

# **COMMUNITY JUSTICE IN INDIGENOUS COMMUNITIES IN QUEENSLAND: PROSPECTS FOR KEEPING YOUNG PEOPLE OUT OF DETENTION <sup>1</sup>**

Paul Chantrill  
University of New England, NSW, Australia

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## **Abstract**

This paper examines the establishment and operation of the pioneering Aboriginal community justice initiatives at Palm Island and Kowanyama in Queensland and their prospects for realising sustained reductions in youth detention and recidivism. To date, their have been encouraging results suggesting that community control and self-management can be of great benefit in crime prevention, conflict resolution and offender management in remote Aboriginal communities. This may be critical to breaking the cycle of recidivism and culture of crime identified as major issues for Indigenous young people by the Aboriginal and Torres Strait Islander Social Justice Commissioner (1996) and other criminology researchers (Cunneen and White 1995 and Beresford and Omaji (1996). I argue that community justice initiatives will falter if they do not receive adequate support from government and suggest that building partnerships between communities and government agencies is a likely critical factor in the longer term viability of these projects. Specific challenges in forging such partnerships include ensuring that government agencies recognise innovative community approaches to justice and provide constructive support through the provision of adequate training and resourcing. These measures can strengthen community capacity to deal with mainstream justice processes and institutions and empower communities to respond and deal with the community demands and needs that arise.

## **Introduction**

Since their establishment over the 1993-94 period<sup>2</sup>, the Kowanyama and Palm Island community justice groups have made a significant contribution to the effective management and limiting of law and social order problems besetting the community (Chantrill 1997, Bimrose and Adams 1995). The achievements at these communities centre around increasing emphasis on community development strategies designed to improve opportunities for young people, the re-establishment of community authority and discipline based on the authority of community elders as well as efforts to improve the community's relationship with community and external justice agencies - the police, children's services and juvenile justice, corrective services and visiting magistrates. Drawing on available police statistics, court records and community sources, it is apparent that there have been significant reductions in juvenile crime and recidivism attributable to the operation of the justice groups at both communities. The achievements are all the more significant because they run counter to the state-wide trends indicating that the levels of Indigenous representation in Queensland's youth detention centres is increasing at alarming rates.

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<sup>2</sup> The Queensland Corrective Services Commission in 1993 made money available to the Palm Island and Kowanyama community to engage Yalga-binbi Institute for Community Development as consultants to explore opportunities for community justice administration in the community. A similar arrangement was later undertaken at Pormpuraaw but these remain the only three communities in Queensland where justice groups were assisted and established by these agencies. A lengthy and detailed consultation process was undertaken by Yalga-binbi consultants who were given a free hand by the Queensland Corrective Services Commission to deal directly with the communities at Palm and Island and Kowanyama.

## The Case for Community-Based Diversionary Strategies for Indigenous Young People

Australian Institute of Criminology data confirms that Indigenous young people are incarcerated in all Australian States and Territories at alarmingly high levels. Figures compiled by Atkinson and Dagger for the Australian Institute of Criminology (1996, Series 73 to 75) on persons in juvenile corrective institutions across Australia reveal that Aboriginal and Torres Strait Islander children are more than 40 times likely to be institutionalised in juvenile detention centres in Queensland than are non-Aboriginal children. This figure is nearly double the national average of 21.3 times greater likelihood for the incarceration of Indigenous young people. (Atkinson and Dagger). Table 5 in Series No. 75 in Atkinson and Dagger's study reveals that 61.8% of juveniles in Queensland correctional institutions for all ages as at 30 June 1996 were Aboriginal and Torres Strait Islander persons. As Table 1 below confirms, the proportion of Indigenous young people in detention centres in Queensland has actually been increasing in the 1994-1996 period. The high levels of juvenile detention in Queensland are second only to the Northern Territory where Aboriginal children are a much higher proportion of the total juvenile population. Scope of the problems alluded to by Beresford and Omaji 1996, p.15):

A visit to almost any juvenile detention centre in Australia will show the presence of a disproportionate number of young Aborigines . . . [Their] . . . experiences, which have led not only to detention for these people but, in some cases, also to death, are so common that they have become a rite of passage into adulthood).

**Table 1 Children in Detention in Queensland 1994–1996.**

	1994		1995		1996	
	A	B	A	B	A	B
<b>Number</b>	63	122	76	140	89	144
<b>Proportion of A as a % of B</b>	51.6%	100%	54.3%	100%	61.8%	100%

**Notes:** Column A represents Aboriginal and Torres Strait Islander Young people in detention centres and column B represents all children in detention centres

**Source:** Queensland Government (1997), *Royal Commission into Aboriginal Deaths in Custody Progress Report*, Go Print, Brisbane, p. 114.

The continuing high levels of juvenile incarceration, reflected in a more than 10 percent increase in the proportion of young indigenous people being incarcerated between 1994 and 1996, is all the more alarming given that several national and international inquiries on juvenile justice advocate limiting contact between young people and the formal justice system to avoid recidivism and a culture of crime amongst young offenders<sup>3</sup>. The problem

<sup>3</sup> The most significant inquiry in Australia, the 1991 Royal Commission into Aboriginal Deaths in Custody, in Recommendation 92 held "that governments should legislate to enforce the principle that imprisonment should be utilised only as an option of last resort". This approach has been echoed in the United Nations on *the*

is put succinctly by the Aboriginal and Torres Strait Islander Social Justice Commissioner (1996, p. 24) who notes that detention is often no solution when as many as 65% of juvenile offenders continue as adults to have contact with the criminal justice system:

Quite bluntly, the longer kids are able to be diverted from formal sanctions, the better are the prospects that they will avoid future problems. Contacts with the police, welfare and justice systems can, in themselves, be criminogenic.

The high levels of detention of Indigenous people can not solely be attributed to higher levels of offending. Cunneen and White (1995, 142) make the point that the high level of recorded offences may be attributable to other factors. Police discretion and decision making, court processes are potential compounding influences that can complicate the picture. They assert that police decision making can have a strong bearing on who and on what terms people enter the juvenile justice system. Empirical studies are cited which indicate that Aboriginal young people do not as often receive the benefits of police cautions as do non-indigenous young people as Police have the capacity to exercise such discretion. The recent study by Beresford and Omaji (1996, p. 74) of Aboriginal young people in Western Australia makes a similar finding:

Police are the gatekeepers of the juvenile justice system. Decisions taken by individual officers on the streets as to which groups to target, the frequency of contact and the range and number of charges laid all have a crucial bearing on the degree of involvement in the juvenile justice system.

Court processes can also work against the interests of Indigenous young people leading to a greater likelihood of those brought before courts ending up in detention centres. This is accounted for by Cunneen and White because prior convictions, i.e. possession of a criminal record, will automatically increase the likelihood of detention. A second element of court process is the preparation of social background reports prepared by welfare officers and juvenile justice officers. These can involve the use of psychology tests and ethnocentric assumptions about family environment that can be used in Court resulting in a higher reliance on use of detention than might otherwise be the case (Cunneen and White 1995, p. 149)

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*Standard Minimum rules for Non-custodial Measures* which calls for a greater commitment to the principles of “de-penalisation, decriminalisation [and the] principle of minimum intervention. The study contends that contact with the formal justice system can ‘contaminate’ young people who may otherwise have had no further contact with the justice system (Aboriginal and Torres Strait Islander Social Justice Commissioner 1996, Appendix D). The United Nation’s study *Crime Prevention: Seeking Security and Justice for All* argues against the ready use of detention on the understanding that the longer entry to formal justice can be delayed, the better the prognosis for the rehabilitation of offenders (Aboriginal and Torres Strait Islander Social Justice Commissioner Dodson 1996, p. 23). Given these national and international currents of reform it is ironic that the Queensland Government conducted a review leading to amendments to 1996 amendments to the Juvenile Justice Act 1992 reflecting the call to get tough on juvenile offenders.

## **Ways Forward: The Royal Commission and the Scope for Community Involvement in Juvenile Issues**

A number of the Recommendations made by the Royal Commission into Aboriginal Deaths in Custody involve recognition of the need for self-determination, empowerment and more opportunities for community involvement. The RCIADIC provides central insights and recommendations about the reform of the formal justice and correctional systems<sup>4</sup>. Apart from these, is the more generally phrased advocacy of greater self-determination and community control. In relation to juvenile justice matters the Royal Commission is less prescriptive. Recommendation 236 sets the tenor for an appropriate general approach:

That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs governments should recognise that community-based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding.

Reflecting this general approach, community involvement in juvenile justice issues at Palm Island and Kowanyama is not limited or prescribed to narrowly defined justice functions of punishment but relate centrally to prevention, identifying and responding to community issues and problems and providing local definitions and responses to these issues and problems. On a daily basis, issues such as parental supervision, recreational opportunities, social infrastructure, counselling and support services and community facilities occupy much of the attention of the justice groups. This broadening of focus provided by a community-based perspective enables attention to be given to the social conditions and circumstances that can bring people into contact with formal justice agencies in the first place. A heavy handed law and order response in these circumstances may in fact be disastrous.

Community-based research brings home to us some of the overwhelming issues the communities at Palm Island and Kowanyama have to contend with. These have been given recent international exposure when Palm Island the subject of a major feature in the British *Sunday Times*. (reported in the *Brisbane Courier Mail* 11 February 1998). The controversial article, drawing on interviews with community residents, described Palm Island in the following terms:

It is the most violent place in the world, a tropical island off Queensland that was once a secret penal colony for unwelcome Aborigines. Now there is an

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<sup>4</sup> Recommendation 88 calls for greater emphasis on community policing and community involvement and negotiation on appropriate policing and Recommendation 214 calls for stronger community input into community policing. Recommendation 215 calls for Police to consult with communities about police activities affecting the community; Recommendation 104 that stipulates that in remote communities "sentencing authorities consult with Aboriginal communities and organisations as to the general range of sentences which the community thinks appropriate". The Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner's (1997, p. 210) *Indigenous Deaths in Custody Report* identifies this as a crucial area for current reform. Dodson makes a specific appeal for establishing a juvenile justice sentencing service for magistrates providing knowledge of Indigenous organisations and willing individuals to be involved in rehabilitation and mentoring. Recommendation 216 appeals for adequate support and funding for community initiatives such as the Echuca scheme operating in Victoria.

epidemic of suicides. Since 1994, more than forty young people have killed themselves, claiming that they were possessed. But is it a ghost or the ghetto that's handing them the rope? (*Sunday Times*, London, January 1998).

The problems besetting communities like Palm Island and Kowanyama are indeed profound. They are bound up with the administration of these communities as authoritarian and controlling missions and government reserves, the displacement of people from traditional lands, the separation of children from families and so on<sup>5</sup>. The legacies of these processes have been profound resulting in serious social order problems relating to alcohol use, boredom, family issues and unemployment and at Palm Island an alarming trend in the increasing incidence of youth suicide<sup>6</sup>. A number of these issues came under close scrutiny in Blackman and Clarke's (1991) study<sup>7</sup> of far north Queensland Aboriginal communities perceptions about correctional issues. Their identifies alcohol and the breakdown of community authority function as interactive elements of continuing social problems:

In all of the communities we visited we found there were major problems of social control. In each one there were extremely high rates of imprisonment to aid in the control of behaviour associated with drug abuse. Indeed, people felt deeply the powerlessness of traditional norms in controlling, not only drug related behaviour, but that of their children. Every segment of the community . . . expressed their sense of powerlessness explicitly (Blackman and Clarke 1991, p.6).

Practical examples of social order problems were brought home to me during a visit to Kowanyama in 1995. In my discussions with the justice group members complained of how the situation came about where the young people no longer listened to the old people. New influences including the media, peer pressure, exposure to European laws and ways, and possible exposure to alcohol and drugs were significant factors contributing to the malaise (community meeting, February 1995)<sup>8</sup>. These concerns were reiterated at the *Customary*

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<sup>5</sup> Tyler's (1995) study of Aboriginal community initiatives in the Northern Territory, echoes the Royal Commission's recognition of the of the potential benefits of Indigenous self-determination, with the finding that: "Greater community involvement should address the problems from over-policing, cultural insensitivity of police officers and magistrates and the general dislocations of public life caused by disempowerment, dispossession and colonisation" (Tyler, 1995. p.128).

<sup>6</sup> LaPrairie (1992. p. 288) also makes much of this connection in considering the on-reserve environment and changes occurring for many Aboriginal communities where there are problems of idleness, an increasing divide between young and old and an undermining of kinship relations. It establishes a clear agenda for reform based on creating better opportunities for young people at home, a greater sense of belonging and interconnectedness within the community, particularly between the young and old and the re-establishment of community authority and responsibility.

<sup>7</sup> The scenario depicted in Blackman and Clarke's empirical study can be usefully linked to Braithwaite's (1989) theoretical work on crime and reintegrative shaming. This has been done in a persuasive way in the Canadian context by LaPrairie (1992, p. 284). Our received understandings of the causes of Aboriginal crime are frequently linked to historical explanations of the experience of colonisation, dispossession and resulting marginalisation and poverty (c.f. RCIADIC, 1991). Braithwaite's approach alerts us to other potential factors based on the proposition that the way a society shames its members will influence the level of crime. LaPrairie has recognised the application of this insight to Aboriginal communities as the limits of shaming practices are linked to the breakdown of traditional authority structures.

<sup>8</sup> Similar findings were brought out in the Yalga-binbi review of the justice groups which cites justice group members expressing frustration that "white law is weak . . . it doesn't teach the young people to behave . . . they

*Law Workshop* held at Kowanyama in July 1997 where community representatives expressed concern about the lack of discipline displayed by young people and the lack of respect for elders (Caltibiano and Jose 1997, p. 12).

As part of their response to community issues representatives from the Kowanyama justice group identified a number of the aims the justice group. These were formulated through the consultation process undertaken by Yalga-binbi Institute and later presented at the Queensland Corrective Services Conference at Palm Cove Resort, Cairns 24-27 October 1995. Amongst these were three objectives spelling out the importance of community perceptions and conceptions about the causes and appropriate responses to justice issues. These are:

- 1 To help the Kowanyama community deal more effectively with its problems of social control
- 2 Address the issues of law and order in a way that the community understands to be right and in accordance with its own customs, laws and understandings about justice
- 3 Identify social and justice issues in the community

The first of these aims clarifies that the community at Kowanyama recognises that the problems and issues besetting the community relate to matters of social control and are not matters of crime *per se*<sup>9</sup>. The distinction is fundamental to understanding what is going on in communities and what appropriate responses might be. Local social conditions based on isolation and strong interaction between known members of the community connected via kinship and familiarity can contribute to particular kinds of tensions. Local conditions also involve circumstances of involves boredom and lack of opportunity and activities. The Community Development Officer (Justice) observed (Interview, D. Gledhill 1 July 1997) that there is a cyclical nature to social order related to residents being unable to escape the town boundaries in the wet season due to impassable roads. Social order problems can be exacerbated during the wet which can last from November to April each year. These considerations underlie the preponderance of social order issues relating to kinship and family tensions, feelings of entrapment, interpersonal and domestic violence. Depew argues convincingly that these social order problems require different responses rather than their conception as crime and response through legalistic means<sup>10</sup>:

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take no notice . . . show no respect (cited in Adams and Bimrose 1995, p. 33). Adams and Bimrose (1995, p. 33) relate that: "Members [of the justice group] are concerned about the lack of self-regulation practised by young people with regard to their own behaviour. In the words of one senior man at Kowanyama, "We want them to think for themselves and stay out of trouble". Justice group members speak of wanting to see their people acting responsibly, caring for themselves and their families, getting along well with others and spending their time in pursuits that are positive and meaningful to them.

<sup>9</sup> This is consistent with Depew's (1996) findings in his research on Indigenous communities in Canada which identifies the majority of incidents in the community relate to social order issues rather than crime.

<sup>10</sup> Depew concludes that the social basis to these problem can mean that legalistic responses are often inappropriate. This reflects on the particular nature social relationships that prevail in remote Indigenous communities where people know each other well and are usually connected via family in kin. Mainstream legal processes usually deal with individuals who are strangers and anonymous, and thus, : ". . . it has only a minimal or narrow understanding, capacity and ability to respond in appropriate, relevant and legitimate ways to socially-based justice problems and needs of people who are closely interrelated and connected by long term relationships and interactions (Depew 1996, p.46)".

Indeed, where incidents occur they are usually spontaneous or 'explosive', or situational rather than premeditated, and they are usually alcohol related and repetitive (Depew 1996, p. 45).  
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This insight underlines the importance of community involvement as it is those who reside in the community who can appreciate the social issues confronting community residents and have the insight and compassion to identify and respond to the issues in an appropriate way.

The second and third aims of promoting community conceptions and perceptions about community issues, priorities and appropriate reflects on the enduring strengths of the practice of the justice groups. These relate to Blackman and Clarke (1991) contention that social problems and unacceptable behaviour were not separable from community life, so that any preventative and rehabilitative response should come from the community<sup>11</sup>. Their study has as its central insight that offender behaviour can not be separated from general community life so that a community-based and controlled response is essential to achieving satisfactory outcomes. The models proposed for Palm Island and Kowanyama draw on three related key elements:

- Community participation by providing community people with the opportunity for a say in the operation of community justice and justice issues;
- The importance of promoting an understanding (amongst mainstream participants in the justice system) of the operation of the program from the point of view of community and justice group members; and
- Promoting preventative action. This was to be a community approach that draws on the strength of community traditions, structures and patterns of authority to promote a greater sense of community ownership and responsibility for community justice issues and problems.

Despite the disruption to customary practices through historical experience of contact with missions and reserve administration in Indigenous communities in Queensland there are strong claims that elder authority and culturally based practices can and are being used to make significant difference to community administration of law and order. These claims are reflected in recent press release following Customary Law Conference in Kowanyama 7 - 11 July 1997:

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<sup>11</sup> In 1991, Blackman and Clarke from the Yalga-binbi Institute for Community Development in Townsville released the findings of a study called *Aboriginal and Islander Perceptions of the Delivery of Correctional Services To Indigenous People in North Queensland*. In it, they argued that traditional structures of authority and social control and broad areas of ceremonial and social life were still strong in communities in far north Queensland. They determined that these traditional structures had a role to play in the administration of justice (Blackman & Clarke 1991: 23). In these communities, traditional sanctions relating to local crime still came into play, irrespective of the actions taken by the local police or the courts. Blackman and Clarke also recognise the potential in these circumstances for alternative arrangements to administer law and order which involved a greater level of self management. The areas identified for extended community involvement included alternate sentencing, community-based custodial arrangements, development of community-based initiatives and the identification of the factors that impact on recidivism.

"Kowanyama was selected for the conference due to the success of the justice group in utilising traditional methods, to dramatically reduce crime and offences being committed on the community during the previous three years.

The week long conference was extremely positive with most delegates accepting that there are two laws currently working in Aboriginal communities and the potential ways in which traditional laws can reduce crime and assist their communities, through the knowledge of the Elders and respect of laws and culture. (Kowanyama Community Council, Press Release, July 1997).

The Report of the Proceedings from the conference also indicated that elders in communities and the justice groups in operation were a valuable source of knowledge, authority and respect in communities (Caltibiano and Jose 1997, p. 12).

The apparent discrepancy between the diminishment of elder authority in the past and the potential for its re-vitalisation and application to present contexts is reconcilable on the basis of new opportunities for community empowerment through initiatives such as the justice groups. The extent to which this authority draws on traditional practice and assumptions is less clear. Some of the responses of the justice group to community problems may be influenced by notions of traditional authority and wisdom, or attempts to re-establish its force whilst others may be something completely new derived on the basis of ingenuity and common sense in responding to what is urgent and appropriate. The common attribute of the elements that are contributing to beneficial outcomes is that they are community-based and involve community people in the administration of justice, planning community-wide responses and conform to community needs and priorities. These strategies appear to conform to Braithwaite's understanding of "reintegrative shaming":

. . . the theory of reintegrative shaming implies shifting responsibility for monitoring illegality back into the community along with responsibility for dealing with that illegality by informal processes of social control and conscience building (Braithwaite 1989, p. 150).

### **What Justice Groups are Doing For Young People**

At the most fundamental level the scope of community justice group activities provide for early interventions as an alternative to direct contact with the formal justice system in cases of offending behaviour. The justice groups are not merely centre for disciplining offenders but provide group-based assistance and support for individuals. There is an emphasis upon setting people on the right track, instilling Aboriginal and community values, providing positive reinforcement, sorting out problems and encouraging people to be accountable to the community for their actions. The *Townsville Bulletin* on 13 October 1995 described the new arrangements on Palm Island thus:

There's a method of justice on Palm Island more feared than an appearance before the visiting magistrate and far more effective in keeping people out of jail.

A local community group of highly respected “older people” is successfully weaving a positive thread through a society which is trying hard . . . not to lose its young men and women to Townsville Correctional Centre.

This scenario provides is a far more conducive environment to community control than has been recently been the case. It accords with Braithwaite’s conceptualisation of re-integrative justice wherein family and friends have more influence over behaviour than can distant and mistrusted outside agencies (Braithwaite 1989. p. 69). This assumption is linked to understandings of appropriate treatment of young people who may have offended (Caltibiano and Jose 1997, p. 13). Community representatives consider that removing children from the community is not the answer and that they are better looked after in the communities. Whilst asking a repeat offender to leave the community is an option considered in extreme cases it has been the practice of justice groups to work things out locally by involving members of the community, using local facilities (outstations) and promoting and teaching traditional laws, culture and values (Caltibiano and Jose 1997, p. 13). The Palm Island community has on occasion used Esk Island as an away from the community camp facility to provide young people with an opportunity to get away from the pressures of community life and access support and training from interested elders from the community.

The strength of the community justice model is in the confidence derived by the groups having developed a mode of operation that it is community driven. As such, the justice groups provide for more accountable and appropriate mechanisms and processes reflecting Depew’s (1996, p. 28) emphasis on familiarity with local conditions and needs, consideration of responses to best suit local circumstances, including knowledge of locally available resources and understanding of how community arrangements can be given legitimacy and authority. The emphasis on particular roles and responsibilities varies between the communities and within communities over time depending upon the issues of the day and the priorities established by the people as members or support workers. The models are highly dynamic and changeable reflecting the contribution of those who make up the groups at a given time.

In both communities young people are a central focus in the deliberations and interventions of the Palm Island and Kowanyama justice group. There is a genuine commitment displayed by members of the justice groups to care for and provide leadership for the young people. This attitude is reflected in the words of Kowanyama Elder, Banjo Patterson, Chair of the Kowanyama justice group from 1994 to 1996:

Make sure you look after them, take good care of them. That’s what you’re there for, to take good care of them, rear them up the proper way, not just running them loose. When they get of hand, they’re gone forever. You might never catch up on them again. Look after your child properly, the way you want to see them and the way we want to see them too (cited in Aboriginal and Torres Strait Islander Social Justice Commissioner, Fourth Report, 1996, p. 56).

Attitudes like those of Mr Patterson’s appear to be strongly motivated by a desire to reverse the consequences of the breakdown of elder and community authority which has been pervasively felt in the area of juvenile crime. It is exemplified in commitments including:

- the kids and cops program.

- reward programs
- a central interest in community development issues
- the establishment of sport and recreation activities, developing community infrastructure - swimming pools, sporting field, additional football stadiums, cricket pitch, reward camps and purchase of a community bus for outside excursions.
- techniques of active counselling and early intervention and requiring young people to make amends for the acts and deeds.

### Re-establishing Elder Authority and Customary Ways

The elders of the Kowanyama justice group in community meeting in February 1995, disavowed any interest with notions of a return to customary ways linked to violence and a cycle of pay-back. Community autonomy does not extend to extreme physical violence and eliciting actions that might provoke continuing family feuds. Alternatively, emphasis has also been placed on identifying appropriate family responsibility for dealing with problems. Crimes and problems should be dealt with within the appropriate family and clan structures rather than by disinterested or inappropriate third parties or external agencies and outsiders.

I learnt that quite specific and subtle forms of control were being instituted that accorded with local custom. These included:

- avoiding people or not making them welcome at particular homes,
- forbidding access to the community canteen,
- asking people to leave the community for varying periods of time.
- promoting reconciliation by bringing problems out in the open and
- allowing a meeting and confrontation of adversaries was also used.
- growling and shaming (public humiliation) were also used to promote socially acceptable behaviour.

These means have been operating particularly effectively in cases where parents and adults have been neglecting family responsibilities of caring for the young and aged. At Kowanyama, mothers who have abandoned their children in order to go to the canteen to drink and socialise have been required to go before the justice group. The humiliation this involves for the mother is said to result in a the desired changes in behaviour, Similar incidents involving the introduction of petrol sniffing practices and the supply of alcohol to children have also been met with swift and effective responses from the justice group. In cases where loosing face in the wider view of the community is involved, the prospect of intervention from the justice group and being made to appear before the justice group to account for actions and hear of its directives is proving to be a powerful deterrent. These campaigns aimed at protecting youth are seen as especially important part of breaking the cycle of alcohol, violence and crime that have been all too prevalent in the community over recent years.

There is now greater conformity with the scenario of reintegrative shaming identified by Braithwaite (1989, p.55):

. . . the nub of deterrence is not the severity of the sanction but its social embeddedness: shame is more deterring when it is administered by persons who continue to be of importance to us.

### Corrections Issues

Given the support for the justices groups provided by Queensland Corrective Services, it is not surprising that the range of activities performed by the Kowanyama, Palm Island and Pormpuraaw justice have been strongly oriented toward those functions related to community corrections. In the 1994-5, the Kowanyama Community Council and the Queensland Corrective Services Commission jointly sponsored Mr Gordon Geertz in the position of Community Corrections Officer. Later, the position of Community Development Officer (Justice) was established under the direct control of the Community Council but with funding support from the Corrective Services Commission on the basis that community correction functions would be retained and administered by the person in this position. The support officer at Palm Island continues to be employed by the Queensland Corrective Services which has ensured a close working relationship between the justice group and Corrective Services. In part, this reflects differences in the nature of the relationships established between the justice groups and the community councils at Kowanyama Palm Island with the former initially being more supportive. The situation at Palm Island has changed now that Peena Geia, a founding member and chair of the justice group was elected as Chair of the Palm Island Community Council. The roles and responsibilities of the support officers include:

- to establish, interact and maintain relationships with relevant agencies
- to explore new ways for community involvement in community justice
- assists in networking with other communities
- to supervise and administer parole orders
- act on the recommendations of the justice group.

The Pormpuraaw community justice group has no support officer with the tasks and functions undertaken by two senior members of the justice group. The Corrective Services Commission is indirectly involved through its funding of the position of the manager of the Baa's Yard outstation correctional facility adjacent to the Pormpuraaw community. At Palm Island most breaches of community service orders are handled by the justice group rather referred back to the court and hence a significant decline in the category of court cases dealing with breaches (Bimrose and Adams 1995, p. 43). This amounts to a common sense diversionary strategy by facilitating closer monitoring of orders and prompt action on breaches that minimises the need for formal involvement of the court.. The Palm Island community in September 1997 launched its own outstation correctional facility named after Mr Kitchener-Bligh, a long standing and respected elder and member of the justice group. The facility is being funded by the Corrective Services Commission.

An emphasis on community involvement in corrections and alternatives to institutional sentencing is evident in the strategies and approaches to community introduced at Kowanyama, Palm Island and Pormpuraaw. In part, this reflects the good relationship and direct continuing support of the justice groups provided by the Queensland Corrective Services Commission. Magistrates and corrective services officials have greater confidence in community orders when there are appropriate supervisory and enforcement arrangements in place in the community... At Palm Island, all sentencing arrangements are brought to the

attention of the justice group and the group provides the visiting magistrate with pre-sentencing reports dealing with individual case backgrounds and the community's thoughts on appropriate sanctions. Justice groups also supervise those placed on community orders and the justice group support officers have a formal role to play in ensuring that orders are adhered to. Breaches are monitored by the groups and referred back to Corrective Services via the Community Development Officer (Justice) at Kowanyama and the Community Corrections Officer at Palm Island.

Early release programs based at an outstation Aboriginal correctional facility known as Baa's Yard near Pormpuraaw is also used for inmates from the Kowanyama community. The terms of release and re-entry into the community are strictly monitored and reviewed by the justice group. Corrective Service officials write to and await receipt of formal instructions and advice from the Kowanyama justice group about the timing, conditions and arrangements for release of inmates back into the community. The terms and conditions of use of this facility by the Pormpuraaw community are not easily ascertained. There are anecdotal claims of overcrowding as well as cases of conflict between people from the Pormpuraaw and Kowanyama community (Interview D. Gledhill, 1 July 1997). Problems of this kind underlie the urgency of the call from the Kowanyama community for the establishment of an outstation facility of their own, perhaps at Sefton or at Oriners.

Research conducted by Fickler (1983 & 1985) of Inuit communities and correctional issues in Canada highlights the potential for the application of Aboriginal and community-based approaches in correctional policy. Finkler's research (1983, p. 900 & 1982, pp. 321-324) identifies an alternative range of approaches including the recognition of special needs, opportunities to pursue traditionally oriented practices, innovative and culturally relevant practices and the use of citizens advisory boards. Community involvement in corrections provides the opportunity for the community itself to impress on offenders the boundaries of acceptable behaviour. Finkler (1985, p. 324) notes of Inuit communities:

Presently, the offender's removal precludes the opportunity for accountability to the community or his confrontation with self. Consequently, the involvement of leaders, elders, and church people in counselling, through the traditional means of group confrontation, enables the community to emphasise to the offender that his actions are disrespectful of Inuit lifestyle and culture, and that he must learn to be accountable for his actions.

### Links With the Judiciary

Other broader functions and interests have recognised and sought by the justice group is in making recommendations for sentencing to visiting magistrates and for Protective Services and Juvenile Justice officers from the Queensland Government. This practice is now commonplace at Palm Island. The President of the Children's Court in Queensland, Justice McGuire, has also emphasised the good sense of allowing greater involvement of Indigenous people in the judicial process. Following a visit to the Aurukun Aboriginal Community on 3 June 1994 for a sitting of the Children's Court, Justice McGuire (1994, pp. 157-8) expressed the view that:

the Aurukun people should have greater input and control over law-enforcement processes. It was thought that an Aboriginal Justice of the Peace

should sit on Magistrates Courts to advise Magistrates. In my opinion, processes whereby families are brought closer to and have some real control over decisions made by the Courts are highly desirable. Without family participation, decisions made by Courts will have little, if any, benefit. Responsible and respected leaders of the community should be empowered to participate actively in the judicial process and, in particular should be afforded statutory recognition . . .

The logic expressed by Justice McGuire is axiomatic, yet there remains a discrepancy between the pace and commitment to the implementation of reforms in practice. It appears to be a matter of discretion for visiting magistrates invite community involvement. It is not at this stage a matter of standard procedure as common sense and good practice might otherwise dictate.

### Community Conferencing

Another initiative of note implemented on a pilot basis at Palm Island in April 1997 has been the option of community conferencing as an alternative mechanism outside of the formal court process (Caltibiano and Jose 1997, p. 21). As such, it provides another mechanism for diverting people away from the formal justice system. This was an initiative of the Queensland Department of Justice and Attorney-General which was influenced by successful model of conferencing in New Zealand and the concept of restorative justice linked with Braithwaite's (1989) research to establish pilots in three Queensland communities ( at Logan City, Ipswich and Palm Island). The decision to select Palm Island may have been influenced by knowledge of the success of the justice group at Palm Island and the capacity the justice group has displayed to work well with the courts and corrective services. The community was supportive of the proposal for a pilot at Palm Island in the belief that it would give some formal authority to the justice groups operation which has not had a legislative base or formal status to date.

There is an inherent risk in the adoption of a community conferencing models for indigenous communities in that its parameters are defined and formulated by external agencies through amendments to the *Juvenile Justice Act 1992*. As such, the scheme has been superimposed across the normal workings of the justice group without perhaps the fullest consideration to accommodations to specific cultural needs and community input and continuity with the established practices and procedures employed by the justice group. Against this are the prospective advantages of diversion from court processes, community involvement in the conduct of conferencing sessions, allowing victim participation and promoting greater offender accountability. More substantial evaluation of the scheme will be required after the passage of time and in response to community feedback.

### Conflict Resolution, Dispute Mediation and Counselling

Another set of critical innovations pioneered at Kowanyama and Palm Island involve preventative actions and mediation activities. These have evolved in response to changing community needs and expectations that matters of conflict and dispute can be dealt with effectively before they get out of hand. These include:

- mediating disputes (domestic family and inter-family)
- curbing anti-social behaviour through the issuing of sanctions and curfews and asking people to leave the community

- responding to complaints and requests for assistance from the community; and
- responding to referrals from the police.

Counselling activities are also an indispensable part of justice group activities with justice functions increasingly blurred as justice group members devoting increasing amount of their private time to counselling young people in need of help and support. There are in fact great stresses being placed on members who appear to be obliged to wear many hats in playing support roles on a voluntary capacity where other permanent support officers in the community may not be in place or available.

### **The Achievements of Community Justice at Palm Island and Kowanyama**

There have been across the board impacts on law and justice issues at Palm Island and Kowanyama community as a result of the activities of the justice groups. These are reflected in the crime rates, especially in the dramatic decline in Juvenile offences in the community since the establishment of the justice group in 1994. The Kowanyama police statistics cited in Bimrose and Adams review suggest that there has been a significant decrease in juvenile offences from a pre-March 1994 level of approximately 40 to 50 offences a month down to nil for the March to November 1994 period and two offences between December 1994 and March (Adams and Bimrose 1995, pp. 37 & 40). My own inquiries in Kowanyama in July 1997 regarding unofficial Police statistics revealed that there were only 3 recorded juvenile offences for the first six months of 1997 (Interview Kowanyama police 1 July 1997).

The official records of court appearances and total of number of charges for the Children’s Court compiled by the Statistical Services Branch give cause for some doubt as to the reliability of the unofficial records compiled by the 1995 Review of justice groups undertaken by Yalga-binbi Institute for Community Development which appear to be some what overstated. Nonetheless, official court records do substantiate the case that significant declines in the number of appearances and total number of charges proceeding to Court since the operation of the justice groups. Caution in reading this data is still advisable as the trends may be influenced by other factors alluded to by the police at Kowanyama including the increased use of police cautions, referrals of minor matters to the justice group and cyclical aspects to the incidence of crime and recidivism (Interview with Kowanyama Police Sergeant 30 June 1997). What is most significant is that the state-wide trends of increasing levels of detention for Indigenous youth are not being reflected in the two communities that have established and consolidated community justice initiatives focused on young people. These trends are reflected in Tables 2 and 3 below.

**Table 2 Record of Court appearances (Distinct) for Juveniles at Kowanyama and Palm Island Court Sitzings, 1993–1994 to 1996–1997.**

	<b>1993–1994</b>	<b>1994–1995</b>	<b>1995–1996</b>	<b>1996–1997</b>
<b>Kowanyama</b>	24	10	20	6
<b>Palm Island</b>	32	38	10	13

**Table 3 Record of Total Charges for Juveniles at Kowanyama and Palm Island Court Sitings, 1993–1994 to 1996–1997.**

	1993–1994	1994–1995	1995–1996	1996–1997
<b>Kowanyama</b>	116	18	68	11
<b>Palm Island</b>	115	107	17	17

**Source<sup>12</sup>:** Tables calculated from Children’s Court Records, 1993-4 to 1996-7 held by the Statistical Services Branch, Queensland Department of Families, Youth and Community Care.

### **Prospects for Community - Government Partnerships in Juvenile Justice**

One of the encouraging aspects of the operation of the justice groups has been the instances where constructive relationships have been forged between government agencies, service providers and the justice groups. Partnerships between the Kowanyama school community and the justice group have seen problems of truancy and shoplifting from the community store brought under control. The conduct of community meetings and planning involving all local players has held the prospect of forging cohesive community based strategies for dealing with problems concerning the community. Constructive relationships and continuing dialogue has been established between the police service and justice groups and the supportive and constructive relationships established between Queensland Corrective Services and the justice groups have been empowering for the communities in monitoring and keeping in check the behaviour of those who have offended. It is likely to be of cost benefit for the Corrective Services to use the community resources and expertise provided by the justice groups and their support workers in providing mechanisms for community-based corrections. It is in the interest of all justice agencies and the community to keep people out of custody and creative partnerships between the community and these agencies offer the best prospects for achieving long term reductions in the number of Indigenous young people ending up in detention.

Community input and advice on sentencing options for magistrates makes eminent sense as another area of creative partnership. The proposal has been fully endorsed by the President of the Children’s Court but the reasons why this approach have not been widely applied outside of Palm Island are perplexing. It may be a matter of the discretion of visiting magistrates on particular circuits being persuade of the benefits of such an approach. If so, there is scope for some systematic review of how pre-sentencing reports are being used at Palm Island might be undertaken to be shared with practitioners elsewhere.

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<sup>12</sup> I am grateful to Manager of the Statistical Services Branch, Queensland Department of Families, Youth and Community Care for providing me with access to the Children’s Court records for Queensland. I assume responsibility for the calculations presented in these tables which have been derived from State-wide data bases for the 1993-1997 period provided to me by the Statistical Services Branch.

The notion of partnership is thus a critical one for furthering the potential of community involvement in justice administration and community development more across a range of potential areas of involvement. Self-determination does not imply that communities must undertake all tasks alone. The support of government or other support agencies in roles as partners, facilitators, funding providers, trainers and advocates. Justice groups do not have ready made answers for all community problems and these innovations will fail if deemed to be a panacea. The range of social pressures and problems besetting the communities at Palm Island and Kowanyama are not amenable to solutions. On a cautionary note is the possibility of overburdening of justice groups and individual members and support workers who are called upon to perform a proliferating range of tasks and responsibilities within their communities. The community development officer at Kowanyama noted the increasing pressures in the number of hats she was required to wear in performing an ever-increasing and diverse range of responsibilities (Interview D. Gledhill 1 July 1997). Similarly, effective partnerships with government entails recognition of the multifaceted roles performed by the justice groups and consideration of constructive ways of supporting successful community initiatives. At the present time the level and kind of support offered to justice groups is uneven and unpredictable. Occasionally, Queensland Corrective Services will support visits by justice group member to Cleveland detention centre in Townsville, but other times it does not. There does not appear to be a consistent policy on these visits. It also apparent that the funding provided to the Kowanyama justice groups support worker as subject to yearly review at the discretion of the Commission.

Other areas of current and prospective creative partnership is amongst Indigenous communities in Queensland in building upon the opportunities for networking, information exchange and referral and practical support. The establishment of an Elders Justice Network across Cape York Peninsula has been a particularly important initiative. It serves not only as centre for information exchange but with adequate resources can function as a centre to resource and support the operations of community justice initiatives that is independent from Government. The recently introduced Local Justice Initiatives Program has significant funding but remains a government administered program. The community conferencing scheme being piloted at Kowanyama under the auspices of the Department of Justice and Attorney General are significant and well intended initiatives. It is important however, that these initiatives do not usurp the sense of community ownership and control bound up with the community's own initiatives. In the spirit of genuine self-determination, government agencies may think to offer constructive ways of working with communities and their initiatives rather than usurp the role of initiator and innovator. The ATSI Social Justice Commissioner's (1997, p. 199) report of Indigenous Deaths in Custody recognises such risks:

Juvenile justice panels and family conferencing schemes with adequate cultural sensitivity and Aboriginal community involvement can be effective solutions to juvenile crime problems, but schemes which increase alienation and which are imposed by police [or other agencies] on the families of the offender and the victim will not succeed.

The challenge also remains for such initiatives to receive the support and recognition of government agencies and their employees who deal with indigenous communities directly both as a matter of common sense and as effective and efficient ways of dealing with justice and rehabilitation. A prevalent attitude amongst government agency workers is that structural

limits should be insisted upon in terms of the scope and boundaries of legitimate justice group activities. It has been suggested to me that there can and should ultimately be one law in Australia implying that the concept of legal pluralism could not be tolerated in Australia. I would note as a concluding observation that this position contradicts the considered wisdom of the Royal Commission on Aboriginal People's in Canada, through *its Report of the National Round Table on Aboriginal Justice Issues* which came to a strong consensus in its advocacy of a parallel system of justice for Canada's Indigenous people. The Canadian justice system was viewed by many as a failure for Aboriginal people attributable to the different world views and requirements of the justice systems from European and Aboriginal Canadians. (Macpherson 1993, p.4). The system was also judged as too legalistic, centralised, formal and far removed from indigenous people, who in turn, believed they had their own internal mechanisms of social control. The admission of the Hon. Kim Campbell is instructive:

It has not been easy for me to accept that, for some, our laws are viewed as instruments of oppression, rather than as mechanisms for the preservation of justice . . . I have come to learn that the administration of justice, despite the good intentions of the people who work within it, has often failed to meet the needs of Aboriginal people who, all too frequently, come into contact with our courts as offenders, as victims and as communities. . . I have learned that Aboriginal people are too often alienated by, and from, the existing justice system, and that many feel powerless even to participate in determining what will happen to people from their communities who have found themselves in conflict with the law" (cited in Macpherson 1993, p. 6-7)

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