ABORIGINAL CUSTOMARY LAW

Elizabeth Pearce

Before Aboriginal people can be involved in the criminal justice system in a meaningful way, both the Federal Government and State Governments must recognise us as an integral part of the Australian community rather than an unwanted appendage. The Central Australian Child Care Agency, (ACCA) is a community organisation which is attempting to work through, within and with, the criminal justice system in Central Australia.

While ACCA has been in existence for the last eight years, it has not been as effective as it could have been for these reasons:

- ACCA is a child care agency not a child minding centre. We protect and monitor children at risk aged less than seventeen years. Our policy is to keep the family unit together rather than split or separate families. It has been very difficult to get groups or funding bodies to understand this until recently.

- Because of the Australian government's attitude to Aboriginals' social structure our families have been intimidated and afraid of anything "smacking" of "welfare people", so even past Committee members of ACCA have not always understood what ACCA is about.

- Aboriginal people who "stand-up" to the white man's law are branded as troublemakers, often by both sides of the community.

- The Aboriginal and Australian Legal Services have also had a dampening effect on the advancement of Aboriginal peoples' so-called "self-determination". For example,

In "white man law" a person is innocent until "proven guilty". In Aboriginal law the perpetrator must own up and accept the punishment. If he or she does not, then their family members are punished. "White man law" has taught Aboriginal people to lie and let others take the blame for crimes committed.
The "white man law" point of view has assisted over the last fifteen to twenty years in breaking down Aboriginal culture and social structure to the extent that chaos and cultural destruction appears to be the norm.

Many Aboriginal people who have despaired of being ever "listened to" by "white man law" have taken action by re-introducing and rebuilding traditional Aboriginal law to cope with today's society.

The women of Yuendumu have taken issues into their own hands by going back to using "old women's law". Traditionally in many nations of black people of this, country now known as Australia, the old boss women were the "final" decision makers. This responsibility was a very serious one and not often used, but when it was used everyone "ran for cover". Even the very important men in the community stopped and "listened properly" and even "backed off" from what they were doing if the "Boss Women" insisted they stop.

In Alice Springs, because so many different nations of "black Australians" have moved in from their own country—a group called The Four Corners has been set up. This group of men are mediators for any trouble which occurs between Aboriginal people living in Alice Springs. When a "hearing" is set up everyone concerned attends (this includes men, women and children). The Four Corners members attend as mediators. By the time discussion concludes the perpetrator admits s/he is the cause of whatever and must go home to their own country for a length of time.

A social behaviour project has also been set up which is a traditional way of respecting other people's land, as well as other people. Both The Four Corners and the social behaviour project, have been set up by the Aboriginal Council of Alice Springs Town camps known as Tangentyere Council. Both of these are fairly recent developments and appear to be making headway.

There is also a night patrol consisting of Aboriginal volunteers who drive around the trouble spots and pick up drunks and take them home. They also talk with troublemakers getting them to move on out of the "vandalism risk area". In the Central Business District of Alice Springs, vandalism has been cut by around 50 per cent because of the night patrol's work; vandalism by non-Aboriginal juveniles has also slowed down.

In traditional Aboriginal law, the uncles, aunties and grandmothers are in charge of children's welfare. Under "normal" circumstances no child can be classed as "homeless" because the children belong to the community.

In extenuating circumstances, where a child might be deemed as neglected for whatever reason, traditional law required that there be a family meeting. On general consensus, that child would be given to an extended family member to be cared for until the closer parent/s were able to care for the child again. The parents could not take that child back until they proved they were able to care for the child again.

This would be looked on as a "shame job" by the family. There would be no discussion of the "Shame" which would make it more severe. Where there is discussion the "Shame" side is minimised, so it would not be so serious.

ACCA's policy is "family consultation" to keep the children within the family system, and care for the children on "grandmother law" basis.
The Northern Territory Government is setting up a Northern Territory Constitution. ACCA will be heavily involved in working towards having the Aboriginal family customary law integrated into the Constitution. Also, the Northern Territory is reviewing the adoption section of the *Family Welfare Act*; ACCA and the Darwin Aboriginal Child Care Agency Karu are involved in this process. One of the issues is that no Aboriginal child be adopted by non-Aboriginal people. The Northern Territory Government has also, through Aboriginal pressure over the years, accepted that there be no more adoptions, but rather long-term foster care for children right "across the board".

The Juvenile Detention Centre (Giles House) in Alice Springs has been closed for the last twelve months because the Northern Territory Government found it was too expensive to operate. Juvenile offenders from Central Australia have been and are presently being sent to Darwin Juvenile Detention Centre (Don Dale Centre) which is approximately 2,000 kilometres away. ACCA has recently applied to re-open Giles House as a juvenile offenders' hostel.

The Northern Territory Minister for Correctional Services is very supportive of this proposal and has agreed to negotiate terms in the near future. He and many other Northern Territory Government Ministers are aware that "grandmother law" and Aboriginal customary law will be practised. Some accept this, others are sceptical. We have tried the white man's way and failed, therefore we *must* use Aboriginal customary law. There is no other way for us to go.