In Western Australia, the Law Reform Commission is making headway with its Aboriginal Customary Law project. The commission's duties are broad in approach and will inquire into Aboriginal customary laws and criminal law, civil law, constitutional law and family law. The project also includes West Australian Court practices and procedures, the administration and enforcement of West Australian law, and provisions being made to identify and apply Aboriginal customary law. Importantly, traditional Aboriginal law people are needed to join in with the consultation process so that one day we may see our laws being recognised by the Australian governments.

The Law Reform Commission will later hand over a report to WA Attorney-General Jim McGinty that will be based upon the advice and guidance, provided by Aboriginal peoples throughout the State. It is envisaged that the report will authentically represent Aboriginal people's wisdom and knowledge about Aboriginal customary law that will form the structure, content and context of the final document, with the implementation of the recommendations stemming from Aboriginal people's needs for traditional law practices to be recognised and respected in Australia. The Koori Mail’s WA north-west correspondent, DESRIEE BISSETT, interviewed project manager Cheri Yavu-Kama-Harathunian about the project...

When was the unit established and how big is your team?

A team from the Crime Research Centre of The University of Western Australia was successful in gaining the tender for the project. One key factor of their success was that they categorically stated that if the project was to be successful in both Aboriginal and non-Aboriginal communities, Aboriginal people had to have key roles in the management and implementing of the project.

My appointment as project manager resulted from the approval of a Law Reform Commission’s Aboriginal Advisory Panel set up to oversee the first stage of the project. In March 2002 I began work on the first stage of implementation. My first task was to ensure that Aboriginal people were placed in critical and strategic positions within the project's organisational and operational plan.

At the governance level, two Special Commissioners of the Law Reform Commission were appointed. Dr Mick Dodson and Mrs Beth Woods are very professionally and highly regarded in the Aboriginal community. Then at the operational level we have the Law Reform Commission’s Research Reference Council, which also has highly qualified professional Aboriginal people who are very strong in their culture and who come from different regions throughout WA.

Because of budget constraints, council members are Perth-based. But the good thing is that each council member has strong links to the regions, and in this way one of the things they have already done is to give us a community contact through which we can make contact with the right people who can talk to us about how to go into their country the proper Aboriginal way.

In all there are 14 Aboriginal members and two non-Aboriginal research directors from the Crime Research Centre – Dr Neil Morgan, who is a lawyer, and Dr Harry Blagg, who is a criminologist/ethnographer. We are about to take on project researchers very soon.

The management level, of course, falls to me. So at every level I have ensured that we are making sure we come to the Aboriginal community.

Who has the power to change legislation in Western Australia in relation the Aboriginal customary law project?

It will come from the West Australian government of the day. After the project is completed, and all the research and consultations have been conducted, the Law Reform Commission will produce discussion papers for comment in the community, and once all submissions have been received, they will be considered by the Law Reform Commission, who will then formulate recommendations to government in a final report. The West Australian government and the current Attorney-General Jim McGinty have expressed strong support for the project, with Mr McGinty describing the project as a living document.

How will secret and sacred law remain protected but accepted as being an integral part of Aboriginal customary law?

This is something that the commission can only take direction from and be guided by the Aboriginal people who own those Things. We know that there will be those secret cultural and sacred law things that no one but the custodians of those Things has the right to speak about and who also have a responsibility to protect.

If we look into mainstream Australia, there are those organisations, clubs, societies and other formal and informal groups who have secret things. Well, the government never goes in and asks them about their secrets, or passes laws about them. So for our people, the same principle applies.

The commission will only receive what an Aboriginal person or community can freely give them in talking about Aboriginal laws, or which they want to share with the commission in songs, dances, or other things like ceremonies or rituals and cultural law practices. If it can’t be talked about, or shown, then the commission will respect that person’s or communities’ wishes. I think the best thing is that it will be the people themselves who will tell the commission that they can’t share something or talk about it.

And if they want it to be preserved in some way but not disclosed in public, that is something that the person or community who want it to be preserved will have to talk to the commission about, and the commission will be guided by what the people say.

I also know that there will be people who do not want to talk about things in a big meeting. If these people want to share their information, then it is the project team’s responsibility to make the arrangements for these people to do that.

No one, not even the Prime Minister of Australia, has the right to take secret and sacred law things from the custodians. To protect these precious things is the responsibility of all Aboriginal people, including me. I can’t break our law on this.

The commission will listen to the person or community and work with them to make sure that it is protected, treated with the respect and value it deserves, and they will go to great lengths to make sure that they work with the people to keep it the way.

If you think about how long Aboriginal customary law has been practised in Australia, this issue must be really huge and to make sure it remains the way it is in our law, it has to be looked after in the same way people tell the commission how to do it.

Why was this project started?

It came about as a result of the commission’s work on Project 92 Review of the Criminal and Civil Justice System in Western Australia where the commission received many submissions on the treatment of Indigenous people in the justice system. The commission felt that the issues raised were very important and too sensitive to be dealt with merely as a chapter of the final report in Project 92.

The commission approached the then Attorney-General, Peter Foss, with the idea of a customary laws reference. The terms of reference were given to the commission in December 2000.

In January 2001 the commission sought tenders for the project and soon after inundated with responses. The council advises the commission and its project management team on issues to do with the general running of the project (such as Indigenous concerns over data and access to the project) and advises on culturally appropriate processes.

To my knowledge it is the first time that a government organisation has been able to establish an Indigenous team with its operating functions. The process has taken a while because the commission has been all pains to ensure that it was correctly set up, culturally appropriate and involved Indigenous people at all levels of decision-making.

How much support are you gaining throughout the law profession for this project?

The response has been just amazing. It has come from legal professionals, magistrates, law students, even some legal people who have retired, not just here in WA, but across the country. You see, we Aboriginal people have been waiting for over 214 years for this to happen. Our old people, those who in their lifetime saw our law being taken away from them down to special people, showed people how to use our law the right way. Well, they are dying, or getting old, and now it is our turn. That concerns me. Can you imagine what it must feel like for them to hang on, year after year, waiting for somebody to listen to them, and ask them to pass the legacy on?

I think there is a lot of heartache out there. But I also think that there is a lot of hope, too. I carry hope, and when I meet with our people, and they say things like ‘It’s about time’, or ‘We been waiting for this for years’. I feel such a burden of responsibility to do this right.

We have to do it right to show respect to people all over WA who have waited for so long. The support is very encouraging, and yet this support has come about because really the law profession has stepped in. I think about the many reasons as to why Aboriginal people are often caught up in the criminal justice system.
Kimbrelly Walmajarri law man

**Walmajarri law man supports project**

It be similar to the new Koorie court in Victoria?

This project is nothing like anything that has ever been attempted in Australia. It is the first time in the history of this nation that one State government has taken this tremendous leap into legislation and all of our law people, with all of its legal and criminal justice systems, into one court. And the court is part of the model.

A court is an outcome of a legal system. We have got to get that right first. That's the first thing.

We are creating the model of a justice system that was only talked about in previous reports like the Australian Human Rights and Equal Opportunity Commission's Recognition of Aboriginal Customary Laws Report No 31 in 1989.

So I can't speak about the Koori court. I don't know. We haven't talked about the Koori court yet. There may be some knowledge and legal principles of traditional Koori court. It is a court system that we have got to think about, about which a court, or a justice system, can evolve from.

What is at the core of the Koori court? Is it Aboriginal law? We have adapted some elements of that.

Then we were told that 'urban' people had lost their culture. So here we are, all these labels, from 'stolen generation' to 'half-caste', 'full-blood', 'quadroon', 'traditional', 'urban'.

This project might be hard because every group has its own law. Other groups like Blumbula and other people might want to talk about their law and ways to be included (in the project) so it will work.

Some of our law is secret. White people might not know that. There are public law and sacred law. They are not at all straight out. We have our Elders and law people who work it all out.

Some may say, why should Aboriginal people receive a punishment different to others? If we go back to the idea of creating a court, an Aboriginal court? Well, the creation of a court, an Aboriginal court system.

Where is the project going over the next year?

At this stage we are hoping to do as much of the community consultations as possible, taking into consideration work time, cost, and survey time factors.

What is the process of this consultation work, and on arrival I was advised that there had been a death.

At this stage, the agenda is for us to consult with as many people as possible, and get as many writers and researchers writing and researching for the project. One thing I do not know enough about, the work will be done because we have waited for so long.

Finally we have the opportunity to make a change from the non-Aboriginal Constitution right down through the systems in our culture that are there because Aboriginal customary laws created the principles that govern the thes, the beliefs, values, etc. This has been done, but the systems have brought into existence and which are uniquely part of who we are as the First Nations peoples of this Sacred Country called Australia.