

# Crime Prevention and Socio-Legal Reform on Aboriginal Communities in Queensland

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**T**he Aboriginal Co-ordinating Council (ACC) is an Aboriginal community organisation which has statutory authority to advise the Queensland Government on Aboriginal affairs. The ACC consists of the chairman and a councillor from all local government deed of grant in trust Communities in Queensland—Cherbourg, Woorabinda, Palm Island, Yarrabah, Hopevale, Wujal Wujal, Lockhart River, Injinoo, New Mapoon, Umagico, Doomadgee, Weipa, Kowanyama, Pormpuraaw and Old Mapoon plus Aurukun and Mornington Island. The secretariat is based in Cairns.

## The Problem

There is a law and order crisis on Aboriginal Communities in Queensland. Table 1 compares Magistrate's Court appearances for Aboriginal adults (18+) from the North Queensland Aboriginal Communities of Kowanyama, Gununa (Mornington Island), Aurukun, Lockhart River, Pormpuraaw, Yarrabah and Palm Island with Queensland adult appearances for 1988-89. Aborigines are seven times more likely to appear on homicide charges, fifty times more likely to appear on major assault charges, thirty-seven times more likely to be charged with rape, fifty-nine times more likely to be charged with other violations of persons, thirty-eight times more likely to be charged with burglary, thirty-one more times on break and enter and twenty-two times more likely to appear on *Liquor Act 1912* offences.

Forty per cent of Aboriginal appearances were for drunkenness, followed by 20.3 per cent for assault, and 15.2 per cent for theft, whereas the overall Queensland pattern was quite different—61.9 per cent being driving offences, 13 per cent being drunkenness, 5.4 per cent being theft and 3 per cent being assault.

A comparison was done by ACC of appearances in Children's Court in 1988-89 of Aboriginal children from Communities and all Queensland children. The results, shown in Table 2, are very disturbing. Assaults, both major and minor are seven times more likely to be committed by children from Aboriginal Communities than in Queensland as a whole, the

overall assault rate being 5.21 per 1,000 compared to 0.78 per 1,000. No Aboriginal children appeared in court for rape (although it did occur). Community Aboriginal children were eleven times more likely to appear on other sexual offences, 0.65 per 1,000 compared to 0.06 per 1000 for Queensland children. Community Aboriginal children were twenty-six times more likely to appear on charges of robbery and extortion, eleven times more likely to appear for theft, nineteen times more likely to appear for other break and enter charges, nine times more likely to appear for weapons offences and seventeen times more likely to appear for *Liquor Act* offences than Queensland children as a whole. They were less likely to appear on charges of fraud, driving offences, drugs and trespassing.

As the over-representation of Aborigines in custody accounts for the high rates of Aboriginal deaths in custody considering their population, the fact that Aboriginal youth are so over-represented in Children's Court appearances is alarming.

Of great concern is that a comparison of Department of Family Services figures with ABS figures shows that as at 30th June 1989, approximately per cent of all children under 15 years of age were Aboriginal and they constituted about 47 per cent of all children under *Children's Services Act 1965* orders for offences. Thus an Aboriginal child under 15 years of age is 21 times more likely to be the subject of an order for an offence than a non-Aboriginal in that age group. As the number of Aboriginal children in Queensland is increasing at a rate higher than in the general population, unless wide sweeping reforms are made soon, then the over-representation of Aborigines in custody is liable to increase rather than be reduced. The high rates of child abuse and neglect and child sexual abuse of male and female children by youth is a matter of grave concern.

## The Causes

### *White Settler Violence*

The level of violence and death by violence in Aboriginal Communities, which in turn contributes to the high rate of imprisonment of Aboriginal people and consequent deaths in custody can be understood against the backdrop of the structural violence white Australia has perpetrated on the original owners of the land. Declaring Australia *Terra Nullius*, uninhabited, and killing off any Aboriginal resistance to land seizure with superior weaponry, diseases, poisoned water-holes and flour laced with arsenic, the British settlers set up institutions and governments which have perpetrated their violent domination.

Accounts of the massacres can be found in Rowley (1972); Roberts, Parsons and Russell (1975b); Evans, Saunders and Cronin (1975); Reynolds (1981) and Loos (1982). This frontier violence, institutionalised violence and racism throughout the years has left a psychological scar on contemporary Aboriginal Australia. This is hardly surprising when events like this are recorded:

One hears of the Sunday afternoon manhunts, of sexual mutilation, of burying a live Aboriginal baby up to its neck in sand and kicking its head off, after tying the severed neck of the husband around the raped spouse (Harris 1979).

#### Mapoon Aborigines recorded the massacre of their people:

Up at Cowal Creek, at the other end of Seven River territory, they remember how Jardine used to kill black children by knocking their heads against trees, and how he and Kennedy together exterminated hundreds of Aborigines (Roberts et al. 1975a, p. 6).

The pain and bitterness of these memories passed on from generation to generation still chills the blood of Aboriginal people, leaves an aching, crying feeling

Table 1

**Appearances in Magistrate's or Higher Courts—Adults 1988-89**

	Qld			Aboriginal Communities			Differ- ence
	Appear- ance	%	Rate	Appear- ance	%	Rate	
Homicide	219	(0.1%)	0.11	3	(0.3%)	0.77	7
Assault	5 856	(3.0%)	2.99	330	(20.3%)	84.99	28.42
Major Assault	1 860	(0.9%)	0.95	187	(11.5%)	48.16	50.69
Minor Assault	3 050	(1.5%)	1.56	94	(5.8%)	24.21	15.52
Rape	169	(0.1%)	0.09	13	(0.8%)	3.35	37.22
Other Sexual	513	(0.3%)	0.26	6	(0.4%)	1.54	5.92
Other violation of person	264	(0.1%)	0.1	30	(1.8%)	7.73	59.46
Robbery & Extortion	247	(0.1%)	0.13	2	(0.1%)	0.52	4.00
Fraud	2 538	(1.3%)	1.3	7	(0.4%)	1.80	1.38
Theft etc	10 683	(5.4%)	5.45	247	(15.2%)	63.61	11.67
Unlawful use of M.V.	1 190	(0.6%)	0.61	25	(1.5%)	6.44	10.88
Other stealing	6 515	(3.3%)	3.33	34	(2.1%)	8.76	2.63
Receiving	852	(0.43%)	0.43	41	(2.5%)	10.56	24.56
Burglary	1 070	(0.54%)	0.55	81	(5.0%)	20.86	37.93
Other Break & Enter	1 056	(0.53%)	0.54	66	(4.0%)	17.00	31.48
Property Damage	2 304	(1.2%)	1.18	87	(5.3%)	22.41	18.99
Driving Offences	12 457	(61.9%)	61.48	71	(4.4%)	18.28	3.36
Other Offences	55 339	(28.00%)	28.24	883	(54.2%)	227.40	8.05
Drugs	5 411	(2.74%)	2.76	3	(0.2%)	0.77	3.58
Drunkenness	25 162	(12.96%)	13.07	654	(40.1%)	168.43	12.89
Offensive Behaviour	5 517	(2.79%)	2.82	79	(4.8%)	20.35	7.22
Trespassing	709	(0.35%)	0.36	5	(0.3%)	1.29	3.58
Weapons Offences	660	(0.33%)	0.34	35	(2.1%)	9.07	26.68
Liquor Act Offences	827	(0.42%)	0.42	36	(2.2%)	9.27	22.07
Other	16 602	(8.4%)	8.47	71	(4.4%)	18.28	2.16
<b>Total</b>	<b>197 643</b>		<b>100.87</b>	<b>1 630</b>	<b>100.2%</b>	<b>419.78</b>	

Rate = No. of people per 1000

Source: Colahan, K. 1990, ACC Data Base Project using Justice Department and ABS Data.

Table 2

## Appearances in Children's Courts 1988-89

	Qld			Aboriginal Communities			Differ- ence
	Appear- ance	%	Rate	Appear- ance	%	Rate	
Homicide	2	(0.0%)	0.00	0	(0.0%)	0.00	
Assault	290	(6.6%)	0.78	8	(5.5%)	5.21	6.67
Major Assault	97	(2.2%)	0.26	3	(2.1%)	1.96	7.54
Minor Assault	152	(3.5%)	0.41	4	(2.7%)	2.61	6.36
Rape	5	(0.1%)	0.01	0	(0.0%)	0.0%	
Other Sexual	23	(0.5%)	0.06	1	(0.7%)	0.65	10.83
Other violation of person	13	(0.3%)	0.04	0	(0.0%)	0.0%	
Robbery & Extortion	20	(0.5%)	0.05	2	(1.4%)	1.30	26.00
Fraud	53	(1.2%)	0.14	0	(0.0%)	0.00	
Theft etc.	2 485	(56.9%)	6.73	112	(76.7%)	73.01	10.84
Unlawful use of M.V.	527		1.43	13	(8.9%)	8.47	
Other Stealing	702		1.90	11	(7.5%)	7.17	
Receiving	146		0.40	6	(4.1%)	3.91	
Burglary dwg etc.	414		1.12	27	(18.5%)	17.60	
Other Break & Enter	696		1.88	55	(37.7%)	35.85	19.06
Property Damage	257	(5.9%)	0.70	10	(6.8%)	6.52	9.31
Driving Offences	595	(13.6%)	1.61	1	(0.7%)	0.65	
Other Offences	662	(15.2%)	1.79	13	(8.9%)	8.47	
Drugs	108		0.29	0	(0.0%)	0.00	
Drunkenness	178		0.48	1	(0.7%)	0.65	
Offensive Behaviour	226		0.61	2	(1.4%)	1.30	
Trespassing	15		0.04	0	(0.0%)	0.0	
Weapons Offences	28		0.08	5	(3.4%)	3.26	40.75
Liquor Act Offences	69		0.19	5	(3.4%)	3.26	17.16
Other	30		0.08	0	(4.0%)	0.0	
<b>Total</b>	<b>4 364</b>		<b>11.81</b>	<b>146</b>		<b>95.18</b>	<b>8.06</b>

Rate per 1000 was calculated with population figures including Yarrabah, Pormpuraaw, and Lockhart even though these communities had no childrens court cases that year.

Rate = No. of people per 1000 appearing in court in 1988-89.

Population of Queensland (between the ages of 10 and 17 inclusive) at 30 June 1988 = 369 426.

Communities included in figures: Population (18 and over only, from 1986 census).

Kowanyama	154
Palm Island	355
Gununa	154
Aurkun	183
NPA	243

**Total**           **11 089**

Including Lockhart, Pormpuraaw, and Yarrabah = 1 534

The population figures above include only those individuals between the ages of 10 and 17 years inclusive.

Source: Colahan, K. 1990, ACC Data Base Project using Justice Department and ABS Data.

in their hearts and causes a choking of the voice, a wiping of tears from eyes—tears of hate, anger, frustration, shame, grief, depression, powerlessness and alienation.

### *Rage Turned Inward To Family Violence*

It is this pain and the knowledge that Aboriginal people constitute too small a group to regain control of Australia by forceful or peaceful means that leads Aboriginal people to turn their violence against other Aborigines rather than against white Australia.

In Taylor's evidence to the Alwyn Peter case he explained the high level of suicide and self-mutilation on North Queensland Aboriginal Communities by saying that Aborigines diverted rage and anger inward on themselves: 'If they were to attack the real objects of their anger, they would claim retribution from the Australian Legal System' (Wilson 1982, p. 29). Taylor had seen many cases of latent hostility caused by oppression.

Black crime in Australia is not directed against whites as it is in the USA but against other blacks. In fact it is generally directed against an Aboriginal's own family—his wife, girlfriend or de facto are the most likely victims.

More than 70 per cent of assaults on one Queensland Community in 1988 were committed by husbands, boyfriends or de factos drunk at the time (Brady 1989, pp. 7-8). Violence is not confined to the nuclear family. Men are fighting their brothers, fathers and uncles and bashing their mothers. 'Women are running away from sons-in-law and grandmothers are being raped by grandsons' (Atkinson 1990, p. 10). At times, Aboriginal women will try to end their suffering by stabbing and sometimes killing their men.

### *Rage Turned Inward—Self-mutilation and Suicide*

There is an important link between violence and self-inflicted injury. Because Aboriginal people are not as individualistic as Europeans, the boundary between self and family is not as clearly defined and family violence (a preferred term to domestic violence) may be perceived as similar to violence against self. This is not to suggest that perpetrators should not be brought to account for their actions, but that the violence whether to self or family may have a similar meaning to the perpetrator.

Wilson (1982, pp. 23-4) touches on this issue when he writes 'the thin line between channelling anger and hostility towards oneself and turning on loved ones is dramatically illustrated in the death of Dierdre. Alwyn recalled the night of Dierdre's death when "things went wrong": according to Alwyn he had wanted to hurt himself, not Dierdre. Alwyn admitted he was drunk and jealous about Dierdre, that he had a knife; that they argued violently. But he said he wanted to cut himself and would have done so if Dierdre had not tried to intervene . . . In the ensuing struggle, she was killed'.

When Alwyn Peter and others like him are frustrated or angry, they use self-mutilation or violence towards others or both depending on situational factors such as who was present and how they responded. Because of their limited knowledge of choices as to how to resolve conflict, someone is usually hurt, sometimes killed. Traditional dispute resolution mechanisms are often not operating because of the imposition of European law and order. Alwyn's sister, Amy Peter has scarred hands from smashing louveres. She said 'When I am angry I reach a point where I can't get rid of anger any other way besides smashing things or getting stuck into somebody' (Wilson 1982, p. 26) illustrating the fine line between violence and self-inflicted injury.

As Wilson (1982, p. 97) so eloquently states:

Most Australians, would not acknowledge the responsibility that they bear in the acts of murder and self-mutilation that occur on Aboriginal reserves (now trust areas). But by taking traditional black homelands, by refusing to allow Aboriginal self-determination and by actively enforcing on Aborigines an assimilationist framework, we have subjected them to a fatal psychic trauma that manifests itself in alcoholism, self-effacement and self-destruction.

### *Land Rights and Self-determination*

In 1984 a form of land tenure was granted to ACC Communities by the 'Deeds of Grant In Trust Legislation' whereby Aboriginal Councils are trustees for the ex-reserve land now owned communally and called trust areas. Also a form of self-management was granted to these Aboriginal Communities with Aboriginal Councils receiving local government status through the *Community Services (Aborigines) Act 1984*. For a thorough discussion of the inadequacy of these two pieces of legislation in achieving land rights and self-determination for Queensland Aboriginal Communities, see Miller (1986) and the ACC's 1989 submission to the Queensland Government requesting changes to the *Community Services Act*. Violence rates and death rates for the five years preceding and five years following the introduction of the above legislation could be compared but it is not likely that the damage done by 200 years of oppression could be recovered from in a few years. Even if Aborigines receive full rights to land and self-determination it will probably take generations for real improvements to be seen. However, it is essential that this occur or no progress will be made.

### *Overcrowding*

The forced movement of tribes into settled areas called reserves meant that some tribes are living on another tribe's area and this of course causes conflict. Support for the outstation movement where clan groups move back to their own lands and establish bases (like Aurukun) will relieve the pressure back in the main settlement. Added to this is the pressure of overcrowding where two or three families often live in the one household with sometimes up to twenty people to a three bedroom house. Taylor et al. (1989, p. 10) found that 'twenty-five per cent of houses (at Yarrabah) contain more than eight persons'. The ACC has almost completed a housing survey of all Communities which shows even higher rates of overcrowding.

One of the traditional social control mechanisms used by Aboriginal people was avoidance, e.g. certain kin like mothers-in-law could not be looked at or spoken to. Family groups could easily shift camp when they live in more temporary dwellings. These factors, combined with alcohol have lead to a situation which would be hard for other Australians to understand. For urban dwelling Australians, it is worth considering for themselves the reality of living with a small community containing all one's relatives, all one's relationships, both past and present, and all one's enemies—constant reminders of one's mistakes and failures (Anderson & Coates 1989, p. 35). More houses with culturally appropriate designs need to be built and more land needs to be made available especially for land-locked Communities like Wujal Wujal.

### *Disintegration of Traditional Dispute Resolution*

The Aboriginal Co-ordinating Council submission to the Queensland Domestic Violence Task Force maintained that while some men defend their right to be violent towards women

as being based on tradition, the controlled violence used in traditional dispute resolution was quite different. Dispute resolution was controlled by a strict set of rules, occurred in public, blockers were used to prevent serious harm and alcohol was not involved. The introduction of European law and order and alcohol has almost destroyed this process.

The traditional role of men in Aboriginal society has been eroded and there are few opportunities for men to develop a sense of achievement and self-worth. Men then tend to use violence on their women to reassert their authority. Homicide, assault, rape and suicide occur as a result of Aboriginal men's fear of loss of a valued relationship and jealousy over his wife or de facto. Such a feared loss takes on greater proportions when it is experienced in the context of few alternatives (such as meaningful employment) to achieve identity and happiness.

### *Alcohol*

Alcohol is used by Aborigines as an anxiety reducing agent to cope with the stresses attendant upon colonisation and racism. However, a vicious circle develops because alcohol releases behaviour not approved of in traditional society which engenders guilt, and consequently more anxiety and drinking. Alcohol abuse has also become a means of passive resistance against white authority. Drinking together provides a way for Aborigines to experience group solidarity and identity.

The first time a young man becomes drunk appears to assume the importance initiation would have had and to fill the vacuum left by the lack of a marker between boyhood and manhood. The first time a young man goes to gaol seems to have a similar value in establishing his manhood. Girls still have the milestone of having a baby to establish their womanhood. But when there are no jobs to look forward to except working for the dole, and no houses available so that young couples have to share with their parents, there is little to mark the transition. For men who have lost their role as provider and leader, alcohol has provided a means of bolstering their confidence to be assertive towards other Aboriginal men and assertive with their women. This can lead to aggression.

The constant refrain of police on Communities is that 90-95 per cent of crime is alcohol related and the constant complaint of nursing staff is that 90-95 per cent of health problems are alcohol related.

Although alcohol does not cause violence, it is correlated with violence, lowering inhibitions so that people express thoughts and feelings which may provoke violent outbursts. An 'alcohol culture' has developed on some Communities where it is almost considered deviant not to drink, and socialisation of the young works to encourage modelling of heavy drinking and fighting behaviour. Coupled with a constellation of social and economic conditions such as poverty, high truancy rates, mortality rates three times the Queensland average, high store prices and inadequate nutrition, poor housing, overcrowding and little employment except for the work for the dole schemes, conditions are created that Wilson termed 'violence provoking' (Wilson 1982).

### **History Of Aboriginal-Police Relations**

It is hardly surprising that a Black Defence Committee was set up to push for an inquiry into deaths in custody. Many Aborigines suspected police had bashed Aborigines in custody leading to their deaths.

History can explain this. Since colonisation Aborigines have distrusted police because they were used as a paramilitary force to move Aboriginal people off their land and to protect white squatters. The native police were used by colonists to wipe out or decimate Aboriginal tribes who fought for their land or who took cattle or sheep when their hunting areas had been stolen. When it appeared Aborigines as a race were dying out, children of

mixed parentage were stolen by police from their Aboriginal mothers and taken to settlements for half-castes designed as training grounds to assimilate them into white society. Many were never to see their parents or brothers or sisters again. Some were hired out as cheap labour for station owners as housemaids or stockboys.

Until recent years in Queensland, the government managed the bank accounts of Aborigines into which their wages were paid. Their bank books were held at the local Police Station by the local police 'protector'. As literacy and numeracy levels were low, Aboriginal people suspected but could not prove that they were not receiving the amount of money they signed for when they received a handful of change, and that much was pocketed. One police station in North Queensland was burned down when there was talk of an inspection of its records.

There are many instances of Aborigines in all states being discriminated against by police—being harassed at pubs like the 'Empress' in Redfern, being beaten up at demonstrations for Aboriginal rights, and being bashed in police cells. Rape of Aboriginal women by police has not been uncommon. There is distrust, even hatred of police and fear of going to gaol. One young Aboriginal male hung himself in Melbourne on 10th January 1977, rather than be returned to Yarrabah for non-payment of fines and breach of community service for traffic offences because he had previously been beaten up by police there. A chairman of Yarrabah, Percy Neal, was gaoled for three months on a charge of spitting at a store manager who had challenged his authority. Subsequent police harassment had led him to leave the Community for about twelve months till things had settled down. Some members of the Land Rights Committee at Yarrabah were intimidated over a period of years by police spotlighting their homes on night patrols. (Three of the Queensland deaths occurred in Yarrabah Watchhouse).

This is not to say that there are no individual police who have assisted Aborigines, worked hard, been sympathetic and won the respect of Aboriginal people, but the historical background to Aboriginal-police relations in particular and Aboriginal-white relations in general is one which has led to a situation where Aborigines are forty times more likely to be placed in police custody than non-Aborigines and are very likely to experience such custody as frightening, alienating and unjustified. In fact, many Aborigines feel that they are 'political prisoners'—gaoled by the discriminatory laws of a racist society. A society whose very foundation is illegal, immoral and based on a lie—that Australia was 'terra nullius' or uninhabited. Traditional Aboriginal lore has largely been replaced by white law; Aboriginal custom and religion much interfered with by white society's rules; priorities and lifestyle; traditional economics have been destroyed by the theft of Aboriginal land and Aboriginal sovereignty; and self-determination has been denied. Such marginalisation has been in the name of progress. How can a nation retain its soul with such a history much less good relations between Aborigines and police? And how can Aboriginal people see a future of hope so that they stop dying through suicide, alcohol abuse, introduced diseases and murder by the hand of loved ones?

## Solutions—Towards Crime Prevention

We have a law and order crisis and a social crisis on Queensland Aboriginal Communities of major proportions. It is time governments responded in such a way as to empower Aboriginal people to find their own solutions at a local community based level.

### *Aboriginal Land Rights and Self-Determination*

Aboriginal land and resource rights and compensation should be given to Aboriginal Communities after full consultation. The outstation movement where Aboriginal clans move out of artificially created Communities where conflicts arise, and move back to their traditional lands which are usually alcohol-free, should be supported. It is important that Aboriginal Communities be self-determining because many of today's problems stem from having that control over their own lives taken away by governments and administrators via, for example, the previous Queensland *Aborigines Act 1971*. The present *Community Services (Aborigines) Act 1984* needs to be changed for Communities to achieve self-determination.

### *Law Reform and Customary Law*

One reason that the present system of law and order on Communities is not working is that although there are Aboriginal police and community courts presided over by Aboriginal JPs dispensing law based on Aboriginal Local Government Council by-laws, which include behavioural offences, it is basically the European system of law and order that is operating. These vehicles on Queensland Aboriginal Communities offer opportunities for the recommendations of the Aboriginal Law Reform Commission's Report on the Recognition of Aboriginal Customary Laws to be implemented, but this has not been attempted. Until Aboriginal Communities re-examine their present social control mechanisms in the light of what customary laws could be adapted to today's needs and are empowered to do so by governments, the present scandalous situation will continue.

Prior to 1984, the Queensland *Aborigines Act* was in operation on Aboriginal Communities and it contained a large number of infringements of human rights. For a detailed discussion on this, see Miller (1986). The by-laws that pertained to this legislation were also discriminatory and the Human Rights Commission outlined these human rights infringements in detail in a previous report.

When replacement legislation, the *Community Services (Aborigines) Act 1984*, came into being with the intent of giving local government to Aboriginal Communities, the Queensland Government made no attempt to ask community councils what they wanted to see in the new Council by-laws that would operate under the head of power of this legislation. Nor was there any effort by government to assist the councils to develop culturally appropriate by-laws or to put into place the recommendations of the Law Reform Commission on the Recognition of Aboriginal Customary Laws.

Instead the Aboriginal Councils were advised to adopt the Mt Perry by-laws, which were devised for a non-Aboriginal Council. Yarrabah was the first to do so and a number of other councils have followed suit because no alternatives were given. These by-laws are framed in inappropriate legalese, many provisions are irrelevant and some important matters are not covered, e.g. land management matters and Aboriginal ranger by-laws. Injinoo and Kowanyama Council, however, have separately sought legal advice and drawn up more appropriate by-laws. Some Communities still do not have new by-laws. They are operating under the outdated by-laws that pertained to legislation that no longer exists, namely the discriminatory Queensland *Aborigines Act*. This is a disgrace!

The ACC puts such a high priority on its By-Laws Project (for which it is seeking funding) for the following reasons:

- By-laws are perceived to be the main avenue for law reform in Communities. As the current Queensland legislation covering Aboriginal Communities is under review anyway, intensive consultations with Communities as to what they would like to see in their by-laws need not be limited by what is possible under the current legislation. Recommendations from this project can feed back to the review of the *Community Services (Aborigines) Act* and other legislation.
- By-laws are the basis of law and order on Communities with community police arresting for by-law infringements (Yarrabah once called them by-law officers when there was a dispute between Council and state police over their supervision) and Community courts having the ability to hear only by-law infringements.
- By-laws provide the best vehicle for the Communities to recognise and/or reintroduce customary law recommendations of the Law Reform Commission or the Recognition of Aboriginal Customary Laws.
- By-laws are an avenue for Communities to be more self-determining. A much wider range of powers can be created under Aboriginal Council by-laws than under non-Aboriginal Council by-laws. For example, Aboriginal Councils can make determinations as to who is a resident, who is eligible to vote and stand for elections, what classes of persons can enter their Communities and make determinations about the use of alcohol, land and resource management, social control issues etc. In this sense Aboriginal Communities are 'domestic nations' like North American Indian tribes.
- Traditional dispute resolution mechanisms could be incorporated into Community by-laws to reduce the amount of homicide, domestic violence, child abuse and juvenile offending on Communities. We need reform of community policing and Community courts so they are more in tune with traditional dispute resolution methods.
- The present by-laws are either outdated and discriminatory or are designed for white councils, culturally inappropriate, framed in legalese, have left out important matters and contain many irrelevant provisions.

Under the previous Queensland Government, the Crown Law Department continually rejected sections from Council's by-laws because they would not allow for cultural differences on the Communities. It is hoped that this will not happen under the present ALP government. For example, Aboriginal Councils and police on a number of Communities have told me that they want curfews to keep their children off the streets in the early hours of the morning to protect them. They also want it to be an offence for a person to 'cart tales' that a person is sleeping around because it causes fights.

Additionally they want it to be an offence to say the name of a dead person because this is against Aboriginal culture and usually happens when a person is drunk. It offends the relatives and will cause fights. In the past, the Queensland government has overruled such by-law proposals.

### *Mediation or Dispute Resolution Training*

The Queensland Justice Department has put out a Green Paper on Mediation and is in the process of setting up four Community Justice Centres in Queensland. The Aboriginal Communities I have visited are keen to have Community Mediation Centres on their own Communities with two or more local Aboriginal people trained as mediators, paid initially by CDEP (the Community Development Employment Program). Aboriginal JPs, community police and women's groups have also expressed interest in mediation training to improve their personal and work skills.

Mediation is particularly useful in resolving family disputes and should reduce crime and incarceration levels. It should also reduce recidivism as the underlying problem would be sorted out, reducing the number of crimes that would be re-committed.

The concept of mediation is that it is non-coercive, non-punitive and the mediator is not an arbitrator, but facilitates the process of getting disputants to talk to and hear each other so that a solution can be reached that they agree on. This may take a number of sessions in difficult cases before a written contract is made. Once Aboriginal mediators are trained, they can work out an alternative to written contracts which would not be suitable in most cases.

Mediation is more suited to Aboriginal Communities than the Western adversarial justice system. Jacob Wolmby, an Aurukun Councillor said 'Mediation is what we do anyway'. He said the Council would like to have a building next to the Council Chambers to use as a Community Mediation Centre. Rather than two disputants as we would see in a city, in an Aboriginal Community, mediators would need to involve a number of kin for the mediation process to be effective.

Mediation or dispute resolution as well as being a preventative measure could also be used as a sentencing option of the Community Court or Magistrate's Court depending on the severity of the offence. Restitution might be agreed upon between parties with the help of a good mediator. Each disputant is more likely to carry out his/her side of the contract because they helped in devising it.

### *State Police*

There should be a screening process to weed out racist police who cannot be retrained so that they do not work in areas of high Aboriginal population. A recent move by the Queensland Police Department to involve Aboriginal Councillors on the interview panel to select state police applying to work on Communities is welcomed. It is necessary that state police be trained at the Police Academy and with in-service courses in Aboriginal culture and history, and inter-cultural communication by Aboriginal people. Courses should be designed and taught where possible by Aboriginal people.

State police need to make more use of proactive policing, getting preventative programs going, such as blue light discos and other recreational activities, building up a rapport with young people. Police need also to use their discretionary powers more e.g. to ignore some matters or deal with them informally by advice on conciliation, or formally by caution or summons instead of arrest.

### *Community or Aboriginal Police*

All Communities I have visited have requested community police training. Kayleen Hazlehurst of the Australian Institute of Criminology, was asked by the ACC to prepare a community police training manual and video in conjunction with the Queensland State Police. This was quite innovative, but there have been a number of problems. It is a very large area for one policeman to cover to do community police training along with his other responsibilities. Also, by the time he gets around to a community to do another module, some police have been replaced so that he has to start over again. Community police have a high drop-out rate because it is difficult to arrest relatives and there are anti-police feelings on Communities. Cultural prescriptions regulating interaction with close kin sometimes hamper police duties. It is also difficult for community police to arrest Councillors or their families when they are employed by Councils.

The Royal Commission into Aboriginal Deaths in Custody found that on Wujal Wujal where a death had occurred, the Senior Aboriginal Police Officer was an untrained teenager. At Doomadgee each Aboriginal Police Officer had only a few months experience on the job.

Very few community police are likely to go to the Police Academy in Brisbane to be trained as state police in the near future because of not wanting to leave home for study and because of the need for a bridging course to cope with the study requirements.

Also once they do the course they can be posted anywhere in the state which they do not want. This makes it important to provide adequate, regular on-the-ground training. Because of lack of training, community police do not often get respect from the community who see them as second rate 'Mickey Mouse' police. This makes it difficult for them to respect themselves and to carry out their jobs. A career structure needs to be created for community police and those that have alcohol problems, or who have raped or bashed community women, should be eased out. It is not appropriate for community police to have criminal records themselves and a better selection process is required.

The Northern Territory Police Aide scheme could be adapted to the Queensland Aboriginal Community situation. It appears to work for four reasons:

- Selection of police aides by the community, so that they have tribal authority and the endorsement of all clans;
- Suitably trained police supervisors;
- Responsive two-way communication from state police through Aboriginal police to Aboriginal Council and Community; and
- Tribal mechanisms for dispute resolution and social control are allowed to take place as much as possible.

An ACC Working Party on the *Community Services Act* recently recommended that community police training occur at a residential training centre on a North Queensland Aboriginal Community, supplemented by on-the-job training. This would be preferable to going to the Police Academy in Brisbane, although it could be a stepping stone to the Academy for those who wish to go. This recommendation followed a discussion on the Northern Territory course at Batchelor College and it was decided that it would be worthwhile getting a copy of the curriculum which would have to be adapted because of different laws. It was also decided that experienced Northern Territory police should be used initially to teach at such a residential community course.

Aboriginal people are most suited to solve their own problems. Aboriginal-police liaison committees could be set up on each community so that there can be greater Aboriginal input into the policing of the Communities.

Police powers should not be limited as in the Northern Territory, but certain basic powers such as powers of arrest should exist even if a Queensland Police member is not present. Queensland Aboriginal Communities feel strongly that community police should have powers of arrest, and that the *Community Services (Aborigines) Act 1984* should be amended so that community police and Aboriginal Councils as their employers are not liable to be sued. This would make it even more important that sound training of police occur.

A major stumbling block to introducing into Queensland a scheme similar to the Northern Territory Police Aide Program would be the employment of Aboriginal police by the state police force. Presently the Aboriginal community police in Queensland are employed by Aboriginal Councils, and most Councils would prefer it this way. Some Councils, for example, Hopevale, do not feel it is necessary to have any state police in their community, while other Councils e.g. Wujal Wujal have requested in vain to have state police stationed there. (Wujal Wujal presently has no community police, no state police, no Justices of the Peace to hold Community Court and no watchhouse to put offenders in anyway).

Further recommendations are:

- To move away from the Aboriginal concept of police as 'Bullimen', training modules need to be developed to teach proactive crime prevention, and crisis intervention skills, as well as peace-making and mediating skills.

- More female community police are needed, in particular for search procedures with arrested women.
- Community police should be selected by the community so that where appropriate, they have tribal authority and the endorsement of all clans.
- Police should be trained to support the use of traditional mechanisms for dispute resolution and social control.
- Funding should be made available through DEET or another source for Queensland Community Police to visit the Northern Territory and see how the Police Aide scheme works.
- A career structure, decent pay, new uniforms and boots rather than secondhand ones, and decent resources such as police vehicles, walkie talkies etc., should be provided to community police to increase morale.

### *Community Courts*

The present system consists of a community court which is presided over by two Aboriginal Justices of the Peace, often elders in the Community or three Aboriginal Councillors. They hear matters related to by-laws offences which apart from the usual local government by-laws, include social order offences such as drunk, drunk and disorderly, offensive language etc. The following problems arise however:

- complete lack of training of JPs and Councillors;
- infrequent court hearings;
- a white system of justice is administered by Aboriginal people;
- they have difficulty in remaining aloof from community conflicts or dealing with relatives;
- they have no support staff or facilities; and
- there is no clear definition of their role.

This leads to lack of faith in Community courts by some Aboriginal people who call them 'kangaroo courts'.

One reason for the infrequency of court hearings on other Communities is that JPs are often old and too sick to attend court, or they are tied up with other jobs on the Community which take precedence because JPs are unpaid. More JPs need to be appointed, proper training needs to occur and remuneration needs to be considered. Cairns TAFE was approached late in 1989 to develop an Aboriginal JP training course in consultation with ACC but nothing has eventuated.

A review into the appropriateness of the Community court system needs to occur before a decision is made whether to retain it or not. With reform, however, it is a possible vehicle whereby customary law can be recognised in Communities. At present there is no legal representation of Aborigines in Community court and the penalty for a by-laws breach is a fine of up to \$500, fines being the only option the court uses.

Community courts could in fact have increased jurisdiction and the following factors should be taken into account:

- Aboriginal people should deal with most juvenile offenders;
- where this has not already occurred, a community group should be established to advise the court on juvenile offenders (and child abuse and neglect);
- drunkenness should be decriminalised;
- mediation or dispute resolution mechanisms need to be incorporated; and
- the procedures and informality of the small debts and small claims courts and tribunals in Queensland should have application within the Community court system.

### *Magistrate's Courts*

The two-tiered system of justice on Communities means that offences that result in charge under state laws are dealt with by visiting magistrates. These magistrates visit Communities on a regular basis every 2 or 3 months and deal with cases over a two to three-day period. Mostly matters are dealt with summarily, with police evidence, pleas of guilty, evidence from the accused by means of a signed statement, followed by a conviction and judgment.

Aboriginal advisers from particular interest groups in the Community should sit with magistrates. Different groups could be recognised as capable of advising the court in their specific area of concern, for example domestic violence, children etc. Aboriginal customary law should be recognised and there should be vested in the courts some statutory discretion to have regard to customary law and punishment. Governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.

### **Recommendations**

For the sake of brevity, a number of additional recommendations will only be outlined:

#### *Domestic Violence*

1. Most Communities want and need women's shelters so that women have a safe place to go when they experience violence. Funding should be made available for this and for training of local Aboriginal women to staff such shelters.
2. Such 'train the trainer' programs could involve assertiveness, self-esteem, conflict resolution, stress management, and counselling skills courses, taught in culturally appropriate ways, preferably by Aboriginal people. These courses should draw on traditional dispute resolution methods.
3. That the Department of Family Services and Aboriginal and Islander Affairs provide Aboriginal Councils with funds to employ Family Support Workers who would co-ordinate welfare services on Communities, and provide counselling and training courses. These Family Support Workers or Community Development Workers would be expected to train local Aboriginal people to take over their position. The ACC is prepared to assist on the selection panel for these staff. These positions are already budgeted for but the positions are presently DAIA staff positions which have yet to be advertised.
4. That the ACC receive ongoing funding to employ a domestic violence worker to make regular visits to Communities to provide support to local women's groups and male perpetrator groups. The present one-year one off funding from the Department of Family Services and Aboriginal and Islander Affairs is not sufficient.
5. That an awareness program be mounted on Communities to address the issues of domestic violence and child sexual abuse and neglect. Aboriginal people need to understand the seriousness of what is happening to them, to educate people about the law and about their misrepresentation of traditional practices. The ACC recently assisted the TAG group in Weipa with their program. More funds are required.

6. That perpetrator programs be set up for males to enable them to form a support group and work through their problems with a trained counsellor and learn alternate strategies to cope with anger and conflict.

7. The ACC held a successful Domestic Violence Workshop in Cairns earlier this year but another workshop needs to be held this time with a greater number of men attending so that strategies can be worked out to deal with the marginalisation of young men. An alternative to initiation from boyhood to manhood so that this vacuum is not filled by the first experience of getting drunk or the first experience of going to gaol being celebrated as an entry to manhood.

### *Alcohol*

1. Governments should legislate to abolish the offence of public drunkenness and police should take intoxicated persons home or to sobering up centres which need to be established on all Queensland Aboriginal Communities.

2. Other ways of achieving group solidarity and identity besides drinking alcohol together need to be found. Alcohol-free sporting events and cultural events should be organised on Communities and encouragement given to traditional and other arts and crafts activities.

3. The Department of Family Services and Aboriginal and Islander Affairs should fund each Aboriginal Council with wages and equipment for a Recreation Officer. This person would train local people to take over their jobs.

4. The Recreation Officer should promote alcohol-free family activities like camping, fishing, hunting and a wide range of activities for men and women, young and old.

5. Edmunds (1990) has noted that Aboriginal people successfully use Christianity as a form of social control in relation to alcohol and see the overall impact of this development as positive. To the extent that this perception is supported in individual Communities, outside organisations should respond to Community requests to support local Aboriginal Christians in their Community work.

6. Sly grogging should be dealt with severely by confiscation of vehicles and boats and laws need to be changed to assist Aboriginal Communities to deal with the sly grog problem as Councils and police often feel powerless to do anything about it.

7. Aboriginal Communities need the power to decide whether a whole Community will be alcohol-free and if they decide to have a canteen, Communities need the power to be able to impose restrictions on the sale and use of alcohol.

8. Aboriginal people need to have the power to request their Council for their home to be considered a dry area so that if a visitor arrives drunk or wants to bring alcohol into their home, that Aboriginal household has some protection, from police if necessary in evicting them. The knowledge that their home is a dry area however will inhibit drunks from going there. (Pearson has recommended to Hopevale Council the inclusion of this provision in their by-laws).

9. The alcohol co-dependency or 'Tough Love' Program jointly run by the Aboriginal and Islander Catholic Council and the Department of Family Services and Aboriginal and Islander Affairs is an excellent program and needs further funds and staff.

10. The outstation movement should be supported so that clan groups can move back to their own land and establish alcohol-free bases away from the conflict caused by having a number of clan groups in close proximity in an artificial settlement.

11. For those who attempt suicide, crisis counselling should be available in the evenings at a sobering up centre or crisis accommodation centre. During the day, family support workers could provide counselling and self-help programs. Many of the recommendations regarding alcohol, including the need for a recreation officer would assist here.

#### *Child Abuse and Neglect and Juvenile Offending*

1. The Department of Family Services and Aboriginal and Islander Affairs should fund children's shelters or extended family homes for children who are abused or neglected.

2. Short courses in child development, counselling skills, communication skills etc. should be run on Communities for the staff of these shelters and members of committees dealing with child abuse and neglect.

3. Counselling and other support should be provided to both parents and children to try to reunite families.

4. The Department of Family Services and Aboriginal and Islander Affairs should change its provisions, and if necessary legislation should be changed, so that care of Aboriginal children placed in children's shelters or extended family homes can be funded by the Department, whether those children are officially in 'care and control' or not, otherwise these shelters suffer a funding deficit.

5. The government should fund an awareness program of posters, videos, pamphlets and books which could be run by ACC in conjunction with Councils and SCAN (Stop Child Abuse Now) or Concerned Parents Groups.

6. Recommendations have already been made regarding the need for Family Support workers and Recreation Officers to be placed on Communities to train local people. The local Aboriginal people they train could assist with child abuse and domestic violence education programs.

7. When the Juvenile Aid Bureau travels to Communities, they should contact the ACC so that an Aboriginal child care worker can travel with them.

8. Amendments need to be made to Queensland legislation so that community SCAN or Concerned Parents Committees have the power to make decisions within the Community on the future welfare of their children.

9. The Cairns TAFE should run a Welfare/Community Development Workers Course aimed at the needs and resources of trust area Communities.

10. Council by-laws should control the kind of videos allowed into Communities. Greater emphasis should be placed on cultural videos instead of European sex and violence videos.
11. The Department of Family Services and Aboriginal and Islander Affairs should make available to the ACC records of removals, births, deaths and marriages so that assistance may be given to families who want to learn of their origins and track down family members e.g. brothers and sisters they were forcibly removed from by government policy as a young child.
12. Parenting skills should be taught in Community schools in culturally appropriate courses delivered, where possible by Aboriginal people.
13. The Queensland Government should allow the Aboriginal Councils who request it, to put a curfew in their by-laws as to when children should be off the street at night. They could then be returned home and if no-one was there, taken to a safe house for the night.
14. To cut down on truancy, Community elders need to be brought into the schools (where this is not already happening) to teach their culture, arts, crafts and dance, so that the children learn to respect themselves and their culture and see more integration between the school and the Community. It is possible to use CDEP to resource this step.
15. Funding for vacation care programs should be available to local children's committees on Communities as a preventative measure.
16. As juvenile offenders often offend to get a 'holiday' out of the Community, the ACC has begun a program to bring 'at risk' children to Cairns on excursions in the belief that this will reduce juvenile offending. ACC needs funding to assist in this program.
17. Juveniles who do offend should be kept in the Community either at outstations or half-way houses in the Community which Queensland Corrective Services Commission should fund. This will mean that the reward of a trip out of the Community will not be given for offending behaviour, but rather for non-offending behaviour.
18. Juvenile offenders can do community service preferably directly compensating individuals or organisations who have been offended against.
19. Community Councils should be supported by government to put provisions into their by-laws that allow more Community and police discretion to deal with juvenile offenders. Aboriginal police liaison committees could advise in this process.
20. Human Relationships Training which occurs in most schools in Queensland should be extended to Aboriginal Community schools to encourage healthy mental, emotional and sexual relationships. Aboriginal people need to be trained to deliver these courses in a culturally appropriate manner.
21. Nurses and police should refer abused children and their abusers to family support workers for confidential counselling for themselves and their families. Recreation officers should provide opportunities for youths to occupy their time more meaningfully.

*Conditions and Procedures at Police Watchhouses*

1. Most Aboriginal community watchhouses are a disgrace and need to be pulled down and rebuilt with Community consultation regarding the design and location.
2. Watchhouse keepers should be appointed to each Aboriginal Community. It is not sufficient to have an off-duty police officer look in occasionally or leave a person unattended all night.

#### *Non-Custodial Corrections*

1. Non-custodial corrections e.g. probation and community service should be made greater use of with fewer Aboriginal people going to gaol and earlier release of those who go on home detention or parole.
2. ACC supports the setting up of half-way houses on Communities by the Queensland Corrective Services Commission to assist in the transition of prisoners back into the Community.
3. Educational and counselling programs to deal with poor literacy and numeracy skills and alcohol problems are needed for prisoners as well as recreational and employment-related training programs to assist in rehabilitation and re-entry to the Community.
4. On some Communities, more adequate supervision of community service is required.
5. Parole Boards and conditions need to be more flexible for Aborigines, because of the difficulty for Aborigines of having jobs and fixed addresses to return to.
6. Aboriginal Community organisations like the ACC need to be funded to assist Aboriginal prisoners to meet parole conditions.

#### **Conclusion**

The Queensland Government should review the whole justice system relating to Aborigines and Islanders by setting up an inter-departmental committee and inviting representatives from Aboriginal Community groups such as the ACC.

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