

Law Reform Commission of Western Australia

## **Aboriginal Customary Laws**

Project No 94

# **THEMATIC SUMMARY OF CONSULTATIONS IN THE PILBARA AND KIMBERLEY REGIONS**

May 2004

# The Law Reform Commission of Western Australia

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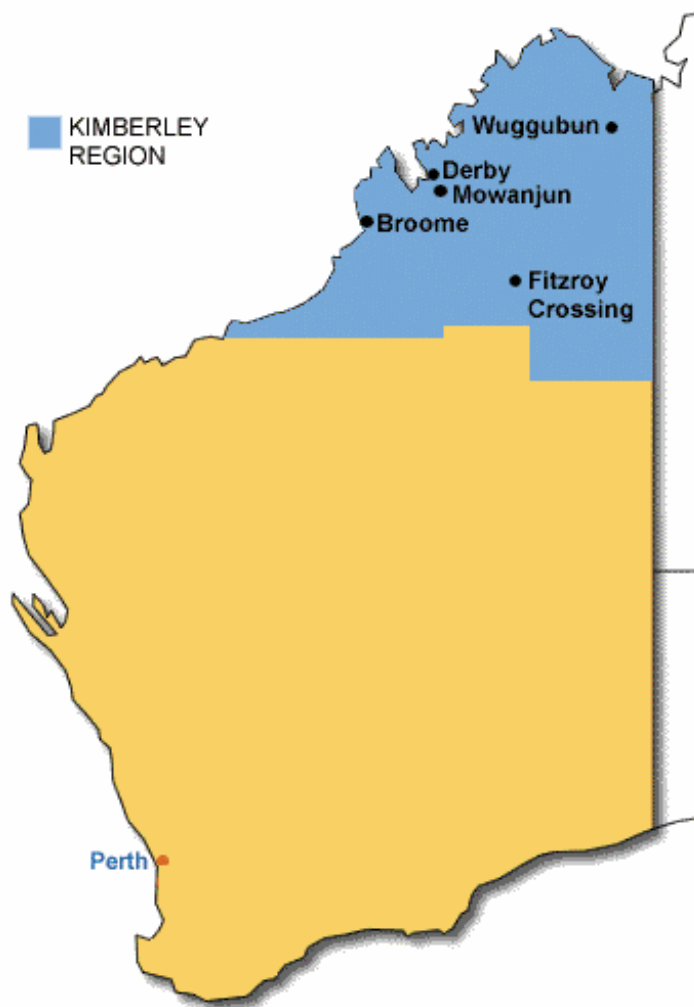
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## Preface

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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 Pilbara and Kimberley 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

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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

## Introduction

The Consultations in the Pilbara Region took place between the 6th and the 11th of April 2003. The Commission split into 3 teams:

- **Team 1** (Harry Blagg, Special Commissioner Beth Woods, with the support of Sui Kamid, Regional Land Officer, Department of Indigenous Affairs Hedland) covered Kunawarritji, Marble Bar and Nullagine;
- **Team 2** (Professor Ralph Simmonds and Gillian Braddock, supported by Maureen Kelly Regional Heritage Officer, Department of Indigenous Affairs Hedland, covered Jigalong, Newman and Yandeyarra;
- **Team 3** (Cheri Yavu-Kama-Harathunian, Oldie Kelly and Ilse Peterson) Roebourne Regional Prison and Strelley Community.

Aside from these consultations meetings were also held with Indigenous people and government agencies in Port and South Hedland.

Arrangements for teams 2 and 3, in particular, were seriously disrupted by a cyclone off the Pilbara Coast.

The field trips are an essential means of ensuring that the Commission hears at 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 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/governance
6. Traditional punishment
7. Substance abuse and aboriginal law
8. Community infrastructure issues
9. Health issues
10. Intellectual property/cultural property rights
11. Education, training and employment of Aboriginal people
12. Criminal justice issues
13. Reconciliation and racism
14. Welfare and family violence issues
15. Deaths, coronial inquests and inheritance

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

## 1. General context

- The question of harmonizing the two laws required the non-Aboriginal system acknowledging the existence of and respecting Aboriginal law. The issue of holding a big meeting was again raised by Elders, to “bring white fella and black fella law together”. “At the bush meeting all elders in area and judges talk, judges listen to Aboriginal law”.
- Aboriginal law is “slipping behind white law” and elders spend all their time at white men’s meetings (white forms of authority take priority of Aboriginal forms of business, Aboriginal business has lower status and accorded less respect, even by some Aboriginal people). Aboriginal law needs to be “raised up” to the same level as non-Aboriginal law, and Aboriginal business given the same importance.
- The laws are so different: have different values, “Black law is based on respect, white law is based on loop-holes”. But in many ways it (white law) is crueller than Black law, which is certain and clear, it sounds harsh but aspects of white law seem cruel - like slow spiritual death, slow torture, if you are from desert and locked up in Roebourne.
- A thriving community requires partnership between an ethical and motivated coordinator and a united council and elders. This establishes a basis for order, which then attracts committed teachers and health professionals. Good links with Commonwealth and State agencies are also needed.
- Law and ceremony were practiced as they had always been practiced. Law ceremony, the role of elders and (traditional) marriage, were all ways in which law was maintained. Hunting is part of Customary Law, showing respect for elders, families looking after each other.
- Some of the old men said: the problem (for Aboriginal law) is that it isn’t written down - white man has to see our law at work to understand. We know our law, it is in our memory, we see it in the land. But we need to write it down now, even if that is not our way. While we still have our old people. They said: it needs to be documented, transcribed and typed.
- The community has no problems recognising law, the problem is getting the balance between the two laws. For example, they believed that white people on communities should be bound by Aboriginal law.
- Aboriginal customary law was upheld with a passion in the community. People gather here up to 5,000 strong to celebrate the law and culture. This makes it hard to understand why European law appears to take little or no notice of punishment under traditional law.

- There is a need to continue to work to construct a better path between traditional law and European law. It was noted that contemporary European law struck many in the community as harsh. They had had relatively little education about it, and experienced its harsh application, as when poor postal communications meant loss of a driver's licence.
- Law ignored by the white government and the message is that there is no respect for the Elders. Government has to recognise Aboriginal customary law. White people have never known, or cared, about how Aboriginal people live their culture.
- People are learning law and culture but it is not upheld. Respect is gone - some people are accountable to no one – it is welfare all the way. White law is not respected.

## **2. Family relations and the law**

### **(a) General Protocols**

- Still being practiced today - women's and men's groups. These are kept separate-no mixed groups,
- Some people cannot be seated in the same room; example, mother-in-law and son-in-law are not allowed to be in the same place. The white system does not acknowledge and this causes a lot of stress. Examples given included hospital beds, schools and police vans.
- Classificatory systems for designating marriage were still practiced, people still were punished (usually a "hiding") for marrying "wrong way". These relationships were a major problem for the community.

### **(b) Skin groupings**

- White people who live with Aboriginal people must respect Aboriginal law. In Pilbara communities - if white man wants to marry black woman, he must be initiated, white man has to recognise our law first. He must be subject to the law.
- Marriage is strong -separation is not allowed without parents' consent, if wife does separate she will be punished.
- The community has its skin groups and arranges marriages, to avoid "wrong way" marriages. This keeps blood pure. The communities also practice avoidance, such as mother-in-law/son-in-law avoidance, where they have no conversation with each other, communication is through another person.
- Four main skin groups, Kurrimuda, Bunaga Milunga and Boorunga. Young boy/girls if having any problems with family members must speak to their elders. Young girls are still being promised to husbands. Their relationships are chosen by their families.

### **(c) Extended family relationships**

- Extended and family members still involved in bringing up children - rearing/caring. For example, two sisters can become mothers to each others families and two brothers can become fathers to each others families, Grandfather/grandmother, their sisters/brothers can become grandparents as well.

- Extended families play an important role too, even though they may not be blood relations. Non-Indigenous culture recognises blood relations and immediate family. Non-Aboriginals need to be aware of extended families and their kinship networks (sometimes no blood ties), especially for prisoners who request permission to attend funerals while they are in custody. Prison administration often ignores or does not understand the Aboriginal relationship protocols.
- Often children are brought up by grandmother, uncle or auntie who may live in a different region, town or different community and may not be blood related but are skin related. They are away from mother or father and are being cared for by the relation on either the father's or mother's side by blood or skin related ways.
- The non-Indigenous legal system did not recognise the significance of grandparents, particularly grandmothers, when families break-up and the importance of the grandparent/grandchild bond generally. Grandparents are often primary carers of children, when parents get on grog and drugs, or go to jail. They need more support from the government.
- Conflict between white man's law and Aboriginal law when placing children in custody. In Aboriginal law children are placed with mother's sisters after death of the child's mother; the grandmother can also become main parent.
- Issues were raised about people being evicted for anti-social behaviour, when they need to house their extended family. Homeswest is evicting them because of over-crowding; this shows a lack of understanding of cultural obligations to take in kin.
- Some women relinquish day-to-day responsibility for their children, to relatives, aunties, grandmothers, but keep hold of child benefit payments.

**(d) Adoption laws**

- Courts to be aware of the way Aboriginal community, family and individuals do adoption or foster care

**3. Children and youth**

- The problems start when young people refuse to be bound by the law, which may lead to them putting pressure on the police to prosecute law men "if they don't want to go through the law. More youths are complaining about law, which may lead to the situation where a young person goes through law and then lays charges. In traditional society, people did not give consent to be put through law."
- Many members of the community had broken away to live in Nyaparu Town, where respect for traditional ways has fallen away. The community gets the blame when young people leave the community and mess up in Nyaparu Town. Many do not want to live in the community, but the community has no control over them when they are in Nyaparu Town or Hedland. Many went to live there because they were involved in "wrong" relationships and these relationships would not be tolerated in the community. This is sad, because the community cannot maintain the kinship links with those in town, and they may no longer feel they can return. Children there are not being educated in the traditional ways.

- Attempts to bring people back to the community for their benefit have been thwarted by the government and the town. This has been particularly felt in the case of attempts to bring children back to get them away from difficult social environments. This represents a case of the enforcement of traditional law incurring liability for contravention of European law.
- A camp (Puntawari) has been established outside the community to keep young people who are troublemakers away. There, away from town influences, elders could teach them the traditional ways. However, although the camp has been established, it needs support in the form of running costs before it can accept any young people.
- Need for Elders, shire, government, police and schools to work together on the problems existing within the communities, including but not limited to youth issues. Two of the problems identified were solvent abuse and lack of (or need for) a driver's licence.
- There is a need to tackle the social issues and increase opportunities for young people. There are activities for the young people in the communities but in some cases the guardians/parents are not much help in encouraging the kids to participate. Local agencies and Community Councils need to be adequately resourced. Support groups needed for the children.
- There is not enough training for young men in the law; the training starts each year from August to Christmas. The need for young men to attend high school impacts on their training in the law. Some teachers do not show respect to the Elders and do not listen to them. The community school recognises the customary law way, but other schools do not. The school should close down and the teacher should go with the community on law business. The school should fit into community, not the other way around.
- Young boys from the community stay in town and if they cause trouble; the Elders have no authority to bring them back home. Previously, police would ring the community and a truck from the community would go to Port Hedland and pick up the youth. This no longer happens. Community by-laws should give the authority back to the community Elders, so that the police and the community can go and bring people back to the community.
- Parents committing crimes and the community takes care of and responsibility for the children. Grandparents often look after the grandchildren. This is not recognised by the authorities and they give the children back to the parents. Family & Children's Services do not listen to Elders. Further, the mother signs documents but she does not understand what she is signing and the child is taken out of the community. Family is very important in Aboriginal law and child should not be taken out of the community.
- Indigenous youth are developing a black American identity, because Indigenous identities afford them no basis for "respect". There was a general pattern of lack of esteem for aboriginality, manifest in the unavailability of interpreting services, and a lack of concern for aboriginal languages in schools.
- There was a lack of concern for the culture in which Aboriginal Customary Law was embedded. Lack of self-esteem feeds alcohol and drug abuse. Contravention of European law becomes a way of gaining attention, a break and a feed.

- Linking kids into sport is good - however kids do not know what is available and there is a lack of coordination and public transport. Also need money for uniforms etc.
- Aboriginal kids need to be given life skills and there should be initiatives to build their self-esteem. There is a lot of labelling of Aboriginal kids and they are discriminated against. The shopping centre at South Hedland was given as an example - where you are excluded for being an Aboriginal youth.

#### **4. Elders**

- The Elders know their law and are able to control the behavior of young people, when they were in the community. Once, all Aboriginal people in the Pilbara and everywhere knew their law and were stronger because of it.
- The Elders in the community take their obligation seriously, still having a strong role to play today in looking after issues that affect their communities/families and still have authority to enforce Aboriginal law and order.
- There needed to be some clarity regarding the "two punishment" issue. Elders needed to have some protection from prosecution when they administer traditional punishment, provided that they operate within the rules. An incident was mentioned where a young man who was flogged for breaking the community law, went to the police and, according to the Elders, nearly resulted in a custodial sentence for the Elder involved.
- It was explained to the Commission that Elders are law people and they are like the judge, lawyers for prosecution and defence (all in one). Elders will talk to the families involved and the community and decide on the dispute. In different places, the law is practiced in a different way; the Commission needs to listen to the different ways. White man cannot elect Elders. Each person from each area knows who the Elders are. Within the Aboriginal communities there is respect for Elders and they "carry our law and culture very strongly".
- In the Community ACL should be strengthened by by-laws and by black and white, it should be recognized that Elders in the community have the right to use them. Outside agencies and the police etc. should not deal with things in the community, but support the Elders who have been given rights to use ACL. White Law should not interfere when this occurs.
- The Council of Elders undermines the true Elders; they are government elders. True Elders are recognised by the community and all the communities respect them. "People change it but law never changes". Aboriginal people need strong leaders and they respect their Elders. An Elder has to be strong and respect himself.

#### **5. Self-policing / governance**

- The Elders recalled the "Ten Strong Men" or "Ten Man" Committee which operated from the Strelley Community some years ago, (until the mid 1980s) to pick up people drinking in Hedland and Roebourne and take them back to the community for punishment/discipline. It was considered by some as kidnapping and stopped. The elders then said "if you stop us, we cannot/will not help when there is trouble in future." "The respect was

broken" and some say that is why there is a lot of suffering in town. It was unclear whether the elders would want to institute a similar scheme today, a number of them said it would not work, or be tolerated, anymore (due to the degree of coercion employed, for example). They recognised that they could not force people to come back to the community.

- Some wanted the by-laws to be amended to give this power back to the community. "We need some back up" from our law.
- The men wanted to hold a big meeting involving all the East Pilbara communities and representatives from the key agencies, police and judiciary, to discuss a range of issues; they were especially concerned with issues of alcohol, drugs (ganja, amphetamines) and anti-social behaviour.
- Some communities had by-laws banning alcohol on the community. Community meetings dealt with offenders, by "growling" them in front of the community. Some communities did not have a Warden Scheme and did not require one as they had good relations with the police. Warden Schemes are required in more remote areas. On the other hand the men wanted to pursue the possibility of establishing a Community Patrol to assist people who get into trouble in the town.
- Some voiced concerns about Aboriginal people "arresting" others, rather work through mediation, express community disapproval through community meetings.
- Some communities had seen the establishment of a Warden scheme. There had been previous attempts to set up a scheme but these had run out of steam. The police were supposed to train the Wardens, but this did not happen. Wardens are to see to law and order in the community through the enforcement of the by-laws. But this is not happening because of lack of support from the government. Wardens have no power at present to search vehicles entering the community carrying alcohol, despite the by-laws prohibiting this entry. Change has been promised, but the community is still waiting.
- There is a community patrol that has been in operation here for about the last 18 months. These involve picking up people who are seen to be misbehaving or in distress, such as drunks. The patrol is, however, run from Hedland, and has no local coordinator or similar, and no other local infrastructure. Patrols are picking up people when they are drunk, but as there is no drying out place, people are using them as a taxi service home.
- There are important issues of lack of respect for the local black communities, including in shops, and other such places. To deal with some of the violence in the community, it might be useful to have local by-laws specific to the communities to address this.
- There was general disappointment that, against the background of the Deaths in Custody and Gordon Commission reports, there has been no action on the establishment of forms of local empowerment. There is a need for a whole of government response here. Thus, it would be useful to have local representatives of the Department of Justice. There should also be local Aboriginal JPs.
- One community had developed an offender management program that could avoid the \$68,000 per prisoner expenditure under the current European law arrangements. The Program had three components. The first was juvenile detention. The second was to deal with such as fine defaulters, having them assigned to community projects, such as

horticultural projects (see the Quinn Report (March 2003)), rather than imprisoned. The third was a facility for females.

- There was a need for greater consultation between the European and Aboriginal communities, so that the latter can understand, own and implement solutions to local problems. Local people can resolve their own issues if given the resources.

## **6. Traditional punishment**

- In the community itself, if you do something wrong, you face traditional justice, out on the flats, a camp meeting is called as needed. But traditional law is not just tribal punishment. It is also about respect, including whom to respect.
- Traditional punishment was consistent, "Tribal punishment, blackfella way, never change". However it was recognised that the context has changed. Aboriginal people are subject to a range of conditions (diabetes, kidney problems, high blood pressure) as a result of colonisation. As one person said: "Diabetics – can't give them a lot of punishment, "cos already sick".
- Payback is important to traditional Aboriginals. Previously there was police sanctioning of payback but now too much litigation was given as the reason for no further sanctions. Police nominated the Elders after consultation with the community and released "guidelines" i.e. no injury above the shoulders. Police thought this worked well.
- It was said that with many people from the lands in prison, traditional justice to deal with offenders was forgotten. On release traditional ways need to be attended to. It may be preferable to have traditional punishment before imprisonment. In cases where the condition of the offender would prevent imposing such punishment (such as where the offender had a diabetic condition), the offender's family might receive the punishment. Consideration should be given to releasing prisoners to undergo traditional punishment, so as to relieve the burden on the family that might otherwise have to undergo punishment.
- It was noted that sometimes actions were taken in the name of traditional punishment, which were not properly so described. The example was given of a flogging by some one who was drunk. Traditional punishment in fact must be done while sober, and administered properly, using the appropriate tools, and in the appropriate places. There is an issue that has emerged of claims of traditional punishment that are false. This raises the question of how to ensure that true claims can be sorted out from false ones. This is particularly a problem for the police, who must decide on the appropriate response to actions taken in the name of traditional law.
- A problem area is where traditional law is used as an excuse for working out differences between families, resulting in violent exchanges in town. Elders have been unable to intervene here, and it has not been possible to take those involved back to traditional lands to be dealt with there. It was said that this had happened at funerals, where families had used the occasion to settle scores.
- There is an issue of young people not learning the traditional law. They had been sent to Jigalong for the purpose, but they came back before they acquired the necessary education.
- Traditional punishment has worked well here, but it is being eroded by external influences. Thus, elders cannot, as in days gone by, pick up

youths who are acting up, and bring them back to the lands. Police no longer assist them for this purpose.

- European law does not permit the community to see to it that an offender is first subjected to traditional punishment, which would permit the slate to be wiped clean. It is also worth noting that the punisher may have to look after the offender. Without this possibility, the matter can fester, resulting in apparently random violence.
- The Council has no simple solution to this difficulty. The Council respects the general law of the land, but it wants to see that law respect traditional law also. A solution might be to have sentences mitigated where traditional punishment is undergone, and to have the law recognise that the offender must face that punishment.
- Elders have the law - there are women elders. Elders in consultation with family and community decide on the punishment. Sometimes families say no to "tribal punishment way".
- Closure - some people feel that they should have punishment. If punishment is faced "then you are free". If you do not face your punishment then worse things happen to you. You and/or your family can become very sick or die.

## **7. Substance abuse and Aboriginal law**

- Alcohol was named as the greatest problem. It affects and undermines law. People use "law excuse" when they are drinking and fighting, but Aboriginal law does not recognise drunken behaviour as lawful.
- Some communities have been beset with problems related to alcohol and petrol. There was fighting and when young people came over to see family there was often trouble. The elders punished these young people. The lesson was that there needed to be strong law and a settled community. Kin living in other communities where there was sometimes problems sent the young people down to be looked after and taught Aboriginal ways.
- When the men (including elders/law men) went to town they were freed from the restraints of the law and culture and became involved in drinking, most had been arrested at some time for drink related issues.
- Consideration needs to be given to introducing local liquor licensing conditions to control the availability of alcohol to local communities. Some communities operate under By-Laws to keep them as dry communities. Residents know they cannot bring alcohol into the community. If anyone breaks the By-Laws the elders have a meeting the next day to deal with the problems.
- Education in relation to alcohol is an issue, particularly in towns where there is only 1 drug and alcohol worker.
- One Elder commented that Aboriginal people could not progress without the support of white people. He said that if Aboriginal people did not have the grog problem then we could be strong. The grog is killing us, all over Australia, it will kill us all off, he said. It will require real partnership with government. He was not confident about the future, or that Aboriginal people could survive. Aboriginal people have their responsibilities - to make a commitment to letting go of alcohol, and government had to play its part.

- Some discussed the need for protocols of behaviour to deal with the different mobs coming into Hedland primarily to drink and fight. "Our law might be flat down on the ground. Money and drink is all they care about, not culture". The mobs then go back to communities and "don't want to work, or anything, just want grog".
- Alcohol has killed off our law (in relation to punishment practices). We can't spear anymore, too many people are killed. Because of alcohol, the wrong people are punished and people are killed. So we have stopped using spearing and flogging, does not work for us in this area. If something is not done there will be no ACL in 10 years. The main problem is Aboriginal self-esteem and "ownership".

## **8. Community infrastructure issues**

- Some people commented that if all agencies did their jobs, a lot of problems would be manageable. Limited resources remained the common theme.
- The necessity of the provision of half way houses to help people coming in from the desert to learn town ways and to get people "job ready" was also suggested. The control of Elders is declining as people move into town. People feel freer in town but no housing and no jobs and access to alcohol and drugs creates problems.
- Telstra won't provide phones and there are no post boxes either. These agencies get away with removing services, yet there is McDonald's in the town.
- Another big issue is fly in fly out policies of BHP, which results in them not putting anything back into the community.
- Placement of women's refuge in Port Hedland wrong as there is no access to telephones, money or public transport. The bus service is inadequate.
- Services are lacking and this leads to a lawless town - this has been happening for many years.

## **9. Health issues**

- There was a need to return to some earlier ideas put to government in a report it had commissioned, ideas that had called for service equalisation in remote communities. This needed to occur in health and in education.
- Transport is often a problem for community members and several times this has resulted in members being left stranded. On one occasion an elderly woman had a 12-year-old grandson who was running a fever. The Elder had to walk all the way to Community Health Centre, only to be told to bring the grandson to the clinic. After being flustered she called at the police station to ask for help with transport. The end result was the child had to stay overnight in hospital
- There was not even a health services officer in the community, which had recently created severe difficulties with the onset of labour for a pregnant woman, and with dealing with a severe head injury. There had been Aboriginal health workers, but they were relatively untrained. There was a considerable incidence of diabetes in the community that needed addressing.

- There were complaints about the attitude of the ambulance service to coming out to the community. The night of the meeting a man had fallen and badly cut his head. The ambulance would not come, using some excuse about lacking a spare tyre. The doctor also drives by but won't stop if it is not funded.
- There was also a problem with health authorities putting inappropriate people in same rooms together - a failure to recognise the Aboriginal customs around inappropriate contact.

## **10. Intellectual property/cultural property rights**

- It was noted that property lost to law enforcement or to welfare agents could often only be retrieved by payment for it.
- Cultural objects are important, and are passed down to members of the family. There is an issue of insufficient payment being made for the use of cultural property, including by some of those operating tourist outlets.
- One of the communities visited is working on an arts centre for artefacts.
- Artwork is being produced by young people, and sold everywhere. It had not as yet raised any real problems. This was not really a concern, save for the return of artefacts that have been taken - exhibits in criminal case - or plain theft by authorities over the years.

## **11. Education, training and the employment of Aboriginal people**

- The communities need better education on the legal system and their rights and how to exercise them, for example in relation to warrants, taking on caring role of children, parole, etc. This education package should be brought to each community: workshops would explain legal jargon and court procedures. This information should be available in language. There needs to be more invested in language and interpreter services. There are many interpreters for migrants, but few for blacks.
- Education on women and men's rights and what is cultural and not cultural is also required.
- It was noted that a variety of institutions in the community had not worked or did not work as well as they should because they lacked local knowledge. Mention was made of hospitals and schools. Turnover of staff was a problem. The appropriateness of non-Aboriginal education was questioned:
 

*"Only learn about white settlers"; "Don't fit with our ways"; "not working - school not part of community spirit".*
- However in one community an Aboriginal principal has just been appointed and there was some optimism about this. Many felt this was a reason for hope that more local children would go further through the school system.
- In education, after 40 years there was still no case of a community young person who had progressed into a tertiary institution. There was a need for closer liaison between the local schools and the communities.
- The Children are not interested in school, it doesn't take their culture into account - for example, it's not fair that children are marked absent when attending to law business.

- There was complaint that the teachers were all white and did not attend community meetings. Also the teachers brought grog into the community [for their own use].
- Cultural respect packages about ACL, languages, and other cultural things should be in schools from very early age not later on, should start when children enter school.
- Aboriginal people must learn their language and culture and this should be taught to them. There are many languages in this region; it is a "big mob". The community wish to teach "our own in the community, passing on the law and language is very important."
- There will always be people that you cannot reach but there are too many Aboriginal children that are not being reached. Changes should be made by Education to its curriculum for Aboriginal children. "One size fits all" - does not work. The Education Department needs to look at what is working elsewhere in Australia.
- There is a need for real training options for Aboriginal people as well as Training opportunities in prison prior to release - community specific training- i.e. training in engineering, driving trucks or within the mining industry.

## **12. Criminal justice issues**

### **(a) General**

- Aboriginal men did have experiences of the criminal justice system, largely in relation to events occurring off the community. The overwhelming majority had been involved with the system in some way.
- In general terms, the men were of the view that the Aboriginal people get a worse deal from the justice system. They get "two" punishments.
- The issue should be over when a person has been punished "black-fella" way. Mention was made of a killing in Hedland, the offender was speared and shouldn't have had to face white justice as well. The problems do not stop when men go to jail, the family faces punishment.
- Communities and family groups want tribal punishment to be done first before the offender is taken into custody (prison) - this avoids pain and suffering on both parties (e.g. family/s and person committing the crime, victim's family/s). Sometimes families take a long time to complete the punishment and this places stress on all families involved and then affects the community.
- A death resulting from car accident - punishment for driver and their family/s. Aboriginal family and Elders do not recognise that another vehicle or some other circumstance may have caused the accident. They look at who was present, driving at the time, and the other people in the car at the time.
- There is no understanding of Aboriginal Customary Law protocols by white people. For example, pre-sentence and Court reports should include cultural matters, such as the significance of avoidance relationships. Lack of understanding of these avoidance principles sometimes causes Aboriginal people to break ACL and get punished when they return to the community and even while a trial is going on. The trial itself creates situations where law is broken. For example, where a mother-in-law

testifies about a son-in-law, people coming into Court who have avoidance relationships and are forced to sit or stand with each other.

## **(b) Policing**

- Some communities had by-laws but did not need a Warden scheme to enforce them because the community worked well, “[we] never see police, never had to see them in four years”. Some visits by “bush police” would be good in order to establish and maintain good relationships. The practice of moving police on relatively quickly made it difficult to have a consistent relationship.
- Aboriginal Police Liaison Officers (APLO) do not provide support to the communities. APLOS should visit communities on a regular basis - not just white police.
- There have been cases where police roughly handle clients when taken into custody. Clients are often thrown with force into panel vans. There appears to be is no consideration given for age, gender, or custom and the APLOs don’t object or intervene to explain the problem. If clients are aggressive police use pepper spray.
- It was also stated that on occasion, drunk and disorderly people are taken to lock ups when the sobering shelters are full. They are usually released around 8.00pm or 9.00pm. Police release them onto the street and no consideration is given to contacting the family to inform them about the released person’s whereabouts. The time that a person is released gives the person no time to contact or the police to contact family or relatives. People have to find their own way back to their community, which is sometimes a long distance away. The community members are afraid for people’s safety - for example, being hit by a car/truck when not fully sober.
- Funeral business is very important business, people have to go and have no choice. The police know this and wait for you up the roads, check vehicle and licenses. Put the people in jail. “You will break Aboriginal law if you don’t go to a funeral.” “The police- ‘preying like hawks’ at funerals, no respect for Aboriginal law”.
- Some police do not show respect when they enter the community - they should first communicate with the Elders before entry. Police just barge in - they do not “understand our way.” Police have not seemed to be engaging in much cross-cultural training. Nor have they been training many local people to become Aboriginal Police Liaison Officers (APLOs). None of the APLOs in the community are trained locals and do not appear to understand the local law. “Our people” were not asked to apply. Police should widen the APLO’s duties and their job description needs to be changed for better community liaison.
- Police arrive from the city and do not learn the culture of the area, all government workers must undertake appropriate cultural training in the locality; sometimes police insensitive. There was a need for better cross-cultural training for newly appointed local officers of government agencies. It should be a regular part of the training of such people to spend 1 week in the lands, rather than simply training in Perth.
- Police were also involved in taking cultural property (such as carvings and baskets), such as sticks taken as exhibits in the aftermath of fights. But this property has never been returned.

- There was also some anger that the police treated driving conditions in the area as similar to urban areas, imposing standards of road worthiness inappropriate in places where there were no roads. The issue also extended to law business, the police waited to check vehicles on the way to law grounds - some miss law business, as in the case of funerals; missing law business is breaking law. There was concern about police conducting illegal searches of vehicles and confiscating firearms, preventing men from hunting - hunting was said to be a way of practicing law.
- Police interfere with the punishment handed out by the community. Community want police to stay away and let community do the punishment themselves. Need for agreements between family and police don't interfere.
- At police station they only lock up troublemakers for a short period rather than keep them locked up overnight for protection of themselves and community. Bundle them off elsewhere so community members are kept awake all night.
- The main problems related to unlicensed vehicles and unlicensed drivers. Can't use back roads to do shopping in cars that are not completely A1. Police stand on hill to watch them then get them. This can result in driver being charged with no driver's licence, yellow sticker, driving under suspension, outstanding warrants etc. People say police take advantage of this opportunity.
- It was said that the communities needed to know more about the authority of the police, and of how European law operated, particularly in relation to the pursuit of offenders.
- The police and law are aimed at the Aboriginal "problem". Whites literally get away with murder. Examples of this include a "drive by shooting", blacks shot by the roadside by whites in a car, nothing done about it.
- There had been an ongoing panic in Hedland around Aboriginal crime and disorder. Talks of more police and tougher action against anti-social behaviour by Aboriginal people and curfews for youth. The meeting said that in contrast Aboriginal problems were never given publicity.
- Police have a lack of cultural knowledge and are more violent toward Aboriginal people. They are racist toward Aboriginal people but especially when in custody. Most racism in the justice system comes from prison officers and police.
- A lot of Aboriginal people were jailed for driving without a licence or for travelling between communities but not on a gazetted road ("back roads"). Jailing for minor offences, such as these "doesn't make sense". Aboriginal people need to travel between communities and the back roads allow them to move freely between the communities. The police sometimes close back roads. The communities use the back roads to travel to and from Court and to transport the sick to enable them to receive medical treatment. Aboriginal people in the communities without a driver's licence may still have to travel to Court and there is usually no other option but to drive.
- Driver's licence - the test/form needs to be revised, as Aboriginal people may know the answer but cannot answer, as they do not understand the question. Consideration should be given to administering an oral test.
- Requirement for licensing leads to fines and then imprisonment. Fines catch up with you - they hold the fines until you are out of prison. You cannot pay the fines, as you need to feed your children.

### **(c) Courts**

- The Yandeyarra scheme was mentioned as a positive innovation. Others suggested the development of an Aboriginal Court using ALC to administer the justice system. A Court where Senior Law people and Elders in the regions sit and preside for minor offences, for serious offences and crimes that would carry lesser sentences in white man's law. In this Aboriginal Court both White Law and ACL for some offences and sentence to be administered under ACL. This Court could refer back to law of the land (white man's law) and white man's courts for very serious offences.
- This should involve Elders and whites law sitting together, as equals. Aboriginal people don't understand the law, and they face double punishment. (However) if we just mix the two laws, this might just further erode our law, because white law is stronger, before we mix them we must first strengthen our law and clarify a bedrock of Aboriginal values.
- There was a Memorandum of Understanding with the Department of Justice, which had led to a Juvenile Bail Facility, to open shortly. In addition, Chief Magistrate Heath would soon hold the first Circle Court at the community. And recently there had been the first appointment of a member of the community as a JP.
- Need interpreter services in court and in police interrogations. There are interpreters but their use in the Court system is only now and again. There are only a few interpreters and sometimes languages do not match. There is no Aboriginal interpreter service available at the Broome Court, despite a need for such a service. One person stated, "I felt that I wasn't heard". Most people felt that there was a problem with language, in addition people did not understand the language used in the Court.
- The Court processes were not properly explained, ex. Election. Aboriginal people that face the Court system need to be told about the system; for example, they do not understand "remand". Aboriginal people also do not understand why they are not dealt with quickly by the white system.
- Cross-cultural training is required, for example, with regard to witnesses - there are some things that you are not allowed to talk about - therefore you can't be a witness to an event, in criminal trials, etc.
- Mandatory sentencing was a major issue, with a disproportionate impact on Aboriginal young people. There appeared to be no will to do anything about mandatory sentencing notwithstanding strong recommendations against it on human rights grounds. The issue appeared to be bound up in a moral panic about home invasions, and young people in shopping centres.
- Convicted offenders should spend community hours on or near their own community. Aboriginal people generally cannot pay the fines imposed so they receive a further term of imprisonment.
- Of particular interest was a community justice initiative in NSW that had brought together a number of government agencies under Aboriginal direction

### **(d) Prisons**

- There are considerable problems with release from prison for the purposes of funerals. Prisons don't understand the cultural ties within the extended family. For example, uncles that takes on father role - they have not been allowed out of prison to attend funeral at time because they are not

recognised as being "immediate family". People in Perth determine who is allowed to visit. Those decisions are based on complex bureaucratic processes, not Aboriginal Customary Law and do not readily allow for prisoners to be released for this purpose who are not blood relation. The criteria are too restrictive. The inability of prisoners to attend who should be able to do so can bring on conflicts between families.

- Also, prisoners who are allowed to come are often restrained inappropriately so they cannot grieve in the right way, such as by physically embracing others -- therefore unable to hold people. This was disrespectful and prevented the prisoner fulfilling his/her obligations, and thereby breaking Customary Law. "Mardu people have respect - won't run away".
- Forms seeking permission to attend a funeral should be more culturally appropriate and should be re-drafted after due consultation with Aboriginal people. The prison had created a Funeral Information Package, and whilst it was used in the prison it was not used by Department Of Justice head office.
- The Prison officer advised that there is also a problem with obtaining the correct and relevant information from prisoners. Prison officers needed training to ask the correct questions. Also, interpreters were sometimes necessary. In addition, there appeared to be too many links in the decision-making process.
- Many expressed the hope that this ACL business will make a difference and that something will happen to get Aboriginal people out of prison and give them skills to stay out.
- Young men treat jail like a holiday camp, get well fed and television; they have no fear of white law; Aboriginal law is harder. Jail creates more violence, the young men come back worse. Jail makes them big fellas; they don't listen to Elders. Instead of sentencing someone to 6 months in prison why not send them out to live in the bush for 6 months to do the law.
- Some expressed concern about transport and other social issues after release from prison. Sometimes released prisoners arrive on the community with no money. Paperwork should be done by social worker at or near prison for prison release payment. They should not arrive at community with no money and then have to wait 1½ months for payment. This places strain on relatives in community financially.
- Aboriginal Visitors Scheme (AVS) is contracted by police when a person has been picked up. Although they do get a couple of phone calls to ring family, police do not allow family or friends to visit the lock-up because they think they are going to supply alcohol/drugs - therefore being judgmental. Emergency phone calls are only calls that can be received by prisoners, its difficult to stay in contact.
- The women had concerns that the lock-ups are still being used to detain drinkers, in breach of RCIADIC recommendations. For example, drunks are detained for 8 hours to sober up in the lockup because sobering up centre is full. Bigger centre needed.
- Prisons - should be built closer to family. Officers send detainees away from country area and they try to starve themselves because they are lost and afraid. A preferable option is to leave people in the community and keep the family together - offenders can work in the community, ex. Clean up. Look at suspended sentences for men and women within the

community and the Elders in consultation with the community decide what the people are required to do within the community.

- Instead of prisons, build a community facility that can be used regionally or by several communities. Its main purpose is rehabilitation and restoration through education/training, employment training, courses for employment opportunities, drug, alcohol, violent and sex offending. Staffed by trained Aboriginal people and non-Aboriginal people who are not prejudiced. A place that family can come to and stay especially when death occurs in or out of prison, or when children are born so people in facility can do the cultural business and family is not made to suffer because person is in prison.
- Traditional medicines should also be available in prison.

#### **(e) Aboriginal Legal Service**

- Aboriginal Legal Service (ALS) should recognize that there is a need for their officers to be working in the prison not just visit from outside. ALS and other lawyers should explain how they will represent Aboriginal clients. Currently, there are no explanations about what "representation" means, not enough information on how to behave (how to show you are sorry), what to do or say. There is not enough information of what to do in Court; sometimes lost by language and things that you have to do when you go to Court.
- The ALS needs to be adequately funded.

#### **(f) Parole**

- Family detainees should have the option to do parole in their local community or a community that has been identified by the detainees' Elders. Detainees have to be given the opportunity to be eligible for parole not just through the mainstream system of getting parole. There should be a cultural process for Aboriginal detainees to get parole because many Aboriginal men do not want to do mainstream prison programmes. If they are paroled to a dry community their healing will be supported. They will be helped to become rehabilitated by interacting, and living with family and being responsible to their community networks and given the opportunity to give something back to their community.
- Cultural protocols should be included in how the Parole Board makes their decisions about Aboriginal detainees and also in an Aboriginal detainees parole plan, management plan, release plan etc.
- The parole process should incorporate dry community networks. Better chance of staying out of prison if ex-prisoner is sent to dry community who has been contacted by justice system and this contact is part of the parole process, because wet community or closer to town communities will have problems for released prisoners.
- Parole - If a person is sent back to the community and breaks the rules, then what is done is at the discretion of the community. The parole officer needs training and education "in our ways."
- Homeswest does not allow for an extended period of absence from the tenancy. Once you have completed the jail sentence and are on parole there is no house at the end. Lack of housing may affect your parole, so it is a Catch 22 situation. Housing should be provided upon release.

### **13. Reconciliation and racism**

- “Aboriginal people kicked out of shopping centre, for trivial things, strict dress code for Aboriginal people, not for whites, they can go in without shoes and shirt”.
- The approach of police to an Aboriginal death appears to be different to the death of a white person- feel that police are not investigating in the same manner as “Aboriginal deaths not important”. There are a lot of Aboriginal deaths that are not investigated, examples given of a drive by shooting and a number of hit and runs.
- “Black deaths not worth reporting in the news - would if they were white”.

### **14. Welfare and family violence issues**

- Department of Community Development does not know whole family networks or how placement of children may put burden on one person. Children get “dumped”, or end up running around, drinking and then the police pick them up. DCD is not around and doesn’t see it so it did not happen. Police therefore play a direct role, taking children to “auntie”.
- Reference was made to the conditions of drunkenness, drugs and offending in town from which people in the community would wish to remove children or grandchildren. However, the European system did not support such removal, and particular reference was made to the position of grandparents. White law doesn’t understand the obligations of grandparents to take and care for children.
- Grandmothers get no extra money for the grandchildren in her care: Mothers of children still collect mother’s allowance, but they use the money for drink. Elders want parents to take responsibility for children. In the past no money was involved, when living off the land everyone looked after each other, now all this has changed.
- There was a problem where children had left dysfunctional parents, of a lack of clarity as to who now had responsibility for them. Many children were left to wander the streets without any other adults clearly responsible for them. Something was needed that would not resort to interventionist custodial arrangements, on the one hand, or to a simple hands off position, on the other. Times have changed from days when the state always intervened & took kids away. Families now take on additional burdens of care. There needs to be clear protocols in place for the placement of Indigenous children, there are “too many orphans in this community” and white men “just take stabs in the dark” when it comes to placing children. Aboriginal people need to be consulted more about family issues.
- When welfare takes children away from parents, they are not always left with extended family. Children can be taken to another community and placed with carers outside of the family. Some raised concerns for a repeat of history of the stolen generation.
- Domestic violence is a complex issue, and often involves extended family. Initially men in the area reacted negatively when the Domestic Violence Action Group (DVAG) was set up in the 1990s, now men are stronger and there are men’s groups being formed in Roebourne, Hedland, Onslow. “Men have been severely damaged by dispossession. Women still have a role and a reason to exist, men don’t. Men have cultural identity issues”.

- With regards to domestic violence, when young couples fight or get injured parents and family have authority from elders to carry out punishment on the one who is doing the injury. Elders and family will look at the injuries, rather than who started the fight, or who was fighting whom.
- Problems of domestic violence start early, young males bash girlfriends, de factos, wives, etc. We have more heavy drinkers and the police, courts, corrections can't handle them. If these men faced Aboriginal justice they would stop. Jail is a soft option. We shame our men when they are sober, if they go to jail they avoid the shame.
- There was a need for refuge within the community. Some suggested that it be close to the community somewhere near the non-indigenous people. Others wanted a family healing centre, for all family, all ages. There was mention made of the women's refuge built right in the Town of Port Hedland. Some say it is too dangerous and it should be more isolated.
- FCS takes the children and limits the mother's contact with her children - greater emphasis on Aboriginal adoptions and foster care arrangements into the community rather than sending the children away. One woman identified a number of problems relating to children, in particular the separation of siblings.
- Restraining orders - do not work for Aboriginal women, they only wish to seek momentary protection and do not understand that the order has to be discharged. If in prison, no visits allowed if restraining order in place.
- Matters raised by the Gordon Inquiry would not happen in traditional society. Traditional culture did not sanction child abuse and family violence and would prevent it occurring. Some people say, "Aboriginal people accept violence". This is not right. "Violence is not part of our culture."

## **15. Deaths, coronial inquests and inheritance**

- Inheritance is not about material things but about the law and passing knowledge on to the community. Children inherit traditional songs and dances. For material goods, then the blood families give them to some one.
- Elders know the right community to take people to for burial. If there is a dispute as to the burial it should be resolved by the families and Elders. White people do not listen to family or Elders because Elders are not recognised. Then there is conflict within the community because the burial was done the wrong way.
- The approach of police to an Aboriginal death appears to be different to the death of a white person- feel that police are not investigating in the same manner as "Aboriginal deaths not important". There are a lot of Aboriginal deaths that are not investigated, examples given of a drive by shooting and a number of hit and runs.

## Introduction

The Consultations in Broome took place on the 17th to 19th of August 2003. Commissioners Ralph Simmonds and Ilse Petersen, Special Commissioners Mick Dodson and Beth Woods, 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 at 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 discussions embraced a wide range of issues, covering the following broad themes:

1. General context
2. Criminal justice issues
3. Traditional law and punishment
4. Community justice mechanisms
5. Burials
6. Governance
7. Quality of life issues
8. Inheritance issues
9. Alcohol related issues
10. Education and young people
11. Intellectual property/cultural property
12. Family violence issues
13. Aboriginal courts
14. Legal services
15. Mental health issues

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

## **1. General issues**

- Senior representatives of the Aboriginal community said that they needed to reclaim community values existing before the white man came, so as to “get comfort for our people in mind and heart”. The European law prevents this from happening, the process of settlement has fragmented Aboriginal society.
- Community leaders also wanted to see the recommendations from the Customary Law process implemented by government.

## **2. Criminal justice issues**

### **(a) Police**

- Young people see themselves being treated with contempt by the police.
- We also see that the police will not intervene in feuds. We cannot get them to take violence within the community seriously.
- Police need to be reminded of the way the handling of our people can make their problems of self-esteem worse. This can be seen in the practice of bringing people to this Refuge in the cages on the back of police vans. It can also be seen in the use of those cages to take them away from here, causing much distress for children in particular.
- Our children end up in filthy cells when detained by the police.
- New “Multi-function centres” may offer a greater law enforcement presence on remote communities yet it is not an option all communities want.
- Children see two types of law. European law harasses them in discriminatory ways. Some police are racist. And there is a considerable turnover in the police here.
- Children notice how those who look white are treated differently from those who look black. Those who look white face, however, the denial of their Aboriginality in their own community.
- Broome is a town with a tradition of discrimination against black children, unlike the rest of the Kimberley.

### **(b) Aboriginal liaison officers**

- Aboriginal Liaison Officers face the problem of dealing with violent scenes where payback against them could result.

### **(c) Educating the judiciary**

- Judges need to be educated about how traditional punishment works in a particular place, given that it varies from area to area. For example, there was a case of a very senior law elder who had to punish his wife who had been criticising him before other elders. In that case the sentencing judge did not take into account the traditional ways that brought this punishment about. The judge should have taken into account the fact that Aboriginal law was at work here.

- There may also be a need for a young person, convicted of what might be both an offence under European law and a breach of traditional law, to undergo education in traditional law as part of his sentence. Again, this would require the judge to know enough about traditional law for him to order this.

**(d) Elders and judges sitting together**

- One approach might be to have elders from the area advise the judge before there is any question of them accepting claims based on traditional law. In Turkey Creek (Warmun) elders sit with Magistrate Bloemen on matters involving alcohol and drug abuse.
- Justices of the Peace also need training, especially those in the Kimberley and the Pilbara. This was one of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- People have not thought through how the communities should relate to European law. We need to go back to the pre-European ways of living, by sitting down with the elders to learn how really to respect the ways of traditional law. Many are confused about those ways. This confusion opens up possibilities for manipulation in the name of traditional law.

**(e) Sentencing**

- Suspended sentences are not a good idea. They sometimes simply give the offender an opportunity to offend again.

**(f) Prison and rehabilitation**

- Prison is failing Aboriginal people. One Aboriginal person said, "I used to think prison rehabilitated. Now I think it makes matters worse. We need to get families together, parents and grandparents, to deal with the issue".
- It should be remembered that the average wage of Aboriginals in Broome is CDEP, effectively below the poverty line.
- White people do not understand our skin groups. There is also a need for more general cultural awareness training in the agencies here. The high turnover of the staff of those agencies makes matters worse. We have to tell our stories to them repeatedly.
- It is important to note that there are working models of traditional law elsewhere, as in the US, with the Navajo, and in NSW, with the circle of elders.

**(g) Prison and burials**

- A big issue in the prisons here is the matter of who goes to funerals. This will for us often go beyond blood relations. Examples would include those who put the deceased through the law, or accompanied him through it. If that person does not go to the funeral, this shames them.
- We have had to educate the police about smoking cells to remove spirits.

### **3. Traditional law and punishment**

- There was guarded support for traditional punishment by some police officers. However, the system of punishment would be at risk if it miscarried, it was said. The biggest problem for police otherwise inclined to allow traditional punishment take its course would be to be seen to be overseeing violence with its potential for liability. Legislation would be needed to deal with this issue. People have been put in a wheel chair as punishment for a sibling's wrongdoing. In that case, it may have been the fact that the punishers were affected by alcohol.
- It needs to be understood that leaving traditional law is not in fact a choice. That is because such law is a part of who you are. It also needs to be understood that traditional law can bind whites. For example, the case of the nurse who was stopped from dressing a wound that had resulted from payback. She was bound by the law.
- Those who have positions in the European legal system, including judges and lawyers, need to know who is, and who is not, bound by traditional law. Lawyers need to know more so they can better tell when their client is misleading them about the application of traditional law. This is because some Aboriginal clients through their lawyers have misled courts about traditional law.

#### **(a) Two laws, different aims**

- Many would say that undergoing European justice is easier than undergoing traditional law's punishments. Those punishments are meant to make you remember what traditional law prohibited. Under traditional law it is not important why you did what you did. The punishments of traditional law leave a physical mark so that you will remember what you did and that it was wrong.
- Many come to Broome from dry communities or to escape a dysfunctional environment. Some are fleeing payback. They would rather face European law than traditional law.
- Traditional law works. Its severity and speed can deter. But it has been weakened in Broome.
- It is a weakness of traditional law that it focuses on the incident, not its causes. We have known cases of punishment of passengers in vehicles involved in accidents through the drunkenness of the driver.

#### **(b) Administering punishment**

- Traditional punishment must, however, be properly administered. There have been recent cases of it being done in a way that permitted the offender himself to take retaliatory action. When the community say that there has been enough punishment, it must stop. This does not always occur, however. The question needs to be asked, is it a matter of culture or just of revenge?

#### **(c) The courts and punishment**

- There is a problem for the courts in informing themselves about what traditional law requires. Wallwork J is an example of a judge who informed himself appropriately of what traditional law involved.

Considerable sensitivity is needed, especially as people feel traditional law strongly now. And there are different protocols in different areas.

- There are examples in the Kimberley of the problems that arise at the intersection of traditional and European law. Thus, in one case of an offender whose conduct was required by traditional law, the judge did not impose a punishment, but the victim made a criminal injuries compensation claim. The offender had in fact wanted vindication, of the sort a complete defence would allow, not the waiver of a sanction.
- There is a need for flexibility to ensure, like mitigating factors in sentencing, that there is account for the varieties in local traditions.
- We are aware of elders concerned about a wrong that was committed in the name of traditional law, where the claim was false, but where the matter was shrouded by a code of silence.

#### **(d) Learning about law**

- There is the problem of teaching the law in different country. Indigenous studies are part of the primary school curriculum here, but not sufficiently. Children are not grounded through the law about who they are.
- There is a real problem of disempowerment through the absence of traditional law. Law is not strong here. Grandparents tell the children stories, but the children still feel remote from the law.
- It is not enough just to go through initiation to be respected in the Aboriginal community. "Going through Law" does not simply equal ritual. Becoming a man in Indigenous society should entail more than just becoming initiated, it should also entail gaining wisdom and knowledge. Simply focussing on initiation may only reinforce a cowboy mentality. More time is needed to go through the law.
- We need to bring the law back through books and recordings and stories. Many are afraid to follow the traditional ways for fear of giving offence. There is often a need for people to prove their Aboriginality through family tree construction. Authority from the old people is often needed, and many of them are now dead. Much information is being lost. Most children don't want to say their original names, because of shame. That shame derives from the image of Aborigines on TV, and the way they are spoken of in the town. Their idols now are pop stars.
- Parents tell us who we are related to. But many children do not know their language or their kin or skin group origins.

#### **(e) Take us seriously**

- It is important for white people to take our people seriously. The impression is sometimes left that it does not matter when we advocate that something be done. A recent example is our repeated recommendation that a mural be placed in the lock-up. But it is a different matter when a white person makes the same recommendation, which is what happened in this case.
- Aboriginals feel excluded. We face two sets of laws. We know that it will always be European law that will apply, rather than the immediate response of our law.

#### **4. Community justice mechanisms**

- Too many of our people are in prison for minor offences relating to vehicles, particularly keeping up licences. There should be greater use of community orders.
- We have a work camp at Derby, it must be said. And the Department of Justice is concerned about the issue of imprisonment rates also. We also note that there is an institute for juvenile offenders at Banana Wells, but it is not the answer. That is because the kids there do not get their culture. We need to send them to the bush rather than to Perth.

#### **5. Burials**

- Although burial matters have not been prominent in Broome, it is easy to imagine difficult cases. One might be if a man dies where his wife's family were required by their tradition to go to sorry country. The man's family might decide by reference to the country of his birth. At least things have improved since the days when our people were buried rapidly, without regard to the country to which they might need to be returned.
- There is a strong concern for burial in one's own country. There is now a move to better accommodate this, away from cemeteries, as part of the recapture of traditional ways of dealing with death. Substitutes for burial in country have developed, such as the use of soil from that country.

#### **6. Governance**

- What happened to the Aboriginal Justice Council? It may be important to get it back as a means of verifying claims as to traditional law.
- Things have gone backwards in Broome since the Council was abolished. The police now simply walk away from a discussion about policing, rather than be accountable for their actions. The police are currently placing outrageous conditions on curfews as part of bail and are waking up families in the middle of the night to check on a young person. This would have been challenged by the AJC.
- It will be important for the Commission to revisit the recommendations of the Royal Commission into Black Deaths in Custody.
- Capacity building is impossible without strong leaders. Yet the corporate governance initiatives that government supports has tended to involve selecting leaders who squeeze out the elders, leaving them with ceremonial roles only.
- Governance is something of a political football. It is necessary to change state-based corporate law to better reflect traditional governance arrangements. It is not necessarily the case that the allocation of jobs based on family relationships is bad, and may in fact be needed to reinforce traditional law.
- Traditional law could be truly empowering, instead of the European structures imposed on us.
- There are a few examples of traditionally based governance structures, in Cape York and the Pitjinja lands. But generally this is not happening.
- The by-law system is important, but may simply be increasing the levels of unnecessary imprisonment. The fact that the contraveners face a

limited array of sanctions for contravening them does not mean that contraventions cannot lead ultimately to imprisonment.

- The traditional roles of elders are being eroded. They are the people who are the support for traditional law. This erosion could mean the end of traditional law, outside the remote communities at least.
- Many Aboriginal people are themselves confused about their position and their culture. Terms like “self-management” and “empowerment” are just words until the matter of giving them knowledge of their culture and their law is addressed.
- Thus, it might be necessary that young people go through the law prior to undertaking the responsibilities of adult life, like taking a spouse. This is because at present they lack the sense of obligation and responsibility traditional law would give them, while European ways give them nothing that is equivalent.

#### **(a) Regaining our strength**

- Communities can recover their strength through traditional law. Compare the weaknesses of the current by-law and wardens system. This involves the choice of enforcers outside the skin group system of traditional law, and is another example of imposing white ways on our communities in the name of “empowerment”.

#### **(b) A piece-meal approach to programmes**

- There are many examples of programs to address community needs which have been piecemeal, and which have lacked adequate follow-up. An example is the Ministry of Justice anger management program.

### **7. Quality of life issues**

- A problem, as Broome has grown, has been the worsening of the conditions for Aboriginal people. Thus, dialysis treatment has had to be introduced here.
- When we give evidence at native title hearings, we are asked why we do not exclude people from our country, and why we do not tend to it. However, Aboriginal people are one people who tend to include rather than exclude.

### **8. Inheritance issues**

- It is true that traditional law does not provide clear guidance on the distribution of property on death. Where there is a will, this is respected. But otherwise, there can be problems. However, it must also be said that our people do not understand why, when there is no will, and the deceased left no family, the property goes to the government rather than to the community.

## **9. Alcohol related issues**

- A major problem identified by Milliya Rumurra was the lack of a half-way house after residents leave treatment. When they return to their communities, they usually lack support for the continuation of their ways of living without any or as much alcohol.
- Milliya Rumurra has worked on educating members of the residents' communities, including family members, so that they can provide support. But lack of community support and understanding remains a significant problem, typified by the sort of community celebration with alcohol that is put on to mark the return to them of someone who has been through detox.

### **(a) Dysfunctional communities**

- The problem is to find communities strong enough to remove the pressures to drink heavily. Many of their so-called leaders are suppliers of alcohol, which may have helped get them elected in the first place.

### **(b) Addiction**

- Alcohol or marijuana abuse is the problem for our residents. They are typically not addicted, but are on the borderline. Problems with other drugs don't present themselves, as they might in say Port Hedland, where there is more money in the Aboriginal community.

## **10. Education and young people**

- The greatest need is to reach young people, particularly those 10 years old or younger. Role models are hard to find. The best role models are their own parents.
- Education Department programs on alcohol and drug abuse are not working, on the evidence of what goes on in the street. Older people are often ignorant of the physical and psychological harm that substance abuse is doing to them. Younger people who are aware of this still keep doing it. The availability of these substances can be seen in the 52 licensed premises where they can acquire alcohol in Broome.
- Milliya Rumurra now deals with the children of former residents. Children suffer from boredom, and see government handouts and the entrenchment of unemployment in their families. Work is simply unavailable to them. It is little wonder they are discouraged. All of this tends to show that Broome's "multiculturalism" is somewhat overstated.
- Children can be the origin of feuding. Alcohol fuels much of it. Sticking up for their children has replaced discipline for many parents. Perhaps this is in part the result of displacement and angst.
- Older people drink to deal with the lack of self-esteem they feel. Younger people drink to establish self-esteem, at least among their peers.
- TAFE here tried to coordinate traditional skills training programs, but these were not pushed enough.
- Broome needs a drop-in centre where Aboriginal people will feel comfortable. There is a need for young people to feel happy and valued. The existing centre run by DCD does not cater well for 14 to 17 year olds.

Many of them have grown up with no dreamtime dancing, and with no football playing.

- In Broome development has overridden everything. Investment in the community itself is missing. Everything has become expensive, there is widening inequality and there is something of an upsurge in racism as outsiders move into the town attracted by the money to be made here.
- There is much theft, made worse by commercialism and peer pressure. There is a need for training for parents so they can help to offset these.
- Things are made even worse by false accusations against our children.

## **11. Intellectual property / cultural property**

- Art offers one way of enhancing self-respect and providing a form of self-help that can benefit the community also. However, a lot of Aboriginals produce simple artefacts for tourists and simply use what they earn to produce drinking money. They do not try more elaborate work, and do not direct what they make into community building. Thus, we have not seen local people use local timber to produce boomerangs.
- What art there is comes from the remoter communities. It is virtually impossible to produce art in Broome, given the distractions there. Also, the cost of equipment is an issue.
- Artists in the Kimberley have had concerns. There is a need for account to be taken of stories, music, and dance, as well as painting. There is a need to see how the land or the community may be a part of the ownership interests here. Royalty issues need to be addressed. There are some most impressive examples of communities knowing how to split royalties up. See the case of the old man who sold an entire corroboree, including the paraphernalia, the music and the performance.
- See how the removal of artefacts to the south, including to the basement of the Battye Library, has hurt people here. We are told that bringing this material back would be problematic because it is too fragile, and could be lost up here. However, some of this material is very important for the cleaning of the ground for ceremonies, and its absence means the ceremonies cannot take place.

## **12. Family violence**

- There is a problem of adequacy with European punishment. Tribal punishment through the family would be better. Counselling is often not enough. Wives live in fear of the release of abusive husbands who are about to come out on parole after relatively short prison terms. In prisons little changes except for the worse.
- Family would be prepared to administer punishment that would satisfy the victim and that the offender would recognise. It would be highly desirable to have submission to traditional punishment included as a condition of parole, submission by community leaders to do this have thus far been rejected by government and courts.

**(a) European law part of the problem**

- European law has caused many problems. Domestic violence results in the wife coming under pressure to leave the home. She suffers emotionally and physically with little or no support from the police or any one else in authority. Her own community may also let her down.
- We also have only one lawyer to turn to, one who tells us to plead guilty. With this lawyer, it is first in, best served.

**(b) Restraining orders**

- In domestic violence settings we face lots of issues of under-enforcement of restraining orders. It would be useful to have such orders able to apply to couples still living together, not just for cases where they will live apart. Apparently, such orders are possible in Queensland and the Northern Territory.
- Particular relations will be responsible for the protection of particular children or other young people, and this needs to be better understood in the European community.
- At the same time, issues have arisen concerning people marrying into a family. These people might take the marriage to mean they acquire rights in respect of all of the females in the family. This is wrong.
- There has also been a lack of understanding of what traditional law says about the protection of people from action being taken against them. Thus, wives who flee to their mothers' places should be safe from further violence there. But their husbands do not always respect this.
- Women and others were subjected to controlled punishments by men. This was often seen as a way of showing the men's concern for their women. Now we see an increase in women in prison for bashing up their men.
- Aboriginal women have moved on, but the men have been left behind. The men often don't know how to do things traditionally, and they have lost much self-esteem.
- Family violence could be made worse if traditional law were poorly reintroduced.
- Where women are promised to men, they have to go with them. If they do not there is shame. Sometimes there are bashings that wash out the breach when these women marry others than those to whom they were promised.
- At the same time the marriage promise system is about uniting groups, and preventing inbreeding.
- However, it should be noted that the marriage promise system is weakening.

**(c) Child sexual abuse**

- There are problems with paedophilia in this town. It is not just a problem in the Aboriginal community - there have been both Aboriginal and non-Aboriginal offenders. There is a perception in the Aboriginal community, however, of differential treatment of Aboriginal and non-Aboriginal offenders, with the latter receiving more lenient treatment by the courts.

- The victims of this sort of crime are seriously hurt, and may well become highly publicised criminals themselves. Aboriginal organisations are aware of the recommendations of the Gordon Inquiry, but we also note the money recommended is not ear-marked for agencies that provide services to the victims and their carers.
- It is a hard thing for Aboriginal people to deal with sexual abuse, particularly of children. This is because of the way payback is understood, and of the complicity of some male leaders. There is a men's forum being promoted to have men confront the reality they face. This has to happen if real change is to occur.

### **13. Aboriginal courts**

- What is needed is to involve the parents, and to have an informal family court, along the lines of the circle court at Yandeyarra. What we need is to find a way to restore respect for children, especially among males who don't take this form of abuse seriously.
- A family violence court was promised here, for 1 July, but is now overdue.
- It is difficult to get convictions in this area, with the need for witnesses. It is clear there is under-reporting of offences in the area of rape and molestation.

### **14. Legal services**

- The ALS is not much help to us. Lawyers don't allow us to speak for ourselves in court. Our people in court need their own advocate from their own community. ALS has insufficient staff.

### **15. Mental health issues**

- Graylands offers no facilities for communication with the families of children sent there. North West Mental Health is often in no position to offer anything.
- In the mental health sphere, the challenge is to work out the interface between traditional law and the western system so as to distinguish mental illness from cultural difference and draw on the healing powers of traditional ways. Where those ways conflict with western precepts, the tendency is to try to give effect to the former. Aboriginal mental health workers and traditional healers are being employed now, as well as family members.
- Graylands is the only authorised treatment centre for the Kimberley, and this creates problems. Community treatment orders could include such healers, but tend not to. Without such orders, there is a duty of care issue that can arise with involving them.
- The Commission's project is timely, as there is a review of the Mental Health Act currently.
- Mental health problems increase if traditional punishment is delayed. There have been cases of suicides where people had not undergone the required payback.

**(a) Disrespect**

- We have been treated with considerable disrespect in courts, as when one of us was told to come back to court to testify only after she had got a set of false teeth. A voice is needed for our people in this town.
- We need a woman lawyer, and women judges.

**(b) Supporting Aboriginal carers**

- We see white foster carers paid to look after children. But because of the responsibilities for care our people feel, we end up with the same responsibilities but with no such financial support.
- One woman told how she had been looking after a young girl from her mother's country who first appeared in my driveway suffering the after-effects of serious sexual abuse from her father and her uncle. "She now does not speak at all. There is provision for payment for physical harm, but not for serious psychiatric illness. This responsibility has been very hard, barely surviving on a pension. In any event more is needed here to offset the high cost of living in Broome".

# WUGGUBUN

9-10 September 2003

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## Introduction

The Consultations Wuggubun in took place on the 9th and 10th of September 2003. The Commission was invited to Wuggubun by Kimberley Law and Culture (KALAC) and the Kimberley Land Council (KLC) to participate in the 25-year anniversary celebrations of the KLC.

Commissioners Ralph Simmonds and Ilse Petersen, Special Commissioner Mick Dodson and Research Director Dr Harry Blagg attended the consultations on behalf of the Law Reform Commission.

The field trips are an essential means of ensuring that the Commission hears at 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 practiced?
- in what ways is it practiced?
- in what situations is it practiced?
- what issues confront Aboriginal people when practicing 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. Children and Youth
3. Elders and Law
4. Self Policing and Governance
5. Language
6. Traditional Law and Punishment
7. Women's Issues
8. Education, Training and Employment of Aboriginal People
9. Substance Abuse and Aboriginal Law
10. Community Issues
11. Community Justice Mechanisms
12. Criminal Justice Issues
13. Racism
14. Welfare and Family Violence Issues
15. Deaths, Coronial Inquests and Inheritance

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

## **1. General Context**

- "Black law does not change." White law should not interfere with black law. White law cannot change black law.
- Some say that the laws need to work together, while others say, no they cannot work together.
- A way must be found of negotiating a relationship between our law and European law.
- The Commission should be interested to learn what is good in Aboriginal law, not what are the problems in Aboriginal communities. There should be partnerships between traditional and European law. Systemic reforms based on partnerships with communities to produce practical outcomes, rather than nice words in a report, are needed.
- With regard to the Commission's Terms of Reference, the comment was made that you cannot leave heritage and land issues out of this discussion.
- Aboriginal people are born into the law, they maintain it as their choice. Authority comes from their elders and comes from the community.
- Regarding the LRC Reference: there was discussion on how many other reports there have been. What will this report do? "What are you (LRC) going to do about the issues of drugs, booze, assault, incest: essentially underlying problems caused by lack of respect?"
- Old people had law and culture; now Western influence leads to jail. There is not enough money for Aboriginal law, singing, dancing and culture. Paid support not given to elders. Turn kids around if they follow the ceremonies, to reinforce their own culture; kids need to learn to behave and respect themselves.

## **2. Children and Youth**

- There needs to be strong support for young people. Young people need to be taught. They need to go back to their community and their family.
- Families want the power back. If power is given back to the families their children will feel safer. American rappers and language are important to kids. Hurtful words are used - there are other role models for kids now.
- In the proper way you respected other people's children and that does not happen now. Elders used to sit down with you and your parents.
- There is a need to allow Aboriginal people to control their own kids. Allow them to take them to the bush and teach them their way. However, this cannot happen due to lack of resources. This needs support - government needs to look to giving support for Aboriginal people.

### **3. Elders and Law**

- We need to use elders better.
- There is a need to recognise the authority of the elders.
- Lawmen are not “elected” in the white-fella fashion. It is already decided in the dreamtime. No one can tell you how these decisions are made. Often, it is passed down through family, it can skip generations, but that’s not the only way.
- Kimberley law is complicated. Skin systems are still vital and govern all relationships. Different mobs have their own law. Sometimes Elders die out and no one can take over that mob’s law.
- Much law is secret. “I could be killed for telling you how law runs”.

### **4. Self-Policing and Governance**

- Old people had law and culture; now Western influence leads to jail. There is not enough money for Aboriginal law, singing, dancing and culture. Paid support is not given to elders. It would turn kids around if they follow the ceremonies, to reinforce their own culture; kids need to learn to behave and respect themselves.
- White people took too much from the Aboriginal people. They have to give something back.
- In the early days, people were dealt with in the tribal way. All power has been taken away from the Aboriginal people.
- Aboriginal organisations need to be responsible. There is too much poverty. High profile black leaders are not addressing our problems, they are feathering their own nests and not going back to the grass roots. High profile black leaders to blame. We should not be living in poverty today. There is a need to have the right people in power.
- We need to come together to make things happen, as people go back to country. We need services and resources delivered there, under our leadership, but with support.
- We need to be able to better regulate access to land. People are going into sacred sites with ATVs and 4WDs, damaging the land. The DIA does not have the resources to deal with the matter. The law requiring permits to enter aboriginal lands is not being enforced.
- At the same time, European law prevents us mustering cattle on our land.
- Mutual respect and legal pluralism are needed.
- Our law should be enforced by us, not by the police; correspondingly, European law should be enforced by the police, not by us.
- A suggestion was made about establishing a “punishment place” and a place for court proceedings in the community. “We could have young people from outside the community brought here, away from relatives who might be too soft on them.”

- There are problems with young people running into trouble in town. We want to have them working through their punishment with us, showing them the culture, such as hunting.
- We need to know where we stand with our law. We would like to be able to punish cattle thieves in the traditional way, with a flogging. We don't want to be sued for practising our law.
- Police in our community have watched on as traditional punishment is administered. Sometimes, when we cannot spear, but must sing, this makes the problem worse.
- Every one wants self-government. European law belongs to them, our law belongs to us. Our elders should control our law, just as your elders control yours.
- If we walk into a white person's paddock, we commit trespass. But when they walk on our sacred sites, they contravene nothing. Ours is the law of the land for us. They must obey our law, as we obey theirs.
- Mining companies are ignoring Aboriginal control of their lands, as the companies pass and re-pass doing their exploration. They do not consult, or consult adequately. And the government does not help.

## **5. Language**

- There was also discussion about the importance of language. There was a right way to talk in own language. This was not acknowledged by the justice system and was not being used in the justice system. There needs to be support for programs. "Nothing has been delivered to our community to support our programs". Services are all town based and not community based.
- Everyone has the right to communicate in their language of choice. Necessary steps need to be taken by Government agencies to respect this. Participate and communicate in language – KLC & KALAC can help with language ensuring proper communication and proper process - however resources are needed.

## **6. Traditional Law and Punishment**

- Our law is very strong and forceful. Old people carry it. Simply speaking of it can bring punishment.
- Our law is not on paper, but in our country. It is sacred.
- Traditional law goes much further back than European law. It is simple and strong. It needs to be kept hold of, tightly. It can't be changed. Change would in fact be fatal to it. It is much easier to understand than European law.
- You need to ensure you speak to the law carriers. They get the law from the old people. Often they don't ask to receive it. They in turn pass the law on to younger people.

- European law tells different stories from those traditional law tells. Both laws need to be at the same level.
- It is often easier to talk about law to judges than it is to talk about it to policemen.
- It is essentially about respect, culture is based on respect. Aboriginal land and heritage is not respected. Respect comes from culture but once in the criminal system you lose respect.
- Some use Aboriginal laws to get away from white justice.
- A criminal record sticks, whereas, once you have traditional punishment everyone is equal afterwards.
- In some places our law is very strong, in others it is not. We have our law everywhere; but some do not use it.
- You cannot separate our people from their land.
- At Fitzroy, if any one is killed, the killer should be put through our law first. At present, however, European justice is on top. We want Our law and European law to be at the same level.
- There must be examples outside Australia of accommodating traditional and European law. In Australia too there are examples, in the exercise of judicial discretion, as in the Northern Territory. In the Territory there are cases of court-supervised traditional punishment, with medical back-up.
- Traditional law says that justice should be administered by the community.
- Traditional law is potentially stronger than European law, in terms of addressing the underlying concerns in offending. Our law has been practised for some time. But it needs reinforcement, and greater respect. It should bind whites also. If a white contravenes our law, they should be punished under it. Coming to a community with strong laws entails being subject to them. Our law is an important part of who we are.
- The matter of Australia's international obligations in relation to physical punishment needs to be understood from our point of view. Ours goes back much further. These international law norms strike many of us as disrespectful and ridiculous. For us, prison is cruel and inhumane.
- Traditional punishments do not have to involve payback, except in the most serious cases.
- When our people are convicted of an offence and go to jail, they get no education. But being dealt with under traditional law does teach a lesson. "You go to prison, get no knowledge". In Aboriginal law you learn all the time.
- If someone contravenes our law and white law, and is not punished first by Aboriginal law, then the matter festers, with members of the offender's family being held responsible. Having traditional law apply first is the best way, and creates no double jeopardy issues for us. The administration of such law could be part of the justice plan referred to, and could help to address the problem of our people going to jail repeatedly.

- Concern about double jeopardy is a European, not an Aboriginal concept. If there is a contravention of both laws; double punishment may be a good thing in deterrent terms.
- An offender being punished in the traditional way will not be killed. The matter could be properly supervised, with an ambulance on hand.
- White people who witness punishment have to be bound by Aboriginal Law. In one instance a nurse was in attendance to assist after a spearing: "she wanted to fix him up but the bosses said leave him, she was bound by that law".
- Police should send offenders back to the community, not allowing them to stay in town.
- We need to ensure that those who properly administer traditional punishments are not themselves punished by European law.
- The State must think outside the box, treating elders as living treasures. The administration of punishment should be under the control of elders and ALOs must be allowed to punish in the traditional way.
- Jail is not the answer as it gives a bad image to a person, a person is nothing in jail. The proper way is Aboriginal law.
- Law has to be given back to the people, back to the community. Communities need to be properly financed, particularly to deal with domestic violence.
- To us, it is cruel and degrading to incarcerate, cruel to stop Aboriginal people living their culture, spearing is more humane.

## **7. Women's Issues**

- It was easier in the past as women were respected and acknowledged.

## **8. Education, Training and Employment of Aboriginal People**

- Schooling at home was suggested. There is a need to provide facilities and support structure so that elders and women can be empowered. Money doesn't mean respect.

## **9. Substance Abuse and Aboriginal Law**

- There are drugs in the community and we need to be role models for the children.
- We need early intervention programs to deal with drugs and alcohol.
- Night patrols are a good response to drunkenness, but they need to be empowered and resourced.

## 10. Community Issues

- If Aboriginal people have an issue that needs attention they deal with the issue within the community.

## 11. Community Justice Mechanisms

- There is considerable interest in model programs, for example, “circle sentencing” courts for young offenders, training camp in Cape York, with the elders provided for by the government and the Broome night patrol. The Law Reform Commission should recommend ones. There are many good ideas in the Kimberley, to deal with the problems of young people, but few resources.
- Preventative, not curative, strategies are needed most. Government agrees, but does not deliver. What is needed is power to communities, to be exercised jointly with government agencies; and offenders need to be placed in communities, to be dealt with there.

## 12. Criminal Justice Issues

### Police

- Police chase cars when it is not necessary. Police need to be properly trained and understand Aboriginal heritage and culture.
- There is a concern that if an Aboriginal kills someone, accidentally, they can lose their job; but if a policeman kills someone there is no such consequence.
- In Fitzroy over the last 9 years Aboriginal people have been killed by white people but there has been no report back to the communities affected on what has been done about these matters. Contrast the speed with which Aboriginal drivers have been dealt with. There is a sense of skewed justice.
- In Broome a young white man got 24 months on a good behaviour bond for calculated pearl stealing to feed a drug habit; contrast black youths who stole pearls haphazardly as a lark, but got custodial punishment.
- There needs to be a review of “move on” powers, directed against sleeping on the beach.
- The royal commission on black deaths in custody does not seem to have produced any justice.
- Where there are criminal cases involving Aboriginal offenders, there should be equal numbers of black and white jurors.
- Police discretion can be misused to discriminate. The legislation should cut back on police discretion.
- Aboriginal Liaison Officers cannot become fully empowered police without further training, in reality this is beyond most ALOs. ALOs cannot arrest whites, and must act under the direction of even a junior white policeman.

## **Courts**

- Interpreters should be used in courts and to assist the family to understand what is going on.
- Having an Aboriginal person sitting with a Magistrate is a good idea. It also ensures equal representation (Aboriginal and white) on the bench.
- It is a good idea to have circle courts to talk problems through.
- Prisons
- Jail is not the answer as it gives a bad image to a person, a person is nothing in jail. The proper way is Aboriginal law.
- Men should not go to prison - it's inhumane. Aboriginal law is more humane.

## **Funeral Attendance**

- There is an issue with prisoners being shackled at funerals. This is considered shameful and should not be allowed.

## **13. Racism**

- "We accept people, forgive people, do our people get the same treatment". "We follow their rules, white rules, we just want equality in Australia".

## **14. Welfare and Family Violence Issues**

- It is necessary to go back to the families. They should be held accountable.
- Law has to be given back to the people, back to the community. Communities need to be properly financed, particularly to deal with domestic violence. Communities should be empowered.

## **15. Deaths, Coronial Inquests and Inheritance**

- Burial issues are indeed significant ones. Up here, it is contrary to our law for some one not to be buried in some sense in his country. The family, however, might say that it is appropriate to have a ceremony in another country.
- When some one dies, elders decide what happens with all the belongings.

# FITZROY CROSSING

3 March 2004

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## Introduction

The Consultations in the Fitzroy Crossing Community took place on the 3rd March 2004. Two meetings were held, both hosted by Kimberley Aboriginal Law and Culture (KALAC) at the Karrayili Adult Education Centre in Fitzroy Crossing. Commissioners Gillian Braddock and Ilse Petersen, Special Commissioner Mick Dodson and Research Director Dr Harry Blagg attended the consultations on behalf of the Law Reform Commission.

The field trips are an essential means of ensuring that the Commission hears at 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 practiced?
- in what ways is it practiced?
- in what situations is it practiced?
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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:

## Morning Consultation Session

1. Traditional Law and Punishment
2. Elders
3. Welfare and Family Violence Issues
4. Burial Issues
5. Policing Issues
6. Departments of Justice and Community Development
7. Community Justice Issues
8. Substance Abuse and Aboriginal Law

## **Afternoon Consultation Session**

9. Aboriginal Justice Plan
10. Policing Drug Issues
11. Department for Community Development
12. The Women's Resource Centre

## **Background**

The morning meeting included members of the Fitzroy Valley community, including prominent Elders, and Aboriginal agencies in the town. The afternoon meeting involved the latter groups plus representatives from the Police, the Ministry of Justice, the Department of Community Development, the Women's Refuge and Women's Resource Centre.

The meetings in Fitzroy followed an invitation made to the Commission by senior members of the Fitzroy Community at a festival to celebrate twenty-five year anniversary of the Kimberley Land Council at the Wuggubun community in the East Kimberley in 2003. These senior men and women wanted to discuss matters related to the coexistence of "two laws" in the Kimberley, and also wanted the Commissioners to hear their concerns about relationships with the police and what they saw as lack of adequate consultation with Fitzroy Valley Elders and Aboriginal organizations on a range of justice related issues.

## **MORNING SESSION**

### **1. Traditional Law and Punishment**

The "two punishments" issue was the subject of considerable debate throughout the morning session. The Elders said that, presently, the Court tended only to listen to "one story" and was deaf to the other (Aboriginal) story. In one case, for example, a man was punished (according to Aboriginal law) following an incident where someone fell from the back of a truck he was driving. He was charged with driving related offences (including driving while above the legal alcohol limit), he had also broken Aboriginal law – the very fact that someone had died when he was in charge of the vehicle meant he had broken Aboriginal law, irrespective of whether he was "at fault" in the western legal sense.

So the man was both punished by the community and imprisoned by the white-fella law. The meeting believed that the court should have taken Aboriginal punishment into account and given him a non-custodial sentence. However, the magistrate, in this instance, declined to take this punishment into account.

This meeting raised a number of important related issues:

- There is no consistent mechanism for ensuring that knowledge about Aboriginal law and punishment is relayed to the court.
- Who should do this and in what form?
- Should there be "cultural reports" to courts, which include issues of alternative punishment and if so, whose responsibility should it be?

- Aboriginal Law should be taught in Universities to lawyers, to all training in law. There should be compulsory training courses – including cross-cultural awareness – in the bush.
- There also needs to be more Aboriginal people involved in the court, sitting with magistrates, as interpreters, and so on.
- Police do not understand that Aboriginal families face retribution if offenders do not face punishment – they are frequently denied bail for this to occur.
- Police fear that the person might die – and that they will be held responsible.
- Practices are very ad hoc. Sometimes Magistrates will not bail/remand offenders so that they can face punishment. In other instances they will do so. Occasionally magistrates do take into account the fact that punishment has occurred and make the necessary adjustment when sentencing.
- There was a case involving a Balgo man who stabbed a youth in the thigh. The Aboriginal Legal Service was successful in getting the Magistrate to understand that the act was not senseless and that the choice of the thigh was not arbitrary. The wounding had been carried out correctly in accordance with Aboriginal law because of an infraction of Aboriginal law. The Magistrate took this into account and the offender was given a three month Good Behaviour Bond.
- Magistrates should also be informed when punishment is carried out, and there should be a mechanism for verification. The punishment needs to be witnessed.

## **2. Elders**

- There was a strong belief that Elders had been undermined – that “authority has been stripped from Elders”. The view was that old people should have the authority to jail young people who played up on communities. Currently, young people were “more afraid of the police than Elders”. This was wrong and authority should “run both ways” – police and Elders.
- Cases involving the potential for double punishment should be the subject of negotiation between appropriate law people and the judicial authorities. In relation to the man who was imprisoned and punished by the community (noted above), a participant said: “Someone should have been sitting with the judge at a ‘negotiating table’ discussing this. He shouldn’t have been punished twice. There should be an Elders Council or Commission sitting with Judges and Magistrates”.

## **3. Welfare and Family Violence Issues**

- Elders should be involved in the resolution of family violence cases. If there was traditional punishment for family violence this would break the cycle. At the moment Aboriginal men claim Aboriginal law when they give

their wives a beating, the Elders can verify whether this is a genuine case of law-breaking or just “bullshit” law.

- The “kardiya” (white-fella) criminal justice system offers no safety for victims, neither does it change the behaviour of perpetrators.
- There also needs to be training on family violence issues in Fitzroy, for all the agencies involved.

#### **4. Burial Issues**

- It all depends on which group you belong to. Family has the right to decide where and when someone is buried - not the spouse: it is not often an issue here, people generally know the rules.
- KALAC has been successful in repatriating the remains of people from all over the world. It is important that people are buried in the right place and that blood relations are returned from other places. KALAC has been involved in sensitive work moving remains from the old cemetery (which has been subject to flooding) to a new site. They have been successful in exhuming bodies that have been buried in other country and returning them for burial in the Fitzroy Valley.

#### **5. Policing Issues**

- There was a strong perception that the police picked on Indigenous people, and that there were problems with the police culture. Racism is a problem with the police. Police, “lie in wait” for Indigenous drivers, they don’t stop white people when they come out of the pub.
- Different sergeants had different approaches, things change when a sergeant moves on and a new one is appointed. There is a need for some consistency, sergeants should not just come along and ignore arrangements and protocols that are in place and have been painstakingly negotiated between the community and the police.
- The Marrala Community Patrol has been taken over by the police. Some participants believed that there was a “deliberate strategy to undermine the Patrol”, led by key government and business agencies. The police have a patrol van to take drunks to the sobering-up-shelter, the van is like a police van, a caged ute. “It strips our people of dignity”.
- The defunding of the Marrala Patrol led the Aboriginal community to conclude that their aspirations were of lesser importance to the police and other agencies than the wishes of a non-Aboriginal service. Marrala Patrol placed the emphasis on safe drinking, drink reduction, and preventing alcohol related problems. Perhaps this was too challenging – there are interest groups with a stake in ensuring Aboriginal people spend money on alcohol.
- As things stand many people are being left stranded at the Crossing Inn. They take a taxi to the Inn but have no money to take the return trip. This leads to more accidents outside of the Inn and on the streets. People have been run over on the dark streets, this was why Marrala was established in the first place. Marrala had two 18-seater buses. It was able to be proactive and take people home before there was any risk.

- The police had refused to have two way radio contact with the patrol bus. Essentially, the police see Marrala's role strictly in terms of transporting drunks to the sobering-up-shelter. However, Marrala works according to Aboriginal law - and has to be aware of the possible consequences of transporting heavily inebriated people to the shelter, they may die or be seriously injured. The Patrollers could be subject to punishment. Marrala works through the authority of the Elders, all five language groups were represented on the bus. The bus had to stop working when there was some "sorry business" –this was used as the pretext to axe the Patrol.
- "The police think they know best", they ignored the views of the Elders, an example given of when Elders advised police that they could track missing youth.
- Police response time is very poor. They take too long to respond to domestic violence incidents. The police are not a 24-hour service in Fitzroy Crossing, they shut up shop at midnight during the week and 2 am weekends.
- There was a death in custody in early 2003. It involved the death of a young person who fell from the back of a police vehicle. The family felt they had been ignored by the police hierarchy. They had never called them to explain anything or to express regret or remorse at the death, when there had been a clear breach of a duty of care. Senior police should have come to Fitzroy and face the family.
- The Coronial Inquiry found that the youth's death occurred by way of an accident but made findings in relation to police management and the design of cage on the vehicle.
- Police have no clue about cultural issues – even though they all profess to. One police officer said "my boys understand the lingo", meaning the five Aboriginal dialects spoken in the area. This is not true.
- Basic safeguards, such as Anunga Rules, are not adhered to.
- They refuse to accept the need for a proper interpreter service. The Kimberley Interpreter Service (KIS) is not used by police and courts, even though it provides an excellent service.
- Aboriginal people tend not to become Aboriginal Police Liaison Officers (APLOs) because "we don't want to lock up our people". Aboriginal police should be from the area, here they brought in APLOs from Wyndham and Mullewa, they are "police lackeys", not representative of the Aboriginal community.
- There was a belief that the Aboriginal community was not well served by the police.
- There was little confidence in complaints mechanisms: "police investigating police does not work". The Ombudsman's powers are too limited. People see no point in raising complaints.
- Elders want to see police becoming involved in proactive strategies, doing educational work around drink driving not just "enforcing". DCD has provided some funds for KALAC to take kids bush, Elders want police involved in these weekends to improve relations with the youth.

## **6. Departments of Justice and Community Development**

- These agencies are not based in Fitzroy but in Broome. Department of Justice, Community Based Corrections should put a position in Marra Warra Warra Aboriginal Corporation, not in Broome.
- Corrections have an expectation that people in Fitzroy should supervise those on Community Service Orders for nothing, people in Fitzroy want to help family, and are obligated to do so, but there should be some remuneration.
- There should be some resources put in to KALAC and organizations such as Marra Warra Warra to provide these services locally as well as supervise young people on community based orders and Conditional Release Orders.
- The same arguments can be made about the Department of Community Development. They have no full time presence here.

## **7. Community Justice Issues**

- There needs to be training in Aboriginal law issues available locally, run through KALAC. The agencies need this. There should also be training in the white-fella legal system available for the community.

## **8. Substance Abuse and Aboriginal Law**

- Alcohol and ganja are killing the young people, particularly ganja. There needs to be severe punishment for those selling ganja. Elders want to see dealers incarcerated, even their countrymen. There are enormous amounts of money involved, some people are afraid to speak out because they fear being shot if they identify dealers.
- Kids are going to school stoned or just hanging around. The police are not doing enough about the issue.
- The community sees ganja, particularly mixed with alcohol, as a serious drug problem.
- There also needs to be a drug education strategy suited to the specific conditions of Fitzroy Crossing. WADASA should be developing this with local health and related agencies.

## **AFTERNOON SESSION**

The session began with a brief presentation by the Department of Justice on the current status of the Draft Aboriginal Justice Plan and initiatives such as the Kimberley Justice Plan.

## **9. Aboriginal Justice Plan**

- Representatives from the Ministry of Justice outlined the justice planning process, which included both state and regional structures being put in

place. The Justice Plan had been developed as a partnership between state government and ATSIC, reflected in the "Statement of Commitment" document. The Plan has been developed at state level: there will be a Regional Reference Group, then there will then be the development of local planning – a three tier approach.

- The Fitzroy community voiced considerable concern about both the Aboriginal Justice Plan and the justice departments Kimberley Plan. The Aboriginal Justice Plan appears to be a "top down" initiative. They wanted to know: Who was to be on the regional group? How were they to be chosen? Who decides? It would be preferable to begin with a local reference group of elders and build a justice strategy from the bottom up. The examples of Ali Curong and Lajamanu in the Northern Territory were offered as examples to be studied. Community Justice Mechanisms need to develop from within community structures.
- The meeting also said that the Aboriginal Justice Plan and the Kimberley planning process would fail if they attempted to impose structures on the Fitzroy Valley they did not want. The locality had its own structures for Law & Justice issues, such as KALAC. Initiatives should be based on these. An Elders Panel of some kind should be a fundamental local mechanism. This constitutes the most up to date thinking in relation to the delivery of services to areas such as Fitzroy – do not set up new structures, rather "add value" to structures already in place and piggy back on existing resources. Those developing the Aboriginal Justice Plan should not try to "reinvent the wheel" when it comes to community based justice structures, rather work with those who are already involved in law and justice.
- The partnership arrangements between Fitzroy Valley Health and Nindilingarri Cultural Health Service was mentioned as an excellent example of such a process. In this case there has been a locally negotiated agreement between Fitzroy Valley Health Services and Nindilingarri to deliver culturally appropriate health care for the Fitzroy Valley population. The agreement includes identifying the roles of each in relation to the delivery of clinical care, early intervention programs, health education, research and development, health promotion and community development.
- The meeting feared that any regional justice structures would just be "stacked with government agencies". Instead there should be community involvement in implementation.
- Department of Justice personnel said they appreciated the opportunity to discuss the issues and that they saw the meeting as the beginning of a consultation process, not the end. There would be further visits and dialogue.

## **10. Policing Drug Issues**

- The meeting describes some of their concerns about the current criminal justice and related systems (as described in the morning session). The police replied that they were firm in their commitment to arresting drug dealers and told the meeting to give information regarding them to the police. The police also said that parents had to accept responsibility. The meeting responded that Aboriginal parents felt they had had their authority to control their kids taken from them and Elders were not

respected. Kardiya agencies tended to empower the children to challenge their parents rather than empowering the parents to control their children.

## **11. Department for Community Development**

- The DCD representative was anxious to work with local structures. Although she was a Care and Protection Worker, her brief was a Community Development one. The meeting responded that to do so they would need to work through credible local structures and understand the cultural issues – maybe place a children’s protection worker in KALAC.

## **12. The Women’s Resource Centre**

- The Women’s Resource Worker was also keen to work within the community and improve access to the legal system for women in family violence situations. Discussion turned briefly to the problems posed for Indigenous victims in the current criminal justice system, the “uselessness” and “inappropriateness” of restraining orders, the need to work through traditional structures to end family violence, while, at the same time, ensuring women and children’s safety at the point of crisis.

## Introduction

The Consultations in the Mowanjun Community took place on the 4th March 2004. Commissioners Gillian Braddock and Ilse Petersen, Special Commissioner Mick Dodson and Research Director Dr Harry Blagg attended the consultations on behalf of the Law Reform Commission.

The field trips are an essential means of ensuring that the Commission hears at first hand the views of Indigenous prisoners 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 practiced?
- in what ways is it practiced?
- in what situations is it practiced?
- what issues confront Aboriginal people when practicing 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 people at this time. The consultation has, therefore, not rigidly followed a pre-defined script, but has 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. Children and Youth
2. Traditional Law and Punishment
3. Education and Young People
4. Community Issues
5. Domestic Violence

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

### 1. Children and Youth

- If people do something when they are drunk they have a defence, this is not right. There is no respect for elders, particularly when the kids have grog in their system. "Drugs and alcohol are hurting our community."
- Girls today do "humbug" (generally, "humbug" or "humbugging" means behaving disrespectfully & ignoring traditional Aboriginal codes of behaviour). Cousins go together. We should go back to the old days. Young people are too interested in white fellow way. White fellow law -

drugs and violence. The youth are a problem. They should learn our language. If parents were respectful of culture then the children would be.

- Young fellows do not know the law. It all starts with alcohol, when they are drunk they feel ten feet tall and bullet proof. But the next day, when not drunk they hang their head in shame. Some of the youth say "If you take me (for punishment) then I'll get the policeman on to you".

## **2. Traditional Law and Punishment**

- One woman indicated that in cases of "wrong way" marriage (marriage outside of skin group) then people should be able to punish and it should not be classified as physical abuse. "It is just punishment and the people punishing under Aboriginal law should not be punished by white law".
- Aboriginal law always stays the same. Families get involved in deciding the punishment. If cannot punish in the traditional way, then this leads to a lack of respect and culture breaks down. They need authority to flog their children. The welfare has taken over and informs them that they cannot flog the children.
- Tribal punishment is not always practised in every situation.
- If white men do something wrong to black men then the white men should face black law.
- Our culture is not respected by others.
- If do the wrong thing, and are punished then the matter is finished. If it is not finished then person aggrieved can go after the other's family. If you are wronged, you punish until satisfied.

## **3. Education and Young People**

- There is a pre-school in the community, however, the children need to go to school outside the community. There is no elder involvement in the school as this is not encouraged by the administrator or principal at the school. The culture within the school is white. No black history is taught.
- In the education system, there is a chronic truancy problem. There is good home-schooling in the out station. The elders take the kids out of the community and teach them.
- There is racism at school, children are laughed at, therefore, children do not go to school. An example was given of a child who was laughed at because of their hair.

## **4. Community Issues**

- The town is run by white men and money counts. There was no justice for black fellows and the attitude from the police is all wrong. There was a comment about the high level of racism in Derby.

- The community is trying to get their bylaws together, this has taken some three years. The process is just too long and hard. However, the bylaws were put forward as a way to address issues of:
  - alcohol,
  - fighting between partners,
  - abuse,
  - non-payment of rent.

It would allow the community to exclude people who muck up.

## **5. Domestic Violence**

- Domestic violence is dealt with by the white system as the black system cannot deal with it. Black system cannot work on this issue, as it will cause conflict between families.

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1. Children and Youth
2. Elders
3. Governance and Community Issues
4. Justice System
5. Policing Issues
6. Family Violence

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

### 1. Children and Youth

- Kids lack respect for culture. We need re-empowerment of our people and our structures of authority.
- Lack of education, drugs and alcohol, these are real problems.
- White-fellas might think flogging kids is abuse, but it's cultural way.

- Skin systems are still crucial, but many young people reject them and get involved “wrong way”.
- Even church groups like the Uniting Church feel it is essential that Aboriginal law and culture are strong.
- Some people are wrong when they think that DCD stops Aboriginal people having power over their kids: the “image of the 14-16 year old, armed with legislation’ is a myth.

## **2. Elders**

- “There are elders and elders”. Some are from law side and others are elders because they senior people with wisdom and experience.

## **3. Governance and Community Issues**

- Local Government is a “European model”, not well suited here. It is not well set up for consultations with Indigenous people. Local Government has only little involvement from Aboriginal people – ATSIC does a lot of the relevant work. The Shire works hard at involving Aboriginal people. It has service agreements with communities such as Looma and Mowanjum to provide services. There are also Indigenous Land Use Agreements,
- There needs to be better education about the role and benefits of local government.
- People need to be aware that only a fraction of LG money is from rates – in Derby its \$2 million of \$16 million.
- Derby has a large Aboriginal population, but there is no “Aboriginal space” in the town. Police move Aboriginal people on. Need somewhere to congregate. Council has no resources to build an appropriate place.

## **4. Justice System**

- Kids are remanded to Perth. They should be remanded here, Banana Wells only takes 6. We need a remand facility here, and more use of CROs on stations.
- Up here, people breach orders but warrants not served for 6 months.
- The elders support the Numbud Community Patrol. Patrol people need knowledge of the law, and they also need local knowledge of issues.

## **5. Policing Issues**

- Relations with the police are always an issue in Derby. There have been some good cops but some very bad ones as well. Generally speaking the police do not respect Aboriginal people. They do not even respect those they know to be community leaders and elders, such as the time when they told the Council Chair of Mowanjum to move on, he was waiting for a lift, it was humiliating.

- They use pepper spray to excess when it is not needed. “Our kids are terrified of police, there have been deaths in custody in Derby lock-up”, one recently. Harassment is an issue.
- There is a culture in the police, too much racism & lack of professionalism. “People are just thrown in to paddy wagons”. “It goes back to colonial days”. People are still alive round here from the Sturt Creek Massacre.
- One woman told a story of being at a meeting with a new police officer (up from Perth): “I look sort of white: when I told him I was Aboriginal he said, ‘you must be one of the good ones then’. I thought about it and wondered, ‘is he being racist?’ He just said it so matter of fact, like it was just ok to talk to me like that, he couldn’t see anything wrong”.
- We need good cross cultural training for police, in this area by local elders.

## **6. Family Violence**

- Women often want to drop charges, they want to cancel VROs. The police tell them they can’t. Women want the abuse to stop, not men jailed.
- VROs have become a full time job for JPs, they are sometimes taken out unnecessarily when just cooling off is needed.
- The Derby Family Violence Prevention Programme has credibility. The Shire has been supportive. It has had funding renewed by Commonwealth. It has young men and young women’s programmes.

# APPENDICES

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**Appendix I:      Memorandum of Commitment**

**Appendix II:         Format for Submissions**