

Law Reform Commission of Western Australia

## **Aboriginal Customary Laws**

Project No 94

# **THEMATIC SUMMARY OF CONSULTATIONS IN THE SOUTH WEST AND GREAT SOUTHERN REGIONS**

May 2004

# The Law Reform Commission of Western Australia

## **Commissioners:**

### ***Chair***

Ms AG Braddock SC, BA in Law (Cambridge)

### ***Members***

Ms ID Petersen, LLB (Western Australia)

Dr CN Kendall, BA (Hons) LLB (Queen's) LLM SJD (Michigan)

### ***Executive Officer***

Ms H Kay, LLB, LLM (Western Australia)

© State Solicitor's Office

ALL RIGHTS RESERVED

First published in 2004

Applications for reproduction should be made in writing  
to the Law Reform Commission of Western Australia  
Level 3, BGC Centre  
28 The Esplanade  
Perth WA 6000

ISBN: 1 74035 035 9

Printed in Western Australia

# Table of Contents

---

Preface..... iv

Terms of Reference ..... v

**Thematic summary of regional consultation meeting in the South West region:**

BUNBURY ..... 6

**Thematic summary of regional consultation meeting in the Great Southern region:**

ALBANY ..... 13

Appendices ..... 22



## Preface

---

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

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

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

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

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

## Terms of Reference

---

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

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

Particular reference will be given to:

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

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

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

Peter Foss QC MLC  
2 December 2000

# BUNBURY

28 & 29 October 2003

---

## Introduction

The consultations in Bunbury took place on the 28th and 29th of October 2003.

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

The field trips are an essential means of ensuring that the Commission hears 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 Commission attempted to meet with a cross section of the community and relevant agencies involved with Indigenous people.

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

1. General context
2. Family relations and the law
3. Cultural authority and elders
4. Children and youth
5. Aboriginal law today
6. Education, training and employment of Aboriginal people
7. Substance abuse and aboriginal law
8. Intellectual property/cultural property rights
9. Burial and inheritance practices
10. Criminal justice issues
11. Racism
12. Welfare and family violence issues
13. Deaths, coronial inquests and inheritance
14. Other issues

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

## **1. General context**

- The comment was made that the Aboriginal Justice Council has already answered the questions outlined in the Commission's Terms of Reference. "How many times do I have to meet before we get justice for ourselves?"
- White people have a lot to answer for.

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

- Provide us with adequate housing and then we will be in a position to look after ourselves. Housing is an issue as there are obligations to family. Homeswest needs to respect what the families want.

## **3. Cultural authority and elders**

- Homeswest and other agencies deny the cultural authority of those Noongar families with a longer connection to the area. Frequently, Aboriginal people from outside the area are given priority in housing. This breaks Aboriginal law.
- There needs to be a set of "cultural protocols", setting out the appropriate form of behaviour for those coming from elsewhere. They would define who has the right to call themselves Elders and, therefore, speak on behalf of local people. Too often Noongars who have moved here from other parts of the South West claim the Elder rights, this is unacceptable.
- Anti-social behaviour is a problem and Aboriginal people are not able to regulate the people that come into a region.
- The protocols would also guide the decisions of government agencies when dealing with the Aboriginal community.
- The issue of the identification of elders was frequently raised. "Previously we had our elders and they were known - who are they now?" A name is put forward and backed by family groups. If you identify the family groups, they will identify the elders in the family groups. It should not be just a question of who speaks up the loudest.
- Government choosing elders is a flawed process. Status of elders has evolved, however, some elders cannot deal with contemporary issues. Committees backfire all the time, vote the problem in.
- The Elders are getting tired. They need to educate the young ones, to help the young ones.
- Elders should be paid for the information they pass on. The information has to be protected.

## **4. Children and youth**

- The question was asked, "Why are our children in prison?"
- There is no support for strong Aboriginal managed projects intended to work with our young people and their families. Lake Jasper is a good idea

-although it has never received the support it needed from government. Government agencies such as DOJ, education and DCD have never grasped its potential as a project dealing with the whole family, not just kids in isolation, that is not the Aboriginal way.

- Kids should have family and community support. Work has to be holistic.

## **5. Aboriginal law today**

- Until Aboriginal people can apply their law, they cannot deal with the problems created by colonization.
- The question was asked, "How can our young people know the law? There is not much traditional law around here, its more about understanding and respect."
- Hunting and fishing rights should be recognised. There is an issue involving Rangers catching people and prosecuting them for taking kangaroo. Hunting is a part of keeping the law alive and Aboriginal people need to pass this knowledge to the younger generation. Hunting and fishing are also a means of keeping a family alive and teaches the children respect. If people are prosecuted, then there is no respect. Aboriginal people should have the right to hunt and fish. The methods that can be used can be modern which includes using a gun. Hunting and fishing includes a relationship with country and does not encroach on other people's territories. Kids learn the connection with the land. Hunting teaches respect for the land.
- Law held people together. When the law is dismantled then "we are in real trouble". This needs to be changed. There needs to be cultural awareness. Presently there are two peoples and two laws and aboriginal people cannot resolve things the Aboriginal way. Sometimes good men are in prison for pay-back.
- The issue was raised about the historical connection versus traditional connection to the land. Who are the traditional owners?
- How people address each other is also a part of the law. For example, a grandmother is addressed by not mentioning her first name.

## **6. Education, training and employment of Aboriginal people**

- A comment was made that "they are taking our language and culture away from us."
- There are Aboriginal stereotypes and people do not wish to employ Aboriginal people. Government Departments are not taking on enough Aboriginal people. There is not enough nurturing and mentoring. In general programs are set up to fail.
- There is a need for Aboriginal studies that recognise the past. "We need to fix that first". This is to be taught in schools. We have to acknowledge the past.
- The schools are getting too big and Aboriginal kids are not catered for in the system. The whole education system needs to be looked at again. Aboriginal language and cultural learning environment has to be reviewed. History is important. The community has put a value on Aboriginal culture.

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

- Misuse of drugs is a problem. There should be a drug and alcohol rehabilitation centre in Bunbury and there is no sobering up centre in Bunbury.

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

- Aboriginal knowledge belongs to the community and the community should have rights over this knowledge. Art and language belong to the people. Aboriginal knowledge and culture should be protected and controlled for their benefit.

## **9. Burial and inheritance practices**

- There are occasional disagreements regarding burial. Families and spouses sometimes disagree on where someone is to be laid to rest, Aboriginal way is for family to decide, but this is not always followed.
- Tend to follow "white" practices around inheritance, but most old people still do not make wills. This creates some family conflict.

## **10. Criminal Justice Issues**

### **(a) Courts**

- The jargon used in court is not recognised by Aboriginal people. Aboriginality is not recognised.

### **(b) Funeral Attendance**

- The whole family and connections need to attend. This should be respected within the prison system.

### **(c) Prisons**

- Aboriginal people have life long contact with the system - they get "life imprisonment by installments". We need better education and employment options, Elders should be involved in prison programmes and appropriate post release schemes.

## **11. Racism**

- One person gave an example of being refused entry to the Rose Hotel. Discrimination has to stop. White people have to respect the individual person. There are issues of shaded discrimination and Mr Gallop's comment about Aboriginal parents not looking after children was offensive. Aboriginality is about respect.
- "There is a lack of respect." "We are not considered as equal."

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

- Currently there is “mess and chaos” in the Aboriginal family. Family violence is an immense problem, the Gordon Inquiry illustrated this. Family violence is exacerbated by poverty and hopelessness. Standards of behaviour in some families is appalling and there is no simple solution.
- There should be a halfway house for violent men. Government agencies do not use their money properly. There is a need for something in the prison system to help prisoners when they get out of prison. Counselling is needed for the boys. A holistic approach is what is needed. Treatment programs in prison should include the family.
- There was an assertion that the Bunbury area had the highest level of domestic violence in the region.
- Early intervention was needed. Sessions giving information teaching parenting skills and taking people out of the home rather than assigning them to a jail. The programs offered in prison for anger management have no impact as they are not designed for Aboriginal people and no-one will go to them. Programs have to be devised for Aboriginal people. As there is no consultation with Aboriginal people it is not surprising that they are not culturally appropriate.
- More work needs to be done to identify the family groups in the area and for each to identify its Elders.
- Family feuding is an issue and people need help.

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

- In relation to inheritance, material things do not matter.

## **14. Other issues**

- Aboriginal people urgently require an economic base to progress. Only land ensures this.
- Currently the region is being stripped of resources, the DIA office has closed and we have no Aboriginal Justice Council - what happened to this?
- Bunbury does not get any support. ATSIC and DIA are not here. The Blue Light disco closed down, as did the Police and Citizens group. There is also a need for a night patrol.
- All the funding goes to remote areas. The perception is that Aboriginal people in the region are more urbanised and that their voice is not loud enough.

### **Moving forward**

- There was considerable interest in the development of some local Aboriginal justice structures, or mechanisms. These included the development of an Aboriginal (Noongar) Court in the vicinity and some formal liaison structures involving justice and welfare agencies and Aboriginal people (a community justice group).

## Feedback received in Bunbury on 24 February 2004

- There is a need to quantify who is an elder and who isn't. This is difficult as Bunbury has a lot of transient people and there is no Council of Elders. Currently those who are high profile, most vocal or most convenient are the ones who are consulted. This is causing embarrassment to the community. There is a need to delve into the issue but a lot of government departments are reluctant to do so. It suits some people to create division.
- There have been incidents of young people talking for Elders, that shouldn't happen.
- The whole community should be consulted and the community should elect who the appropriate Elders are to consult further. No one talks to Elders.
- Aboriginal people in government departments need to be more accessible, not hidden from their people. The power to sort issues out quickly has been taken away, out of the communities.
- People need to be taught protocols and local cultural awareness. Once they understand the issues then they can better assist. But it has to be a local who delivers the cultural awareness.
- There was praise for the Lake Jasper programme, however, some said there is the need for a follow up system run after it, which takes in parents as well. A holistic system. Some were re-offending to get back on the programme. Others commented that Lake Jasper doesn't suit everyone. Some claimed they should be dealt with in Bunbury and not sent off to Lake Jasper. There is a need for local solutions for local problems. If you include the local community you'll get better results.
- In 2000 it became compulsory for schools to offer indigenous studies. Many schools are not including it in their curriculum, despite it being compulsory. There should be checks to make sure Indigenous studies are being offered.
- With regard to hunting and fishing rights, there is a local agreement with local CALM officers. However, young CALM officers often don't know the protocols. Some CALM officers don't have an understanding of black fellas. They have never sat down with them.
- The issue of one person giving their view of Aboriginal culture also causes issues in the area of hunting and fishing rights. For example, catching marron in a way that is not allowed by authorities. The person charged explained that the method used was traditional. The authorities spoke to someone who claimed to be an elder. The elder told them that the method was not traditional, but this elder was from a different tribe and his family had never caught marron using this method. The wrong person was spoken to.
- There was an issue raised about access to land. How do we access our land so that we can hunt kangaroo and emu? Some have no connection to the land cause we were in missions, but we still know our traditions.
- With regard to Intellectual Property and Cultural Property Rights, it should be up to the agencies, for example TAFE etc, to share copyright information with the students so that they are protected. Individuals need to obtain their own economic independence and intellectual property can provide that independence.

- There is a need to protect resources such as timber minerals etc, however, not for monetary reasons. Indigenous people have different values. Money is not a part of their value system.
- Courts are culturally inappropriate. It would be good if representatives of the community could have the opportunity to visit the Koori courts in the Eastern States to see if the innovation could be adapted and applied to the Bunbury region.
- The life expectancy of Aboriginal people is a lot lower than the rest of the population. Aboriginal people are missing out on a lot as a result. For example the government is still running the same rules and time lines for Aboriginal people with regard to superannuation and the retirement age. The average Aboriginal male only lives to the age of 45 and the average female to the age of 48. They don't reach the age of retirement and therefore do not get access to their super. There is definite inequity. These funds end up lost, sitting in an account somewhere, because the family doesn't know to apply for them. This needs to be advertised so that Indigenous people are aware of the processes involved to claim lost monies.

## Introduction

The consultations in Albany took place on the 18th November 2003.

Commissioners Ralph Simmonds and Ilse Petersen, Special Commissioner 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 Commission attempted to meet with a cross section of the community and relevant agencies involved with Indigenous people.

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

1. General context
2. Family relations and the law
3. Children and youth
4. Elders
5. Self-policing / governance
6. Traditional law and punishment
7. Community justice mechanisms
8. Mental health issues
9. Intellectual property / cultural property rights
10. Cross cultural awareness and training
11. Education, training and employment of Aboriginal people
12. Criminal justice issues
13. Racism
14. Welfare and family violence issues
15. Feuding
16. Deaths, coronial inquests and inheritance

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

## **1. General Context**

- Perhaps European law should be in a form that is more intelligible to Aboriginal communities, as well as to others. Traditional law is in fact something of a model of real simplification for European law.
- Aboriginal people – were treated like second-class citizens – the white people have stolen their culture and this project is all too late.
- Aboriginal peoples do not understand the protracted European processes. Their own are quick and decisive, especially in relation to domestic violence. Traditional law responds to the wish of the families for closure.
- One person expressed the view that it (reform) will never happen and in the end it (law) will all fade away. “Nobody knows about our law down here”. Culture will die out if its not passed down to the young people. One person said, “cannot go back”.
- There was a sense of loss and sadness speaking about the massacres and the “policy to breed out” Aboriginals and a feeling that there was a loss of Noongar identity.
- One person stated that he had been institutionalised all his life. People have been half brought up in one system and half in the other.
- Reconciliation and saying sorry were very important.

## **2. Family Relations and the Law**

- At present we have mixed communities, which are not complete and are unbalanced. Family feuding is a problem. We have families, not communities, in Noongar culture. One’s sole responsibility is to one’s family.

## **3. Children and Youth**

- Children and young fellows are no longer disciplined. Children see that and grow up without discipline. Aboriginal children are now using the white man’s law to protect them.
- Children could in the past be quickly and physically disciplined, but not any more. This is because of the police’s powers to intervene.
- It should be noted that some families will not take responsibility for problem children, as where there is a relationship change, or simply fatigue. Grandparents and other carers will share the children so as to maximise the return from welfare payments.
- Parents, grannies, uncles and aunties are not permitted to chastise children, who thus run wild. Admittedly, there must be some limits. But there is no recognition of the authority of persons other than parents.
- We need to give young people values they can use, while offering them redress for bullying. There is the problem of self-help attracting punishment under white fella law.
- Children are not getting the stories and the proverbs. They cannot be punished by the elders. And they can’t be taken on the “heroic journeys”

that could help to give them the traditional ways, for the same reasons. These “heroic journeys” have apparently worked in South Australia, as an alternative to going through the law. These journeys need to be reintroduced into communities that have lost their traditional law.

#### **4. Elders**

- There was discussion about the elders. The elders are not elected by the community. An elder is someone you respect due to their wisdom “what they say makes sense”. “Young fellows listen to them”.
- There should be an Aboriginal Court of elders where there is a fight over issues.
- Elders should get more respect, with a greater role for them in relation to young people. Young people don’t respect elders as they did previously. We have young people extorting money from elders to help with such things as the acquisition of clothes. At present, young people don’t respect European or traditional law.
- Drugs, alcohol and unemployment are serious problems for us. White fella law is too soft on the young. The elders could help. If young people knew the stories, they would pay the elders their proper respect.
- Our elders are somewhat younger than has traditionally been the case. Most are below 40. Most will not live past 50.
- Elders should be recognised for the training they have received. However, such training is not now being provided. See the importance of having the elders advise those at summer schools on the sites that are important to the communities.
- The young are not inheriting much from the elders. Very few young people want information on traditional law from the elders. Nor are the elders anxious to share information with them. What’s important for the young currently is fitting in with their peers.
- The desire of the elders for payment to share knowledge is the outcome of a history of broken promises.

#### **5. Self-Policing and governance**

- See the development of local government accord with Aboriginal communities. There has also been the giving of parkland to communities. There is not so much an emphasis on local government law as on native title law.
- There is one Aboriginal person in the Department of Justice locally, a person who is invisible to us. This is frustrating for the local communities, who want to see such people performing their roles. And the roles that are recognised by the Department sometimes do not allow for work with the communities.
- Although the law started here, it has been a long time since some one from here went through the law.
- Places that are important to us, like the Stirling Ranges, are places where Aboriginal people now cannot go. It is an insult to be told that we cannot use the land in the traditional way. We cannot take the old people to the

Stirling Ranges without working with government officers, which is disrespectful to our traditions.

- We can't go out to get bush tucker, and thus cannot bring children along to learn this tradition.
- When trying to find family histories in local records, our people have encountered demands that seem to require us to grovel. This is inappropriate treatment for "first peoples".
- There is a problem with people who never married in the "white fella" way, and thus are recorded as "never married".
- Fragmentation comes from living in the European community. Fragmentation is not as much of a problem in remoter communities. Thus, in some cases we could not get volunteer visitors for the prisons to speak with certain prisoners, as they were from other families. The fragmentation causes problems for other service providers, such as in nursing and home service. If there are such difficulties with service provision in health, how much greater would the difficulties be for justice delivery? There has, however, been an agreement between Silver Chain and the local communities, an agreement which has worked.
- But elders disagree among themselves about what traditional law is. There is criticism of them by others for talking about others' country. In fact, one could say that traditional law is in the Albany area largely lost; the elders themselves might be prepared to concede this.
- There is in fact something of the Afro-Americanisation of Aboriginality. Thus, there is the matter of integration of families prior to taking on traditional law. The issue is one of fixing families, rather than fixing communities.

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

- Aboriginal law should be respected.
- There is a need for government to recognise land ownership. There is a real connection with land.
- Double punishment is an issue.
- One person indicated that if you commit an armed robbery then you are punished white way but if it's a family issue then it should be the Aboriginal way, ie feuding if nothing is done - get the elders involved.
- Western law needs to look at traditional law, not vice versa.
- Note the difference between communities, for example in the finality of payback in remoter areas, and payback's role as part of a vendetta in urban areas. In those areas it is no longer a matter of customary payback, but of outbreaks of feuding, without cessation. Thus, in urban centres payback must be approached differently from payback in remoter communities.
- What is at stake is the matter of acceptance of punishment in the traditional way. Failure of those punished to accept it will unsettle the community.
- Payback is a matter of knowing where to spear, and has advantages over incarceration.

## **7. Community justice mechanisms**

- The closest to traditional law systems in a community like Albany, is the Juvenile Justice Teams. Perhaps an elder should be included in each Team. Perhaps a separate Aboriginal Justice Team could be set up – there is model for this in New Zealand. The problem here is the different family groups. Setting up such a Team here then raises issues of representation, as well as of payment of the members.
- Note that the Juvenile Justice System now allows for cultural issues to be addressed in reports to the judge.
- Perhaps there should scope for anger management training as part of the array of diversionary options.
- There may a role for removal of the young for training in outdoor matters, not restricted to Aboriginal offenders. The young person may simply be in need of mentoring. The Bremer Bay experiment appears to have worked well, as part of a range of camps, for boys and girls. As ever, it comes down to families.
- There does not appear to be a street kids issue in Albany ? although there is the matter of transient children, without a fixed home, moving from house to house.
- Housing issues need to be resolved as part of the resolution of justice issues. It's a matter of house size, and special features such as those for children with special needs.

## **8. Mental health issues**

- Mental health issues for Aboriginals are very complex. These include appropriate visitors for them when they are in jail, alcohol, and drugs. Many slip into the cracks in the system.
- Mental health is a big issue. Given our people's sense of powerlessness, mental health problems are not easily remedied. Thus, it is important to reassure our people as to their value.
- Our people have nowhere to go to call for help. The police could be more supportive. Locally, the small psychology ward is always overcrowded, and there are no out of hours services.
- We do get opportunities to have counselling, but it is one-to-one. We need group and family counselling. We also need to be able to help ourselves; others really cannot.
- There are problems under our law with public shaming.

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

- See the arts programme involving fringe dwellers that was started in Kalgoorlie. There was a problem there of finding an ethical agent: they are important to enforcing rights such as when a painting was incorporated into a tea towel.
- See also the cases of the Warburton Women, who have started "Eco-spiritual" tours. Those going on the tours agree not to disclose what they learn.

- There is a need for greater protection of the writing of the communities. Anthropologists have signed protection agreements with Aboriginal communities committing themselves to look after the stories of the communities.
- Aboriginal communities need to secure agreements to preserve exclusive intellectual property rights in their members' works.
- There is the problem of preserving the languages. The solution of that problem is crucial to traditional law. The issues include recording, rendering the material in writing, translations, if so, by whom, and whether the translations should be into English only.
- Paintings that have been sold are lost to the painter and to the community.

## **10. Cross cultural awareness and training**

- There is a lack of cultural awareness training among many in positions of authority here. Attitudes have not changed much over the last few years. It is quite frequently the case, for example, that government officers tell us to plead guilty to charges against us.
- It is important to make whites aware of how the Noongar treat land, as part of the process of improving cross-cultural awareness.
- See the importance of fireplaces in their homes for Noongars. Yet HomesWest does not provide or allow for these in the accommodation they make available to us.

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

- "We need to be taught the real history of Australia, it's a shame that white fellows are taking the history away". "We need to know the history of massacres and the Aboriginal heroes". Government has to take responsibility for what happened and it has to be recorded. There is a monument in Albany to a white fellow who killed a lot of Aboriginal people; that is offensive. Aboriginal people need to know where we fit in. "Nothing has been done around here for Aboriginal people and no-one is responsible for that". "We need to know what happened with the black fellows and put it in the history books." So much of the history has been sanitised. "We need to write down the history and look at cultural education". "The history is there it just has to be written down".
- Put money into schools so that young people can learn Aboriginal culture. "Somebody give us a chance, the scales are not balanced".
- What is at stake here are the matters of education and value systems. There needs to be a big emphasis on education of the children in their own language and culture, from primary school onwards. Compare Maori language training in New Zealand, which has been an important part of the education of white children there also.
- ATSIC should be investing in the future for Aboriginal people for sustainable development. It is hard to get a job and ATSIC should be in a position to provide for Aboriginal people. Members of ATSIC provide jobs and grants to their families. They should invest the money in profitable

organisations and it really should be a multi-million dollar organisation. ATSIC has to be accountable.

- Employment is an issue. There is nowhere for people to go, no men's resource centre and so men go back into crime. They want a fair go and not to have a criminal record. There should be funding for Aboriginal people in jail to assist them on their release from jail and on parole.
- In Katanning there is not one person employed by an independent authority.
- One person said that if he was able to have full time work he would not involve himself in criminal activities, but now he has a record and as an Aboriginal then it is very unlikely he will get a job. "If I cannot get a job then I will sell drugs".
- On CDP there is no encouragement to work - part of Centrelink, but all it does is distort the unemployment figures. It would be best if rather than just going on CDP, a private employer would give 20 hours work and CDP give 15. CDP is a bit higher than employment benefits. There are no incentives to work, only pre-requisite is to turn up - there is so much untapped potential. A lot of people see their future as the CDP. CDP \$20 more than the dole. Its not included in unemployment figures. Few individuals are privately employed. There is a bit of the tall poppy syndrome with the kids and they are not encouraged to succeed. There should be more positions in government also getting kids from school and into worthwhile training in relevant areas. Presently Aboriginal kids are never going to gain any worthwhile employment.

## **12. Criminal justice issues**

### **(a) Police**

- We need Noongar policemen. There is disrespectful behaviour from police towards our children. We have been told by the police that we can't do anything about police conduct. This is even in cases where in effect some of our young people have been kidnapped.
- Aboriginal Liaison Officers can assist, but they lack the powers of regular police. The regular police need to have a better understanding of the roles of ALOs. When matters go to the next level from the ALOs, those matters tend to break down.
- ALOs are seen by the police as part of them, not as liaison with the Aboriginal community. ALOs should not be in uniform. Our people don't like to deal with them in their uniforms. However, ALOs do meet with the community on a regular basis. But there are only two ALOs for Albany as a whole.

### **(b) Courts**

- There is a lack of understanding in the Courts and in the police force of Aboriginal culture - there needs to be education in language and culture for both the white and black people.
- ALS encourages people to plead guilty.
- Language used in court, doesn't make any sense - Aboriginal language should be used. Also, there are different meanings given to language. What a white person may perceive as a threat, an Aboriginal person would

not. One of our countrymen translating is important. Aboriginal language should be brought into the Court.

- We need more intelligible language in courts, to help our people understand what is going on. And courts need to hear from the family of the accused and from the elders.

#### **(c) Prisons**

- Some boys see prison as a rite of passage, although they are still scared when they arrive.
- Our young people are abused in prison.
- There are problems in the local prison facility, with young men from far away and no visitors while they are here. Many in prison lose hope and also lose their culture.
- Notwithstanding the Royal Commission into Black Deaths in Custody, people still die.
- When Aboriginals leave jail, they are suffering a form of post-traumatic stress disorder, which needs treatment. There is at least post-release counselling for full-sentence prisoners. Also, juvenile justice elements are being adapted to the adult system. But there is, for example, the problem of a mentor, paid for by the Department of Justice, still being seen as part of the Department and not of the community.

#### **(d) Funeral attendance**

- Funerals are a problem because the extended family and obligations are not recognised. "I wanted to attend the funeral of my first cousin, I received a letter from my mother, but I was not able to attend the funeral and now that brings shame to me and I will have problems when I leave jail".

### **13. Racism**

- There are negative stereotypes of Aboriginal people.

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

- There needs to be a support structure. Violence needs to be spoken about more. There needs to be an Aboriginal Men's Group.
- Violence is the result of many factors; employment is one, Aboriginal people cannot get a job in this region.
- No support is given to grannies looking after children. Thus, this is a larger burden for them. The Department of Community Development pays good money to carers, but won't pay grannies. Their policies need to be changed, as to assessing who is eligible for support, and the forms of the support. There is no DCD consultation with grannies with whom mothers leave their children. Sports expenses are too high for parents, let alone for grannies.
- This is a result of substance abuse, usually but not always. Sometimes there may just be abusiveness. Consider the Gordon Inquiry's findings.

Here, traditional law appears neither to be part of the problem nor part of the solution.

- There is also much frustration in the communities, which seeks an outlet. Consider, for example, a grandparent who abused a child for not providing more money.
- Domestic violence solutions are made problematic because of disrespect for white authority. At the same time, traditional law has not resolved the domestic violence problems.
- Consider, however, the Geraldton approach, where Restraining Orders were designed with the appropriate consultation. But there have been problems there also, as where people are banned from shops for indefinite periods.
- There may not be enough consultation as to the underlying issues before the orders are secured. Thus, domestic strains may not be sufficiently addressed.
- Note that Noongar men who are prevented from seeing their children may often become violent.
- Counsellors need to understand the kinship system.
- Battered women may have had a victim mentality, based on being beaten as children for being naughty.
- In Aboriginal communities there appears to be an acceptance of certain levels of underlying violence.
- There is in family law some stereotyping of men as “always wrong”. Not enough time is spent on understanding the problem, and explaining the effects of the remedies to be used. There has been some use of Restraining Orders as weapons, in keeping fathers away from children.
- There is something of an artificial separation of welfare and justice, in WA at least. This is so even with the current impetus in government for departments to “break out of silos”. Consider for example the Disabilities Services Commission and its remission of drug or alcohol abuse to the Health Department, and dual diagnosis that puts people between agencies. All of this has led some families to play some agencies off against others.
- The Strong Families Program is proving successful. But there is the problem of the prohibition on the sharing of information between the Department of Justice and the police that flows from relevant legislation.

## **15. Feuding**

- Feuding is affecting the young ones. The young are being conditioned to feud here.
- Some of the feuding is an attention-getting stratagem.

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

- The family decides about inheritance.
- There is now much marriage outside skin groups, which creates difficulties for burial determinations. Negotiations can often solve these problems, however.

# APPENDICES

---

**Appendix I:      Memorandum of Commitment**

**Appendix II:        Format for Submissions**