family violence). The Magistrate is supportive of keeping men in the community if they can be placed in a men’s refuge and they will be required to undergo counselling and other programs that will help them not re-offend and be sent to prison and out of the area. Counselling needs to go further than just anger management.
- Men’s issues need to be controlled and owned by the men in the area. Government agencies should not control a service just support it and assist in providing resources.
- There is a serious need for a residential facility to be built in the Gascoyne area.
- Men and women on Methadone Programs go to the general hospital for treatment. The treatment is inappropriate as it is in public view of everyone else waiting. Name-calling is common, derogatory language is used within the hearing of the people seeking assistance.
- This program should be operated in discrete premises and the people employed should be educated on how to provide the service in a sensitive manner to the people in need of it.

Other issues

- Government wants to own and control all the services. They should be community based. There was no consistency of government policy. Policy coming from the bottom up.
- Scattered paydays do not help Aboriginal families because there is money around all week. There is a strong need for common paydays of welfare payments.
- Old people need their own hostels/homes where they can build up their own respect for themselves away from family problems.
- Hostels in the community, groups of old people living together to give each other support.
- Pilyardi Yardi Cultural Centre is being built without any input from grass roots people, no input from the Mungulla mob.

GERALDTON

26 & 27 May 2003

Introduction

The Consultations in took place on the 26th and 27th of May 2003.

This visit was initially scheduled as part of a regional consultation with Indigenous communities in the Gascoyne Murchison area, including Wiluna and Meekathara. Unfortunately, a death in the area meant that the larger trip had to be temporarily postponed. A more limited visit to Geraldton was considered appropriate by local elders consulted by Mr Dennis Eggington (Aboriginal Legal Service) on the Commissions behalf.

Commissioners Gillian Braddock SC and Ilse Petersen, Special Commissioner Beth Woods, Research Director Dr Harry Blagg and Project Manager Cheri Yavu-Kama-Harathunian attended the consultations on behalf of the Law Reform Commission.

The field trips are an essential means of ensuring that the Commission hears first hand the views of Indigenous communities regarding Customary Law. The consultations have been guided by four key questions that together provide a focal point for discussion of law issues. Briefly, the questions ask:

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

1. General context
2. Family relations and the law
3. Children and youth
4. Elders
5. Self-policing and governance

6. Traditional law and punishment
7. Substance abuse and Aboriginal law
8. Health issues
9. Criminal justice issues
10. Racism
11. Royal commission into Aboriginal deaths in custody
12. Welfare and family violence issues
13. Deaths, coronial inquests and inheritance

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

1. General context

- While Yamatji were not practicing law in a strict sense, they still have part of it “ingrained in them”. We are a distinct people with our own ways.
- Customary Law was quick and things were sorted out straight away.
- Aboriginal law is harder, much harder, than white-law. Most of the law is extinct because it has not been passed on.
- The law used to be strong, but now some people don’t even know their own skin group, and go running to white law. That law is often too soft, as in accidents, or in cases where prison results for situations involving death. In cases of death, traditional law might provide for death in return. Many young people prefer prison to facing the elders.
- Today being involved in law is a choice. There is a huge diversity of culture and tradition across the state. It is impossible to have one set of rules, applying everywhere. People need to be consistent about being bound by law, should not be able to simply “opt in or out” when it is convenient.
- Law too violent, when there is payback they hurt all the family.
- It was said that the whole issue of being Aboriginal was no longer clear-cut. There needed to be awareness of the different Aboriginal “identities”.
- There is a concern that native title issues have been read out of the project.

2. Family relations and the law

(a) Skin groupings

- There are a lot of wrong way marriages today. Elders’ advice is ignored and people marry the wrong kind. Sometimes there is conflict between Christian and Aboriginal values on marriage issues.
- It’s a hard road for Aboriginal people who have lost their skin systems and their strong law.

(b) Extended family relationships

- All Aboriginal people are next of kin. A man might have 6 wives: all with children. The extended family, countrymen, all have kin relationships.
- There was strong support for the Aboriginal Child Placement Principle, “Aboriginal family should always be considered first”.

3. Children and youth

- Younger and younger kids are involved in crime, with under 10 year olds involved in break and enters. These are in company with older siblings and kin and are used because they can't be charged. This bears out the perception that the delinquent/criminal "recruitment" system is "kinship" rather than simply age/neighbourhood based (as in the classic "western" delinquency model).
- The police are involved with other agencies in early intervention strategies - these form part of the Geraldton Aboriginal Cyclical Offending Intervention Project begun in the mid 1990s. This project focuses on integrating agencies as diverse as education, housing, justice, health etc. They try to link at-risk youth into the local PCYC and work closely with the Geraldton Street Work Project. The process includes family conferences.
- A program called "One Step Ahead", a case-management based program, has also been developed and focuses on increasing participation in schools. The police report that they have been successful in stopping some offending through the early intervention strategy.
- Young people are caught between 2 laws. Our child rearing practices are different. We give a clip round the ear, or a belting. White law has undermined our family structure and forms of authority. Many of this generation were "empty, had nothing, no spirituality or culture", very sad.
- Old people want to return to old laws and old ways to repair the damage. Return young people to the country and teach them the old ways, and learn practical skills. The old people don't want to see them locked up, they want to use shaming instead, the white law only makes the young people worse, enhances their status.
- Younger people should have the choice whether to learn about law and which paths to choose.
- There should be young offender places run by Indigenous people.
- For young people crime is a rite of passage. But they feel society has nothing for them. Parents need to be involved more and the Aboriginal community should hold them to account. The white system does not shame them. However, many youth do not have a functioning family to look after them.
- There is a lack of specialised facilities for juveniles. In such facilities they could develop better self-esteem, communication skills and other job-related skills. There could also be training in the traditional ways, both in such facilities and in prisons like Greenough. There is also a need for alternative sanctions, such as community projects, to break the cycle of re-offending and re-entry into the prison system.
- In cases of juvenile offending, it would be a good thing to have the parents charged, as under traditional law, for the hurt their children do in the community. White man's law destroyed these arrangements. However, it must also be acknowledged that children often make choices now that parents cannot control or even monitor them.

4. Elders

- You still need to consult with the elders - even though a lot of law has gone. They still know which places to avoid because of spirits and how to behave in the bush. They will just get goose bumps and know it is a spiritual place.
- They know how people should behave and how to show respect. You can't make decisions without talking to elders, they mediate in disagreements.
- Elders are generally respected people. However, they sometimes do not respect young people. Some elders set a poor example.
- There has been a loss of respect for the elders, which has been compounded by racism and the white community's reactions to the way we deal with our children. Education of the wider community is necessary here.

5. Self-policing and governance

- The Commission of Elders regionally provided a link with tradition. Family feuding was a problem that had a cultural basis, people were simply obligated to be involved in them, had no choice. The Commission of Elders was important in this area, they still have "cultural authority" to intervene.
- Sovereignty was a key issue today and goes to the status of Aboriginal peoples. Aboriginal jurisdiction was key to establishing law again.
- In our society there is a sense that people have lost their law, to professionals. In traditional law, at least for traditional people, there does not seem to be that sense of loss. Part of that sense of connection with the law may come from its traditional processes for them.

6. Traditional law and punishment

- The Elder suggested that law does not affect everyone the same way. Just those choosing to live within tribal law would be punished, for example. Some people in Geraldton would be considered to be bound by law. There is a great deal of migration from elsewhere, from east of the state where law is still strong.
- People should not have to face two punishments. There should be just one.
- There needs to be controls on punishment, it should not be carried out by people with "hot blood" and it should be supervised. "I have seen men speared like a porcupine" - in one instance a blunt nosed spear was used and the man bled to death. There needs to be better communication within the court regarding punishment. Perhaps experienced ALS court officers could inform the court whether traditional punishment was likely to occur or if the defendant was "pulling the wool over our eyes". There is a need for courts to account of the knowledge of Aboriginal court staff (ALS, court liaison), to understand these issues.
- One problem for court involvement is that the court might need to know how the process was likely to take place and may require too many specific details, for example, how big would the spear be? Would it be barbed? (etc).

- Aboriginal knowledge is crucial in determining whether a case involving traditional punishment is genuine or not. ALS court officers with this knowledge are important. This relates both to situations where courts are adjourned for punishment or where offenders claim that they were carrying out a customary punishment. It can mean the difference between a custodial or non-custodial option.
- Traditional law might not only be used in relation to mitigation but might also be used in relation to matters of aggravation. It is certainly true that traditional law might make the difference between a custodial and a non-custodial sentence.
- Undergoing traditional punishment is not a matter of choice. If it is not undergone, the families affected by the offence will be after you, or after your family. Traditional punishment can be hard, but at least after it is undergone the slate is wiped clean, with no risk of banishment from the lands. This is also true in family feuding, where such feuding is the infliction of bodily harm in white law. However, people sometimes go across the invisible boundaries we all recognise, so as to avoid traditional punishment.
- There is a distinction between Aboriginals in urban areas, and ones in remote areas, with traditional law a reality only for the latter. Determining Aboriginality for this purpose is also difficult. It is a little like children playing parents off against one another.
- If a project like the Commission's is to be meaningful, then serious consideration needs to be given to recognising something that seems to be an important part of much traditional law, the infliction of grievous bodily harm as part of traditional punishment.
- A judge's understanding of traditional punishments should not be a matter of elders giving them advice, but rather of a codification of such punishments. And in any event, if the matter is to be left to the judge, he or she should be required to recognise traditional law, not simply given discretion to do so.
- There are difficult issues of who should be subject to the law. Quite possibly a European living on the lands and married to a traditional person should be subject to it, if they were prepared to undergo it, the family wanted it, and the elders allowed it. But there should not be multiple legal systems. And there should be no allowance for convenient opt-in, opt-out arrangements.

7. Substance abuse and Aboriginal law

- There is an increasing drug problem, including not just ganja but speed and other hard drugs. Families will not do in kin, even when they are preying on other family, and destroying families. Dealers get status and "respect"; they have money and cars.
- Gambling is a major problem, consumes family budget and leads to evictions.
- The courts in the region have used the Bail Act to send Aboriginal people on bush programs for alcohol related problems.

8. Health issues

- The health system is still ignorant of Aboriginal law and culture issues. There is a shortage of Aboriginal staff and lack of cultural training: for example “avoidance” laws not understood, inappropriate people sometimes placed near each other, an example given of a man who missed out on treatment and died because he would have been placed near his mother in law in hospital: this law came first.
- The health department still does not have Indigenous people on interview panels. They miss out on “cultural criteria” and skills when appointing people to work in the hospital.
- The hospital is changing (slowly). Recently they adapted one of the hospital lounges to accommodate a whole family who were obliged to be with a dying relative.
- Geraldton Aboriginal Medical Services had been established because of the lack of appropriate services for Indigenous people.

9. Criminal justice issues

(a) General

- The justice system has “failed” to resolve fundamental problems in the Indigenous community. The juvenile justice system, in particular, illustrates that “Aboriginal youth have no respect for the system”.

(b) Courts

- There is a need for more Aboriginal JPs, especially younger ones with energy and commitment
- An Aboriginal person might be acquitted under white law, but still be punished under Aboriginal law.
- There have been cases where magistrates have utilised Intensive Supervision Orders and s16 of the Sentencing Act to allow for adjournments to enable offenders to return for law business to be carried out. It might be helpful to have this sort of legislation amended so as to mention Aboriginal law business specifically as one of the bases on which these sorts of discretion could be exercised. All this raised issues of training for Magistrates to use their discretion positively.
- There are no special programs to educate Aboriginal people about court processes. However, there are monthly information sessions at the Geraldton Court for self-represented litigants generally, run by the ALS and the Geraldton Community Legal Centre.
- There needs to be changes to the review of provisions regarding JPs sentencing, currently has to be to the Supreme Court. JPs can still imprison, but has to be reviewed by magistrate in 48 hours. The RCIADIC recommended an abolition of sentencing powers.
- JPs should sit with magistrates. Some Indigenous people have called for more Aboriginal JPs sitting with non-Aboriginal magistrates. Currently, only 2 out of 70 JPs in the region were Aboriginal.

- It was noted that there were now a variety of initiatives attempting to make courts more relevant to Indigenous people, such as Yandeyarra, Wiluna, the Koori Court (Victoria)
- To date, problems of false claims as to traditional law have not arisen in the Geraldton court. However, they have surfaced elsewhere, in the Kimberleys. The possibility for such problems requires vigilance by the prosecution, as part of the development of their local knowledge. Were the problems to surface here, there would be difficulties arising out of the lack of consensus of the sort to be found in the Kimberleys as to who are the recognised elders.
- Concerns that some Aboriginal people “play the system” by claiming law business in court. There was one case where a man claimed he was facing punishment and it transpired he wasn’t. There are obvious difficulties in confirming these claims.
- Some argued that the justice system has failed Aboriginal people. Traditional people, in particular, have no idea what is going on. There needs to be a parallel jurisdiction for Aboriginal people, examples such as the Koori Courts were mentioned. There was general support for this kind of initiative.
- Why were Aboriginal people not called on juries? Aboriginal defendants have the right to be judged by their peers. This never happens. They should use ATSIC electoral role for this.
- We need Aboriginal judges (including not just magistrates but also judges at the District Court level) and jurors (as part of mixed white / black ones) to provide an inside view of the communities. At present, even the elders are inhibited and do not say anything about traditional law. There is a need to explain to white judges what an offender may face under traditional law. Double jeopardy should be avoided. Traditional punishment should be undergone first. Then the judge should take it into account in passing sentence.
- The white system has failed traditional peoples. Even well meaning judicial officers do not understand such peoples, as where they plead guilty too readily. The solution may lie in Aboriginal courts that parallel the existing ones, if not in the arrangements at Wiluna and Yandeyarra. The Koori Court in Victoria is of interest, particularly to the extent it is different from any of the WA arrangements.
- There should be regular cross-cultural training for judges.

(c) Prisons

- White jail is an easy option.
- There is a need for proper training of prison officers in local cultures, so they can appreciate the sorts of stress suffered by prisoners brought from far away to a prison. More Aboriginal prison officers are needed. At present there are relatively few, and they tend to be caught up in the white culture rather than Aboriginal culture.
- In prison you can’t wear traditional clothing, like headbands.
- There should be special prisons for aboriginals. It was noted that incarceration at some detention centres was a rite of passage for some Aboriginals. Traditional law could address this.

(d) Funeral attendance

- There are occasions when Aboriginal prisoners go to funerals chained up and as a result they cannot show grief appropriately. If they can't attend they feel shame. The shame that can flow from these constraints illustrates how traditional law goes well beyond punishment.

10. Racism

- Aboriginal people are often criminalized on the basis of their appearance and how they speak.

11. Royal Commission into Aboriginal Deaths in Custody

- Government and agencies need to be reminded of the fundamental recommendations of the RCIADIC. For example: "Watch house (lock-up) recommendations often ignored - especially health of prisoners". Police are now too quick to get them off their hands - onto remand and prison. There needs to be a reduction in the arrest rate in the first place. The deaths are just happening somewhere else.
- There was also concern expressed that the state government was trying to off-load the costs and responsibility for the RCIADIC on to Federal agencies - by supporting the ATSIC "statement of commitment". Elders said they were "outraged" by the abolition of the AJC, and did not support the "statement", "it is a false document" one said, the ALS had been "tricked into it".

12. Welfare and family violence issues

- A serious problem with "horrific consequences". The feuding is intergenerational. The police work with their APLOS to mediate between families where possible. Feuds are re-ignited by young people - often teenage girls fighting over boys - this stirs up the adults. Jealousy is a major reason for family based forms of violence. It is possible to have seven families fighting with each other over seven different things. Also, it is accepted in many Indigenous families for young children to be "initiated" into feuding.
- The APLOS (all Yamatji) compose a family tree of the combatants and "map" the conflict, where it started, who has been involved, and try to resolve the underlying issues.
- Family violence affects all parts of the family, from young children through to grandmothers. Police have taken out VROs to stop grandsons attacking grandmothers.
- There was also a sense that mainstream domestic violence services did not work of Indigenous women. The service provides a support/advocacy service for victims, assists them in taking out restraining orders. They have had problems recruiting a full time lawyer.
- Child abuse and domestic violence were not accepted in customary law. There were strict rules against it.
- There needed to be more emphasis on treatment for men. Men should leave the home, rather than the woman and children.

- There were problems of access to children. Orders to protect reasonable access needed to be strong, with access for the father accommodated within an appropriate community framework. Conditions might be imposed, such as no alcohol or submission to drug testing.
- Domestic Violence Orders need to be double barreled. That is, they should apply to both males and females, to allow for the fact that wives sometimes manipulate the system. Thus, where a man is not allowed within 50 metres of a woman, she should not be allowed within 50 metres of him.
- Restraining Orders need to be closely monitored, so that the cycle of violence can be brought to an end.

13. Deaths, coronial inquests and inheritance

- Generally, verbal agreements are made regarding inheritance, things are rarely written down. There are variations in practice depending on locality, from the coast eastwards. As always, coastal people differ from desert people. Some burn all possessions (a desert, Central Australia practice) coastal people don't do this. In other places Aboriginal people have their possession buried with them - an example was given of a case where a man had his car buried with him. In some places it is traditional practice to give it to outsiders and let them take it away. We (coastal mobs) keep photos of the deceased; others do not.
- The meeting also acknowledged, however, that things had changed from the old days when issues focused on spiritual rather than material things, "all a man could give was what was in his heart", "we have to catch up, make a will if you have a car and a house".
- Public Trustees need more cultural training. They don't understand Aboriginal traditions regarding inheritance. They need to be reminded of RCADIC recommendations regarding "cultural training". Aboriginal people were unnecessarily depriving their surviving family by not making wills and the state was taking their savings and property instead. The Public Trustee's Office was sitting on Aboriginal money. They need advice from Elders about family structures and how possessions and money should be dispensed.
- In Geraldton, there is an expectation that property will be passed on, and there is sometimes conflict over who inherits. A few hundred miles away, the family must give it all away. There was agreement that Public Officers need to check out local practices.
- Funerals create conflict. Especially when people are from one place and live in another with new family. What happens when you die? You might want to be buried where you came from but your family might want to bury you where you die. There is sometimes a tug-of-war between families over burial sites. This causes great anguish and feuds.
- Young people use white law to prevent cultural practices around burials. Sometimes they ignore the power of verbal agreements (verbal wills) by old people and say they are not bound by these requests.
- Even Geraldton people have a wish to be buried in a place other than a recognized or declared cemetery (in the Northern Territory this is possible

under the Cemeteries Act). This is a form of law, even if we are not what people would see as “traditional” people.

- There is much dispute over the belief that the deceased must be buried in their country, when the surviving spouse wants burial elsewhere. The deceased might have expressed a view in conformity with that of the spouse, orally, but not in a will. Sometimes it might be appropriate to override the wishes of the deceased in such cases.

Introduction

The Consultations in Wiluna took place on the 27th of August 2003. Commissioners Gillian Braddock SC and Ilse Petersen, Special Commissioner Beth Woods, Research Director Dr Harry Blagg and Project Manager Cheri Yavu-Kama-Harathunian attended the consultations on behalf of the Law Reform Commission.

The field trips are an essential means of ensuring that the Commission hears first hand the views of Indigenous communities regarding Customary Law. The consultations have been guided by four key questions that together provide a focal point for discussion of law issues. Briefly, the questions asked:

- how is Aboriginal law still practised?
- in what ways is it practised?
- in what situations is it practised?
- what issues confront Aboriginal people when practising their law today?

The Commission has employed these questions as a general guide for discussion. However, these questions may not always be in direct alignment with the particular set of issues confronting Indigenous communities at this time. The community consultations have, therefore, not rigidly followed a pre-defined script, but have tended to adapt in accordance with the flow of local circumstances.

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. Family relations and the law
3. Children and youth
4. Elders
5. Traditional law and punishment
6. Substance abuse and Aboriginal law
7. Women's issues
8. Health issues
9. Education, training and employment of Aboriginal people
10. Community justice mechanisms
11. Criminal justice issues
12. Reconciliation and racism
13. Religion
14. Welfare and family violence issues
15. Deaths, coronial inquests and inheritance

The issues raised varied considerably between Meekatharra and Wiluna. The latter community leads a far more “traditional” lifestyle and customary law directly governs social relationships.

The notes from the original consultation were formally returned to the Wiluna community on the 4th February 2004. A number of the points in the notes were disputed and some additional information was provided. We have noted these in a separate section called “Additional material”.

1. General context

- The strength of these traditional practices varies from community to community in the area.
- There are two laws, and two worlds. White fella, black fella worlds are different.
- Some say we have gone around the issue of progress the wrong way. It doesn't take enough account of tradition. Housing is a good example, ideal for whites, it makes Aboriginal family life dysfunctional.
- Having two laws may be divisive.
- There are fewer controls over Aboriginal kids. That's why they mess up.
- Some local people opt in to Aboriginal law or opt out. It's more based on choice or family beliefs.

2. Family relations and the law

(a) General Protocols

- Family is everything; it is all these people have. But they cannot do it alone.
- Most Aboriginal people in the area are bound by law. Only recent arrivals who may only be distantly related to people in the area are not bound. If you form relationships you are bound.

(b) Skin groupings

- There are four skin groups and people still tend to marry into them. The culture survives despite the destructive affects of alcohol. Women are 'promised'. Some marry out of skin or if promised do break the rules and marry anyway. Both male and female have to be punished for the issue to be resolved and for them to be accepted back into the community. This is not like the white system where records are dredged up. In Aboriginal law, when it's over, it's over.
- It is not as strict as it used to be. Even some of our old people have had “wrong way” marriages.
- Today, some young women want to marry the western way, for love. They can reject the “promised” marriage, usually without reprisal.

3. Children and youth

- The behaviour of a group of young males in Wiluna is causing great distress to elders and the community. They show no respect to elders, have not been through law. They are all in to “gangsta” culture, baggy jeans, and caps. They steal cars and drive to Laverton, Leonora, Meekatharra, then just drive back and even just stop outside the police station until they are arrested.
- The young people steal cars and try to escape at law time. But they still have to come back here eventually; it is their culture. They have nowhere else to go.
- The legal system lets the kids down. It’s just a slap on the wrist, it can’t resolve underlying problems. Re-offenders come back and destroy younger kids.
- Many young people just do not understand the white legal system, no matter how many times they are in it. Being remanded for reports means nothing. They do not understand the time-scales involved.
- When young people are punished it must be done by someone from the right skin group, otherwise it does not work.
- At the moment the young people have no respect for the white legal system - they think they are the ones in control. We need to empower families, as long as the punishment is not too harsh.

4. Elders

- All here are bound by law. Our elders show us law. They are usually heads of families. They get the law from their old people. They choose you to carry on the law. It is passed down through male line. It is all linked to “skin” group. Over time 1 group will provide the leaders, then another group.

5. Traditional law and punishment

- Law is very strong. Many Aboriginal groups won’t come here for law business; “law too strong”, “too harsh”, they police their law stringently. It is based on traditional “cultural obligation” principles.
- If you don’t come forward for punishment (even if you are not “responsible” in the western legal sense), your family will cop it.
- Pay-back is a fact of life, people have been speared after accidents or where they have been “morally” responsible - such as when family are punished after the death of a child (in one instance because of petrol sniffing). People carry a greater responsibility under black law and will be punished for failing to prevent an accident. This is not seen as negligent under white law
- Occasionally non-Indigenous people are bound by this, even if they do not consent. Such was the case where a community wanted to spear a white person who accidentally ran over someone on a community.
- Process of Aboriginal punishment is quicker, effective and less complicated, however, in the white system, some Aboriginal people don’t understand why they have to go through a long, drawn out process.

6. Substance abuse and Aboriginal law

- Reducing further the access to alcohol might only displace the problem. If we removed the pub it would remove 60 per cent of the current users of the pub (the chronic drinkers), they would move to Meekatharra, Laverton etc. Police don't come down too hard for this very reason. They keep a lot of the region's chronic alcoholics here. They feel it can be managed better this way.
- Drug use includes, ganja, "chroming", petrol, some speed and alcohol. Petrol is a recent problem. So is ganja. They are brought in from outside.
- Restrictions on the sale of alcohol should be increased. The accord is a good idea and along with the Ganah Ganah Patrol and the shelter has reduced family violence. People should spend money on their kids and not grog.
- Parents feel powerless, and alcohol undermines the vitality of the community. Alcohol really undermines family as they are too inebriated to be consistent with discipline. There is a sense of despair. The young inherit this. Why not muck up? There seems no purpose to life and there are no boundaries.

7. Women's issues

- Described as a man's world and women and children left behind.
- Elders not accorded some level of respect as in the past.
- Programs not appropriately represented.
- Elders - men and women should be paid when they sit in the Court.
- Some women have to move to other regions to escape domestic violence.
- Problem with young girls sniffing and drugs and alcohol.
- Kids need to be kept busy.

8. Health issues

- There are lots of health problems in the community like diabetes, obesity and heart problems.
- In Meekatharra there is also a reasonably high incidence of youth suicide and self-harm. Kids feel they have nothing to live for; bright kids get pulled down and there is much jealousy. In Wiluna there is no youth suicide.

9. Education, training and the employment of Aboriginal people

- Education is still a western model. Young people did not get enough for them to compete in western society, and not enough of their own language and culture (although the language is taught it is done so as a language, other topics not taught in their language), so they were in deficit with both. Dissatisfied with both.

10. Community justice mechanisms

- Children have benefited from the various community justice mechanisms in place, such as the Social Justice Committee, the Sobering Up Shelter and the Ganah Ganah Night Patrol. Now parents are better behaved, less noise and fighting, they don't come back into the home intoxicated. So the children don't miss school.
- In Wiluna these initiatives also employ the local adult population. This has meant that around one third of the people have been able to share in the work over a year. This has had a cultural impact on the town with people becoming involved and owning alcohol reduction practices.

11. Criminal justice issues

(a) Policing

- The local sergeant is crucial, the most important white player in town, they have to be carefully selected. The police are the law. They can run amok. "They need to act as they expect others to". The current Sergeant is very positive, is accepted onto law grounds and punishment grounds (different places), and can mediate between the two laws. He is trusted by Aboriginal elders.
- When Aboriginal people do contact police they don't write things down, rather they tell a story. The Aboriginal way is quicker, gets it over with, its better in many respects.

(b) Courts

- The Wiluna Court model is clearly more user friendly and defendants appear to respect the elders sitting with the magistrate. On the other hand the system, while an advance on the traditional process, is not an "Aboriginal Court". The process is dominated by the magistrate and the language etc is very formal.
- There should be more elders on the court, two men and two women. One reason for this is that one woman might be mother-in-law to a defendant or witness and can't talk in front of her, so the court needs more options. At the moment, the court sometimes breaks Aboriginal law.
- Recently, 2 Warburton elders were in the same court and they could not talk to each other directly, only by making particular noises "from their throats". The magistrate said, "stop making those noises". He should have respected these men, instead he shamed them.
- The courts need more court interpreters. They need to interpret the "cultural issues". Also interpreters themselves may be bound by the Aboriginal law, this can create difficulties.
- Many Aboriginal people appear before the bench and they don't have a clue why they are there.
- Fly in and out can be bad for justice. Curfews are seen as the punishment (rather than simply conditions for bail). Long bail periods can set people up to fail.

- Remands in custody are some times longer than the sentence, sometimes there is no sentence.
- A Wiluna style court may not be appropriate in Meekatharra. Families here won't allow an elder from another family to deal with their kids. Only elders who have been through law would have the necessary authority to deal with kids in the court.

(c) Prisons

- Prison makes people worse; they learn worse things. There needs to be programs where we can take young people out bush. There is a voluntary program like this already, but it needs to be compulsory via court. Maybe, there should be "bush camps" run by Aboriginal people as an alternative to prison.

12. Reconciliation and racism

- Aboriginal people used to have no one to advocate for them. It was the last town in Australia that allowed Aboriginal people in the pub. It used to be segregated, with a caged area, that's gone now.

13. Religion

- Many Aboriginal people see no conflict between Christianity and Aboriginal cultures.

14. Welfare and family violence issues

- Family structures are disintegrating, falling apart. Kids play "lock-up" as a game, jail experiences are normalized.
- The problems caused by alcohol cannot be under-estimated. "If we removed alcohol there would be no family violence". It is a serious problem but the Accord (a Certificate of Special Measure linked to the pub license), the patrol and shelter, and better cooperation and partnership in the town, particularly with police, has reduced the problem.
- Violence in families is not related to law, but rather alcohol. Alcohol is destructive. People see the drink and violence more with Aboriginal people because it is in the open, not hidden like white fellas.
- The only other violence is "tribal", typically about payback, wrong way marriages, etc.
- There have been estimates that the rates of domestic violence have been reduced by 70% since the accord. There have also been 75% reductions in other forms of violence, drunkenness and disorderly conduct.
- There is too much abuse of the legal system. People accused of sexual violence should not be released on bail. The ALS is too quick to defend abusers, should help the victims more. Some men think it's acceptable to bash and rape women.

- There is hope that the new child protection workers in Carnarvon, Geraldton and Meekatharra, part of the Gordon Inquiry implementation, might improve things. Also, making Doctors report STD cases involving children.
- Children are poor witnesses. Men get off on the poor quality of video evidence by children. More weight needs to be given by DNA evidence, even if uncorroborated.
- DCD has the powers, but doesn't use them effectively with Aboriginal kids. Now they are too scared to intervene. We need more safe places for kids. Adults need to take more of a firm stand.
- Elders aren't taking a firm stance on family violence. There is no Aboriginal punishment for abuse any more.
- Few traditional men use Aboriginal law to justify abuse and keep silent on the issue.
- Kids see inappropriate videos and this normalizes some abusive behaviour.

15. Deaths, coronial inquests and inheritance

- Traditional ways are still strong. In one community all the houses were burned out after a death and the people moved out. In another case, where an old woman died, they are just waiting for the second funeral then they will all move out. Sometime this is for "sorry" time, if it's an important person, they may never return.
- Most agreed that 99% of funerals involve pay-back, due to "blame" or some past event. A number of prominent elders want to change this, trying to change rules. One elder refused to have punishment at the funeral of a relative, organizing a big feed instead.
- Funerals and punishments take place on different grounds. "Sorry Camps" so that people can come to pay respect to all family. Sorry grounds and punishment grounds are always different places. Family choose the sorry ground, usually at the Reserve, an old meeting place, cultural business is conducted there.
- On the issue of burials, the community expects a body to be returned here, it is not the spouse's decision to make.
- With regard to inheritance, "we don't have much to leave". If you have a car we send it to a group in another country, Jigalong or Warburton, because it would "remind them" too much of the deceased. The law is strong on this issue.

Additional material

Substance abuse and Aboriginal law

- The Wiluna School is situated opposite the pub. This does not give a good example to the children.
- A lot of the programs for kids are actually working.
- No rehabilitation for alcohol dependency in Wiluna.
- Alcohol is a real problem. It is killing Aboriginal people. No dialysis treatment in Wiluna.
- Some voiced strong opposition to the view that offenders convicted of family violence should be released for funerals. Need a zero tolerance approach. Mediation is useless. This would not work in the area.
- Elders not paid or appreciated for the knowledge when they sit with the Magistrate- this is a matter of respect.

MEEKATHARRA

28 August 2003

Introduction

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1. Traditional law and punishment
2. Elders
3. Health issues
4. Inheritance
5. Youth and education
6. Family violence
7. Intellectual property

The issues raised varied considerably between Meekatharra and Wiluna. The latter community leads a far more “traditional” lifestyle and customary law directly governs social relationships. The Meekatharra community is considerably more integrated into non-Aboriginal society and customary practices are less influential in governing social relationships.

1. Traditional law and punishment

- Law business has not been practiced in Meekatharra since about 1974, those who choose to go through law have to go 70 kilometres north, to Martu country, out of Meekatharra.
- Going through Law helps to keep children away from drugs and alcohol because other children and adults treat the kids who go through Law with respect.
- Older people who have gone through Law have to watch out for the younger people who are going through Law.
- “Pay back” is not used. Aboriginal people are more concerned with making the white-fella system more open to them.
- If you are going through Law you cannot tell other people about it only talk to other Law people.
- Grandmothers teach children about where men and women can and cannot go.
- Dreamtime stories tell others about our Law but you have to know what things are being represented to understand the Law parts.
- In Meekatharra the creation spirits are the snake, emu and kangaroo.
- Kids know where to go and get “bimbi” - (bush gum).
- Emu fat is very important. It is a bush medicine and is used with dirt and other things to paint for dancing.
- Boys get a “juna”, a stick to use when hunting, when they are taught to use a rifle.
- ‘Juna’ is used to put a kangaroo out of pain when they are shot.
- Most Aboriginal people in Meekatharra follow the White Laws but we should have our own Aboriginal Law to fall back on.
- Lawmen can drive around now and pick up the young men and take them to the law ground. This is different to what used to happen before.
- White people need to learn the stories about our Law then it might work. You have to have a good reason to put our Law into the white law otherwise it will just get lost.
- Our own Law should be respected and put into WA Law system. We want to see it written there not just for Aboriginal people but white people can see it too.
- Kids hear stories about men being frightened to go underground because the land is their Sacred land. You cannot go down into your sacred land without doing the right things. Mining companies do not talk to the Elders and get them to tell them what has to be done for Aboriginal men and women to work on the mines.
- Some families go bush on the weekends to teach culture-hunting looking for bush tucker and medicine, teach dancing and songs about the country.
- All Aboriginal people should learn about or go through the Law.
- Kids know about feather foots, magic men, and their business and you can be trained to do these things if you go through Law, the Elders will pick you out.

2. Elders

- Respect for elders has gone out the window. It is 2003 and we live in a modern age. We can't go back. On the other hand we need elders still involved, as with Wiluna court. Meekatharra is different; there are fewer traditional ties.

3. Health issues

- The health of Aboriginal people is a major problem. Both young and old are dying, mainly of cancer. There is increasing general awareness of health issues and sexual education is taken more seriously.
- There had been a meeting at the courthouse to cut down on the grog - cut down on hours - it was a police and community initiative.
- "The new liquor accord has created some concerns, mainly that, rather than eliminating violence, there has been a time-displacement, the time frame changes."
- "Drinkers still buy grog (black and white), they just stock up in advance for the times they can't buy it. They still take the family budget". (This claim was disputed as true of Wiluna).
- The mines are too close to the town where people have to live but if there was no mine there would be no Meekatharra.
- Mining companies do not employ Aboriginal men or women sometimes because they are scared to go down in the mines. Men and women sit around and get drunk.

4. Inheritance

- When a death occurs the protocol is that the families make the decisions - whether that person is buried in country or not. It is sad when a dispute occurs but the family should sort it out.

5. Youth and education

- Some expressed the view that the education system is failing Indigenous children.
- In Meekatharra truancy is also big issue. The kids move around, they are very mobile. There are 190 on rolls, 130 attend - which means 60 chronic truants.
- On the other hand, it was acknowledged that the High School works hard at developing programs to address issues such as truancy - and retention rates have improved. Innovations include "on-the job training" as part of the curriculum, making education more directly relevant.
- The school also promotes learning about Indigenous culture and language
- It was admitted that some young people were out of control and engaged in risk taking behaviour. Drugs and alcohol affecting young people - "cannot get any sense out of them, the drugs are doing the talking". There were 12-13 year olds on drugs, mainly ganja, a few of the youth are also

into petrol sniffing and aerosols - other kids have brought them into town from outside.

- Many believed that there was little for young people to do. And this was why some acted up - the Shire and agencies in the town needed to do more for youth. There were few structured recreational and leisure activities, the pool was closed half the year - even though the weather was warm, Aboriginal young people were denied access to sporting facilities.
- Others took the view that there needed to be more controls placed on young people - such as curfews - and that families needed to take a firmer grip on them.
- Some Aboriginal and non-Aboriginal leaders in the town said that many of the complaints about young people in Meekatharra were made by people who were covering up their own lack of commitment to engaging with the young people. Some teachers, for example, who came from outside don't like it in Meekatharra, and wanted an excuse to abandon the kids.
- There needs to be more focus on education. Aboriginal people need to be working in schools.
- One school has had a problem with aggressive children attacking teachers. This aggressive behaviour often results from broken, dysfunctional families, alcohol and gambling. The school is just seen as a day-care centre. Parents don't see value in school.
- Very little for youth in Meekatharra. Youth get bored and try to liven up their life by doing things. Sometimes they do things that cause problems with the police.
- Sometimes kids do silly things because they are seeking attention.
- Lots of kids buy matches and aerosol like deodorant to set fires.
- Kids cannot go much around Meekatharra because of the mineshafts and open pits and this makes it hard to walk around on their country and play in the land.
- Lots of stuff from mines on the tips that can make bombs.
- Aboriginal kids feel shame and proud to be Aboriginal and they do not like being shown up for something.
- Lots of young girls are getting pregnant at earlier ages and they do not know what to do, but they should not get an abortion because they are breaking the Law.

6. Family violence

- There were concerns expressed about youth suicide and attempted suicide, levels of child abuse and child sexual abuse in the town. The issues raised in the 2002/3 Gordon Inquiry into child abuse were said to apply equally in Meekatharra, there were problems around family violence, teenage pregnancy and community fragmentation that required urgent attention from government.
- DCD has had difficulty in establishing credible programs. The approach is ad hoc and fragmented. Initiatives occur in isolation.
- Grandmothers looking after children - big problem - as no financial assistance given.

7. Intellectual property

- The dot paintings on display in the town are from Cotton Creek, the Centre obtains permission for the stories, dot painting and colours. That is the appropriate way.
- Traditional arts, such as emu egg carving, are only for Aboriginal people, & only Aboriginal people can play the didgeridoo.
- Western legal protection is needed for Aboriginal culture to survive.

APPENDICES

Appendix I: Memorandum of Commitment

Appendix II: Format for Submissions