Warning: Readers should note that there may be mention, photos or interviews with Aboriginal persons who are deceased within this Newsletter. In the case of deceased persons, the Association strives to observe cultural necessities, particularly in naming their 'living names'. In all cases, where possible, we seek the advice of the immediate family of the deceased person. Where there is disagreement within that family structure, we will observe the wishes of the most immediate family member with whom the deceased had regular contact.
Where there is uncertainty in the naming protocols, relatives cannot be established or a failing with our inquiries we will use the initials of the deceased. We offer only respect for the deceased person and his/her family but we cannot delete the 'living names' of the deceased from the reports/articles used due to legal issues.

Djadi–Dugarang

(Talk Loud – Talk Strong)

The Newsletter of the Indigenous Social Justice Association
Volume: 8 Issue: 2
March – April 2007

On Custom, Law and Howard's Genocide – Part 2

Continuing the analysis of why we must not lose our Custom and Law

Welcome to the March/April issue of the Newsletter.

This issue continues to look at the issues of Custom and Law arising from a previous issue, V7 #9, September 2006.

After some thought, and looking at the articles included in this issue, it was decided to concentrate only on Custom and Law rather than to widen it by including articles and arguments on what is also involved in the Communities and Town Camps. That must wait for a future issue, hopefully the July/August issue. This could be pushed aside however by the outcome of the Court case against Senior Sergeant Christopher Hurley and his assault on Mulrunji Doomadgee.

Perhaps as a warning as to what the Government of Peter Beattie, the Courts and the Queensland Police will/may attempt to do in an effort to have Hurley exonerated, is clearly and cynically shown by us looking at the dismissal from Court of Sergeant Robert Whittington of the Northern Territory Police four years after shooting an 18 year old in the back at Wadeye in October, 2002.

But we begin as usual with our Sorry Business Reports.

It is already a great loss to bear when a loved one dies in normal circumstances but it is far more grievous when one dies as a result of a death for which there is no real explanation.

Ask any Death in Custody Family.

The absolute senseless killing of the talented artist and CRC volunteer, Ray Brown, clearly shows this. Police investigations are still ongoing to find his killer.

Following this Sun Herald report is the Condolence to his Family and Community from CRC staff where Ray volunteered his valuable time as a mentor as a member of the StAMP Mentoring Programme since November 2005.

Shooting of artist baffles detectives

The Sun-Herald
John Kidman
1 April 2007

POLICE concede they are battling to explain the killing of a talented Aboriginal artist, gunned down in Sydney's west eight weeks ago.

The killing, apparently for the sake of a few dollars and a mobile phone, has left Ray Brown's grieving family equally dumbfounded.

The bloodied body of the 36-year-old father-of-one was found by an early morning jogger on a bike path near Canley Vale Railway Station, minutes from his parents' house, on February 4.

Hours earlier he had travelled by train from Bathurst but, finding no one at home, left his gear on the veranda and presumably went to visit a friend.

His last known movements were captured by security camera - he was walking across a footbridge after using a platform vending machine about 3.15am.

Within an hour, he was dead.

"He didn't have any enemies," his father, Thomas, said. "It could have been mistaken identity, the wrong place at the wrong time. We're at a loss to come to terms with it."

Detective Chief Inspector Gary Clark said police had no motive other than a petty robbery gone wrong.

"We're not even sure how many people were involved," he said.

Speaking at length for the first time since the death, Brown's family told how he had turned his life around after years battling drug and alcohol problems.

"He'd become a happy, loving man again," his sister, Marjorie, said. "And then this happens."

Brown had been mentoring Aboriginal youths and helping on anti-drug and welfare projects.

Police are investigating a seemingly unconnected break-in at his unit in Bathurst. Most of his valuables were stolen.

Vale Ray Brown

CRC Newsletter
March 2007

CRC is sad to share with everyone the tragic passing of Ray Brown. Ray Brown had been a volunteer mentor with the StAMP Mentoring Programme since November 2005. Ray was killed near his parent's house in Western Sydney on Saturday February 3rd, 2007.

His passing has left many people that knew him saddened and perplexed that such a senseless tragedy took his life.

Ray was a thoughtful and gentle Aboriginal man. Drawing from his own life experience he felt it was time for him to assist others facing difficulties and share his knowledge and experience.

In addition to his work with CRC, Ray did a lot of volunteer work for his community. He had a great respect for Elders in his community that had supported him when he himself had struggled with life.

He was open and honest about the demons he had faced in the past through using drugs, alcohol, depression and living a transient lifestyle. He was clear that his past was that, the past and his commitment to use his history to benefit his future and the future of others was transparent and sincere.

Ray had a great sense of humour and always wanted people to smile. He was generous with his time, with his ideas, with his dreams and hopes for the future.

Ray was exploring and discovering his spiritual path in life which he expressed in his new love of art.

Ray had undertaken Aboriginal Studies at TAFE where he developed a strong drive to reconnect with his cultural heritage which in turn increased his sense of belonging and pride.

His parents were very important to him. He had a loving connection with them. He visited them often and painted for hours under their tree.

His art was developing and giving him solace. He encouraged the young people he mentored to use art to express their feelings. Through his art he hoped to share Aboriginal stories, tell stories of pain and healing, strength and resilience. He had hopes for the future of teaching and building bridges between cultures to find commonalities between people.

Above all, he was proud of his journey and of the work he did with his community. He will be sadly missed.

We also report on the passing of a well-respected and honoured Tribal Elder, George W Brown, Jnr of the Lake Superior Chippewa Tribe on 15 March 2007

Holy Road

Indian Country Today
Abbey Thompson
2 April 2007.

Honoring George W. Brown Jr.

LAC DU FLAMBEAU, Wis. - The Lac du Flambeau Band of Lake Superior Chippewa suffered a great loss March 15 when well-respected and honored tribal elder George W. Brown Jr. passed away after a long battle with diabetes. Born and raised in the "Old Indian Village" of Lac du Flambeau, Brown served the tribe for 42 years as a tribal council member and secretary.

Brown also served on numerous community organizations and is best known for his work in establishing the tribe's first museum, later dedicated in his honor as the George W. Brown Jr. Ojibwe Museum and Cultural Center.

In 1951, Brown was one of the original waaswaagan dancers who performed in the Indian Bowl amphitheater. Following in his father's footsteps, he later emceed the weekly pow wows, using his infamous sense of humor and his fancy dance steps to entertain the summertime crowds.

Brown's love of music led him to other performances, playing trumpet in the Haskell Institute band. He continued to share his musical talents in a jazz band he formed with his brother, Leonard "Buddy" Brown, and friend, Charlie "Injun" Peterson. "The Brown Boys" were popularly known around the Lakeland area during the 1950s, '60s and '70s. He loved Dixieland jazz and big band music, often imitating Dixieland icon Louis Armstrong. He was also a well-known singer at pow wows held throughout the region and, at one time, performed at the Smithsonian Institute.

Brown was a World War II veteran, proudly serving in the U.S. Navy from 1944 - '47 as Seaman First Class. He served in the Pacific theater on the USS-LST-826, and several Pacific Islands including Iwo Jima. He enjoyed attending reunions with his former shipmates. He was a lifelong member of the local American Legion Chicog-Skye Post 374.

Brown was the official bugler, playing Taps at military funerals and Memorial Day services.

Brown is survived by his wife of 55 years, Geraldine; daughters Georgine Brown and Geraldine "Weeders" Brown; a son, John Brown; a brother, Leonard "Buddy" Brown; a sister, Wanda Hunt; four grandchildren; two great-grandchildren; and numerous nieces and nephews. He is preceded in death by his parents, George W. Sr. and Sadie Brown; a brother, James Brown; and a sister, Violet Virts.

Another respected Elder and a most talented artist from the Eastern Desert town of Utopia also left us.

Invisible artist of the desert

The Sydney Morning Herald
Henry Skerritt
12 April 2007

Kwementyay Kemarre, c.1939-2007

LIKE many artists from the Eastern Desert community of Utopia, Kwementyay Kemarre* first exhibited in the landmark touring exhibition Utopia - a Picture Story in 1988. Co-ordinated by the late Rodney Gooch, A Picture Story contained batiks from 88 Anmatyerre and Alyawarre artists from the Utopia region.

Kwementyay's contribution to the exhibition demonstrated a level of artistic confidence and dynamic lyricism that came to define her art. Entitled The Athamarenye Men, it told the story of "spirits of the country who live in the hills and are almost invisible. They give food to

hungry people as long as they respect the Law."

This story is an apt metaphor for Kwementyay's life. She lived as a traditional bush woman. She was an artist of the greatest integrity, talent and generosity - but, for much of her career, remained one of the more "invisible" talents of the Eastern Desert, her legacy overwhelmed by the meteoric success of some of her contemporaries, including Emily Kngwarreye, and Kathleen and Gloria Petyarre.

Kwementyay, who has died at Alice Springs Hospital, is remembered as a person of deep sincerity, passion and warmth. Her friends Mark Gooch and Janet Pierce recall her smile and ability to find humour in the smallest thing.

Kwementyay was born about 1939 at Mount Swann in her father's country. The daughter of Clara Kngwarreye and Kwementyay Pwerle, she was brought up in the Harts Range region with her sister, Gladdy Kemarre, and her brother, Billy Benn Perrule. The siblings grew up learning the traditions of their Anmatyerre people and how to paint through the ceremonial body designs.

Their father was a carver of traditional objects, boomerangs and spears. All three siblings would go on to be successful painters, with Kwementyay and Gladdy also turning their hands occasionally to sculpture.

For much of their lives, the sisters lived together at Camel Camp in Ahalpere country with Angelina Pwerle and the three would often sit together and paint the Alkwe or "bush plum" dreaming. The Alkwe was a story given to Kwementyay by her grandmother. Depicted in layers of shimmering dots, the bush plums grow in abundance in Ahalpere country and are a major source of food.

For traditional Anmatyerre women, the bush plum is a source of physical and spiritual sustenance - reminding them of the sacredness of Ahalpere country. Its story is crucial to Anmatyerre women's ceremonies.

Kwementyay's depictions of the Alkwe were the accumulation of a lifetime's knowledge about the country that she loved and felt a personal responsibility to care for. Their power resonates across geographical, botanical and spiritual dimensions.

Kwementyay and Gladdy were an inseparable pair. Both artists were involved in the first Utopia painting project of 1989, and their works have been included in numerous exhibitions of Utopian art.

In recent years, the sisters had undergone a renaissance in their work - by all accounts producing some of the finest paintings of their careers. Last October, they held a critically acclaimed exhibition at the Mossenson Galleries in Perth, with several works bought for major public collections.

At the time of Kwementyay's death, she and Gladdy were about to have another exhibition at the Mossenson Galleries in Melbourne. In deference to indigenous protocols, Kwementyay's works have been removed, leaving Gladdy's works sadly alone for the first time.

The paintings of Kwementyay Kemarre have left a legacy of delicacy and beauty. Her works have travelled the world and are held in numerous public collections, including the National Gallery of Australia. In their shimmering beauty, they testify to the incredible life and radiance that she saw in her desert home. If this was a beauty that long eluded Western eyes, it is perhaps a perfect legacy for an "invisible" artist.

*A "sorry camp" is now being held at Camel Camp, in Utopia country, after Kwementyay's funeral. The community has asked that her image not be used and that, after the nameline, she be referred to as Kwementyay.

A Traditional owner from the Borroloola region has also passed on. At 43, Mr Timothy as we have been requested to call him, is far too young to have left us. It does, however, clearly shows the discrepancy that come from the health issues within the Communities. He was a Leader in the fight against the expansion of the mine on his Country.

McArthur River Mine activist dies

ABC Online
15 April 2007

A MAN who was instrumental in the fight against the expansion of the McArthur River Mine has died in Katherine.

The man, who for cultural reasons can only be called Mr Timothy, was a traditional owner of the Borroloola area.

Mr Timothy was in Katherine last week to represent Borroloola at the meeting of shire councils.

He fell ill and died in the Katherine Hospital on Friday.

Mr Timothy made headlines as the spokesman for the Yanyuwa people in their legal challenge to stop the multi-million dollar expansion of the McArthur River mine.

The case started in the Supreme Court last month and is ongoing.

Mr Timothy was also well known for his other achievements in the town.

He studied music in Adelaide and was the lead singer of Borroloola's first ever rock band.

Mr Timothy was 43 years old.

The cause of death is still unclear.

The tragic passing of 'our' actress, Justine Saunders, was, despite the knowledge of her long illness, still received by all as a great shock. Justine was an ongoing dynamo and continual inspiration to all those she touched upon. We have lost a Great Lady. We have two reports.

Indigenous actor Justine Saunders dies

ABC Online
16 April 2007

ACTOR Justine Saunders has died after a long battle with cancer.

Ms Saunders died yesterday in the Hawkesbury District Hospital north of Sydney.

Ms Saunders acted in television shows Number 96 and Prisoner in the 1970s and also in feature films such as The Chant of Jimmie Blacksmith and The Fringe Dwellers.

She helped establish the Black Theatre and the Aboriginal National Theatre Trust and was declared Aboriginal Artist of the Year in 1985.

Long time friend and colleague Pauline Clague says she will be sadly missed.

"Aunty Jus was one of the leading icons of the stage and screen but she was our leading Indigenous pioneer," she said.

"[She] helped to build things like the Black Theatre in the '70s and supported the Australian Film Commission when they got the Indigenous branch up."

Curtain falls on devoted black star

Sydney Morning Herald
Erin McWhirter
17 April 2007

AUSTRALIA'S film and TV industry was mourning the death of the actress Justine Saunders yesterday.

She died on Sunday morning, the Aboriginal and Torres Straight Islander Arts board said.

It's understood she died in Hawkesbury District Hospital, north of Sydney, after a long battle with cancer.

Saunders, who was born near Rockhampton in 1953, had a film, TV and stage career stretching back three decades.

She was best known for her roles in Fred Schepisi's 1978 movie The Chant of Jimmy Blacksmith, the 1981 TV mini series Women of the Sun and the movie The Fringe Dwellers, made in 1986.

Saunders, who hated being typecast in Aboriginal roles, appeared in television shows such as the 1970s hit Number and, during the 1980s, in Prisoner.

In more recent years she appeared in the long-running police drama Blue Heelers, the science-fiction series Farscape and the ABC medical drama MDA.

Her last acting role was in 2004, alongside Barry Otto, in the play Last Cab to Darwin.

Saunders received an Order of Australia in 1991 for services to the performing arts and to the National Aboriginal Theatre.

She also help set up the Black Theatre and the Aboriginal National Theatre Trust in 1987.

"Bob Maza always used to say when you entertain you educate," a statement from the Aboriginal and Torres Straight Islander Arts board quoted her as saying.

"I'd like to think people will remember me for playing my part in educating and entertaining.

"The curtain may come down, but hopefully the next generation can see what is achievable if this little black duck can do it."

A private service will be held this week and the statement said a memorial service would be held in Sydney in the near future, in accordance with her wishes.

A tireless Fighter for her peoples' Anangu Pitjantjatjara Lands, among many other actions, including Culture, health and education, has also sadly left us. Far too many of our esteemed Elders are leaving us and that is a sorrow we know only too well.

Living bridge between cultures

The Sydney Morning Herald
Diana James
17 April 2007
Nganyinytja, 1928-2007

NGANYINYTJA, who worked all her life to preserve the knowledge of her heritage and to unite Aboriginal and non-indigenous people in understanding each other, was born in the desert, beside a fire.

Her knowledge of the land was intimate, having walked as a child the Musgrave, Mann and Peterman ranges in the north of South Australia to Uluru in the Northern Territory. She travelled with her parents and grandparents, carrying only a digging stick and bowl, growing up strong in her traditional law and culture.

In the late 1930s her family moved from their homelands to Ernabella, where she attended the first creek-bed school as a girl of about 11 in 1940. Ernabella, in the Musgrave Ranges, was then a sheep station and ration post run by the Presbyterian mission.

Nganyinytja, whose memorial service is being held today in Amata and funeral tomorrow, first left her tribal home to travel to Adelaide in 1943 to find out how whitefellas lived. An independent and inquiring mind enabled her to learn quickly to read and write in English and Pitjantjatjara.

Other people, languages and cultures intrigued her. She was not daunted by the stares of strangers. "Poor things, they had never seen an Aboriginal girl in a bright red coat and white socks on an Adelaide tram before," she said, laughing.

Nganyinytja, which is pronounced Naninja, returned to Ernabella to become one of the first Pitjantjatjara teachers, enthusiastically introducing bush kids to settlement life and teaching white teachers, nurses and workers the Pitjantjatjara protocols and language. She became a bridge between the cultures.

Nganyinytja believed that health of body, mind and spirit depended on a strong relationship with country and culture. She was as active in health as in education and was the first Anangu woman to choose to give birth to a child in a "whitefella" hospital, in 1951. She broke tradition because she felt Western medicine

had much to offer her people, having seen it save lives during the measles epidemic of 1948.

However, Western medicine could not cure disease of the spirit, the malaise of alcohol and petrol addiction that was destroying her people in settlements in the 1970s. So she and her husband, Ilyatjari, moved back to her traditional country, Angatja, establishing the first outstation rehabilitation program for petrol-sniffing youth on the Anangu Pitjantjatjara lands. Many young people and families were saved by their tireless work.

Nganyinytja was never afraid to speak her mind. A fearless advocate of women's traditional land rights and responsibility to be involved in community political life, she led Aboriginal women in the Pitjantjatjara Council land rights struggle. At Amata in 1980 she chaired the first modern political women's meeting on the Anangu Pitjantjatjara lands, when senior women traditional landowners organised their part in the land rights meetings and protest march in Adelaide that year. Nganyinytja joined delegations to the state and federal governments.

She also led the Anangu women's delegation to the 1980 Australia and New Zealand Association for the Advancement of Science Aboriginal Women's Conference in Adelaide, where she expounded, unannounced, her vision of sharing the "dreaming" and keeping it alive by teaching all people, black and white. Her vision inspired the formation of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council. Nganyinytja declined to be the chairwoman because of her commitment to her work with petrol sniffers.

Nganyinytja and her family started the first cross-cultural tourism on the Anangu Pitjantjatjara lands, called Desert Tracks, in 1988. In the same, bicentennial, year she was one of 20 Australian women, from 1200 nominees, to receive a Women 88 Award. It recognised "consistently demonstrated tenacity, leadership, compassion, humility, determination and creativity", particularly in passing on culture to the next generation.

Desert Tracks, which won the National Tourism Award for Cultural Tourism in 1992, was developed around Nganyinytja's vision that the "Earth belongs to everyone, black and white, and we must work together to take care of it". Nganyinytja, who believed that the origin of racism is ignorance, welcomed people from around the world to her country to learn about Aboriginal culture, spirituality and their sense of place. "If people will listen to our way, they will understand why we live in the country of our grandparents and why we must have strong land rights," she said.

Her work was recognised by her being made a member of the Order of Australia (AM) in 1993.

To continue her cultural sharing Nganyinytja co-founded the Spirit of the Land Foundation in 1997. Anita Keating, who spent time with Nganyinytja, became the foundation's first patron. Keating said her time with Nganyinytja was "one of the most extraordinary and enlightening experiences one can possibly have".

Nganyinytja had six children and leaves 23 grandchildren and 22 great- grandchildren. Ilyatjari predeceased her, but their work will be continued by a daughter, Leah Brady, and her husband.

To the Families, Communities and Friends of those who have left us, we offer our Condolences and Respect. May they walk their Lands in Peace.

During October 2002 in Wadeye there was much friction between two gangs of youths involved in an ongoing 'payback' fight that had torn the Community apart for some time. By negotiation from all concerned it was agreed that the two factions, the Elders and other Community members would meet at the Oval in an attempt to work something out that would hopefully bring a level of peace back to the Community.

Four police officers were also present, and armed, during the fracas that ensued. Then one of the youths involved ran to a house and produced a shotgun. He was crash-tackled by the deceased, who cannot be named, and during the struggle the shotgun was fired harmlessly into the ground.

Meanwhile, Acting Sergeant Robert Whittington had drawn his revolver and pulled off four shots. Three of his shots hit a nearby house, or so we are told, whilst the fourth hit the young man in the back and he died. Whittington was stood down by the Northern Territory police force on full pay awaiting an outcome.

Two years later, still on full pay, Sergeant Whittington was formally charged with murder and another charge of committing a dangerous act. The young man wielding the shotgun was also wounded at the time.

The treatment of Sergeant Whittington by the investigating police and the Northern Territory Department of Public Prosecution openly shows the collusion that occurs to allow the police of Australia to be found free of any and all blame or culpability towards those that they kill.

From October 2002 to the two police deaths in 2004, and onto the death of Carl Woods in Perth on 11 April 2006, the Governments of NSW, Qld, NT and WA have worked – and are still working – to save the four or more police officers from being charged and sent to gaol for their crimes.

Sgt Whittington of the NT police force was eventually set free and released due to a legal technicality after four years of being stood down on pay.

Then-Constable Michael Hollingsworth of the NSW police force was exonerated of any blame by the NSW State Coroner, John Abernethy, in a very tight legal investigation that, in the interests of real Police Justice, disregarded important evidence and witnesses.

Senior Sergeant Christopher Hurley is responsible for the killing of Mulrunji Doomadgee on Palm Island, Queensland. Acting State Coroner Christine Clements found that he certainly had a case to answer. The DPP decided that Hurley should not face Court for very spurious interpretations of the difference of evidence required between the Coroner's Court and the Criminal Court and the 'secret evidence' that still remains secret. .

Only very strong public pressure upon the Queensland Systems forced them to accept the examination of the two legal opinions by Sir Laurence Street who promptly overturned the DPP decision. Hurley now faces Court in Townsville during June.

The WA police killing of Carl Woods by the arresting police in April 2006 has yet to be brought to the attention of their State Coroner, Alastair Hope, for his Coronial Inquisition into the facts causing the death of Carl Woods. The killing of Carl Woods will be looked at in greater detail in the May/June Newsletter, along with other items of interest.

Four police killings. Two police officers allowed to go free by very questionable, at least, legal tactics that do not include Justice for the two Families involved.

Hurley nearly made it. The Systems had a hiccup with the Coroner but the DPP sorted that out. Or so they thought. Public pressure changed that and Hurley will rightly face Court. But as the Sgt. Whittington criminal farce shows, there is still a way to go. We must all be very, very aware of the Court processes during his trial. Hurley's legal team will attempt every slick and sick trick in the legal book.

The legal team for the Doomadgee Family will need to ascertain, almost on a daily basis, that all the legal twists and turns of submitting the Applications and other legal requirements are all applied by the due dates. Nothing must be allowed to be used as a legal technicality to have the charges against Hurley to be dismissed and Hurley allowed to let free. He must have his day in Court, as must the Family and the Community.

Similarly, for the Woods Family. Firstly they need to get through the Coronial process. We hope that WA Coroner Hope is more to the Clements ethics rather than that of Abernethy. Should Coroner Hope find a case for the arresting police to answer, they then have to face the very real threat of police and legal chicanery.

Following is how the NT police and Legal Systems allowed Sgt. Whittington to walk free of his crime.

We step through the events that allowed Justice to be denied to the Wadeye Family and Community.

We produce with thanks and gratitude a cartoon from Austin of the English Guardian newspaper.

Policeman faces murder charge

News.com.au
Karen Michelmore
21 October 2004

A NORTHERN Territory police officer has been charged with murder over the shooting death of a teenager at a remote Aboriginal community two years ago.

Sergeant Robert Gregory Whittington will face a trial in the Northern Territory Supreme Court on four charges, including murder, following a lengthy committal hearing in Darwin Magistrates Court.

It is believed to be one of the first times a NT police officer will face a murder charge allegedly committed while he was on duty.

Sergeant Whittington, 39, had faced two charges of doing a dangerous act causing the death of the 18-year-old man and injury to another, Tobias Worumbu, at the community of Wadeye, 350km south west of Darwin, on October 23, 2002.

However, at the end of the committal proceedings today, Magistrate Anthony Gillies said he found there was sufficient evidence to commit Sergeant Whittington to trial on a count of murder and a third charge of committing a dangerous act.

The two men were shot during a large "payback" fight between rival families on the community's oval, at which three or four police were present, the court was told.

Mr Worumbu had run from a nearby house with a gun and the teenager attempted to tackle him and may have begun to chase him when the police officer fired, the court was told.

The 18-year-old man, who cannot be named for cultural reasons, was shot in the back, while Mr Worumbu was shot in the arm.

After the teenager died, the community erupted into a "war zone" with houses systematically trashed and cars torched.

Magistrate Gillies said there was evidence of a number of possible scenarios, including that the deceased man was chasing Mr Worumbu, with his back to Sergeant Whittington, when he was shot.

Another scenario was that the two alleged victims had been wrestling over Mr Worumbu's shotgun when Sergeant Whittington fired at them, the court was told.

"There are several scenarios in this case and I am not in a position to discount any," Magistrate Gillies said.

He said he had to take the "prosecution case at his highest" in the committal proceedings.

The court was told Sergeant Whittington fired four shots, but only three projectiles were recovered lodged in a nearby house.

Later, when he was interviewed by police, the court was told Sergeant Whittington was tearful and distressed, but had not been aware that the shot that killed the teenager had come from his gun.

Sergeant Whittington has not been required to enter a plea.

He was released on bail to appear in the NT Supreme Court next month.

Whittington faced the Chief Justice, Brian Martin, in the NT Supreme Court and was informed that a four week trial was set for 31 October, 2005.

The officer would have been suspended on a full pay deal for a little over three years by then.

It is interesting that further charges had been brought to bear. The article states that Whittington is the third NT police officer to have been charged.

That surprises me but very definitely no police officer, or gaol officer, has ever been found guilty in a Court of Law in Australia for the killing of an Aborigine.

Policeman faces trial for teen's murder

The Australian
AAP
1 February 2005

A NORTHERN Territory police officer will be tried for murder in October, only the third time in territory history a policeman will face court for an alleged murder committed while on duty.

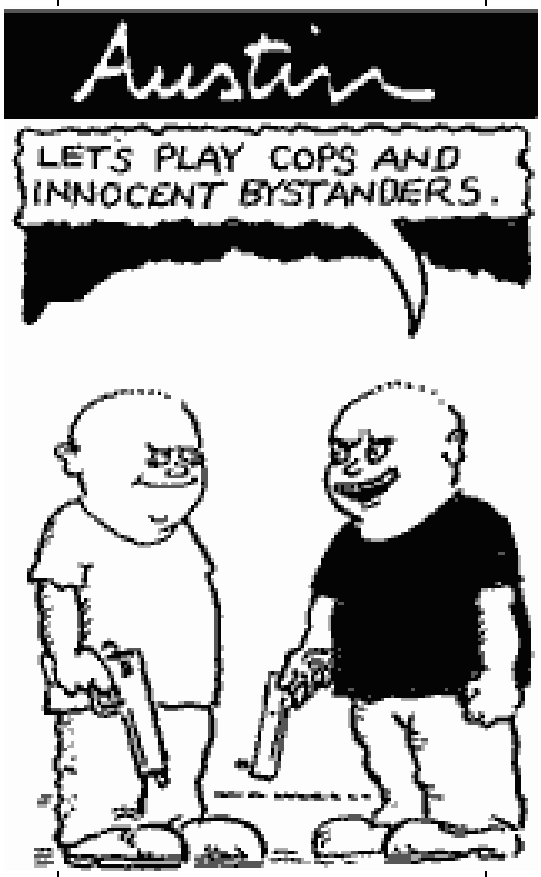
Robert Gregory Whittington, 39, faces four charges - one of murder and three of committing a dangerous act - over the shooting death of a teenager at a remote Aboriginal community two years ago.

An 18-year-old man died and another was injured when they were shot during a brawl at the community of Wadeye, 350km south west of Darwin, on October 23, 2002.

Whittington faced the NT Supreme Court briefly today, as Chief Justice Brian Martin set the four-week trial for October 31.

About 70 witnesses would be called in the hearing, the court was told.

Whittington, who has been suspended from duty on full pay, has not yet been required to enter a plea.



By March 2006 the case had been bogged down with legal tricks by the NT Police Union legals.

The Supreme Court appearance did not happen and the murder charge was reduced to manslaughter and only one charge of doing a dangerous act causing death.

This matches the charges that Hurley will face.

The arguments of the NT Police Union and Whittington's legal representatives shows us some good examples of the obfuscation and desperation that is introduced to get the police officer off.

NT policeman to face historic death charge

News.com.au
From: Northern Territory News
Rebecca Hewett
2 March 2006

A NORTHERN Territory policeman will stand trial for manslaughter after a landmark legal ruling found the charges against him were justified. Sergeant Robert Gregory Whittington, 39, was charged with manslaughter and doing a dangerous act causing death after he fired his gun during a riot at the remote community of Wadeye in 2002.

An 18-year-old was killed and a second man was injured.

Sergeant Whittington, who has been suspended from duty on full pay, was to face a Supreme Court jury last October but the case became mired in legal argument.

It was then referred to the Court of Criminal Appeal for a ruling on whether the charges against him could be prosecuted.

The defence argued the prosecution needed to particularise which of the four shots fired by the policeman actually killed the teenager, who cannot be named for cultural reasons.

Sergeant Whittington's lawyers also questioned whether the indictment against him existed as an offence under the law and whether the prosecution had to provide a basis for their contention the policeman's actions were not authorised.

On behalf of the full court, Justice Dean Mildren yesterday ruled in the prosecution's favour.

Sergeant Whittington will be arraigned at the end of March and will face a Supreme Court trial later this year.

Wadeye man Tobias Worambu and the deceased were shot during a large "payback" fight between rival gangs on the community's oval in October, 2002.

The NT Police Association claims Sergeant Whittington was acting in accordance with his duties.

"Sergeant Whittington was acting in good faith," association president Vince Kelly said after the committal hearing in October 2004.

Buy August 2006 it appeared that even the manslaughter charge had been dropped whereby he would only face the one charge of a dangerous act causing death.

Prior to his appearance in the Supreme Court he was before Justice Mildren who found the charges against Whittington were defective as they had not bee presented in the allotted time of two months under the Act.

No Supreme Court appearance – you are free. Go, and take your license to kill with you. You very well may need it again.

The Police Commissioner and the Police Union President crowed loud and long that Whittington had been exonerated. He had not been exonerated, he had not faced Court on any charge due to a technicality. A technicality that had knowingly been used by the police to allow him to not face trial. Whittington was back at work.

Counsel for the DPP decided that they would appeal the J. Mildren decision that brought much scoffing from the Union President. I find the police mutterings to be absolutely insulting to the memory of the young man who was killed. And to all those victims that police around Australia have killed.

In their collective sick opinion Whittington should never have been charged or made to face Court for his actions on that tragic day.

Cleared cop can have his job back

News.com.au
From: Northern Territory News
Rebecca Hewett
2 March 2006

A TERRITORY policeman accused of killing a teenager during a riot at a remote community has had the case against him dismissed.

Police Commissioner Paul White said yesterday Sen-Constable Whittington was now able to return to full duty.

"There are no winners in a situation like this. Our primary focus will be in assisting Senior Constable Whittington to fully reintegrate into the work force", Mr White said.

Sen-Constable Whittington was charged with murdering 18-year-old Robert Jongmin after discharging his firearm during a riot at Wadeye on October 23, 2002. The charge was later downgraded to manslaughter and then doing a dangerous act causing death.

Sen-Constable Whittington was stood down on full pay in 2002 and was set to face a Supreme Court trial this week.

But Justice Mildren found yesterday the dangerous act charge was defective because it had not been laid within the two-month period set down in the Police Administration Act.

"I find that ... the prosecution in this case has not been brought within the time limit thereby prescribed and is therefore defective," the judge said.

"The indictment is therefore quashed".

Counsel for the Director of Public Prosecutions, Jon Tippett QC, said the DPP would appeal against the decision.

But NT Police Association president Vince Kelly said it was "extraordinary" for the DPP to talk about appealing so soon after the decision.

"It seems premature when the DPP has not even had time to consider the reasons for Justice Mildren's decision," Mr Kelly said.

"The death of this young man in Port Keats was a tragedy but the tragedy has been compounded by this court case."

Mr Kelly said Justice Mildren's decision was a vindication of Sen-Constable Whittington's actions during the riot, which involved hundreds of people wielding rocks, sticks and spears.

True to his word, and despite the great chagrin of the NT police, the J. Mildren Decision was appealed to the Court of Criminal Appeal of the Northern Territory. Jurisdiction was found in the criminal Appeal from the Supreme Court exercising Territory Jurisdiction.

The Appeal was heard by their Honours, Martin (Br) CJ Thomas and Riley JJ on 26 February 2007.

After examining the Lower Court decision and hearing argument from the opposing QC's, their honours found against the Appellant, the Northern Territory Department of Public Prosecutions.

Case closed. Whittington obviously had/has a licence to kill. He used it in 2002 and may very well use it again at some future time.

I produce the Reasons for Judgement in full.

The Queen v Whittington [2007] NTCCA 2

PARTIES: THE QUEEN
v
WHITTINGTON, Robert Gregory
TITLE OF COURT: COURT OF CRIMINAL APPEAL OF
THE NORTHERN TERRITORY
JURISDICTION: CRIMINAL APPEAL FROM THE
SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO: CA 14 of 2006 (20304540)
DELIVERED: 26 February 2007
HEARING DATES: 26 February 2007

JUDGMENT OF: MARTIN (BR) CJ, THOMAS & RILEY JJ
CATCHWORDS:
CRIMINAL LAW APPEAL
Appeal against decision to quash indictment – police offences – limitation of time for prosecution – whether the Criminal Code displaces the operation of s 162(1) of the Police Administration Act – appeal dismissed.
Criminal Code (NT) s 1, s 66 and s 154; Criminal Code Act, s 5; Police Administration Act s 162.
R v Cooling (1989) 44 A Crim R 171 applied.
Hamilton v Halesworth (1937) 58 CLR 369; Little v The Commonwealth (1947) 75 CLR 94; Trobridge v Hardy (1955) 94 CLR 147; Rose v Hvric (1963) 108 CLR 353; Webster v Lampard (1993) 177 CLR 598; Ferdinands v Commissioner for Public Employment (2006) 224 ALR 238, followed.
REPRESENTATION:
Counsel:
Appellant: J Tippett QC
Respondent: M Abbott QC
Solicitors:
Appellant: Office of the Director of Public Prosecutions
Respondent: Withnalls
Judgment category classification: A
Judgment ID Number: Mar0701
Number of pages: 10
IN THE COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY OF AUSTRALIA
AT DARWIN
The Queen v Whittington [2007] NTCCA 2
No. CA 14 of 2006 (20304540)
BETWEEN:
THE QUEEN
Appellant
AND:
ROBERT GREGORY WHITTINGTON
Respondent
CORAM: MARTIN (BR) CJ, THOMAS & RILEY JJ
REASONS FOR JUDGMENT
(Delivered 26 February 2007)

The Court:

[1] This is an appeal by the Director of Public Prosecutions against a decision of a Judge to quash an Indictment charging the respondent with the crime of Dangerous Act contrary to s 154 of the Criminal Code ("the Code"). The Indictment also charged an Aggravating Circumstance that by the dangerous act the respondent thereby caused the death of another.

[2] In substance the learned trial Judge found that s 162(1) of the Police Administration Act ("the Act") applied and required that the prosecution be brought within two months of the act said to amount to the crime. As the prosecution was not brought within that time, his Honour quashed the Indictment.

[3] At the conclusion of submissions we dismissed the appeal. We now set out our reasons.

Background

[4] On 23 October 2002 the respondent was a serving police officer and a relieving sergeant at Wadeye. Acting in the course of his duties, the respondent attended a disturbance involving a number of people and, while attending the disturbance, discharged his police firearm on four occasions. One of the bullets struck and killed the victim. It was the discharge of the firearm that was the basis of the Crown case that the respondent committed the crime of Dangerous Act.

[5] A number of preliminary issues were argued before the trial Judge. During submissions his Honour drew the attention of counsel to s 162(1) of the Act which, at the relevant time, was in the following terms:

"(1) Subject to this section, all actions and prosecutions against any person for anything done in pursuance of this Act shall be commenced within two months after the act complained of was committed, and not otherwise."

[6] It is common ground that the prosecution against the respondent was not brought within two months of the respondent's act of discharging his police firearm. It was also common ground before the Judge and in this Court that if s 162(1) applied, the Judge was required to quash the Indictment.

Proceedings before the Trial Judge

[7] From the outset of submissions relating to the application of s 162(1), the trial Judge expressed concern that the question whether the respondent was acting "in pursuance of" the Act for the purposes of s 162(1) was a question of fact to be determined by a jury. His Honour correctly indicated that if this question of fact was to be determined by a jury, his Honour could not, as a preliminary issue, determine whether s 162(1) applied.

[8] In this context, the Crown identified the factual basis upon which it sought to proceed against the respondent. In summary, the factual basis advanced by the Crown was as follows:

- At the time the respondent attended the disturbance and up to the point at which he discharged his firearm, the respondent was acting in pursuance of the Act in the performance of his duties as a police officer. ·
- The respondent's act in discharging his firearm amounted to "unnecessary force" and, as a consequence, the discharge of the firearm was not authorised, justified or excused and amounted to the crime of Dangerous Act. ·
- At the time the respondent discharged his firearm, the respondent genuinely believed that he was acting in the proper performance of his duties as a police officer.

[9] The concession by the Crown that at the time the respondent discharged his firearm he genuinely believed he was acting in the proper performance of his duties necessarily confined the basis upon which the Crown contended that the respondent used "unnecessary force". Section 1 of the Code defines unnecessary force as follows:

"'unnecessary force' means force that the user of such force knows is unnecessary for and disproportionate to the occasion or that an ordinary person, similarly circumstanced to the person using such force, would regard as unnecessary for and disproportionate to the occasion."

[10] If the respondent knew that discharging his firearm was using force that was unnecessary for and disproportionate to the occasion, he could not have genuinely believed he was acting in the proper performance of his duties. It necessarily followed from the Crown concession that the respondent held such a genuine

belief that the Crown was not advancing a case that the force was unnecessary because the respondent knew the force was unnecessary. The Crown case was based solely upon the second limb of the definition of unnecessary force, namely, that an ordinary person, similarly circumstanced to the respondent, would regard the force as unnecessary for and disproportionate to the occasion.

[11] The factual basis of the Crown case having been identified, in response to a question from the Judge senior counsel for the Crown agreed that the sole issue to be determined was whether s 162(1) applied to the circumstances of the respondent. In contending that s 162(1) had no application, counsel advanced two submissions. First, that the Code covers the field with respect to prosecutions under the Code and s 162(1) has no application. Secondly, and in the alternative, that the enactment of the Code impliedly repealed s 162(1) to the extent that s 162(1) is inconsistent with the Code. Both submissions were rejected by the Judge.

The Appeal

[12] On the appeal to this Court, after discussion and consideration of the proceedings before the trial Judge, senior counsel for the Crown agreed that before the trial Judge the Crown had conceded that at the moment he discharged his firearm the respondent genuinely believed he was acting in the proper performance of his duties. The Crown maintained that concession in this Court. The concession having been made, neither the trial Judge nor this Court was required to consider the evidence. The factual basis upon which the trial Judge and this Court were to proceed was agreed between the parties.

[13] There was a further concession made in this Court which should be mentioned. At the outset counsel for the Crown sought to agitate, for the first time, the contention that even if the respondent genuinely believed he was acting in the proper performance of his duties nevertheless s 162(1) did not apply because the act of discharging the firearm was unlawful and, therefore, was not "in pursuance of" the Act. However, after consideration of the proceedings before the trial Judge and relevant authorities, the Crown conceded that the proposition could not succeed. That concession was well made. A succession of High Court authorities plainly establishes that provisions such as s 162(1) apply if the unlawful act is committed by a person who genuinely believes that the act was done in the proper execution of that person's duties: Hamilton v Halesworth (1937) 58 CLR 369 at 374 and 380; Little v The Commonwealth (1947) 75 CLR 94 at 108; Webster v Lampard (1993) 177 CLR 598 at 605 and 619.

[14] In essence, in this Court the Crown advanced the single proposition that s 162(1) is inconsistent with the Code because the Code covers the field with respect to prosecutions for offences against the Code, including any time limits for such prosecutions. As the Code does not contain any time limit for instituting a prosecution for an offence against s 154 of the Code, s 162(1) is inconsistent with the Code and, therefore, has no application to the prosecution of the respondent. If that contention succeeded, it would necessarily follow that the trial Judge was in error and the order quashing the indictment would be set aside. The Crown agreed that if that contention failed, the appeal should be dismissed.

[15] Inconsistency between the Code and s 162(1) is not readily apparent. The Code does not prescribe a time limit within which a prosecution for the crime of Dangerous Act must be instituted. In 2002 the only time limit prescribed by the Code was found in s 66(6) which provided that a prosecution for any crime defined in s 66 must be instituted within one year after the crime was committed. Section 66 was concerned with offences relating to riotous assembly. In other words, the Code was silent on the question of time limits for the prosecution of all other crimes against the Code.

[16] Notwithstanding silence of the Code as to time limits, the Crown submitted that as the Code covers the field with respect to all aspects concerned with the prosecution of criminal offences under the Code, by inference the Legislature intended that the Code deal exclusively with time limits for the institution of prosecutions. In particular, counsel referred to the various provisions which circumscribe the power of the police to use force, including lethal force, by specifying the circumstances in which the use of force by police officers is justified. By inference, argued counsel, the Legislature intended that no time limits would apply for the institution of prosecutions of police officers for the use of unjustified force and the operation of s 162(1) is thereby ousted. To determine otherwise would be to treat police officers differently from the rest of the community in connection

with prosecutions under the Code.

[17] As the trial Judge observed, the purpose of s 162(1) "is not to make lawful that which would otherwise be unlawful". Section 162(2) is not a substantive provision concerned with the elements of a crime. Nor does it provide a defence in respect of unlawful conduct committed by a police officer. Section 162(1) is a provision concerned solely with the process of prosecution: R v Cooling (1989) 44 A Crim R 171 at 173. It governs an aspect of the process about which the Code is silent.

[18] Section 162(1) of the Act was in force at the time of the enactment of the Code. There is nothing in the Criminal Code Act or the Code from which an inference could reasonably be drawn that time limits for prosecutions of offences under the Code were to be found exclusively within the Code itself. To the contrary, s 5 of the Criminal Code Act which was the Act that established the Code tends to suggest otherwise:

"5. Establishment of Code

On and from the commencement of the Parts of the Code, those Parts shall be the law of the Territory in respect of the various matters therein dealt with."

[19] As we have said, other than in respect of riotous assembly, the question of a time limit for the institution of a prosecution under the Code is not "therein dealt with".

[20] Section 162(1) is not the only legislative provision outside the Code concerned with time limits for the institution of prosecutions. Section 49 of the Justices Act provides that a complaint may be made to a Justice where a person has committed a "simple offence". The offence of common assault contrary to s 188 of the Code is a simple offence. Section 52 of the Justices Act provides that where no time is specified for the making of a complaint, "the complaint shall be made within six months from the time when the matter of the complaint arose". If the Crown contention is correct, s 52 has no application because no time limit is prescribed in the Code for the laying of a complaint alleging common assault contrary to s 188. That contention cannot be accepted.

[21] There is no inconsistency between the Code and s 162(1). No "explicit or implicit contradiction" exists between the Code and s 162(1): Rose v Hvric (1963) 108 CLR 353 at 358. There is no indication in the Code of a legislative intention to oust the operation of s 162(1). They can readily be read and applied together.

[22] A determination that s 162(1) applied to the circumstances of the respondent does not lead to an absurd result. Section 162(1) only has application if an officer was acting in good faith in the sense that the officer believed that the conduct in question occurred in the proper performance of the officer's duty. Section 162(1) has no application if the conduct of the officer was motivated by bad faith or was "actuated solely or predominately by a wrong or indirect motive": Trobridge v Hardy (1955) 94 CLR 147 at 162. In the absence of a concession as to the mental state of the police officer whose conduct is called into question such as the concession made with respect to the respondent's mental state, the question whether an officer was acting in good faith or otherwise will be a question for the jury. If an officer is found to be acting in bad faith, s 162(1) will not have application. Whatever one may think of the policy underlying the prescription of a time limit, it is not difficult to recognise that a policy founded on special considerations applying to officers acting in pursuance of their duty could lead the Legislature to the view that it is desirable to incorporate a time limit such as that found in s 162(1). We note that subsequent to the events under consideration s 162(1) was amended and now applies only to offences against the Act. It no longer applies to prosecutions under the Code.

[23] The presumption that two laws made by the one legislature are intended to work together "is not displaced": Ferdinands v Commissioner for Public Employment (2006) 224 ALR 238 per Gummow and Hayne JJ at 252 [49].

[24] For these reasons, in our view the trial Judge was correct in determining that s 162(1) applied to the prosecution of the respondent and in quashing the Indictment.

On 7 March 2007 AAP informed us that to allow the legal niceties to occur within the NT Legal System, there was to be a Coronial Inquest, nearly five plus years after the incident.

As is usual in cases involving their police, the State and Federal Governments pay all legal and other costs, wages, etc., when the police are declared to be 'not guilty'.

This is how cosy it gets.

I am unsure as to whether Whittington can be recharged with an offence arising from the decision of the Coroner after the Inquest. Or does the double jeopardy rule apply? He has been charged but has not faced Court. Does that make a difference?

We will need to await the outcome of the Inquest to find out.

Inquest to be held into NT teen's death

Sydney Morning Herald
AAP
7 March 2007

AN inquest will be held into the death of a teenager shot by a police officer during rioting at a remote Aboriginal community in the Northern Territory.

Constable Robert Gregory Whittington was charged with committing a dangerous act over the death of the 18-year-old man at Wadeye, 350km southwest of Darwin, in October 2002.

But court proceedings against the married father of one came to a dead end last month, when the DPP decided not take the matter to the High Court.

The teenager was one of two men shot by the officer during a large "payback" fight between rival families on the community oval.

After the teenager died, the community erupted into a war zone, with houses systematically trashed and cars torched.

In October 2004, following a lengthy committal hearing, Sen Const Whittington was charged with murder.

It was believed to be the first time a territory police officer had faced such a charge over an offence allegedly committed while on duty.

But the charge was later downgraded to manslaughter and then to committing a dangerous act causing death.

In August last year the NT Supreme Court quashed the charge against Const Whittington.

The DPP sought to have the decision overturned in the NT Court of Criminal Appeal but in a unanimous decision last month, three

judges dismissed the appeal and the DPP declared the matter closed.

NT Coroner Greg Cavanagh on Wednesday announced that he would hold an inquest into the teen's death.

"I intend to hold a public inquest into the death of (the boy) who died at Wadeye," he said in a statement.

"I have taken this step of releasing this statement as there has been much interest in the case and whether a coronial inquest was to be held.

"(His) family has been informed of the intention to hold an inquest.

Mr Cavanagh declined to be interviewed further on the matter.

The inquest will start on August 7 at Wadeye, with further proceedings in Darwin where it will finish on August 17.

During court hearings in 2004, Darwin Magistrates Court was told the teenager, who cannot be named for cultural reasons, was shot in the back, and another man Tobias Worumbu was shot in the arm.

Tobias Worumbu had run from a house with a gun and the teenager had attempted to tackle him, and may have begun to chase him, when the police officer fired, the court heard.

The NT government announced in 2004 it would pay for Const Whittington's legal costs as he was on duty at the time of the shooting.

The officer was suspended from duty on full pay in 2002 for four years, and is now back on duty.

We finish our sorry examination of police Justice by allowing the Family and other assorted characters to have their say.

Clearly this case cynically shows why police anywhere in Australia should not be the cause of the event as well as managing both the investigative process and the legal process also. I count all DPP's as police cronies. The Queensland DPP proves my point.

Another more absolutely independent system must be introduced to control all aspects of the investigation and the legal processes.

Whether this be a Civilian Review Team or an Aboriginal Investigative Team or a combination of both or some other process must be worked out quickly.

The first thing that must happen is that the nefarious practice of police investigating the police must stop. Now. Right now.

Family speaks out about Wadeye shooting

7:30 Report
Australian Broadcasting Corporation
5 April 2007
Reporter: Mark Bannerman

MARK BANNERMAN: Four years ago, a Northern Territory policeman shot dead a young Aboriginal man in the remote and troubled Top End community of Wadeye. The officer was charged, and the case should have been resolved in court. But that didn't happen. Instead, the case against the policeman collapsed, due to a bizarre technicality. The Supreme Court judge hearing the case found the charge had not been brought in time. As you would understand, in the community of Wadeye, this is a very sensitive issue, but now members of the dead man's family have spoken on camera for the first time. Murray McLaughlin was there to hear their story.

MURRAY MCLAUGHLIN: They're playing footy again on the oval at Wadeye, a town of more than 2,500 people, 250 kilometres south west of Darwin. This was forbidden ground for many months after a huge brawl here in October 2002. It had begun as a payback clash between two gangs whose regular wars had long terrified the community.

MARYANN JONGMIN: It's a little bit frightening, but there was a lot of people there.

MURRAY MCLAUGHLIN: It suddenly became much more frightening when a shotgun was brandished.

MARYANN JONGMIN: I was running towards all the other mob, towards the oval. Then when everybody had a gun, I ran back.

AMBROSE JONGMIN: I see this boy run out with a shotgun, and then my son went and tackled him.

MURRAY MCLAUGHLIN: Ambrose Jongmin was a witness to the brawl. It was his 18 year old son who tackled the boy with the shotgun, causing it to fire into the ground. Then a local policeman who was on the scene fired four shots from his pistol. Ambrose Jongmin's son was hit in the back by one of those bullets, and died soon after. More than four years later, Ambrose Jongmin hasn't looked at a photograph of his son and doesn't want him named.

AMBROSE JONGMIN: The police actually shot my son, but he was a hero. I want to put my son as a hero, because of what he did there to save many lives instead of the boy with the shotgun shooting them other boys.

MURRAY MCLAUGHLIN: The policeman who killed Ambrose Jongmin's son was Robert Whittington. He was charged with committing a dangerous act causing death. After hearing evidence at a preliminary hearing, a magistrate recommended that Robert Whittington be charged with murder on top of the dangerous act charge. Whittington received the immediate support of the Police Association.

VINCE KELLY, NT POLICE ASSOCIATION: The Police Association absolutely stands behind Superintendent Sergeant Whittington. He was acting in the course of his duties, he was acting in good faith.

MURRAY MCLAUGHLIN: But the Director of Public Prosecutions decided not to charge Robert Whittington with murder. In a letter last month to the family of the young man shot dead, the DPP wrote: "My office carefully looked at all the evidence and concluded that there was no reliable evidence that Robert Whittington had murdered your son. There was evidence that he should

not have fired his pistol when he did, that he should have known when he fired that there were two men close together and that he might have hit either one of them."

SEAN BOWDEN, JONGMIN FAMILY LAWYER: There was an expectation within the family that Mr Whittington would be brought to trial on a charge of murder. That didn't eventuate. The family also finds it very difficult to understand how it is that the DPP reached a conclusion that the defendant police officer was acting pursuant to his duties.

MURRAY MCLAUGHLIN: In the Supreme Court at Darwin in August last year, Robert Whittington faced only the charge of committing a dangerous act. By then, a charge of manslaughter had been abandoned, too, by the prosecution. But after only one day of argument in the Supreme Court, the judge tumbled to a fundamental legal point. The dangerous act charge had been laid too late, because the Police Administration Act stated: "prosecutions against any person for anything done in pursuance of this Act shall be commenced within two months after the act complained of was committed and not otherwise."

REPORTER: Today, Justice Dean Mildren ruled that because Mr Whittington was working under the Police Administration Act when his gun went off, any charges needed to be laid within two months of the incident.

MURRAY MCLAUGHLIN: The shooting on the sports oval at Wadeye had happened on 23 October, 2002. The police didn't take the case to the DPP until 6 February, 2003, already more than a month beyond the two month deadline to lay a charge.

STEPHEN GRAY, LAW FACULTY, MONASH UNIVERSITY: For a serious indictable offence, I don't know of any other case where a time limit of that nature has been applied. So, it's absolutely unprecedented, as far as I know.

MURRAY MCLAUGHLIN: Stephen Gray has written the definitive textbook about criminal law in the Northern Territory.

STEPHEN GRAY: There's no doubt, really, about the correctness of the decision on the law and that the judge raised the issue for the first time during the beginning of the trial. So, no, I don't think there was a conspiracy here, I think it was something that nobody realised.

SEAN BOWDEN: This case asks some fundamental questions about the administration of justice in the Northern Territory. Justice needs to be done, and it also needs to be seen to be done.

MURRAY MCLAUGHLIN: The family of the young man shot dead are left bewildered that investigating police and so many lawyers could have been mixed up with the case over four years, and not have realised that Robert Whittington had been charged too late.

AMBROSE JONGMIN: Why didn't they say it in the first place, instead of dragging it all the way up to the grand final - the Supreme Court? Each lawyer should know every law. And they're professional lawyers, they study the law.

MURRAY MCLAUGHLIN: Ambrose Jongmin was first inclined to settle the aftermath of his son's death according to traditional Aboriginal law. That, he says, would have settled the whole business a long time ago.

AMBROSE JONGMIN: Yeah, I wanted to do it but I thought I'd best give it to the white man law so they can handle that. But what did they give me? Nothing.

MURRAY MCLAUGHLIN: Attempts by the Jongmin family to revive the prosecution of Robert Whittington have failed. The DPP last week refused their request to take the matter up to the High Court. They are now waiting for an inquest in August. Meanwhile, they treasure the memory of the young man they hold to be a hero.

MARYANN JONGMIN: He was kind, he was gentle with kids and there is not even a day goes by, we can't stop thinking about him.

MARK BANNERMAN: And it's worth knowing the Northern Territory Government amended the Police Administration Act last year, eliminating the two month limit on bringing a criminal charge against a policeman. Murray McLaughlin with that report.

White man's rule, black man's injustice

The Sydney Morning Herald
6 April 2007

A DEATH in a remote town in the Northern Territory has exposed faultlines in the justice system, writes Lindsay Murdoch.

White man's justice meant nothing in Wadeye as fists, rocks, sticks and hammers flew, spilling blood into the outback's red dust on a scorching hot afternoon. It was payback time. By mid-afternoon almost 300 people had gathered at a football oval in one of Australia's most isolated communities, for a fight between two clan-based gangs.

Detective Senior Constable Carmen Butcher knew she would not be able to stop the brutality when she and two other officers went to the oval, because for centuries this was the way Aboriginal people had settled their disputes here, 350 kilometres south-west of Darwin.

"Generally when something happens in the community they tend to try and sort it out themselves by fighting, and usually if they have a large fight there's nothing we can do about it," Butcher said later.

But nobody counted on the actions of the former Pauline Hanson supporter Robert Whittington, a newcomer to Wadeye, who also went to the oval that October day in 2002. The acting sergeant-in-charge of Wadeye's police station raised his pistol and fired at least four shots in quick succession, killing 18-year-old Robert Jongmin and wounding another youth, witnesses said.

Moments later, Butcher confronted Jongmin's father, Ambrose, who was armed with a wheel brace and hammer. "I stopped

him and spoke to him and just said to him that it's not the way . get rid of the weapons and let the police deal with it," Butcher told him.

Jongmin, 54, listened. But the respected clan leader now says his decision to turn his back on his people's traditional payback, which includes spearings, and allow white man's law to deliver justice for his son's killing was a mistake that ruined his life. Jongmin says his son had never been in trouble with police, unlike many local youths, and that he was a hero because he ran onto the oval to wrestle a shotgun from a youth who was threatening to shoot people. Whittington opened fire after the shotgun discharged into the ground, witnesses said. "Look at what happened . my son [did that] and was shot in the back by a policeman," Jongmin says.

Jongmin wants the Northern Territory Government to set up an independent inquiry into the way police and lawyers handled the shooting after Whittington walked free, even though a magistrate had found a prima face case for murder after hearing weeks of evidence. He also wants the Northern Territory Government to pass retrospective legislation so that Whittington can face new charges.

Whittington was supposed to stand trial last year after the Director of Public Prosecutions' office reduced the murder charge to committing a dangerous act causing death. But just as a jury was about to start hearing evidence, the trial judge, Dean Mildren, noticed what the bevy of case lawyers had not. Whittington had not been charged with an offence within two months of the shooting. He dismissed the charge.

Lawyers say the territory's justice system failed the Jongmin family and Wadeye, a long-troubled community struggling to end the gang violence that last year turned its streets into a war zone. Other serious criminal charges hung over Whittington, who was suspended on full pay, for 4½ years although he could have been dismissed for breaching the Police Administration Act in 2002.

Jongmin can't look at photographs of Robert, his youngest son. He can't speak his name. "My life was ruined. I am slowly trying to pick myself up," he says.

Jongmin says the police should have kept away from payback business "like they had done over all the years". "A policeman is here for five minutes - bang, bang, bang."

Jongmin says he has not received an apology for the death of his son. "How can they do that with what he [Whittington] done . face to face with me. I don't think so," he says. "What's the use of an apology from a white man? My son is gone. He should be here with us now."

Since the shooting, the police have ordered residents not to use traditional payback violence to settle disputes and have adopted a zero-tolerance policy towards inter-clan violence. But the dismissal of charges against Whittington has undermined these efforts. At least one clan leader offered to be speared to settle lingering problems between the two gangs over Robert Jongmin's death.

Sean Bowden, a Darwin lawyer representing Jongmin, says there are aspects of the case the family wants independently investigated. "The family is seeking justice and to obtain justice the family feels that Mr Whittington should face a jury on the charges that were brought against him," Bowden says.

In a letter to Jongmin last month, the Director of Public Prosecutions, Richard Coates, said there was evidence Whittington "should not have fired his pistol when he did". Coates said Whittington had said in an unreleased statement he thought when he fired the pistol the wounded youth, Tobias Worumbu, had shot Robert Jongmin "and that was why he fired his pistol at Mr Worumbu".

The Jongmin family last month asked Coates to appeal the dismissal of the charge against Whittington to the High Court. Coates did not reply to the request before the time limit for the appeal to be lodged had expired.

Whittington, whose legal costs have been paid by the NT Government, is back on duty in Darwin. An inquest into Robert Jongmin's death has been set for August 7, and the Jongmin family will co-operate.

In closing this criminal farce I respectively warn the Doomadgee and Woods Families that the above events are only a taste – and a very bad one in the mouth – of what they Governments, Legal Systems and the relevant police will stoop to in order to save a copper from Justice. Beware, and be very aware and alarmed at all times. The perniciousness of State terrorism knows no bounds.

We now continue our look at the Howard-led Government attack on Traditional Aboriginal Custom and Law. It is only Aboriginal Custom and Law that he wishes to eradicate. The Custom and Law of our Brothers and Sisters in the Torres Strait seems to be of no cause for alarm from Australian Governments. Not even the Queensland Government.

It seems that the Torres Strait Islanders are historically 'lucky' in not having huge, or any, mineral resources.

Howard wants full and total access to our Lands. He is desperate to wind back not only the social and political clock, he also greedily wishes to return Aborigines to being a 'Landless people'. The same situation that we found ourselves in in 1972 during the last months of the Billy McMahon Liberal/Country Party Government.

McMahon not only said no to Land Rights – he stated 'never'. So four young Aborigines became the Tent Embassy in protest – a protest that fired up our Nations, and still does today.

The Gough Whitlam Government changed all of that negativity and history has proven that his attempts to introduce Justice was indeed a double-edged sword. The changes led to both positive and negative results.

Gough gave us 'The Block' and settled the righteous claims of the Gurindji strikers, ending the longest strike in Australian history.

We also got the NT Land Rights Act, 1975 that was brought into Law by Liberal Prime Minister, Malcolm Fraser after he worked with the Systems to sack Gough. History states that Howard went purple when Fraser brought it in.

And so the Traditional Lands now incorporate some 50% of the Northern Territory. And both the NT Government and the Federal Government want it back.

Even Howard gets breathless when he explains that there is a real lot of mining to be done in the Northern Territory, especially for Uranium. Hence his push for more uranium mines and the introduction of nuclear reactors.

To do that he needs to repeal the NT Land Rights Act and then move all those Aborigines 'sitting' on their 'unproductive' Lands.

Howard is no novice in his attacks on Aborigines and others. Looking back over the last 11 years one determines that he has always used an intertwined or multi-pronged attack system.

His plan is, inter alia, to force us off our Lands and make us cheap labour under the Workchoices scenario for whomever comes in to 'utilise' our Lands. Linked into this is that should we resist then there will be no access to education or health facilities unless we move on. Both Howard and Abbot have stated that we must put our Culture and the practice of that Culture, behind us so as to make us more 'productive' and much more 'profitable' for our worthy employer. Then, and only then, will we be 'real' Australians.

Should we still resist then access to Welfare assistance become very curtailed.

We have lived in social cesspools, some of our making, but mostly by so-called 'benign neglect', for nearly forty years. Fro every one of those years we have pleaded for an equal fair go. We have argued and demanded that we and our Culture be treated as equals. We have never received it.

Scores of Reports have been sent to all Australian Governments in every one of those years. Nothing – and still nothing.

Now the Governments are supporting each other to move us on – and out.

History shows what happens to our Land Rights, our Rights to Land, when our physical links are broken. One only needs to remember the disgusting and dishonest outcomes for the Yorta Yorta mobs who had fought for over ten years only to be told that because their Cultural Links had been broken, whether by choice or force matters not, then they had no claims to the Traditional Lands that had been theirs and their ancestors' for at least 60 thousand years.

This is what Howard seeks. The total destruction and termination of our Rights, our Sovereign Rights, to our Lands. No more Lands, no more Culture.

The two are as entwined as a genome helix. Each to the other is Life. Our Life. Without each, we are culturally dead and assimilated. A forgotten People only to be remembered like other Ancient cultures.

That is only some of the Howard Plan.

He and his Goon Squad cynically use the argument that our present circumstances are brought about by our own Culture and Law. And our greed for sit-down money. This is White Blindfold business at its worst, but it is also ably supported by rich Aborigines of the ilk of Pearson, Mundine, and the 'unrepresentative swill' that are the members of the NIC – many of whom stand to gain by the loss of the Lands.

Employment of Aborigines was stopped when we were given equal pay rights and the Pastoralists grew spiteful at the Gurindji win also. Unemployment of Aborigines was fuelled by racism and as more and more of our people found time on their hands and money in their pockets, they found other things to do. The destruction of our Culture became all pervasive.

Generally we were locked out of the cities and country towns to become fringe dwellers or lived on Missions away from the so-called 'nice people'.

For near forty years this festered and rotted out way of life until we are where we are today. But as I said previously – not all our fault, John.

Add to that the Invasion History and it's a wonder we have not only survived – we re growing, about 500,000+ according to Dr. John Taylor, Senior Fellow at the ANU's Centre for Aboriginal Economic Policy Research on 30 September 2006.

That is why I believe our Custom and Law is so integral to our survival. Hence this continuation of looking at the Government push to remove it. Especially in the Northern Territory. But that push will not be restricted just to the NT. This is an all-out attack upon all the Nations to wipe out our Cultural Rights.

Howard knows and understands one word only, and that word is Assimilation.

We begin with a Lateline Report during May 2006 that

gives an overview of what the Government and Oppositions of Australia see as the problem. Acting Prime Minister, Peter Costello enforces that Customary Law is being argued to condone domestic and sexual violence against women and children of both genders by the perpetrators.

Govt pushes for end to customary law recognition

Australian Broadcasting Corporation
Lateline
Reporter: Narda Gilmore
25 May 2006

TONY JONES: The crisis in Indigenous communities has dominated meetings of government and Labor politicians in Canberra today. All agree that urgent solutions are needed and it's been confirmed that a summit will be held to establish a national response. The Government is pushing for a major shift in Aboriginal justice, ending the recognition of customary law, with the Acting Prime Minister saying justice should not be determined by the colour of a person's skin. From Canberra, Narda Gilmore reports.

NARDA GILMORE: The shocking details of abuse and gang warfare in Aboriginal communities has both sides of politics demanding action. The issue dominated the Coalition party room and Labor Caucus meetings today. A national summit will go ahead, and on his second day in the Prime Minister's chair, Peter Costello called for cooperation.

PETER COSTELLO, ACTING PRIME MINISTER: I urge all premiers and chief ministers - including the Chief Minister of the Northern Territory - to attend.

NARDA GILMORE: The Indigenous Affairs Minister had some good news for the Acting Prime Minister - while Clare Martin won't be going, the Northern Territory has dropped its boycott.

MAL BROUGH, INDIGENOUS AFFAIRS MINISTER: I haven't had the chance to inform the Acting Prime Minister yet but I am able to do so now. The Northern Territory has today informed me that the Police Minister and the Attorney-General will be attending the summit and that is a very positive thing.

NARDA GILMORE: Clare Martin will meet Mr Brough in Canberra on Thursday. The issue of Aboriginal justice is likely to be high on the agenda.

PETER COSTELLO, ACTING PRIME MINISTER: The Government believes, Mr Speaker, that there is no such thing as a cultural defence to rape or child molestation.

NARDA GILMORE: The Government's pushing for an end to Customary Law being used as a defence in serious crime cases.

MAL BROUGH, INDIGENOUS AFFAIRS MINISTER: What you do is you have the states and the territories agree that they will legislate that using such defence, or using it to lessen a sentence as a mitigating circumstance, is actually not - is unlawful.

PETER COSTELLO: Whatever the colour of a child's skin, it deserves a safe life. And the Government believes that whatever the colour of the skin of a perpetrator, that perpetrator must be brought to justice.

NARDA GILMORE: The Opposition has set up its own committee to work on solutions for Indigenous communities. In Parliament, Labor questioned the Government's response.

WARREN SNOWDEN, LABOR BACKBENCHER: Why was the Minister's department's recommendation to establish one of the 65 family relationship centres in Alice Springs ignored by the Government, leaving only one centre in Darwin to service the entire Northern Territory?

PETER COSTELLO: When you're dealing with crime of the level that you are in Aboriginal communities, family relationship centres, which deal with marital breakdown, is not the frontline service that you need.

NARDA GILMORE: The Indigenous Affairs Minister says money is being spent on housing, education and health services - $40 million committed in Wadeye alone. But he argues that while ever the fundamental problem is ignored, that funding is being wasted.

MAL BROUGH: If you don't have the fundamentals of a rule of law applying so that people feel safe, so that people can send their children to health clinics, to schools, then you might as well pour the money into the sand.

NARDA GILMORE: There have also been calls today for a royal commission into Indigenous governance. John Cleary, a former administrator of the Tiwi Islands, says the current crisis can be linked to poor leadership in Indigenous communities and it should be investigated.

An Editorial then appeared in the Canberra Times that shows, correctly, that the Howard Government really has not had much positive outcomes in the ten years that it had been dealing with Aboriginal issues. They then castigate the Howard Government for its pure ideological push to deal with Aboriginal Community problems.

Mention is made of Howard's appearance at the Reconciliation Australia function in Melbourne on 26 July 2006. Howard put the spin he wanted on his speech and then stated that he was putting up $500 million dollars to fix up the educational problems within the Communities.

The Editor then makes the fatuous remark that Professor Mick Dodson, Director of Reconciliation Australia, 'sang his (Howard's) praises'. Mick stated that Howard is 'the best-placed Prime Minister in Australia's History to do what needs to be done'.

As a statement of fact, this is quite true. Howard is the best placed Prime Minister to do something positive.

But the Editor errs badly (intentionally?) in his/her assessment. Mick was not there to praise Howard, he was there as a strident critic of Howard's practice and implementation of the Howard Plan. Mick's body language and tone of voice said it all.

Howard is 'best placed' for several reasons. Firstly he is in complete control of both Houses of Parliament and can therefore (and is) introduce any scheme or action he pleases. That his schemes and actions are to our detriment goes without saying, but he still is 'best placed' because of the power that he holds.

Secondly, the mining boom is bringing an ever higher bonanza to the Federal Treasury. So is the GST but that goes to the States and Territories. He has many, many billions of dollars that he could use productively in solving and answering not only our many, many problems, but also the other Social Justice problems currently besetting the country. The fact the he is not is still a moot point. He is still 'best placed'.

Thirdly, if Howard had the moral conscience of a human being rather than that of a cash register, then, perhaps, things could be so very much better.

Mick was not there to praise him, Mick was merely stating the obvious. He then vented his spleen upon Brough and his attempts to wipe out Customary Law. He is indeed a class act, is our Mick.

Signs of hope for Aborigines?

The Canberra Times
Editorial:
27 July 2006

PRIME Minister John Howard would probably be the first to admit that improving the lot of indigenous Australians remains unfinished business for his Government. Given recent revelations of child sexual abuse and violence in remote Aboriginal communities, it could be argued there is little to show for the Coalition's 10 years in power in lifting Aborigines out of poverty, ill-health and community alienation.

While the Government can point to increases in total spending on the delivery of essential services to Aborigines (without much benefit, it has to be said, in terms of improving their health and wellbeing), the Government's approach has, to some extent, been coloured by ideological rather than pragmatic inclinations - the push to tie welfare payments to mutual obligations, shared responsibility agreements with remote communities to secure new infrastructure, the dismantling of initiatives set up by the previous Labor government, such as ATSIC, the refusal to apologise for wrongs committed in the past, and, most recently, an obsession with issues of law and order and thought bubbles from the likes of Tony Abbott about restoring old ideas of paternalism.

For their part, some Aboriginal leaders have themselves been suspicious of Government intentions, sometimes to the point of deliberate subversion of initiatives and policy implementation. But lately there have been signs of a thawing in relations, perhaps as a result of the realisation by indigenous leaders that they cannot sit out proceedings until a change of government which may be years away.

Probably the most encouraging sign of a break with the old ways of finger- pointing and blame-shifting was Mr Howard's address to Reconciliation Australia in Melbourne on Tuesday. He made no secret of his belief that reconciliation is more than eloquent rhetoric or symbolism, that it will only be complete when indigenous Australians enjoy the same opportunities as other Australians, and that it will be "the work of generations".

The theme of Mr Howard's address was that indigenous disadvantage is inextricably linked to lack of education, and that improving educational opportunities for young Aborigines is the quickest, surest way of ensuring they gain economic independence and improve their health and wellbeing. To this end, the Prime Minister said the Government would spend an additional $500 million in this year's budget on programs to deliver, in cooperation with the states, better facilities, more teachers, improved literacy and numeracy, and incentives to improve truancy rates and school retention rates. Emphasis would be placed not on debate about the programs, said Mr Howard, but on practical action that delivered results.

Among those in the audience who might have quibbled with aspects of Mr Howard's speech was Reconciliation Australia director Mick Dodson. Not on this occasion. A long-time critic of the Prime Minister, Professor Dodson sang Mr Howard's praises on Tuesday, citing him as "the best-placed prime minister in Australia's history to do what needs to be done".

Professor Dodson, like Mr Howard, is anxious that Australians know more about the success stories in indigenous affairs - communities overcoming disadvantage with a combination of local initiative and help provided by NGOs, businesses and government. Which perhaps explains his antipathy towards the Minister for Indigenous Affairs, Mal Brough, whom he accused on the same day of waging an uninformed campaign to have the states remove customary law as a mitigating factor, when sentencing Aborigines accused of violent crimes, from the statue books. Professor Dodson says the minister's allegations about the extent of abuse in remote communities has entrenched the misconception among many non-Aboriginal Australians that indigenous people are either drunk, paedophiles, wife bashers or no-hopers.

There is little doubt that family violence and child abuse is a problem in some indigenous communities - as it is in towns and suburbs across Australia - but recent revelations about how evidence of alleged abuse at Mutitjulu in the

Northern Territory was obtained and used by Mr Brough in support of his assertions have cast doubt on his judgment and capacity to make a worthwhile contribution to alleviating the deep-seated problems that have been allowed to blight indigenous communities for decades. These doubts have been echoed by NT Chief Minister Clare Martin, who remains critical of Mr Brough's obsession with problems in remote communities to the seeming exclusion of pressing matters such as housing.

Of course, Mr Howard remains a strong supporter of Mr Brough's approach, and while there might be something to be said for a "good cop, bad cop" approach to cleaning out the Augean stables of indigenous affairs, Professor Dodson's vote of no-confidence in the minister indicates Mr Brough has work to do to reclaim his authority and credibility. As it is, Mr Howard's proposals, provided they are buttressed with measures that give Aborigines a large say in how they're implemented, offer indigenous Australians renewed hope that progress can be made on this most intractable of problems.

Ms Sharon Payne of the North Australian Aboriginal Justice Agency in the Northern Territory introduces a most important argument as an underlying cause of our current problems.

Marriage Laws among the Aboriginal Nations were very strict and totally enforced. One could only marry within the correct skin group, to do otherwise could lead to spearing, banishment or even death.

Space does not permit me to go into greater detail here but perhaps a future Newsletter will look at this and other Custom and Law practices.

Suffice to say I believe Ms Payne is correct in her analysis.

Presscuts on Traditional Law

National Indigenous Times
Issue 110
27 Jul 2006
The Australian

A REDUCTION in the number of traditional Aboriginal marriages has led to an increase in domestic violence in remote communities. Sharon Payne, head of the North Australian Aboriginal Justice Agency, said the influence of Western concepts about marriage had contributed to broken families and violence in remote communities. “Most traditional cultures, Greek, Indian or whatever, have arrangements or promised marriages that are far more secure and long-lasting than the way we’re doing it now,” she said. “It’s broken down a lot of those kinship relationships that were all about caring for country. “It was a system based on protection, integrity, and ensuring the integrity of the next generation.”

Howard then thundered out his message of ‘one law for all’. The malodorous Brough would have ‘Cultural Law’ scrapped whilst Reconciliation Australia co-Chair, Jackie Huggins, demurred as to whether the Custom and Law was used ‘appropriately’.

Democrats Leader, Lyn Allison, correctly pointed out that we are already being gaoled at a far higher rate than other Australians, caused by the problems that have been historically ignored by all Governments at all levels.

One law for all: Howard

The Australian
Patricia Karvelas
29 May 2006

THE attitude that there should be one set of laws for Aborigines and another for the rest of Australia must end, John Howard said yesterday.

"I think part of this problem derives from a 30-year attitude of many in the Australian community that you really do need to have one set of laws for the indigenous community and one set of laws for the rest of the community," the Prime Minister told ABC TV.

"I'm not asking for harsher treatment of indigenous people, I'm asking for the same treatment and the same law applied by the same courts to all Australians irrespective of their ethnic background."

Indigenous Affairs Minister Mal Brough last week said he would put a proposal to scrap consideration of cultural law in serious crimes to state and territory governments at a summit on indigenous violence expected next month.

Reconciliation Australia co-chair Jackie Huggins said the issue was not whether customary law should be considered when Aborigines were sentenced, but whether it was considered appropriately.

"Criminal law in this country has always allowed for mitigating circumstances which take into account a person's background. Cases of inadequate sentencing hit the headlines from time to time and where appropriate, a sentence is reviewed and increased - as it was in the case involving the rape of a young girl," she said.

Democrats leader Lyn Allison said Mr Howard failed to see the full picture. "The notion that Aboriginal Australians are getting softer treatment from the legal system is ludicrous. Aboriginal Australians are already incarcerated at far higher rates than the rest of Australia. Isn't it just possible the problems stem from other problems governments have chosen to ignore?"

For the full incumbency of the Howard Government Aborigines have attempted to ‘educate’ Howard in some of our ways. One even took Howard and Herron to their Community to participate in the tribal initiation of his son. He is deceased and I will not use his name.

Television reports showed Howard as possibly having eaten something he should not have. All the attempts failed. Howard remained Howard.

Three traditional Owners of the Kunwinjku Country of Arnhem Land in the Northern Territory decided to attempt the impossible once more. They invited Howard and other politicians to sit with them on their Land and learn why

their (our) Custom and Law was so important to them (and us) as a People.

I have not found any reports that Howard accepted the invitation.

Sit with us, Mr Howard. We will help you understand

THE AGE
8 August 2006
By Donald Gumurdul, Philip Mikginmikginj, Jacob Nayinggul

THE Federal Government has said it wants to change the way we live here on our land. No one has asked. We, the traditional owners of the Kunwinjku country of Arnhem Land, ask them to leave us alone.

We have heard that Health Minister Tony Abbott wants us to cut ceremony time. They want to audit our Homelands (Outstations) and talk about closing them. We have heard that they want to remove the permit system to Aboriginal land. They want to change the Community Development Employment Program (CDEP), where we work (especially our young people) - we are paid to work - for the community.

We ask the Government not to do these things. We ask them not to do these things so as to save our culture, our religion, our livelihood, our people. These are our reasons:

1. Ceremony

This is the most important. Abbott has told central Australian Aborigines in Pitjantjatjara lands that spending months on ceremony doesn't work in today's Western culture. He told an Anangu Pitjantjatjara Yankunytjatjara meeting that "if you're going to develop a working culture, you can't have a three-month ceremony season and you can't take six weeks off because your cousin has died. I wouldn't imagine that long before white man came (a death) would have stopped hunting."

He is wrong. Our ceremony is part of our work. That's why we call it "business". In our country, in Arnhem Land, ceremony has continued uninterrupted for a very long time. It is important to our culture, our art and our moral beliefs.

Does the minister say that Jewish, Christian or Muslim rituals should be changed? Ceremony is carefully structured, with everyone holding significant roles for the various important things to be done. It takes a lot of organisation. People come from all around the country for these ceremonies. We have to organise transport, food, healthy places to live. Work doesn't stop. Everyone has to work for ceremony business. Young kids are initiated to learn the hard rules; we don't want that to stop. Trouble comes when they lose the culture.

If someone has to go into ceremony for 12 months, they ask their boss. Aboriginal art represents Australia in places such as Venice and New York. But this art comes from ceremony. If ceremony is changed, if it is stopped, the art will stop too.

2. The Outstations

The homeland outstations are very important to the Aboriginal people of Arnhem Land. These are places where we live and our ancestors, our parents and grandparents are buried there; we can pay respect to them. The outstations are also where we prepare and undertake many ceremonies that keep our religion and our beliefs together. Parts of our country, the ceremony grounds are not unlike your churches, your mosques, your synagogue - they are sacred sites.

3. The Permit System

The permit system is important because we want to protect the environment, the rock art and our ceremony ground. Someone who walks into our country has to have approval. We ask them to respect our wishes. Balanda (white people) don't know which is ceremonial ground or burial ground, they just walk anywhere; that's why we have to have this system.

4. The CDEP

Right now the CDEP allows our people, especially our younger people, to work for the money they get, to learn skills and talents that work for both the white community and the Aboriginal community. The Government wants it to work like the dole, but this is a problem. For the dole you must apply for jobs every two weeks or your payments stop. Here there are not very many jobs, so we share the CDEP work so everyone can get paid and all the work can get done. We are concerned that without the CDEP our young people will be forced into places such as Darwin to look for work. This will break up families and expose the young people to things such as drink and drugs, which are not here at Gunbalanya.

We have our law. We know how to look after our country. We need to keep control over our communities. It is the Kunwinjku people, not the Federal Government, who hold the solutions for our future.

The politicians, the Prime Minister, are welcome to sit on our land and talk to us. We can help them to understand.

Donald Gumurdul, Philip Mikginjmikginj and Jacob Nayinggul are traditional owners of Kunwinjku country, in Arnhem Land.

The following Report looks at the horror that some, and only some, of our Communities have become. Too many of our Communities have been crippled by alcohol, drugs and petrol sniffing. I would strongly argue that there are also historical reasons that can explain, or at least add to the explanation, of why some, not all but only some, of our adult men and young males have sunk so low to perpetrate the horror that they do.

As Community members and others have stated many times, these problems have not just arisen or come to notice now. These horrific problems have been around for some three or four decades. Many of our eminent advocates have supplied information and Reports going back thirty years or more.

Either all ignored or starved of proper funding and commitment.

There has been a lessening of charges for acts that display more a mental health problem than one of criminal intent. That does not, of course, detract one iota from the tragedy and seriousness of these depraved acts. Surely the mental health of a perpetrator must be taken into consideration by the legal system?

Firstly neither the crimes committed nor their defence arguments in Court have anything to do with Custom and Law in any form. This argument is a total misreading and misunderstanding of true Custom and Law.

Secondly, and this point will be expanded further on, it is the role of the defence solicitor or barrister to argue down the charges, or even to attempt to exonerate, the person he or she is representing. There is either an assumption and acceptance of innocence by the legal team and/or the acceptance that the offence was as a result of 'underlying causes' or mitigating circumstances. All defence teams will operate this way.

It is the way the System works, the 'presumption of innocence' and all that that implies.

I produce several article of this nature to show that the despicable acts perpetrated upon the victims simply have no Cultural or Historical base in Custom and Law.

Aboriginal violence noted in rape cases

The Age
7 June 2006

AN appeal court has cited concern about violence in Aboriginal communities while increasing jail terms for two men who raped young children.

In one case a Northern Territory man who raped his seven-month-old cousin had his jail term increased by five years.

The Northern Territory Court of Criminal Appeal also increased the jail term of another Territory man who, in a separate case, admitted raping a two-year-old girl.

As the court declared the original sentences manifestly inadequate, Chief Justice Brian Martin noted widespread concern about violence in indigenous communities.

"In many Aboriginal communities, crimes of violence, including sexual violence, against women and children are prevalent," Chief Justice Martin said.

"The victims frequently live in deprived and dysfunctional circumstances without significant support.

"They are particularly vulnerable.

"Such victims are entitled to look to the courts for protection against these types of crimes."

In the first case, an 18-year-old man was originally jailed for four years for taking his sleeping seven-month-old cousin from a bedroom and raping her near Alice Springs in 2003.

The girl's injuries were so horrific that they could have been fatal due to the amount of blood lost, and she required surgery, the court said.

Chief Justice Martin said the man, a petrol sniffer who was affected by drugs and alcohol at the time of the rape, showed only limited prospects for rehabilitation.

He increased the man's sentence to nine years imprisonment, with a non-parole period of seven years.

In the other case, a 26-year-old man took a two-year-old girl from the front yard of her Tennant Creek home into remote bushland and raped her in 2004.

When the girl screamed, the man, who was drunk at the time, told her to be quiet.

The offence was only discovered when the girl's mother found blood in her nappy the following day.

The man was originally jailed for four years but had his sentence increased to eight years imprisonment, with a non-parole period of six years and six months.

Chief Justice Martin said there was no suggestion that either of the rapes were related to traditional Aboriginal law or culture.

He said crimes against children so young were particularly disturbing.

"(The victims were) not merely vulnerable, (they were) helpless ... (and) unable to offer any resistance whatsoever," he said.

i believe there are legal and social/moral reasons for the continuation of the legal necessity to be able to argue the circumstances that could/would have led to the crime committed. Some call this 'the bleeding heart approach'.

Another good reason to do so is that not to do so would contradict International Human Rights Conventions that, I understand Australia is signatory to. It would also be discriminatory.

So it comes as no surprise that a peak legal group, the Criminal Lawyers Association, along with the Governments of Western Australia and the Northern Territory have said no to the malodorous Brough in his attempt to sell our legal rights away. For different reasons no doubt. For some it seems the sale price is not high enough, to sell us out. Yet.

Lawyers warn against removing customary law

ABC News Online
27 June 2006

A PEAK lawyers group says removing Aboriginal customary law as a sentencing factor would contradict international human rights conventions.

At yesterday's summit on violence in Aboriginal communities, the Federal Indigenous Affairs Minister put forward a $130 million funding package but said he would only pay up if states and territories remove customary law considerations from the Crimes Act.

Western Australia and the Northern Territory have rejected the idea and now the Criminal Lawyers Association has joined calls to scrap the plan.

The association's spokesman Colin McDonald QC says it goes against international conventions that protect the rights of victims and offenders.

"Australia would be sending mixed messages in the international community, which nation states try to avoid," he said.

He says governments should be wary of making sweeping changes that could bring about an uneven criminal justice system.

Brough accused of horse-trading

The Northern Territory Government has accused the Federal Indigenous Affairs Minister of horse-trading Aboriginal people's legal rights in exchange for more Commonwealth money.

NT Attorney-General Peter Toyne says Mal Brough's demand would almost certainly breach discrimination laws right around the country.

"I think he really doesn't understand the complexities of picking on one group in a community and removing their right to have their personal and social history included in the sentencing factors that a judge or magistrate might take into account," he said.

"I think that gives the Territory about $4 million."

The Chief Minister told a press conference Mr Brough's demand is unreasonable.

"Do you think it would be racially discriminatory?," she was asked.

"I'm not a lawyer, Murray, I don't know," she replied.

The Territory Attorney-General Peter Toyne says he knows.

"It would almost certainly offend discrimination laws right round the country," he said.

Ms Martin says she will raise the issue with the Prime Minister at the Council of Australian Governments (COAG) meeting next month.

Customary law demand unreasonable, says Martin.

ABC News Online
28 June 2006

THE Northern Territory Government has attacked the Federal Indigenous Affairs Minister's attempt to tie the abolition of customary law to new funding for remote Indigenous communities.

The Chief Minister Clare Martin says if Mal Brough were serious about pushing States and Territories to remove customary law as a mitigating circumstance in sentencing violent offenders, he would use a bigger bargaining chip.

"$130 million over ten years for every part of Australia," she said.

This offer was made at the meeting set up by Howard who had invited all those politicians who had carriage in matters Aboriginal. No Aborigines, not even the hand-picked 'breast-plated' leaders got an invite. We can only assume that even they were not trusted enough to be invited.

Governments as a matter of course never trust those that they have invaded and most certainly not while they are stripping them of their natural resources. Keep them down and quiet is the name of the game.

For those Indigenes around the world that have been invaded and had everything taken from them, this argument is well known. It is part o out Invasion History that is fed to us with our Mother's milk. Along with the history of our collective trauma.

Conversely, we are forever beseeched by Governments that we, the invaded, must trust them as they do really have our best interests at heart.

So it is that we Indigenes struggle greatly with attempting to return the trust that they require. Rather we better show the utter lack of it. And why?

Read on and replace the word 'Indian' with Aborigine, United States with Australia, and so on.

Monteau: Mystery of why Indians still don't trust 'white men' resolved

© Indian Country Today
30 June 2006
Harold Monteau / Monteau & Peebles, LLP
Or: Kemosabe

WHY do you make rules so Tonto never wins the race? "Our [BIA] research revealed that most Native Americans view the white man as a deceitful, avaricious, exploitive mass murderer, just as their ancestors did. It remains unclear why, in an age when so much of their culture has been lost to time, this tradition remains as strong as ever." - James Cason, Interim Assistant Secretary for Indian Affairs ("The Onion," May 4, 2006)

Dear Assistant Secretary Cason: First of all, let me allay your fears that we all hate "white men." We don't. What we do hate are the policies and restrictions foisted upon us and our homelands by the lawmakers of the prevalent race of human beings in the United States, and that just happens to be people of the Anglo persuasion. Particularly, males of the species.

I won't go over past sins. I will leave that to old AIM activists and our "thorn in the side" Indian humorists like Charley Hill, Drew Lachopa and Don Burnt Stick. (P.S. - if you don't know who these guys are - we have a cultural gap issue.)

The pervasiveness of the attitude "revealed" in the above-referenced study is based not only on past treatment of Indians in this country, but by the way we are treated right up to today. "How's that," you ask? Well, let me tell you.

The United States passes laws that are supposed to enhance the economic development of Indian tribes and Native Alaskans. A few of us use the laws to create corporations and go out and compete in the marketplace around the world, and someone says, "What's going on - we can't have these Indians and Natives making millions of dollars

from these 'loopholes.' Let's change the law." What about the "loopholes" for private energy companies that reap "billions" in profits? Since when did economic recovery for Indians and Alaska Natives become a "loophole"? Yet Congress is ready to hold hearings and change the laws, just when we are realizing some success.

The states were in a panic in 1988 because Indian tribes beat them in the U.S. Supreme Court and we are allowed to have "gaming" on our lands free from state restrictions. The private casino industry comes unglued and demands that Congress not allow the destruction of "their industry" and allow tribes to force "gambling" upon the states without the states having a say. It does not matter that Indian gaming will pay for schools, hospitals, health insurance, food, medicine, education, elderly care, youth programs, law enforcement, court systems and a myriad government services rather than to enrich individuals. Las Vegas and the states say, "Let's change the law so that Indians can't run gambling without the great white father looking over their shoulder and without the permission of the states."

When Indian tribes beat the U.S. attorneys (our "trustee") in court and in 2002 the National Indian Gaming Commission adjusted its rules to comply with the court rulings, the Justice Department responds, "Let's change the rules to make it illegal or impossible for the Indians to use Class II machines or make a decent profit at it, even though the courts have said that's what Congress intended." The NIGC (our trustee) says it has to stand with its "Federal Family" and carry the Justice Department's water and change the rules so we lose, even though we won.

The states are in a panic again. The Indians are "buying back America," they say. Be assured, we don't want most of it back because you screwed it up so badly. But maybe we should take it back, as we have acted more responsibly about such issues as water quality, air quality, conservation, global warming and historic/cultural preservation than the states have. So what do you do? Well, the states and counties want a law that makes it nearly impossible for Indians to recover even a small amount of their original homelands by placing requirements that allow the states and counties (and, in some cases, private do-gooders) to obfuscate the fee-to-trust process and in some cases "veto" the acquisition of what little of our former lands we can afford to purchase back.

Then the Supreme Court "makes" a law that says, essentially, "If your land was stolen fair and square by the states and you didn't have the knowledge or wherewithal to start a claim within this amount of time, once the land came up missing and white people moved onto it (or you moved off it at the end of a bayonet), you can't expect us to right a wrong that is 'old' and based on 'old' treaties that our 'old' ancestors signed with your 'old' ancestors. (Didn't you know that you were sitting on your rights all this time? What did you think that pain in your behind was? You must have known you were getting the shaft, and you didn't do anything about it.) And oh, by the way, you can't get money damages anymore either, and you can't go back to buy a piece of the homelands we drug you off of because they are too far away from the reservation we put you on."

Congress passes another law that says that tribes can take over services that were formerly provided by the government. Then Congress essentially says, "We expect you to serve an ever-increasing population with fewer dollars per head than we were spending when you took it over." And: "Oh, by the way, we can't give you the amount we know you need in order to maintain administrative capability in order to effectively run the programs, and you will have to spend tribal funds to make it up." And: "If you dip into program dollars to pay for administrative shortfalls, we will make you pay it back, penalize you and, possibly, send your leaders to jail." Then Congress asks, "Why aren't more tribes engaging in self-determination contracting and compacting?"

Why would we want to let our trustee out of its responsibilities and then have to use tribal funds to make up for money Congress refuses to appropriate despite knowing we can't maintain adequate levels of services and, at the same time, maintain administrative capabilities to run services efficiently and competently? On top of it all, the president lets our Bureau of "Indian" Affairs and our National "Indian" Gaming Commission languish without permanent appointments because we can't be appointing Indians to watch the Indians. They might advocate on behalf of Indians, heaven forbid.

The states are also up in arms because the federal government is "giving" tribal status to "groups" of Indians without consulting the states enough, even though the state may have recognized the tribes, as a matter of state law, for centuries. Our trustee, by its inaction, says, "Let's allow the states to spend million of taxpayer dollars to get the United States to declare certain Indian tribes dead and to prove that we killed them off a long time ago - they don't exist anymore and the state made a mistake in recognizing, as a matter of state law, that they still were a tribe." Isn't there some international law that prevents the singling out of an identifiable group and putting them under such circumstances that are designed to bring about their disappearance? I seem to recall something called the "Geneva Conventions against Committing and Complicity in Genocide." In fact, how much of state or federal policy has, as its goal or as a natural effect of its application, the disappearance of the Native groups of America? Perhaps Congress should filter every law it passes affecting Indian tribes and Native groups though a process that determines whether the law "places an identifiable group under such living conditions or circumstances that would facilitate their disappearance." Much of our present federal law and policy would fail to pass through that filter. Is it legal to

spend state and federal taxpayer dollars for an illegal purpose that violates international and federal law? Looks legal in Connecticut and, apparently, Washington, D.C., as long as it facilitates the "final solution of a state's 'Indian problem.'"

Our fathers and grandfathers, sisters and brothers, fought wars on behalf of the United States in numbers far greater than our proportions in the general population. We fought a war against tyrants who would have annihilated the Jewish nation and who would have made all other peoples of the Earth servants of the "master race." Our young men and women are fighting and dying in a war to rid the world of yet another terrorist regime that believes that the destruction of the Jewish nation and other "infidels" is the sacred duty of all of Islam. Back home, Indian brothers and sisters are being attacked by state and federal politicians (some of them Jewish) and face annihilation by administrative fiat or legislation. Assimilation, elimination, annihilation, equalization - genocide has many euphemisms.

I wish I had more space, but the editor thinks I'm long-winded as it is. Suffice it to say, in conclusion, that our "distrust" has as much to do with the present as it does with the past.

Indian country, please excuse the tongue-in-cheek humor. If it weren't so damned true, it would be funny.

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A worthy discussion I feel. I enjoy this analysis so much. When I'm feeling more depressed than usual, I read this again and again and it cheers me up no end. But we must move on.

In answer to the calls to keep the mitigating circumstances much beloved by the legal profession, the Government gave Phillip Ruddock, the Federal Attorney-General, the opportunity to put his extremely partisan views. It has previously been argued by some that despite his time spent in the Immigration portfolio, Phillip does have some good points. A sharp legal mind is one point they say. Sadly, humanity is not considered to be one of them, despite his Amnesty International badge. His linking of the practice of female genital mutilation with our real Custom and Law perhaps better shows an aspect of his sharp legal mind.

Brough firmly links violence and child abuse to our Custom and Law.

Ruddock backs push to remove customary law as legal defence.

ABC News Online
3 July 2006

FEDERAL Attorney-General Philip Ruddock says customary law should not be used to argue any penalty should be substantially mitigated.

Mr Ruddock says the removal of customary law from the Crimes Act will have implications for all cultures and ethnic groups.

He has told ABC Radio that the changes will override the High Court's view there is one law for all and that law allows for cultural consideration.

"One of the relevant factors they will not be able to entertain would be a factors of a particular culture or customs because of somebody's race or ethnic origin," he said.

Federal Indigenous Affairs Minister Mal Brough has been pushing for the changes to stamp out violence and child abuse in Aboriginal communities.

Mr Brough says they will prevent anybody from using cultural practices to reduce their sentence when they have committed crimes.

Mr Ruddock says the practice of female genital mutilation is an example of where the laws could have wider implications.

"I think that the Australian public would find it difficult if people who were engaged in that practice in Australia, were able to largely escape responsibility because it was seen to be a cultural practice," he said.

The Law Council of Australia correctly points out that the Brough bribe has no merit whatsoever. Northern Territory Chief Minister, Clare Martin offers a 20 year plan without any details. Warren Mundine backs Martin and calls for more housing.

COAG to consider plan to improve Indigenous living conditions

ABC News Online
14 July 2006

THE Northern Territory Chief Minister will today ask her fellow national leaders to commit to the concept of a 20-year plan to improve the living conditions of Indigenous Australians.

But Clare Martin is facing criticism from the NT Opposition for going to the Council of Australian Governments (COAG) meeting without any concrete details.

Ms Martin last month refused to attend Mal Brough's ministerial summit on Indigenous affairs, arguing COAG was a better forum.

That summit produced a $130 million federal funding proposal for law and order and community service initiatives, which will be considered by COAG.

But today Ms Martin will also ask the Prime Minister and premiers to commit to developing a broader 20-year plan to improve Indigenous living standards.

"This gives us a way to go for the future and I think it will have quick agreement," she said.

NT Opposition Leader Jodeen Carney says Ms Martin's approach is bizarre.

"No one knows any details of the 20-year plan - in essence the 20-year plan doesn't exist," she said.

Ms Martin has also rejected suggestions Indigenous issues will not get the air time they deserve.

Package 'inadequate'

Meantime, the Indigenous president of the Labor Party, Warren Mundine, says the $130 million package being considered at COAG is inadequate.

Mr Mundine says dealing with crime is an important first step in improving remote Indigenous communities.

But he says state and territory leaders need to vigorously argue for a strategy that moves beyond law and order.

"The main focus has been on the law side in regard to policing and that," he said.

"But also we've got to deal with the other side, which is dealing with the problems of Aboriginal housing and how we can increase that to make sure that we're building a more healthy society and a more safe society."

Customary law debate

The Law Council of Australia says state and territory leaders should resist a push to ban consideration of Aboriginal customary law in criminal sentencing.

Mr Brough has previously said the $130 million funding being considered at COAG will be offered on an "all or nothing" basis - including the removal of cultural factors from consideration in sentencing.

Law Council president Tim Bugg says the policy should be considered purely on its merits.

"If the matter was being approached on a truly principled basis, the proposed changes could stand alone, they wouldn't need to be linked to funding," he said.

"If these communities require appropriate funding and there is a clear indication they do then it should be given to them."

The next two articles give further examples of the abuse of our youth that is continuing.

The homophobic Liberal Senator, and great mate of John Howard, commissioned a Report on Sexual Abuse by Ms. Lyla Coorey who makes serious claims that Culture and Law, and especially, Initiation Ceremonies, were being highjacked by some Aboriginal Elders.

The Report was tabled in the Federal Parliament in March 2005 but was not considered at that time as being worthy of consideration. Perhaps Bill had other more important Judicial people in his sights.

It seems the Report only became noteworthy, and of some urgency, when Howard decided to link domestic violence, child and sexual abuse with our Custom and Law.

Gary Lee, a Northern Territory researcher, backed up the Heffernan Report but he did say that it was in a 'fake cultural context'. Brough continues to push his petty bribe.

Aboriginal boys sexually abused: report

Sydney Morning Herald
7 September 2006

ABORIGINAL elders are sexually abusing young boys during bogus "initiation" ceremonies and mothers are too frightened to intervene, according to a report on indigenous sexual abuse.

Mothers are too afraid to take action because the abusers often hold positions of power - in charge of extended families or employed by government agencies in control of housing, education or other benefits, The Australian newspaper reports.

Author of the report, Lyla Coorey, said while researching the report she was told that in some more traditional communities, the initiation of Aboriginal boys was being hijacked around child sexual abuse.

"For children it would be difficult and confusing to understand what is cultural and what is abuse," her report said.

"Children may not be aware that they were being abused."

The report, commissioned by Liberal parliamentarian Bill Heffernan, was tabled in federal parliament in March 2005 but was buried at the time, Ms Coorey said.

She said she was near "boiling point" with rage over the abuse of indigenous children.

Sex abuse part of culture, boys told

The Australian
Caroline Overington
8 September 2006

ABORIGINAL boys as young as eight are being used for sex and told, "It's a cultural thing", an indigenous researcher in the Northern Territory has warned.

Gary Lee, an indigenous man studying for a PhD at Charles Darwin University, said he had counselled boys who had been abused by community elders "for these very strange pseudo-cultural reasons".

"It seems to have almost a cultural sanction," Mr Lee said.

"Everybody knows it's happening, There's a real reluctance to talk about it, yet everybody seems to know who the perpetrators are, and they are elders, older relatives, people with power."

Mr Lee said he encountered an eight-year-old boy in a remote island community "whose behaviour was totally sexualised". "He was behaving more like a teenager or a young adult. He didn't know how else to relate to an adult.

"In remote communities, you see giant screens set up, with everybody - two-, three- and four-year-old boys - invited to sit around watching pornography.

"In my research, I had to conclude it occurs in this cultural context, this fake cultural context, which is something I really didn't want to find."

Mr Lee said men in positions of power could easily find boys to abuse because they "abuse the resources. They control the money, or the booze, or some other service, and like all sexual abuse, there's an abuse of power".

The Australian reported yesterday that indigenous boys were being abused under the cover of fake initiation ceremonies.

In the Northern Territory, at least one group of mothers in a remote community have reportedly banned their boys from attending an initiation camp with an elder suspected of abuse.

Federal Minister for Aboriginal Affairs Mal Brough said children had to be protected. "It's patently clear coming out of report after report, and story after story, that there is a major problem with child sexual abuse in indigenous communities," he said, adding that laws to prevent such abuse existed. "I have said all along that I urge the states and territories to enforce their laws to protect children."

The federal Government had committed $130 million last month to assist the states and territories to enforce the law, "keeping in mind that law and order is their responsibility".

The states and territories "must act on this insidious problem", Mr Brough said.

Liberal senator Bill Heffernan said: "It's well-known to everybody that the sexual abuse is chronic, and I was abused for saying it. Now I just hope I live long enough to see people have to eat a shit sandwich over it, because everything we said is true."

The Australian also reported yesterday that the NSW Labor Government had failed to respond to a disturbing report on sexual abuse of indigenous children. The report, titled Breaking the Silence, said every Aboriginal family in 29 communities studied had been affected by abuse.

The report was completed months ago, but there has been no official response, prompting dismay in the authors, who travelled widely to complete it.

But a spokesman for state Attorney-General Bob Debus said: "No one is dragging the chain. There are, I don't know exactly, how many recommendations, but a lot of recommendations, more than 100 recommendations, and they're all being very seriously considered. The aim is not to provide a two-page response, but to provide a thorough solution."

He could not say when the Government's response would be released.

"I'm not entirely sure but it's not far away," he said. "It's a live issue, people are working on it. Shortly, I'm told."

The Victorian Aboriginal Legal Service Co-operative Ltd. put in a Submission to the Senate Legal and Constitutional Affairs Committee in response to the Inquiry into the Crimes Amendment (Bail and Sentencing) Bill 2006. They titled it 'Culture is not the enemy – culture is a tool towards achieving Justice'. I can only agree with that. The submission is excellent but was ignored nonetheless. The WA Aboriginal Service also put in a Submission, as I assume the others did but I have not seen them.

There are many notations that will be left out but if anyone wishes to have the submission with the notations, then please contact me and I will send it to you. Or go to www.vals.org.au.

Culture is not the enemy - Culture is a tool towards achieving justice' –

VALS submission to the Senate Legal and Constitutional Affairs Committee in response to the Inquiry into the Crimes Amendment (Bail and Sentencing) Bill 2006 - '
sent 27 September 2006

VALS submission to the Senate Legal and Constitutional Affairs Committee in response to the Inquiry into the Crimes Amendment (Bail and Sentencing) Bill 2006.

Introduction

Thank you for the opportunity to comment on the Crimes Amendment (Bail and Sentencing) Bill 2006. However, VALS is concerned by the inadequate amount of time to provide comment, especially as the Bill originated from the National Summit on Indigenous Violence (26th June 2006), where there was no or limited Indigenous Australian presence.

It is ironic that at a time when the Commonwealth Government is advocating the importance of being aware of our history and culture that amendments to the Crimes Act 1914 are being proposed which seek to deny the importance of culture.

The proposed Crimes Amendment (Bail and Sentencing Bill) 2006 removes the requirement to consider cultural background and includes a new section to proscribe (preclude) any possibility of culture being used to justify a more lenient sentence.

The Bill is based on several demonstrably false assumptions and as a result it will fail to achieve its stated objectives. Accordingly VALS calls for a moratorium on the Bill in order to enable the Indigenous Australian community to understand the Bill better and provide comment on it.

Please see Appendix A, which contains a media release of Aboriginal and Torres Strait Islander Legal Services titled 'Aboriginal and Torres Strait Islander Legal Services Support Customary Law' (29th June 2006).

Unwarranted Assumptions

1. Consideration of cultural background by Courts is leading to lenient sentences The first unwarranted assumption in the Bill is that the consideration of cultural background by Courts is leading to lenient sentences. In our experience, the inappropriate use of cultural background by Courts to justify more lenient sentences is extremely rare. Over the last decade we are aware of a handful of cases where the issue of lenient sentences and

cultural background has been problematic. These cases have speedily been appealed by the Director of Public Prosecutions. The continuing and worsening level of Aboriginal overrepresentation in the criminal justice system might be expected to have created a corresponding larger number of cases where Courts had been too lenient in sentencing; however there is no evidence of this (see below). The Commonwealth Government proposal is to introduce legislation to prevent something happening which hardly ever happens.

Also, the enthusiasm the Government has for removing cultural background as a factor in sentencing gives the impression that culture is regularly used as a 'get out of jail free' card for Aboriginal and Torres Strait Islander peoples. The fact that prison numbers across Australia are rapidly increasing and that Aboriginal people now constitute 22% of all prisoners, an increase from 14% in 1991 is surely an indication that the criminal justice system is already highly effective at placing people in jail. As of 30 June 2004, Indigenous Australian offenders were 11 times more likely to be incarcerated than non-Indigenous offenders.

VALS agrees with the Law Council of Australia Submission (Aboriginal Customary Law (29 May 2006) that the notion that a 'customary law defence' exists, is a fallacy. Customary law has 'never been accepted as a defence or justification for abusive or violent behaviour'. However, at common law the recognition of traditional law in sentencing has been well established. Though it is important to note that 'Judges have been to date highly circumspect and careful in their considered determinations in cases in which customary law has risen with proper evidence from anthropologists and other experts.'

Also, evidence exists that support for punitiveness is superficial and when Australians have more access to circumstances surrounding a court case than the media provides, they change their mind and no longer consider certain outcomes lenient. According to the Sentencing Advisory Council:

In the abstract, the public thinks that sentences are too lenient.

Despite apparent punitiveness, the public favours increasing the use of alternatives to imprisonment

According to Professor Larissa Behrendt in an article titled "Politics clouds issues of Culture and Customary Law" despite the fact that many reports have been written documenting sexual assault in the Aboriginal community for decades, many by Aboriginal women, when a Public Prosecutor raised the issue it sparked a media frenzy. Notably, the Public Prosecutor was non-Indigenous.

In summary, there has been a misrepresentation of the issue. Customary law is not a shield behind which violent Aboriginal people hide. It is incorrect to view customary law as vehicle through which an offender can receive a lenient sentence.

2. The primary problem with sentencing is that it is not harsh enough

The second unwarranted assumption in the Bill is that the primary problem with sentencing is that it is not harsh enough. This has become a national preoccupation over the last decade in spite of the evidence that harsher sentences have a negligible impact on re-offending rates or crime rates. Harsher sentences have largely replaced a focus on appropriate and rehabilitative sentences and crime prevention. Sadly, successive State Governments have a "tough on crime" bidding war at each election. We are yet to hear some proposals to prevent crime or to promote diversion and rehabilitation.

3. The existing requirement to consider cultural background will lead to too great an emphasis being placed on culture in the consideration of sentencing The third unwarranted assumption in the Bill is that the existing requirement to consider cultural background will lead to too great an emphasis being placed on culture in the consideration of sentencing. The Explanatory Memorandum states that "…this amendment removes an unnecessary emphasis on the "cultural background" of convicted offenders". The quote is a value judgement that cultural background has been given too great a weight in past sentencing or culture is a vehicle for lenient sentencing. As we have stated above there is no evidence for this. Removing the requirement to consider cultural background implies that a significant part, an essential part, an integral part of a person's identity no longer retains important for Courts making sentencing decisions. This is not dissimilar to trying to remove a person's identity.

Justice Geoffrey Eames of the Victorian Supreme Court – Court of Appeal said in 2002 (R v Fuller-Cust [2002] VSCA 168)

"Sentencing principles are the same for all Victorians. Race is not a basis for discrimination in the sentencing process. Nothing I say in these reasons should be taken as suggesting that Aboriginal offenders should be sentenced more leniently than non-Aboriginal persons on account of their race…To ignore factors personal to the applicant and his history, in which his Aboriginality is a factor, and to ignore his perception of the impact on his life of his Aboriginality would be to sentence him as someone other than himself".

The Commonwealth's proposed legislation is a proposal to do exactly this, a proposal to sentence people as though they were someone else. Culture is inseparable from individuality and it is unrealistic to strip away culture from a person. Any notion that this is plausible is based on an over-simplistic conceptualisation of culture. Culture is integral to a person's world-view.

Associated with the assumption that consideration of cultural background will lead to too great an emphasis being placed on culture in the consideration of sentencing is the under valuing of culture. The

demonisation or under valuing of Aboriginal culture is becoming a culture in itself and apparent in the following:

a. Mainstreaming of service delivery, which means removing the cultural expert.

b. Cultural awareness training is minimally attended by those who need the training the most. It is the VALS' Chief Executive Officer's experience that often the majority of Judicial Officers who attend the cultural awareness training are the converted and it is others who need to be preached to.

c. Notion that self-determination has failed (Tony Abbott), but it has not been properly tried.

d. Continued paternalism of the Government

e. Assumption that culture is not a dynamic living thing, but a thing of the past (ie: cultural museum – Amanda Vanstone).

f. Claim that culture should not be taught in schools. This is evident in the Menzies Research Centre Report titled "Aboriginal Education: Remote Schools and the Real Economy" at the VALS website: www.vals.org.au

g. Culture is only seen as a negative or an enemy to justice (refer to discussion on the Koori Courts below).

h. The culture of the media and Government is to only represent the worst stories about Indigenous culture. If a truly balanced representation of Indigenous Australians was represented it will be broader than is currently offered and include:

i. Balance of blame of individuals and acknowledgment of the failure of the Government in addressing issues of disadvantage stemming from the colonisation of Australia.

ii. Good news stories about how Indigenous Australians are attempting to solve problems (ie: awards for good governance, sobering-up centres, night patrol, time-out houses).

i. The onus is placed on newly arrived migrants to learn about Australian culture, but a similar onus is not placed on Australians to learn about the culture of migrants or Aboriginal people.

j. The loud and clear message that violence is not a part of Aboriginal culture is falling on deaf ears. The debate around customary law and family violence, and indeed the introduction of the Bill, highlights the continued misunderstanding about culture and the causes of violence in the Aboriginal community.

The demonisation of Aboriginal culture above contrasts with the situation in New Zealand where culture is valued as social capital. Build bridges/bonds between two cultures/work collaboratively. The following Court cases, along with Fuller-Cust, place value on Indigenous Australian culture by considering it relevant.

Neal v The Queen [1982] HCA 55

"all material facts, including those facts which exist only by reason of the offender's membership of an ethnic or other group. So much is essential to the even administration of criminal justice" per Brennan J (Neal v The Queen 149 CLR 305)

R v Norris, Norris & Bodere [2006] VSC 75

"..Given the well recognised socio-economic disadvantages that confront many members of the Aboriginal community and contributes to their disproportionate involvement in the criminal justice system, a sentencing judge is bound to consider the impact, if any, of your Aboriginality on each of you when addressing both the cause and context of your offending and your prospects for rehabilitation" per Eames J – R v Norris, Norris & Bodere [2006] VSC 75 (6 September 2006)

4. Cultural background is somehow the enemy of the justice system.

The fourth unwarranted assumption of the Bill is that cultural background is somehow the enemy of the justice system. Most State Governments and Governments in Canada and New Zealand have developed Court initiatives which better include cultural knowledge and experience of Indigenous peoples. The outcomes of such initiatives highlight that cultural background is not an enemy of the justice system. Victoria's Koori Court, for example, uses Elders and Respected Persons to help the Magistrate decide on the most appropriate sentence (ie: cultural expertise).

Koori Courts are not a panacea but they have resulted in significantly lower re-offending rates. Only 14 of the 152 people who appeared before the Shepparton Koori Court, in its first 18 months had re-offended. Four years after the introduction of a Circle Sentencing

as a program in Nowra, only two of 24 offenders had re-offended. Moreover, the program reduced the number of Koori offenders appearing on list days at the local court from 23 percent to 6 percent. This highlights one of the positive effects of including Aboriginal and Torres Strait Islander knowledge and perspectives. The Koori Court is not a soft option as it is arguably more confronting for Aboriginal people to appear before their Elders and Respected Persons than a culturally alienating Magistrates' Court. There are many other examples across Australia of Aboriginal and Torres Strait Islander peoples working collaboratively to address health education and environment problems using cultural background as a strength not a liability (ie: Victim of Crime Assistance Tribunal Koori List).

The framework of the legal system is to treat culture as only an issue in relation to mitigating circumstances. This is a framework based on a "tough on crime" approach that measure of success of the sentence in terms of the severity of it. The framework should be looking out the measure of success being the appropriateness of the sentence in terms of rehabilitation or recidivism reduction.

The Bill is at risk of undermining positive initiatives, such as the Koori

Court and Circle Sentencing. Rather than attacking something that works (ie: consideration of cultural background), the flaws in the justice system should be attacked (ie: caused by the systemic racism of the dominant monoculture). The Bill assumes that the Western legal system has an equal effect on all Australians, however, this is not the case. If the Victorian Government enacts similar provisions to the Bill then this will be a backwards step from the Victorian Aboriginal Justice Agreements (2002 and 2006). The Koori Courts make the legal system more meaningful to Indigenous Australians and improve the Aboriginal community's confidence in the criminal justice system.

5. It is reasonable to take cultural background out of the factors which should be

considered in sentencing The fifth unwarranted assumption of the Bill is that it is reasonable to take cultural background out of the factors which should be considered in sentencing. Consider some of the characteristics alongside of the 'cultural background' characteristic in the existing legislation. Age and mental capacity are two such neighbouring characteristics which have not been culled. Would it be acceptable to delete age from the matters to be considered in sentencing? Would it be fairer if we treated all people according to an average age? Would the justice system be better if we abolished Children's Courts and Juvenile Justice Centres and rolled them all into the adult system? Would it be fairer if we ignored issues of mental problems and simply treated all people as if they were all equally mentally able? We suggest not. Culture is an integral part of a person's identity and the proposal to abolish the need to consider it in sentencing is a recipe for both demeaning the value of peoples' cultures and reducing the effectiveness of the justice system. VALS would go as far to say that cultural background is more important that the other factors in section 16(m).

Unintended consequences

The unintended consequences of the Bill are as follows:

• It will be more difficult for non-Indigenous Australians to appreciate the diversity of and the positive effects of Aboriginal and Torres Strait Islander culture.

• A continued preoccupation with harsher sentencing at the expense of achieving improved rehabilitation and prevention.

• Whilst Magistrates and Judges will still have the discretion to consider cultural background, some would be most likely to be reluctant to do so. The media hysteria following the case of GJ and the Government's demonising culture as the villain has created a climate where Magistrates and Judges will hesitate in considering culture for fear of possible backlash.

Further arguments:

• International Legal Principles:

The Law Council of Australia has highlighted 'the imposition of western value systems on Indigenous cultures may also be seen as an infringement of basic human rights, such as the right to self-determination'. (p.8, Aboriginal Customary Law – Law Council of Australia Submission).

Underlying issues:

A law and order approach does not address underlying issues. However, even a narrowly focussed law and order approach will be ineffective if it fails to appreciate the importance of culture as a source of pride and strength rather than a liability. • White Australia Policy:

At the same time as celebrating and finding identity as a multicultural county the diversity within Australia is denied by this amendment. Australia is not a monocultural society, yet in effect the Bill is deeming Australia a monocultural society in a similar manner as the earlier White Australia Policy.

Bail:

The changes to bail provisions are exceptionally broad and should be reviewed. There will be considerable cost implications for Legal Aid providers if harsher and more complicated bail conditions are introduced. The arguments raised above about sentencing are applicable to bail. Please see VALS' submission to the Victorian Law Reform Commission in response to the 'Review of the Bail Act Consultation Paper' (November 2005), sent 22nd February 2006 at http://www.vals.org.au/news/submissions/62%20VALS%20Submission%20re%20bail%20sent%20220206.pdf.

Cultural Awareness Training:

VALS notes that cultural awareness training will be provided. VALS seeks further information about this training in light of the Bill removing reference to cultural background.

APPENDIX A

For immediate release, 29 June 2006

MEDIA RELEASE

Aboriginal and Torres Strait Islander Legal Services Support Customary Law

The Chairpersons, CEOs and Principal Legal Officers of all Aboriginal and Torres Strait Islander Legal Services across Australia are calling on the Australian Government to involve them in any discussion on changes in legal policy for Indigenous peoples.

The call comes after a Forum in Adelaide, 28 & 29 June and discussion of details of a Communiqué from the Indigenous Affairs Ministerial Summit in Canberra, 26 June. Although commending Ministers on wanting to do something, on behalf of the Forum, Chairperson, Mr Frank Guivarra said there were specific concerns about a number of issues.

1. The proposal that section 16A of the Commonwealth Crimes Act be amended to delete mandatory consideration of cultural background of offenders and exclude it from sentencing discretion, is contrary to fundamental principles of equality as enunciated by the High Court and the Racial Discrimination Act;

2. In accordance with case law principles, in particular Neal v R 1982, equality before the law implies and requires recognition by Courts of cultural difference in relation to sentencing matters;

3. The Forum endorses the Law Council submission to the WA Law Reform Commission on Aboriginal Customary Law that removal of the court's power to consider all factors relevant to the state of mind of an accused is against the principles of Australian law.

4. The removal of cultural background from the codified list of sentencing factors in Section 16A would be inappropriate for all ethnic and racial minorities.

5. A significant issue within Customary Law is double jeopardy – where, whilst Australian law applies, so may a perpetrator be dealt with under Customary Law.

6. Application of Customary Law restores harmonious relations within communities.

7. We support the Law Council's recognition that Customary Law is highly complex and cannot be simply categorised.

8. Recognition of Customary Law is consistent with the approach of the Australian Law Reform Commission in Report 31 and with the approach adopted by Superior Courts of Record for the last half century.

9. Judges have been to date highly circumspect and careful in their considered determinations in cases in which Customary law has risen with proper evidence from anthropologists and other experts.

The Forum noted that the important developments of Aboriginal courts in the criminal justice system and the proposed changes conflict with these developments.

We believe the application of Customary Law facilitates a reduction in crime in Aboriginal communities.

The Forum suggests that ill-informed and simplistic approaches should not be applied, nor should the Commonwealth rush into ill-considered legislation.

Further information contact:
Mr Neil Gillespie, CEO Aboriginal Legal Rights Movement, 0417 086 025.

In the New Matilda, Judy Atkinson has a critical look at the Community abuse and the blaming of Custom and Law as being the accepted cause of that violence.

Professor Atkinson reviews with a critical eye the statements made by Ms Joan Kimm in her analysis of violence towards aboriginal women in her book, 'A Fatal Conjunction'. Ms Kimm argues strongly that all violence toward Aboriginal women is very much rooted in Custom and Law. Ms Kimm is studying Law at Monash University.

Ms Atkinson's heritage comes form the Jiman People of the Upper Dawson in central west Queensland and the Bundjalung Peoples of Northern New South Wales. Judy has focussed most of her Community and academic life working in the field of violence, trauma and healing in Aboriginal Communities. She has also had practical experience through involvement with programmes and workshops aimed at Community healing and violence prevention.

Looking at the issue and importance of Custom and Law, I have previously argued that the misinterpretation of our Custom and Law, both historically and currently, comes form a, mostly, Anglo-centric view. It is also, of course, disgracefully used by politicians and others as a demonising tool to set their own cynical agendas.

Violence between men and women is as ancient as human kind has been around. Images of cavemen carrying their clubs to subjugate women, among other uses, are more or less eternal.

Originally, I believe, there was a level of equanimity between the genders but gradually, over millennia, the system of patriarchy, based mainly on property, goods and the need to be able to properly identify (mostly male) heirs, took over and males in most, if not all, Societies became dominant. As it is today around the world. It comes as no great surprise that violence against women – and children – becomes much easier to see when the focus is on other Cultures rather than their own.

I have written before on the viewing, and the assumption, of violence among Aborigines by the original invaders and even to their progeny.

I can easily accept that there was violence among Aboriginal Communities when the Invasion began. But surely there must be equal recognition of the violence manifest within White Communities. There are records stating that the Eora Peoples were absolutely appalled by the savagery of the Troopers and their Masters towards the convicts, men, women and children, being flayed with the cat-o-nine tails.

Many records tell of the massive abuse towards the convict women by their keepers. Rape was not a matter of concern and I assume that it would be as argued then, as it is now, that 'they' asked for it and were party to it anyway. Especially coming from the Trooper/Police view. I believe the age of consent for girls in England at that time was 10!

Of course there were Rules/Law/Lore for Aboriginal women, as there were for the men and youth of the Clans, Tribes and Nations. That that 'legal' violence has been mutated to the disease we have today has many, many underlying causes.

Perhaps the most pernicious of those causes was the availability and consumption of alcohol. Again, records show that rum was given to our People and then they were encouraged to fight,

gladiator-style. Rum was also given for the rape of Aboriginal women and girls by the early Invaders. As the Aboriginal Communities died out, the rum was replaced with brute force.

Domestic and sexual violence occurs in every Society and must be stamped out in all Societies.

We return to the article. That the police interpretation is argued shows that little has changed.

*Indigenous Politics: Traditional Violence and Bullsh*t Law*

New Matilda
Judy Atkinson
27 September 2006

A LOT has been written about Aboriginal violence since Northern Territory Crown Prosecutor, Nanette Rogers's report and interview on ABC TV's Lateline in May. But, often, people's supposedly authoritative claims are flimsy, at best - and tainted, at worst.

This is not just a recent problem. In 2004, Joan Kimm published A Fatal Conjunction: Two Laws Two Cultures (Federation Press, Sydney), a book whose major theme is that, under Aboriginal customary law, Aboriginal women were brutalised through acts of violence called 'sacred rape' and other excessive physical forms of violence as punishment, which kept them subjugated to patriarchal power.

The problem is that Kimm presents what, in many cases, is a flawed literature or biased legal finding. But this would only be apparent to people already familiar with the cases she used.

Kimm says that Aboriginal women perceive they suffer 'three levels of oppression . implemented through a threefold operation of law . White men's law, traditional law and bullshit law.' Bullshit law is the term of contempt used by Aborigines to describe the 're-creation by (some) male Aboriginal elders of traditional law' to suit their own ends - that is, to justify the rape of women.

Repeatedly Kimm names 'Aboriginal male elders' as the instigators in this 're- creation' of customary law.

But then Kimm argues that violence against Aboriginal women was a particular and essential part of male customary law practice. She says that the male elders' perspective has been authenticated by male anthropologists, argued by male counsel, and that, until recently, the judiciary have taken their direction from such male elders

But the cases Kimm uses as examples don't support her argument. For instance, in the 1991 case, known as Mungkilli, Martin and Mintuma (in the South Australian Supreme Court), Mungkilli, Martin and Mintuma were Aboriginal community Police Aids who raped a woman they were holding in custody. At the time of the offence, they had just come from a police function where they had consumed alcohol, before they picked up a woman who was also 'under the influence' and, it was claimed, being a public nuisance, with the instruction to take her back to her home community.

They raped her in the back of their police vehicle. When they arrived at her community she complained loudly and bitterly (this does not sound like a subordinated woman). State police immediately removed the three Police Aids to Port Augusta 'for their own protection,' because of the community's anger, and the threat of customary law punishment for what Aboriginal people (both men and women) saw as unacceptable behaviour. Kimm does not refer to these facts.

Charges were laid against the three men. A non-Aboriginal police officer gave evidence that these were 'good' police, and that forcing Aboriginal women to have sexual intercourse is not regarded by Aboriginal peoples with the same seriousness as it is by White people. He said Aboriginal women do not experience - are not hurt by - rape, in the same way as White women.

These facts provide a completely different understanding of this case and, I would suggest, many of the other cases to which Kimm refers. In this regard, the South Australian police - not Aboriginal elders, nor the Aboriginal community generally - collude with the judiciary in defining violence as an aspect of 'Aboriginal Customary Law Practice' and determine how Aboriginal women experience rape. They also define how a 'good' policeman behaves.

In one case with which I am familiar, the counsel employed by an Aboriginal Legal Service was asked why he used the court to discredit a number of young Aboriginal women who had been victims of sexual assault by a senior male who was, at the time, an Aboriginal community policeman. Counsel replied that it was his job to get the defendant off. He was not concerned about the very substantial damage he did to the young girls through his actions, nor to the distress of their mothers, grandmothers, and the community generally. He had 'done his job.'

The Western legal system apportions blame - and, generally, there must be a single party to blame. It is insular and looks to single causes. In the second case cited above, it was preferable to blame the young women. Their behaviour, it was claimed, 'caused' the man to desire sexual contact. While the young women did not initiate sexual contact, the Aboriginal Legal Service counsel used Western law to prove the young women's bodies were to blame.

In A Fatal Conjunction, Kimm discusses the high levels of violence inflicted on Aboriginal women in the 'relatively intact cultures' of the Northern Territory and Kimberley, compared to other areas. I have worked extensively in all these areas and I can say emphatically that some of the violence I work with in so called settled, urban, 'assimilated' east coast Aboriginal communities exceeds the violence Kimm finds in 'relatively intact cultures.' The violence, however, is hidden within the secrecy and shame of traumatised communities.

We should also address the assumption that 'relatively intact

cultures' are representative of a more 'traditional' Aboriginal cultural life and customary practice.

Two communities in Queensland that are considered to have 'relatively intact cultures,' also have the highest rates of sexual violence in the State. They were also two communities where, during the 1980s, pornographic movies were made available to young men by certain Whites employed by the State Government. In both instances the White males initiated sexual contact with young people.

The Western legal system has the capacity to redefine, reconstruct, and re- create culture and tradition. In cases of positive affirmative action, it is effectively doing this on behalf of White women. However, A Fatal Conjunction demonstrates the opposite for Aboriginal women.

Thanks to Bill Leak
http://www.newmatilda.com/admin/imageLibrary/images/atkinson-leak-wgKbn1RQ118F0.jpg

Kimm says that Aboriginal women's voices have been subordinated by those of Aboriginal men, White male anthropologists, legal counsel, and bureaucrats. Yet, ironically, like many others, she discounts the voices of contemporary Aboriginal women (and men) who are working to address the issue of violence.

After the Nanette Rogers report, Aboriginal women from the central Australian community of Mutitjulu, along with others, were given airspace on Lateline. The women's stated concerns were for the wellbeing of their children. To some, Muntajara Wilson and the other women who spoke may seem powerless - but they demonstrated great authority in speaking as Aboriginal women have always spoken, as law keepers of their communities (men were law enforcers) about issues of law, of right behaviour, of child concerns, of community needs, of women's rights.

Very quickly, however, their voices were subordinated and negated by those of political and media agents - generally White men - in what the women later described as a 'political football.'

The women then wrote a letter published in The Weekend Australian in August 2006. These are women who are speaking out to right wrong. They are demonstrating their power in their concern for their children.

We now have documented, clear evidence of diverse, and often incomprehensible violations of Aboriginal children in every region of Australia. The question we must ask is: What has changed for our children? One answer is that their fathers and grandfathers have been institutionalised by the State, suffering many acts of violence.

In consideration of the fiction of Aboriginal traditional violence as presented in recent months by media outlets, a knee-jerk political answer has been to focus on law and order as a short-term crisis intervention. I do not argue against such a response. I just ask that we fully understand the implications.

If we bring more police in, we must budget for better education at the community level. I presume there will be more charges laid. We must therefore plan for more courts. We need to enhance the education of court workers, whether they be magistrates, lawyers, barristers, or prosecutors. More courts will mean more sentencing, which means more prisons - unless people are sentenced to programs that will influence behavioural change. Such programs are currently unavailable but, obviously, putting young people at risk of sexual assault in a prison environment is a serious human rights concern.

I agree that education is the most powerful tool available. We need education for early childhood development; education for life; education for healing. Can we not invest in education that will provide the most marginalised and dispossessed within Australian society a chance for a future within their own country? To do nothing less would be tantamount to genocide.

About the author
Judy Atkinson is Professor of Indigenous Australian Studies at Gnibi College of Indigenous Australian Peoples, Southern Cross University and Director of the Collaborative Indigenous Research Centre of Learning and Educare

HREOC then adds its voice to scrap the Bill and then points out some avenues that the Bill fails to address.

Govt plan to strip customary law slammed

Sydney Morning Herald
AAP
28 September 2006

THE human rights watchdog has criticised federal government laws aimed at removing Aboriginal customary law from consideration in courts.

The government wants to change the commonwealth Crimes Act to stop courts from having to consider cultural backgrounds, customary laws or cultural practices in sentencing deliberations.

But the Human Rights and Equal Opportunity Commission (HREOC) says the move would contradict Australia's commitment to cultural diversity and the right to cultural expression.

The change was also unnecessary and would not apply to serious crimes like murder and rape, which fall under state laws, HREOC said.

In its submission to a Senate inquiry investigating the government's Crimes Amendment (Bail and Sentencing) Bill 2006, HREOC recommends the bill be thrown out.

"The bill distracts from the real solutions to the problem of family violence in indigenous communities - solutions that address poverty, overcrowding, substance abuse, low levels of education and unemployment," HREOC says.

The body also says the term "cultural practice" is not defined in the legislation and could arguably

apply to concepts as broad as "mateship".

"Cultural practice would appear to be a very broad term and the bill confirms that any form of such practice is covered.

"The terms potentially cover all aspects of what might be considered to be Australian practices and values," HREOC says.

"By way of example, it is often said that mateship is an important part of Australian culture.

"Would helping a mate be considered a cultural practice in Australia and therefore irrelevant in sentencing for a commonwealth offence?"

Should the changes be passed, they would contradict Australia's fundamental commitment to cultural diversity, the human rights watchdog says.

"(It would be) contrary to a commitment to cultural diversity and the right to enjoy culture to automatically exclude customary law and cultural practice from sentencing."

The bill, which was introduced to federal parliament earlier this month, was drafted after violence and abuse in indigenous communities was thrust into the spotlight when a Northern Territory prosecutor went public with her concerns.

Nanette Rogers' stories drew national attention to the state of Australia's remote indigenous communities, but many indigenous leaders have criticised the media coverage of the issues, which they say has tarred all indigenous people with the same brush.

HREOC is appearing before the Senate committee examining the bill in Sydney.

Glen Dooley of the North Australian Justice Agency believed that the NT has many cultures and believes the new Bill would cause more problems. The Northern Territory's Syd Stirling argued that there was now a far greater tendency for charges to be watered down from murder to manslaughter to doing a dangerous act for Aboriginal offenders. There will be no defence of a person's culture to mitigate the circumstances.

Had the reforms been accepted, where would that have put Acting Sergeant Robert Whittington and his police culture? Will it be argued that the police culture is indeed a minority one?

NT murder charges reform 'disgraceful'

ABC Online
2 October 2006

THE Northern Territory Government has come under fire over plans to make it more difficult for murder charges to be reduced to manslaughter.

An Aboriginal legal aid service has described the changes as disgraceful.

NT Attorney-General Syd Stirling says there has been a growing tendency for murder charges to be downgraded to manslaughter or doing a dangerous act in the past 30 years.

He says the changes will remove drunkenness or a person's cultural or ethnic background from being a defence to murder.

"A life's a life, no matter what colour, creed or background, race or custom that they come from," he said.

But North Australian Aboriginal Justice Agency spokesman Glen Dooley says the changes ignore the fact the territory has a range of diverse cultures.

"It just seems to be ad hoc," he said.

"Whatever's the most politically available bandwagon, they're contorting their views to hop onto that bandwagon.

"Disgracefully for the Territory we seem to be the first state jumping on this politically-motivated bandwagon to try and strip away cultural and ethnic considerations in our criminal law - it's a disgrace."

The amendments will be introduced to Parliament later this month.

Frank Quinlan, Director of Catholic Social Services Australia, presents a cogent and very correct view of why the Bill should not go forward. He also notes that a four week Inquiry into such an all encompassing change is in every way inadequate. He better describes it as an insult and a disservice to those of all Cultures, but especially to Aborigines.

Sentencing laws will further alienate indigenous Australians

Eurekastreet.com.au
Frank Quinlan
3 October 2006

JUST last week, the coroner's report into the death in custody of a Palm Island man, Mulrunji, called for a major overhaul of how the justice system deals with indigenous Australians.

Yet in the same week, hearings commenced for an inquiry by the Senate Committee on Legal and Constitutional Affairs, into the Crime Amendment (Bail and Sentencing) Bill 2006, a bill that will increase the potential for injustice in sentencing decisions affecting indigenous people and other cultural minorities

The purported aim of the legislation is to amend the sentencing and bail provisions in the Crimes Act 1914, in line with the decision made by the Council of Australian Governments (CoAG) on 14 July this year, following the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities in June.

But far from addressing the problem of violence in indigenous communities, the bill risks further discrimination against cultural minorities, and should not be passed in its current form.

Under the proposed changes, judges passing sentence on federal offences will no longer be required to consider a person's "cultural background", even where this might be considered relevant. Moreover,

sentencing judges will not be allowed to take account of "customary practices" and customary law.

The current reference to "cultural background" guides courts to consider this as one factor, among many others, in the balancing process that is an essential part of sentencing. We do not agree with the suggestion contained in the supporting material, that the current law contains an unnecessary emphasis on "cultural background".

While there is a serious need to address the incidence of violent crime in indigenous communities, this bill will not address the problem.

We agree with CoAG that the law's response to family and community violence and sexual abuse must reflect the seriousness of such crimes. CoAG agreed that no customary law or cultural practice excuses, justifies, authorises, requires, or lessens the seriousness of violence or sexual abuse

However, sentencing judges must be free to take account of cultural background, customary law and cultural practices and background, when determining appropriate penalties. In fact, the law ought to encourage them to do so.

Significantly, of the ten publicly available submissions to the Senate Inquiry, not one supports the passage of the bill.

The bill is at odds with the findings of several major reports, including the 1991 report of the Royal Commission into Aboriginal Deaths in Custody; the 1986 report of the Australian Law Reform Commission, The Recognition of Aboriginal Customary Laws; the Law Reform Commission of Western Australia's Aboriginal Customary Laws and the NSW Law Reform Commission's The Recognition of Aboriginal Customary Laws.

The Royal Commission into Aboriginal Deaths in Custody in 1991 stressed the importance of reducing the over-representation of Aboriginal people in custody.

It recommended "that governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread, and have such potentially disastrous repercussions for the future, that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise".

However, indigenous people, and those from disadvantaged backgrounds, are increasingly and disproportionately represented in the prison population. The proportion of indigenous people in the total prison population increased from 14 per cent in 1991 to 22 per cent in 2005.

Criminal justice is inextricably linked to social justice. The overrepresentation of indigenous people in the criminal justice system is among the factors leading to indigenous disadvantage. We know for example, that time in prison reduces employment prospects.

It's concerning that the motivations underlying the bill, no matter how well-intentioned, may be grounded in the very misconceptions of Aboriginal customary law, against which the NSW Law Reform Commission warned.

In particular, there appears to be an operating assumption that judges and magistrates may take account of Aboriginal customary law, in such a way as to "excuse" or lessen the seriousness of offences involving violence against women.

Even apart from grave doubts about whether this assumption accurately reflects Aboriginal customary law, the appeals process is the most effective means of redressing any individual inappropriate sentencing decision.

The senate committee's report on this inquiry must stress the urgent need for action to address underlying causes of violence in indigenous communities, especially poverty, social exclusion and inadequate support for families in crisis.

The Commonwealth Government must ensure that any legislative action it develops in response to the July 2006 CoAG Communiqué, is measured and just. It must also ensure that any such action will not have unintended consequences which might further disadvantage some of the most vulnerable people in the Australian community.

An inquiry of just four weeks, with limited opportunity for public input and debate, does not achieve this, and does a disservice to the importance of the issues under consideration.

Our ATSI Social Justice Commissioner, Tom Calma, also adds his not inconsiderable voice to those placing their concerns on notice against the introduction of the Bill.

Knee-jerk response will create injustice for Aborigines

The Sydney Morning Herald
3 October 2006

Ruling out cultural practice as a factor in sentencing will not stop indigenous violence, writes Tom Calma.

THE Federal Government has introduced legislation to prevent the courts from considering customary law and cultural practices as a mitigating factor in sentencing, in response to the problem of indigenous family violence and child abuse.

The trouble is the bill will do nothing to address the issue of violence in indigenous communities and may even make solving the problem harder.

Despite the recent media frenzy about the problem of violence in indigenous communities, so far there's been no serious discussion about whether the Government's claim - that the Crimes Amendment

Bill 2006 will help address this issue - stacks up.

The bill removes "cultural background" from the list of factors courts can take into account in sentencing. But to what end?

When the bill was introduced, the Government said: "The high level of family violence and child abuse in indigenous communities is appalling." I agree. As the Aboriginal and Torres Strait Islander Social Justice Commissioner, I have repeatedly called for concrete, practical steps to address this blight on our society.

The problem is that this bill does not address family violence in the bill indigenous communities in any meaningful way. Rather, it will undermine attempts to solve the problem and perpetuate harmful stereotypes about Aboriginal customary law.

If we are serious about preventing family violence in indigenous communities we need to focus on the root causes of the abuse. We need practical strategies to target the poverty, substance abuse and low levels of education and employment, which continue to destroy indigenous men, women and children's lives.

Customary law does not permit family violence.

We need to help break the cycle of recidivism in indigenous communities through strategies such as circle sentencing, which involves the communities in the sentencing process.

We need all these things but we don't need this bill. It is in conflict with every major inquiry into the role of cultural background and customary law in the legal system, including the royal commission on Aboriginal deaths in custody and the recommendations of five reports of the Australian Law Reform Commission.

The Government says the laws, which criminalise family violence and child abuse, must reflect that such criminal behaviour is unacceptable. There are two problems with this view.

First, the Crimes Act 1914, which is amended by the bill, does not apply to offences of violence such as assault, murder or rape: these offences are covered by state and territory laws.

Second, our legal system already takes these crimes very seriously. Cultural practices or customs are not a defence to a criminal charge. No one will be found not guilty as a result of arguing they were just acting in accordance with customary law.

The key issue is: what factors should the court consider when sentencing a convicted offender?

Under common law, indigenous offenders are sentenced according to the same principles that apply to other offenders. However, the courts have recognised that it is necessary to take into account the offender's cultural background, be they indigenous or non-indigenous, to ensure that sentences are just. It is a judge's job to make sure convicted offenders receive sentences that fit the crime.

In deciding on a sentence the judge needs to weigh up a long list of factors. In some circumstances the impact of the crime on the victim and the severity of the crime may outweigh any factors that the offender argues should mitigate the sentence. In other circumstances it may be appropriate to take into account the person's cultural background or cultural practices.

If a judge gets it wrong, the sentence can be appealed. However, by restricting the ability of the court to take into account all relevant facts in sentencing, the bill will undermine the ability of judges to provide a just sentence.

By expressly excluding the courts from considering "any form of customary law or cultural practice" as a mitigating factor in sentencing the bill enters into dangerous territory.

The problem is, it does not define what is meant by "any form of customary law or cultural practice", and the scope of this provision is broad. It could potentially exclude all the aspects of what we might call "Australian cultural practices" or "Australian values".

For example, "mateship" is said to be a vital characteristic of Australian culture. Is helping a mate a "cultural practice" that should be irrelevant in sentencing?

If these sorts of Australian values are not supposed to fall within the scope of the proposed laws then we have to ask: why not? Is it because only the values and practices of minority cultures are being targeted by the bill? Because if this is the case, the new laws will be a form of racial discrimination.

We desperately need practical solutions to prevent violence in indigenous communities. But this bill is not the answer. Sadly, all it offers is more problems for all Australians.

Northern Territory Attorney-General, Syd Stirling, went head to head with Ms Sharon Payne of the NAATJA, mentioned earlier, who argued against the changes being mooted.

Bid to cut reverse racism in murder trials

The Australian
Ashleigh Wilson
3 October 2006

MURDERERS in the Northern Territory will find it harder to plead manslaughter under reforms designed to eliminate "reverse racism" from the justice system.

As foreshadowed by The Australian last month, Attorney-General Syd Stirling yesterday announced changes to the Criminal Code following concerns about the high rate of convictions in the Territory for lesser charges instead of murder.

Mr Stirling said the reforms, to be introduced in parliament this month, would remove drunkenness and any

reference to cultural or ethnic backgrounds as partial defences to murder.

"The amendments will ensure that those who commit murder are convicted of murder," Mr Stirling said.

The Northern Territory has the nation's highest murder rate, with the majority of homicides involving Aboriginal people, alcohol and domestic violence.

In the 10 years since 1996, there have been just 12 indigenous people in the Territory convicted of murder compared with 62 for manslaughter.

Over the same period, 24 people have been convicted for dangerous acts causing death and 23 for doing a dangerous act causing death while intoxicated.

But the changes were attacked by Sharon Payne, head of the North Australian Aboriginal Justice Agency, who said removing the need to prove intent represented a "return to the Middle Ages".

"Under homicide rules, you really have to prove an intent to kill. The onus has to be on the Crown to prove that they (the offenders) intended to kill."

The reforms come one month after a coronial inquest in Darwin highlighted the circumstances leading up to the brutal death of Jodie Palipuaminni, a 27-year-old Aboriginal woman from the Tiwi Islands who was killed by her husband, Trenton Cunningham, in May last year.

Northern Territory legal figures have questioned why Cunningham was convicted for manslaughter, not murder, since no alcohol was involved in the crime and the killer was breaching the conditions of his parole at the time.

Cunningham, who had inflicted 11 years of horrific abuse on his wife before he finally killed her, was originally charged with murder but faced court for manslaughter.

In August, he was sentenced in the Northern Territory Supreme Court to 11 1/2 years behind bars, with a non-parole period of 6 1/2 years. Mr Stirling said too many offenders had previously been able to get away with lesser charges than murder.

"I've always ... thought that there's been somewhat of a reverse racism-type element in law," he said.

Under the reforms, the defence of diminished responsibility will be clarified, with new provisions for defence to focus on the accused's ability to understand events and determine whether their actions were right or wrong.

Mr Stirling said the charge of "dangerous act" would also be abolished to ensure offenders were "appropriately charged".

"Offenders will face the full arm of the law," he said.

Readers of Newsletter V7#9 may remember the excellent dissertations written by Stewart O'Connell/Stewart Black whom I had the privilege of meeting at an Aboriginal Law Conference.

Ms Jodeen Carney, Northern Territory Opposition Leader, in her usual negative fashion (yes, I have my biases, but then, so does she) attacked young Stewart for his 'offensive' views. The meaning of this 'offensive' is that if you don't agree with me, ergo therefore, you are offensive. I wonder if Jodeen has actually read any of Stewart's reports.

Stewart singularly raises the obvious issue that violence is not restricted to the males of the species. Women of all Cultures also may involve themselves in acts of violence. Why would some Aboriginal women be any different? They most certainly are not.

There is more to violence than just physical acts. Women can, like males, utilise other forms of violence against not only their menfolk, Family members including Mothers, sisters and aunts and their children, but even upon themselves.

Along with physical violence there is also mental or psychological violence. One attribute of violence used by both genders, is the art of 'nagging'.

Jodeen's statement that only males perpetrate sexual violence against children is not 100% true. The Recommendations that those perpetrators who voluntarily come forward would be given immunity and, I assume as it is unstated, given some forms of assistance to change their lifestyles.

I admit to ambivalence on this Recommendation. Whilst I can see the uselessness of sending perpetrators of violence, both men and women, into another violent system, viz – gaol, I believe the immunity deal must be qualified.

The rehabilitation being offered must be an admixture of Western and Community Healings, including Circle Sentencing with the involvement of the victim(s) and perpetrators, their Families, the Community and other invited personnel. This may or may not include the police and/or the Court Systems. We are seeking a true rehabilitation, not a vindictive, adversarial outcome. This would be based on knowledge of the Elders in Council concept that was given to me by our Freedom Fighter, Dennis Walker, whilst he was interned in Goulburn Gaol for attempting to protect a Cultural site of the Bundjalung Peoples.

It must be clearly understood that to eradicate this terrible social practice we must not just focus on male violence. We need to address female violence also.

NT abuse inquiry officer faces sacking call

ABC News Online
16 October 2006

THE Northern Territory Opposition says a newspaper article written by a policy officer working for the child sexual abuse inquiry shows he has extreme views about violent Aboriginal men.

The CLP is calling on the Chief Minister to sack Stewart O'Connell to avoid tarnishing the inquiry.

Mr O'Connell has defended a Yarralin elder convicted of beating and having sex with his 14-year-old promised wife, in response to media coverage surrounding the case.

In an article for the National Indigenous Times in June this year, he suggested offenders who come forward should be granted immunity from prosecution.

He wrote sexual violence has no link with traditional Aboriginal law.

Mr O'Connell also wrote that demonising Aboriginal men ignores the fact Indigenous women also inflict violence on Aboriginal men and children, or provoke it.

Territory Opposition Leader Jodeen Carney says his views are offensive and he should go.

"Indigenous women do not sexually abuse children," she said.

"It is violent Aboriginal men who are the perpetrators."

She says the suggestion to give offenders immunity is repulsive.

"Try telling the victims of sexual violence that their offenders should not be prosecuted," she said.

North Australian Aboriginal Justice Agency chief executive Sharon Payne says offering perpetrators immunity from prosecution worked in post-apartheid South Africa, with its Truth and Reconciliation Commission.

"It was the only way they could get them to come forward and for that country to move on as a whole," she said.

"I think that's really what is required here because the way we're looking at it presently with law and order, police, jail etc is obviously not working."

She says Mr O'Connell was trying to convey a balanced view based on his extensive experience as a defence lawyer in his article.

"A lot of our clients are women, and they are women who have been found guilty of assault," she said.

"We've seen a number of men that we've had attempts to reconcile with [that] have had stab wounds and things like that."

The Territory Government says it will not always agree with those working on the inquiry and has ruled out immunity for sex offenders as a policy option.

The inquiry's executive officer says Mr O'Connell is unavailable for comment.

Lateline's Tony Jones reports that the Bill had passed the Senate and should clear the House of Representatives before the end of the year. A good example of the Democracy of the Tyrant with all power in action. A true Elective Oligarchy.

The two Chris's – Evans and Ellison – naturally had opposing views. Evans stated there was no evidence to show that Custom and Law was to blame.

Conversely, Ellison stated that the Bill was not aimed at just the Aboriginal culture. It would apply to all Australian Cultures. What he did not say was that it was aimed at all non-Anglo Cultures, especially those of the Muslim faith.

The senate has passed legislation to remove Aboriginal cultural practices as a mitigating factor in sentencing.

Lateline

Australian Broadcasting Corporation
8 November 2006
Reporter: Tony Jones
Transcript

TONY JONES: The Senate has passed legislation which would remove Aboriginal cultural practices as a mitigating factor when sentencing in criminal cases. It was prompted by recent revelations of alarming levels of violence and abuse against indigenous women and children. The Opposition and the minor parties oppose the change, saying it is politically motivated and demonises Aboriginal culture.

CHRIS EVANS: It seeks to perpetrate the myth that somehow violence against children and women is endorsed or perpetuated by Aboriginal customary law. That is wrong. It's a lie. There is no evidence for it.

CHRIS ELLISON: The amendments relate to criminal behaviour across the board. They are not specifically designed to target just indigenous offenders. As these amendments are couched, these amendments apply to all Australians and I think that that must be remembered.

TONY JONES: The legislation is expected to be passed by the Lower House before the end of the year.

The Australian Law Council voiced their disappointment at the passing of the Bill in the Senate.

Law Council rejects Indigenous sentencing changes

ABC Online
9 November 2006

THE Law Council of Australia says proposed changes to Commonwealth sentencing laws will see more Indigenous offenders sent to jail.

Legislation was passed by the Senate last night, removing Aboriginal cultural background as a mitigating factor in sentencing, despite recommendations against the plan by a Senate committee.

The changes were agreed at a COAG meeting after concerns were raised about the level of violence in Indigenous communities.

But the council's Peter Webb says the proposed laws - which are still to pass in the House of Representatives - will do little to address the problems.

"It's very probable as the Senate debate conceded that Indigenous offenders will be placed at greater risk of going to prison and going to prison for longer periods of time," Mr Webb said.

This next article shows quite clearly the nexus between Aborigines, the police, health

workers, among others, who were empowered to intervene into the terror and trauma of this young girl but elected to do nothing.

They didn't interfere because they considered their somewhat jaundiced view of Custom and Law to be the sole arbiter of what could be accepted as true Custom and Law. Would they have done something if the young girl was white? Of course they would. What they decided to 'see' was their own corrupt view of Custom and Law and not the Human Rights of the child.

How far does the cowardly argument of 'non-interference' go?

As the legal system is fond of saying – ignorance of the (Custom and) Law is no defence. So to in this case.

Justice MIldren, the same Judge who found the technicality that allowed A/SGT Whittington to walk, sentenced Owen Bara to 10 years gaol with a seven year non-parole period. The Judge, it seems, did not accept any Custom and Law defence, if one was given.

After finding the police, health workers, and others on Groote Eylandt 'guilty' it is not registered as to what sentence they received for the aiding and abetting in this crime and the conspiracy to not report a crime.

Oh! They are white. Sorry!. A no Bill, obviously.

Another case involved the killing of a 27 year old pregnant Aboriginal woman, Jodie Palipuaminni after 11 years of abuse.

The alleged rape of an 11 year old Aboriginal boy by 10 males was also highlighted.

It seems to me that certainly the health workers, and perhaps the police, would have had some knowledge of these events and should have taken steps to stop these abuses. They did not.

But no charges there either. Only the perpetrators it seems and not those guilty of a reverse racism that is an accessory both before and after the fact. As is the whole bloody rotten System. Heal thyselves, Systems!

Was there any public outcry at the choice of words used in the headline? No politicians? No shock jocks? Or do these righteous outbursts occur only when the target is more controversial?

Girl, 11, easy meat for rapist, court told

The Sydney Morning Herald
Lindsay Murdoch in Darwin
22 November 2006

NORTHERN Territory health workers and police ignored the plight of an 11- year-old indigenous girl who a man raped in public and then took as his so- called "promised wife" for nine years under the guise of traditional Aboriginal law.

The treatment of the girl, who a judge described as "easy meat" for the man with a long criminal history, is the latest in a series of crimes where authorities have failed to protect Aboriginal women and children in remote areas.

These include the bashing to death of a 27-year-old pregnant woman after 11 years of abuse and a succession of alleged rapes of an 11-year-old boy by 10 males.

In the Northern Territory Supreme Court, Justice Dean Mildren said nobody on Groote Eylandt, including white people, stepped in to help the girl, identified in court as LM. She was only 12 when she was forced to live as the wife of the man, Owen Bara, who fathered her three children, one a five-year- old girl whom he brutally assaulted.

Justice Mildren told the court in Darwin that "perhaps in some cases they may have thought this was a traditional marriage and it was perfectly okay and lawful, but of course it was not a traditional marriage, nothing like it and not put up as such".

The practice of Aboriginal elders taking children as "promised wives" has been under scrutiny since another judge in the territory last year sentenced a 55-year-old man to one month's jail for raping and bashing a 14-year-old girl, saying he took into account the man's belief that he was within his rights to violate the girl because she had been promised to him when she was four.

After an outcry, appeal judges increased the sentence to three years.

Bara, 34, admitted in court to maintaining an unlawful relationship with the girl after grabbing and raping her while she was walking home from school just before her 12th birthday in September 1995.

She was forced to live with him as his wife until she was 20 when she managed to leave him "because of domestic violence issues", the court heard. Justice Mildren said Bara's relationship with the girl was open and not even health workers involved in the birth of her children, who "would have known surely" how old LM was, stepped in to help her.

Justice Mildren said the "police who know everything on Groote [Eylandt]", relatives and teachers also failed to intervene. "Some may have thought this was a traditional marriage and therefore none of their business," he said.

At the time Bara took the girl to live with him she was not in the care of her parents or any adult "so she was easy meat".

"She had motherhood thrust upon her when she was too young," Justice Mildren said. "She was easy pickings," he said. "She had no one to look after her."

On November 17 Justice Mildren sentenced Bara, who is unemployed and has more than 90 previous convictions, to 10 years' jail with a non-parole period of seven years for rape and three counts of aggravated assault. He had pleaded guilty.

The territory's coroner, Greg Cavanagh, last month urged urgent action to stop what he called gross violence against women in

indigenous areas after inquiring into the death of Jodie Palipuaminni, a 27-year-old pregnant woman who was bashed to death on Coburg Peninsula by a man she had been promised to under Aboriginal law.

The murder had been predicted by a psychologist two years earlier but authorities failed to protect Ms Palipuaminni despite a long history of domestic violence against her.

This year sexual assaults against an 11-year-old boy continued in Maningrida, 500 kilometres east of Darwin, after he had gone to a clinic with injuries and a sexual disease.

A Darwin magistrate described the offences against the boy by 10 males as the worst he had seen.

The NT Government has set up an inquiry into the sexual abuse of children in remote communities. The inquiry's findings are expected in April.

I remember well the last Federal election when the Howard Government was re-elected with total authority in both Houses of Parliament. He firstly reiterated that time worn phrase that his Government would govern for all Australians. The sotto voce qualifier was, of course, 'my Australians'.

His second lie of the night was that even though his Government had control of both Houses he would not become arrogant but would involve the Australian people (or at least those that mattered) into all Government decisions. But not, apparently, this Bill.

This use of the Guillotine and sheer number crunching put paid to that piece of whimsy. The futility of the Bill itself at a Federal level was also raised. Perhaps there are other reasonings behind the push to make the Bill law?

Govt to change Aboriginal sentencing

Sydney Morning Herald
AAP
28 November 2006

THE government is pushing ahead with plans to stop cultural practices being taken into account when courts sentence Aborigines.

That's despite opposition from Labor, human rights watchdogs and a Senate committee.

Debate on legislation to amend the Crimes Act began in the House of Representatives on Tuesday after the government used its Senate majority to pass it earlier this month.

The legislation will allow courts to take the effect on the victim into account when considering bail, but remove the need to consider customary law and cultural practice in sentencing.

Indigenous Affairs Minister Mal Brough proposed the sentencing changes as part of efforts to tackle rampant violence and abuse in Aboriginal communities.

The bill was drafted after a Northern Territory prosecutor went public with her concerns earlier this year.

Attorney-General Philip Ruddock on Tuesday told parliament criminal behaviour could not be excused, justified or made less serious because of customary law or cultural practice.

"The Australian government rejects the idea that an offender's cultural background should automatically be considered when a court is sentencing that offender, so as to mitigate the sentence imposed," he said.

"All Australians, regardless of their background, will thus be equal before the law."

But Labor's legal spokeswoman Nicola Roxon told parliament the bill was fundamentally flawed.

Ms Roxon said that after 10 years and two national summits, the bill was the best the government could come up with.

It was a distraction to draw attention away from the government's failure to take real action to curb violence in indigenous communities, she said.

A Senate committee in October urged the government to scrap the sentencing changes, saying it was unlikely to work because offences relating to indigenous violence were dealt with under state and territory, not commonwealth, law.

Submissions to the committee raised concerns the bill could be discriminatory, restrict judicial discretion and undermine important Aboriginal initiatives such as circle sentencing - where a sentencing court is taken to the local community.

The Human Rights and Equal Opportunity Commission has urged the government to scrap the bill, saying the move would contradict Australia's commitment to cultural diversity and the right to cultural expression.

The bill was passed and will go back to the Senate so it can consider government amendments.

Matters Aboriginal were fairly quiet over the holiday season and the malodorous Brough was still having great problems in having his bribe accepted by some States and Territories. Becoming more and more frustrated by such recalcitrance the Government was casting around for something to push the issue along.

As if on cue, along came playwright and screen writer, Louis Nowra, and his, quote 'blunt, provocative book titled Bad Dreaming: Aboriginal Men's Violence Against Women and Children'. Unquote.

Nowra in his explorations 'argues that the problem is a product of dispossession, Government neglect,(both benign and with malice aforethought - rj) judicial leniency and a 'pathological extension' of traditional customs'. He should have added – 'by mainly White men relevant to the pathological extension'.

And guess which product was grabbed and given at least National coverage, if not

International coverage? The Governments, the media, the shock jocks, the racists, among others, could not believe their luck. The feeding frenzy of malice and misinformation became Tsunami-like in its destructive power. All common sense and sense of fairness was swamped by the Systems and their sycophants.

His exploration of our Custom and Law was restricted it seems to the work of the 'early' white settlers (invaders),Anglo-European explorers (who needed the Aborigine to get where they wanted to go) and anthropologists (basically white European males who were probably blinded to the violence of their own Society) to conclude that traditional Aboriginal Society was violent and misogynist. Pardon?

Nowra does at least agree that Traditional pre-Invasion violence was 'tight' but alcohol (and drugs) had loosened the regulation of the Aboriginal Communities. And of course, there is the psychological question of what 200+ years of Invasion History, liberally mixed with a savage and continual police violence, that helps to mutate our Peoples to varying levels of amoral social savagery. To some degree it falls into the 'monkey see, monkey do' concept.

His feeling that as a white man he should speak up, as did NT Prosecutor, Ms Nanette Rogers before him, perhaps has a touch of irony about it when one questions all the Aboriginal reports over thirty plus years that were ignored by successive Governments and came to nothing. Does a problem exist if only a White person sees it and talks about it? It seems that way. Are we not even to be trusted with our own complaints? Does Government action on our complaints somehow empower us?

Indigenous violence a bad dreaming, says playwright

The Australian
Rosemary Neill
6 March 2007

INDIGENOUS communities must disown the violent aspects of their traditional culture or face "cultural oblivion," warns the prominent playwright and screenwriter, Louis Nowra.

In a blunt, provocative book titled Bad Dreaming: Aboriginal Men's Violence Against Women and Children, Nowra explores the escalating epidemic.

Bad Dreaming - an essay version of which will be published on Wednesday in The Australian Literary Review - argues that the problem is a product of dispossession, government neglect, judicial leniency and "a pathological extension" of traditional customs.

Nowra, best known for his plays Cosi and Radiance, draws on the work of early white settlers, explorers and anthropologists to conclude that traditional Aboriginal society was violent and misogynous.

He writes: "A male gerontocracy made sure that it could practise polygamy, take promised girls as child brides and made gang rape a custom. Aboriginal culture was also strongly punitive and aggressive."

He stresses that traditional violence was tightly regulated, whereas today, dispossession and alcohol abuse mean indigenous "violence has become violence for its own sake".

Nevertheless, Nowra says traditional indigenous culture has been idealised since the 1960s, "when it became hip to know about Aboriginal culture" and Left liberals re-embraced the "noble savage" ideal.

Nowra concludes indigenous communities "need to accept that certain aspects of their traditional culture and customs - such as promised marriages, polygamy, violence towards women and male aggression - are best forgotten. There has to be an acknowledgement by the men that women have human rights ... If men refuse to do anything, then they are responsible for the slow death of the many wonderful aspects of their culture, traditions and customs, and their communities will continue to be on a nightmarish treadmill to cultural oblivion."

Why is this 57-year-old, white, male playwright from neon-lit Kings Cross tackling this issue? The tipping point came in 2005 when he spent three days in Alice Springs hospital with pancreatitis, surrounded by bashed indigenous women and girls.

"Some of their faces looked as though an incompetent butcher had conducted plastic surgery with a hammer and saw," he writes in the ALR.

He also feels it is important that a white man should speak up about the indigenous violence epidemic, "writing about the issue 'man to man', and saying that it's actually our problem".

He adds: "I was brought up with it." The playwright's stepfather bashed his mother.

He says concern over the stolen generations must not prevent abused indigenous children being removed from "toxic" situations. Education for indigenous children - in boarding schools, if necessary - is the key to progress. "The most pressing need is that these (abused) children be rescued."

Having been softened up, so to speak, by Ms Rosemary Neill the previous day, the Australian, gave lots of space to Louis Nowra to allow him to give his view.

Whilst I do question some of his statements and thoroughly agree with others and I have agreement with most of his examples of violence, I know that only the titillation of the violence will shine through.

Space and the length of his writings do not allow me to answer, for or against, what he has written. I will leave it to the

intelligence of the reader to make up their own mind. Overall the article has some balance but not enough to give a full explanation.

Nowra makes mention of the NSW Breaking the Silence Report and the reason for that Report due to the high incidence of domestic and sexual violence within both city and rural Communities.

This investigation was managed by Ms Marcia Ella-Duncan and Recommendations were made to the Government of Morris Iemma who shelved the Report/Recommendations because Treasurer Michael Costa stated that the State could not afford the implement it.

ISJA has written to Iemma and we will include our letter in the next Newsletter. Should you not wish to wait that long, then please contact me and I will send a copy to you.

Culture of denial

The Australian
By Louis Nowra
7 March 2007

Tradition is no excuse for the epidemic of male violence and sexual abuse that is obliterating indigenous communities.

IN 2005 I spent several days in the Alice Springs hospital after falling ill while attending a friend's wedding. I shared a ward with a middle-aged Aboriginal man who was quite proud that he had raped a 13-year-old girl. As he said, "She wouldn't say yes, so I f---ed her hard."

It did not surprise me. A few years before, I was in Alice Springs talking to two Aboriginal men in their early 70s. They were preparing to go into town to buy plastic toy dinosaurs. This was to pay a 12-year-old girl for having sex with both of them at the same time.

What amazed me was their lack of shame or even simple embarrassment. What disturbed me even more was that the most common sight in the hospital was Aboriginal women and girls with severe injuries suffered during domestic violence. Some of their faces looked as though an incompetent butcher had conducted plastic surgery with a hammer and saw. The fear in their eyes reminded me of dogs whipped into cringing submission. The confronting evidence of what men had done to the women was almost unbearable.

About 20 years ago an Aboriginal woman told me she had been raped at the age of seven by her uncle and grandfather on a town rubbish tip. As I was to discover as my circle of Aboriginal friends and acquaintances grew, sexual abuse was not uncommon -- and in some communities it was rife -- from the 1960s onwards.

Another friend told me that at the age of 10 he had been thrown into a wardrobe where his uncle masturbated him and then forced him to perform oral sex. Several other "uncles" also abused him through the years. I heard of many more such incidents and not one of these men ever had to go to court for their actions.

After I had recovered from my stay in Alice Springs hospital I was alarmed to read of a middle-aged Aboriginal man who anally raped a 14-year-old girl whom, he said, had been promised to him. Northern Territory Chief Justice Brian Martin sentenced him to detention for the duration of the court session.

It seemed to me that Aboriginal men were using the defence of cultural traditions to get away with rape and murder. But it's not only that. The statistics on Aboriginal domestic violence and sexual abuse are so much worse than in the general population, as has been highlighted in the 40 reports produced on the issue since 1999. All the statistics and case studies I refer to in this piece are sourced from federal and state government reports, court proceedings, newspaper articles and books, and are expanded on in my new book, Bad Dreaming (Pluto Press), which also contains an extensive bibliography.

The Alice Springs hospital provides a clear example: about 800 Aboriginal women were treated for domestic assault last year, up from 351 in 1999. The rate of domestic assault in indigenous communities is eight to 10 times that of non-indigenous communities and the sexual abuse of girls is so widespread that one-third of 13-year-old girls in the NT are infected with chlamydia and gonorrhoea. In fact, the situation has become a calamity.

But even more disturbing is that while some Aborigines are being recognised as wonderful painters, photographers, actors, filmmakers, footballers and dancers, indigenous communities are breaking down under the strain of male violence and sexual brutality. As Aboriginal elder Mick Dodson has said: "This is not just our problem; this is everyone's problem."

After the arrival of the First Fleet explorers and settlers wrote about the violence they saw Aboriginal men inflict on women. They also observed how the men kidnapped women from other tribes, raped them and forced them to become their wives.

By the end of the 19th century, the new discipline of anthropology began to study Aboriginal culture and society in detail, and with much sympathy and respect. It is in these studies that we gain a clearer picture of the relationship between Aboriginal men and women.

Betrothal was universal across the continent, with some marriages arranged before a child was born. A feature of Aboriginal life was that of the considerably older man, a middle-aged elder, marrying a girl barely into her teens. Polygamy was also practised.

A.W. Howitt, who wrote the influential The Native Tribes of South-East Australia (1904), summarised what he had learned about the marital situation in traditional society as "a man had power of life and death over his wife".

Despite local variations, there is a consistent pattern of traditional Aboriginal men's treatment of women that could be exceedingly harsh and sexually aggressive (gang rape, for instance). Given its pervasive nature across Australia, we can say that it was ancient and long-lasting.

Anthropologist Phyllis Kaberry, author of the seminal Aboriginal Women Sacred and Profane (1939), sums up Aboriginal men's attitude to women: "(The men) generally attribute a series of undesirable qualities to women. They are held to be faithless, untrustworthy, sexually insatiable, and talk too much."

One of the most depressing exercises in Australian history is to map the march of white settlement. Invariably, the arrival of white men meant the quick destruction or near dissolution of Aboriginal groups as a result of disease (including venereal disease as a result of rape), violence and dispossession. Later came the deliberate removal of mixed-blood children from their families, and state and federal governments' benign neglect or callous indifference towards Aborigines. Missionaries undermined traditional culture but there were some customs indigenous women were pleased to see fade away. One has only to read Oodgeroo Noonuccal's poem The Child Wife ("They gave me to an old man,/Joyless and old,/Life's smile of promise./So soon to frown") to understand why.

If cases of Aboriginal men murdering their women were reported in newspapers, it was merely to confirm that Aboriginal ways were primitive and their actions and behaviour were very different from white societal norms.

For example, in the mid-1960s, an Aboriginal man killed his wife in central Australia. A Department of Aboriginal Affairs welfare officer, explained to the judge that it was customary for the men to punish their wives or partners with "considerable beatings". After listening to this explanation, the judge sentenced the man to a year in jail, justifying the short jail term as making "allowance for racial customs". This episode is related in Joan Kimm's 2004 book A Fatal Conjunction (Federation Press).

Customary law or traditional law began to be used as a common defence. In 1980, justice John Gallop in the Northern Territory Supreme Court accepted the argument from evidence given for an accused man "that rape is not considered as seriously in Aboriginal communities as it is in the white communities ... and indeed the chastity of women is not as importantly regarded as in white communities. Apparently the violation of an Aboriginal woman's integrity is not nearly as significant as it is in the white community."

Occasional reports in the '80s began to detail some alarming trends. For instance, in Western Australia, sexual assault by Aboriginal men increased tenfold between 1961 and 1981. Audrey Bolger, in her 1990 book, Aboriginal Women and Violence, writes that if all reported and unreported assaults are taken into account, about one-third of the female population in the NT is assaulted every year. Bolger further points out that the number of murdered Aboriginal women exceeds the number of indigenous men who have died in custody.

It is not necessary to exaggerate the dystopian quality of some Aboriginal communities. The poverty and squalor can be overwhelming. Alcohol, kava, marijuana (according to the police, almost every house on Groote Eylandt has a bong) are pervasive drugs that, with petrol-sniffing, render some indigenous communities totally dysfunctional. Viewing pornography is commonplace and children are constantly exposed to it. Nepotism means regular financial corruption and the misuse of public funds. "Big men" control their communities by thuggery.

The poor health of Aborigines results in a life expectancy 20 years shorter than that of non-indigenous Australians. As regards education, the 1999 NT government report Learning Lessons pointed out that indigenous students in the territory were less literate and numerate than their parents or grandparents.

Violence is so much a part of Aboriginal life that a town such as Alice Springs has a murder rate 10 times the national average. An Aborigine is seven times as likely to be murdered and about 10 times as likely to be jailed. These conditions spawn a hideous environment where women are subjected to brutal sexual indignities, physical wounds and murder and where child sexual assault is endemic. Indigenous theatre director Wesley Enoch recently summed up the situation: "I don't know any Aboriginal who hasn't had to deal with physical and-or sexual abuse."

Since the release of the report by the Queensland Aboriginal and Torres Strait Islander Women's Taskforce on Violence in 1999 there have been about 40 official inquiries into domestic violence and sexual abuse in indigenous communities. The Aboriginal Child Sexual Assault Taskforce's Breaking the Silence report, released last year, found that the sexual assault of indigenous children in NSW was so widespread that not a single family in the 29 rural and urban communities surveyed was unaffected by it.

Such reports contain many graphic examples of the appalling violence meted out to women. Let's take some at random.

Last year Alice Springs crown prosecutor Nanette Rogers reported a case in central Australia in which the wife of an elder was repeatedly bashed and stabbed through the years. Eventually her husband beat her to death, tied up her corpse and left it on an ant's nest for a week.

Two years ago, at Araru outstation on the Coburg Peninsula, Trenton Cunningham beat his wife, Jodie Palipuaminni, to death after she failed to bring him a cup of water while he was burying his dog. On the night before she died, people heard her screaming. Rather than help her, relatives told Palipuaminni and her husband to shut up. She was later heard crying out, "Please stop."

At the time of the attack Cunningham, 27, was on parole for assaulting his wife with a steel bar and pouring boiling water over her, resulting in skin grafts to 20 per cent of her body. Palipuaminni had been promised to Cunningham soon after being born and they had four children.

These men assault their women for sometimes the most minor reasons. Sometimes the reasons are almost unbelievable. In her 2005 book Balanda: My Year in Arnhem Land (Allen & Unwin), Mary Ellen Jordon relates that in Maningrida, a community in the far north, it was common for men to bash their wives when the women returned from a trip just in case they had done anything wrong while they were away.

Nurses and doctors in the outback see countless examples of domestic abuse. Kate Napthall once worked at the small Tennant Creek hospital. She remembers one Friday night working in the emergency department from 5pm until 8am and seeing 28 cases of domestic assault and, as she remarked, these were the ones who had sought help.

"The case I recall with the greatest sadness," she told a newspaper interviewer last year, "is that of a young woman, probably 28, who had a saucepan of boiling water poured over her face, scalding her eyes beyond recognition. When I looked in her files, she had between 40 and 50 similar presentations of assault against her by her husband."

It's also worth remembering that many of these violent acts occur in public but no one steps in to help the woman, not even relatives. As one woman related to the 1999 taskforce: "I've seen women on the ground being kicked in the belly and in the head and no one went to help her. You just didn't do that. You could watch, but weren't allowed to butt into people's fights."

The number of assaults on women is rising dramatically but the brutality of the attacks is escalating, too, with spears, rocks, knives, bottles and bricks being used.

The 2002 Gordon report into child abuse and family violence in Aboriginal communities in Western Australia makes it quite clear that rape has become more common, especially gang rape.

The violence associated with these rapes is increasingly ferocious and sometimes beggars belief. Victims are viciously gang-banged, during which they are smashed with iron bars, rocks, pieces of concrete or lumps of wood that cause extensive physical injuries and permanent facial deformities.

A particularly nasty strain of this violence that is showing an alarming increase is the number of women being set on fire. Russell Skelton wrote in The Age last year about the case of a young man who doused petrol on his 18-year-old girlfriend's stomach and genitals and set her clothes on fire when she refused to have sex.

It has been the recent publicising of child abuse in Aboriginal communities that has shocked the non-indigenous community most. I don't want to dwell on the details of such abuse but I will note a few cases that are indicative of what is happening to Aboriginal girls.

A seven-month-old baby was taken out of her home and raped. She needed surgery under general anaesthetic. A six-year-old girl was playing in a waterhole when an 18-year-old petrol sniffer grabbed her, pulled her under and simultaneously anally raped and drowned her. A 10-year-old girl was tied to a tree for several weeks and raped repeatedly. Then there was the case of a three-year-old girl who had been sexually assaulted by three men. If that wasn't enough, 10 days later another man raped her twice, once using a mangrove stick.

The Breaking the Silence report notes that the sexual abuse of children is at least four times more likely in Aboriginal communities and that the reported levels of abuse "grossly under-represent the reality".

If the sexual abuse were not enough, many of these girls are infected with sexually transmitted diseases by the perpetrators. In WA, the rate of gonorrhoea for Aboriginal children aged 10 to 14 is an astonishing 186 times the non-Aboriginal rate. In late 2005, four underage girls in the NT, the youngest being just seven, were found to have serious sexually transmitted infections that included chlamydia and resilient strains of gonorrhoea and syphilis.

Indigenous homosexuality has always been an uncomfortable topic to discuss, for Aborigines and their supporters. The reasons are complex but we know that it was practised traditionally, both as a sexual release for teenage boys and young men who couldn't find female sexual partners, and in initiation ceremonies.

Because of the secrecy around the subject the abuse of boys has been overlooked; but there is no doubt that some men are raping boys under the guise of the act being part of Aboriginal culture. Researcher Gary Lee says that boys as young as eight are being used for sex. "It seems to have almost a cultural sanction," he says, adding that everyone in the community knows it is happening but that there is "a real reluctance to talk about it". He believes the main perpetrators are elders or older relatives.

The situation is so bad in the Tanami Desert that mothers have banned their sons from going into the bush for initiation camps.

We also know that Aboriginal boys are 10 times more likely to be sexually assaulted than the rate for the rest of Australia. In a 2006 survey of indigenous men in Queensland and the NT, 10per cent of participants had been raped before reaching the age of 16.

It is a mistake to think that this only happens in remote or rural areas. About 70 per cent of the indigenous population lives in urban areas. The Sydney Aboriginal communities at La Perouse, Woolloomooloo, Mount Druitt, Blacktown and Redfern have high rates of domestic violence and

sexual abuse, too, as the Breaking the Silence report points out.

A few years ago, at La Perouse, Lani Brennan fled from her partner after he tried at least four times in their three-year relationship to kill her. She left him after one incident when he bashed her with a baseball bat and golf club, raped her, then tried to hang her. She said the La Perouse community knew what was happening but did nothing to stop it.

"It's not just happening in some Aboriginal community in Western Australia or the Northern Territory; it happens in Sydney," she said after her husband's trial. "A lot of Aboriginal people are 'Hear no evil, see no evil'. There's a lot of alcohol, a lot of sexual assaults and a lot of really terrible violence. It's a normal thing in an Aboriginal community."

This abuse of children is disturbing, but so is the constant threat of its occurrence. It must create a state of permanent tension and fear that permeates the childhood years of many young Aborigines. One of the contributing factors to the high suicide rate among indigenous children is sexual molestation.

Henry Councillor, chairman of the National Community Controlled Health Organisation, has said: "One of the experiences we are finding is that a lot of youth suicide under the age of 18 is a result of child sexual abuse."

Perhaps the worst outcome is that the abused child ends up becoming an adult abuser, making the terrible cycle a permanent feature of indigenous life in Australia.

Traditional Aboriginal society expressed anger through aggression, but the violence and sexual behaviour was tightly structured through ritual, ceremony and proscribed procedures. But with the influence of alcohol and acculturation, some of these customs have become a pathological distortion of those that were the basis of traditional life.

Even so, some Aboriginal men use the notion of custom and tradition to get their own way. Journalist Paul Toohey has written of how indigenous men in the NT fallaciously claimed that tribal law justified their raping of Aboriginal girls and women. The truth is that most, if not all, of these rapes occur because of lust and alcohol, not because the girls and women have committed a traditional offence.

Even when Aboriginal men go to court, many receive lenient sentences when using the defence of intoxication combined with customary law. Cunningham was convicted of manslaughter, not murder, yet no alcohol was involved in the crime and he was breaching the conditions for his parole at the time.

There is no doubt that some judges still consider that Aboriginal men's treatment of their women should be viewed differently from how the rest of society treat women. The defence does work. Last year NT Chief Justice Martin conceded he was wrong to sentence the elder to a month's jail for having anal sex with a 14-year-old promised to him as a wife. He admitted he had placed too much emphasis on the elder's belief that under tribal law he had the right to teach the girl to obey him.

There are other problems with this defence. The most important one is that it is always the man's view of customary law that prevails in court. Women remain victims of men's versions of indigenous customs and culture.

Women have not only been at the mercy of men's violence but also captives to the idea that they do not represent Aboriginal culture; that only men do. Is it any wonder that indigenous women despair of their own Aboriginal legal services, which still continue to push the defence of customary law?

In May last year, Marcia Langton, an indigenous professor at the University of Melbourne, spoke for many women when she asked: "Are the Aboriginal legal services which supposedly work for us ever going to stop arguing that rape is traditional law?"

It's not only in law courts where indigenous men take precedence over their victims but in their communities, where many elders wield authority through physical intimidation and bullying and by using bureaucratic powers given to them by state and federal governments.

The Gordon report concluded that "Some elder groups or councils are part of the reason why indigenous communities are having little success in creating less violent, more positive communities with male elders hindering prevention initiatives because of their own involvement in violence."

A prime example is Robert Bropho, an influential elder who had for years effectively banned child welfare workers and the local Aboriginal medical service from the Swan Valley Nyoongar camp. His indifference to the plight of abused girls was disgusting. He was eventually jailed for sexual matters involving a girl under 13.

These men not only intimidate their own people but the white health workers, bureaucrats and others who work in these communities. Lara Wieland, a former flying doctor who spent three years in far north Queensland, said last year that public servants who reported abuse were themselves verbally abused and threatened by men in positions of power.

"Some of these men were considered by many in the community to be perpetrators of child abuse themselves. Yet time and time again we saw them wield the power and control in the communities and saw government departments and officials cower in fear, turning a blind eye rather than (be) accused of being a racist by these men, which was their common ploy."

Another way these violent men maintain control is through the use of the permit system that allows some indigenous communities to refuse entry to visitors. Men use the permit system to continue their abuse undetected and unreported by

the wider community. The Australian's Nicolas Rothwell has commented that "there is a striking correlation between the levels of violence in a community and the tightness of its closure".

In any community it takes much courage to report domestic violence and sexual abuse, but in Aboriginal communities women and children face other enormous obstacles.

Retribution by relatives of the accused is common. One woman told the 1999 taskforce: "Extended family came around and got into me. They went for me at the court after he was found guilty of attempted murder on me."'

Sometimes the whole community will protect a vicious abuser. In November last year, NSW District Court judge Michael Finnane, in sentencing Aboriginal rapist Phillip Boney to 23 years' jail, criticised the Moree Aboriginal community who refused to help police find the rapist after his first attacks on a woman.

By protecting him, the community allowed Boney to rape her again. Within the space of one month, he kidnapped the woman on three occasions, assaulted her and raped her five times.

As Finnane remarked in his judgment, "Aboriginality does not provide any justification for his obsessive and cruel behaviour."

But as far as many Aboriginal men are concerned, it does. Kinship ties are strong. Men will not condemn perpetrators whom they are related to by kin, and because these communities often see violence and sexual assault as a normal way of life, the dire situation is frequently hidden to protect family members and the perpetrators.

The most important commodity in any society is its children. After all, they are the future. The problem with this is that, despite the high numbers of Aboriginal children being removed from their communities and families (in 1990, indigenous mental health specialist Ernest Hunter reported that heavy drinking had been so destructive of family life that there were fewer Aboriginal children in Western Australia being reared by their biological parents than in the days of forced assimilation), many other at-risk children are not being removed.

The reason, as Sue Gordon, National Indigenous Council chairwoman, has remarked, is that "government agencies across the states and territories charged with the statutory responsibility for children's issues have, I believe, taken the softly-softly approach to child abuse, (whether it be) emotional, physical neglect or sexual, because they have been frightened of creating another stolen generation."

The most pressing need is that these children be rescued. Education has to be a priority. This may mean children are sent away from their communities to separate them from the corrupting influence of grog and the welfare mentality. Some communities, like those on Cape York, aware they need a new generation of leaders capable of dealing with the outside world, are sending their boys to Sydney boarding schools.

Indigenous communities have to recognise that it is impossible to hide from a globalised world behind an ossified sense of tradition. They have to realise they are part of Australian society as a whole and they have to face up to the high rate of social crisis among them. Indigenous communities cannot argue that they are not part of Western culture when they are eager devourers of it, consuming drugs, television, pornography, alcohol, junk food, cars and rap music.

Last year Rosalie Kunoth Monks, who chairs the Batchelor Institute of Indigenous Education, said Aboriginal people were on a path of cultural suicide and needed to accept some blame for the choices they had made. She added that land and culture were no longer sufficient to sustain identity and that people must accept change. "To be part of the economy and a contributing member of society we have to take that journey," she said. "It is my belief that the confusion will only be resolved through a new sense of identity and that comes through when you connect with other people, look at future pathways and not be so internalised."

Yes, there are considerable health issues; yes, there are too few police in remote communities; yes, there is a shortage of women's shelters; yes, one of the main problems is alcohol, yet it has been successfully banned in some communities. But one of the most insidious and intractable problems is welfare. Most of these communities have no employment and people exist on welfare their whole lives. As a result, a large number of men have nothing to do.

To put it quite simply, an idle man is a dangerous man.

It is curious that while researching Bad Dreaming there were many solutions put forward to combat these issues, yet men were rarely mentioned. But they are the problem and the solution. The men not only have to realise their behaviour is undermining Aboriginal culture but also that they are creating a generation of boys without good role models.

There is another aspect to all of this: Aboriginal society is oriented towards a sense of collective obligation rather than individual responsibility, but men may have to confront the perpetrators of violence, even though many of them may be elders and relatives. This may be the hardest task of all.

Furthermore, men need to accept that certain aspects of their traditional culture, and customs such as promised marriages, polygamy, violence towards women and male aggression, are best forgotten.

Above all, there should be one law for all and a recognition that human rights come before cultural rights. If the men refuse to do anything, they will be responsible for the slow death of aspects of their culture and their communities will continue to be on a nightmarish treadmill to cultural oblivion.

I include the next article only because I have the quibbles with the attitude of the ex-Northern Territory Deputy Director of Public Prosecutions, Rex Wild, QC and his current role as a co-Chair of the Northern Territory Child Abuse Inquiry.

I have always thought that the head of an Inquiry was expected to be neutral and unbiased. Would not the reading of Nowra's book possibly cloud any future judgements he may make relative to the Inquiry?

Secondly, does he really believe that the issuing of a book or Report, though totally proved to be fallacious, is acceptable so long as it raises, to the Public view, an issue of some arguable importance? I can hardly control myself to write of the sex lives of Politicians, Judges and the DPP's around Australia.

Wild hopes book raises Indigenous violence awareness

ABC Online
8 March 2007

THE Northern Territory's former director of public prosecutions says a new book about violence in Aboriginal communities is welcome.

In the book, Louis Nowra makes reference to Aboriginal men boasting about raping a girl in Alice Springs.

Rex Wild QC, who is also the co-chair of the NT's child abuse inquiry, says he is yet to read the book, but will make an effort to do so.

"One of the things that is important is getting the message out there that there are problems in Aboriginal communities and the book, whether it's accurate or not, and I don't say anything about that, will certainly raise awareness which is one of the things that we think is probably important," he said.

Thinking laterally, Michael Costello looks at not only the savage mistreatment of Aboriginal women but also at the politically-led savagery of treatment given to Australian women as a matter of course by the misogynist Howard Government. What ever happened to the Equal Pay struggles?

Michael Costello: No end to our bad dreaming

Sexism and racism still present a challenge for seekers after truth

The Australian
9 March 2007

SOMETIMES it's a little thing that draws seemingly disparate things into a pattern. When I read in this newspaper this week about a decline in the number of companies with senior women executives, it linked to a report on the views of historian Keith Windschuttle, which linked to a new book called Bad Dreaming, which linked to recent articles by the great Aboriginal leader Noel Pearson, which linked to ... Well, you get the idea. Speaking at a recent Quadrant dinner, Windschuttle recalled George Orwell's condemnation of the "intellectual cowardice" that turned publishers off his famous work Animal Farm. Windschuttle suggested it was similar intellectual cowardice that had led publishers and editors to be guilty of stifling "unfashionable opinion" so that, during the 1980s and '90s, "almost any criticism of the leftist ideological triumvirate of gender, race and class could not be expressed in print".

I have no interest in getting involved here in the history wars in which Windschuttle is so prominent a warrior. I agree there is truth in the assertion that the label racist or sexist can be, and has been, used as a convenient slur to intimidate people wishing to engage in legitimate debate on immigration, refugee policy, gender politics or the plight of indigenous people.

Indeed, Louis Nowra, writing in this month's The Australian Literary Review, points out how "Aboriginality" is used by men to defend rape, regular bashings, murder and sexual exploitation of children. He cites not just cases of judicial leniency in the name of Aboriginal culture, but how government departments and officials "cower in fear, turning a blind eye rather than (be) accused of being a racist by these men, which was their common ploy".

But Windschuttle's concern about what he sees as abuse of history and the language of racism and sexism has been followed not just by what he describes as a turnaround in the public discourse on these issues; sexism and racism have become today's "unfashionable opinions".

And that is a tragedy. Because you only have to read Nowra's book Bad Dreaming to understand that whatever you think might have happened to Aboriginal people during the period over which the history wars have raged, we know what is happening to the Aboriginal people today. It is the destruction of what is left of their culture, of the lives, health and moral worth of hundreds of thousands of people in Aboriginal communities around Australia. What is happening to Aboriginal people now is in its own way as bad as the severest historical accounts of the kind that Windschuttle so excoriates.

Who could read recent articles in this newspaper by Pearson on his return to his home town without concluding that race - the destruction of a whole race and of a whole culture - should be part of every decent person's triumvirate of public issues.

In Nowra's book and Pearson's essays we see how race and gender issues can combine. Nowra says that "while researching Bad Dreaming there were many solutions put forward to combat these issues, yet men were rarely mentioned. But they (men) are the problem and the solution."

Those who most directly suffer in Aboriginal communities are women and children oppressed by men, often claiming the cultural mandate of their race. Pearson's stories recount the same behaviours. Yet the oppression of women is hardly confined to Aboriginal communities. In the name of religion and culture - or out of simple avarice - women and children are raped, murdered,

beaten, stabbed and exploited on a massive scale around the world. But surely, we ask, not here in good old Oz? Surely the balance has shifted substantially towards women in Australia?

In fact, we are going backwards. The number of companies without any senior women executives rose last year. The number of women who are board directors of top Australian companies is static at 8.6 per cent. In those same companies, the number of women executives has barely risen, to about 10 per cent. The proportion of women in the House of Representatives has stalled at 24.7 per cent. Out of 30 commonwealth ministers, only four are women. So female representation in these, the real centres of power, is still insignificant after 50 years of so-called advances for women.

More broadly, our tax and family allowances system is now biased heavily towards maintaining the traditional single-income, male-breadwinner family model. The new industrial relations laws are particularly harsh on women. They allow casualisation of labour, arbitrary on-call arrangements, shiftwork, the abolition of penalty rates for overtime, most public holidays and weekends, deny family-friendly practices - all without compensation. Women, whose bargaining position is overall weaker than men's, bear the brunt of this.

Windschuttle is by his own claim a seeker after truth. He might like to recall that it took enormous intellectual courage to stand up in the '60s for what had been for centuries the deeply unfashionable causes of opposition to racism and sexism. Racism was the norm in Australia and so was the subordinate position of women. But whatever the subsequent excesses of some of the supporters of those two causes, the issues of race and sex inequality and injustice are still central problems in this country.

We should argue over history. It's important. But we can't change it. What we can do is shape our present and our future. Now there's a task for a seeker after truth. Orwell would approve.

Our seemingly everywhere Justice Mlldren, even after all the words spoken and written, almost casually informs us that the NT Judiciary, or at least he, will continue to consider Custom and Law when sentencing offenders. So much for John Howard and his Bill. Loopholes anyone? Underlying causes?

I must admit that I am still struggling with J. Mildren's example.

Customary law may be considered in sentencing: judge

Message Stick Online
15 March 2007

A NORTHERN Territory judge says customary law may be taken into account in sentencing Indigenous people, if the facts warrant it.

Justice Dean Mildren says the vast majority of Indigenous people are dealt with in exactly the same way as non-Indigenous people who come before the courts.

But Justice Mildren says customary law may be taken into account in formulating a sentence for a defendant who has already been punished under traditional law.

"We take that in to account on the basis that the person shouldn't be punished twice for the same offence and that would be the case regardless of whether the pain and suffering inflicted on the defendant was the result of customary law or not," Justice Mildren said

He is also concerned there is some misunderstanding about the way customary law is considered in sentencing and will speak at the University of Adelaide tomorrow about Aboriginal people and the law.

Justice Mildren says if an Indigenous person has already been punished for their crime under traditional law, that will often see a reduction in the sentence.

He says an example of where that would happen is if a non-Aboriginal rapist was subject to a reprisal attack from a victim's boyfriend.

"When dealing with the boy who raped the girl, the court would say, well he's already had a fair bashing from the boyfriend, shouldn't we give him a little less because of that?" Justice Mildren said.

Someone once said that 'The Law is an ass'. I have mainly agreed with that statement when involved in legal matters, whether Coronial, Criminal, Family or whatever.

Justice Mlldren, (yes again), sentenced a 32 year old Aboriginal man to 14 months gaol for having consensual sexual relations with his wife. A 'promised wife' of 13 years old but a consensual wife in all aspects. Both Families agreed also to the marriage and its outcomes.

It happened at Maningrida three years ago. Judge Mildren found no predatory acts against the young girl. Under Custom and Law they were married as certainly as John and Jeanette are. Howard that is.

They married in 2003. During 2004 the Law changed and the good Judge (and the NT DPP obviously) found that whilst the marriage was lawful the sexual relationship was not. He was further found to have assaulted his wife with a tree branch during an argument. How big the branch was is not known.

However, surely the points of contention must fall within two areas. First the matter of retrospectivity or does that only count for whites? The Military Tribunal couldn't charge David Hicks initially because there was no Law at the time of his arrest that could be applied. Hence the new System and the plea bargain of a guilty plea (for what?) and a trip home after five years of isolation in an American sanctioned Human Rights free zone. Justice – the American Way. It is my understanding that no Law, whether tax, corporate,

criminal or whatever, can be made to apply against a person on a retrospective basis.

If consensual married sexual relations were acceptable in 2003, then, I would argue, the same married relationship must also be legal in 2004. The Law change would only be relevant to similar marriages from the date of Legislation and its acceptance by the NT Government.

The second matter is as surely as they were legally married, blessed by both Families and Custom and Law, what business is it of any Australian Government or Justice System what occurs between a legally married couple. Regardless of age, race or gender. If you are married, you are married. And as the celebration goes, 'let no man put asunder.'

Why the hell was this case not appealed? They have allowed a terrible precedent to be established.

Before I have many of my female and feminist friends chase me round the streets, I need to put a further argument and a moral and sensible qualifier.

Historically young girls were married off soon after puberty, for various reasons, and the Age of Consent was quite low. As I pointed out earlier, at the time of the Invasion, in England it was set at the age of 10. Way too young of course and over the years it has crept up to 12, then 14 to the now more agreeable 15 or 16. Some States in America have 18 as the required age.

Some Cultures insist on virginity until marriage; others don't. Those Cultures that did generally married their daughters off as quickly as possible to maintain the standard. And because death in childbirth was extremely prevalent. Probably due to the immature girls at the time of giving birth.

I recently read an article in the New York Times where the Head of the Mormon Church is in great trouble for marrying off 13 year old girls to the Mormon males.

Even today around the world there are Cultures that work on the "promised bride' concept. Such practices have occurred among Aboriginal Societies for many millennia. It worked stably enough, it seems, to allow our Cultures to exist for that amount of time. There certainly were human relationship problems that would have evolved and that is why Custom and Law was there to manage these problems. There was also the Skin Laws about whom you are allowed to marry. I assume there were many Laws and some of those Laws were there to protect the women.

There are still Traditional Peoples living by these ancient Laws. That is a fact and that is what is causing the legal problems currently.

It must be remembered that these practices were accepted by the NT Government and its Legal System until just recently. The Custom and Law practice of Polygamy also occurs and is recognised in the NT. An Aboriginal Elder, well respected in the NT and an advisor to the NT Government had three wives. He is now dead so I will not name him, suffice to say that his wives were legally recognised as such.

There are many other examples of Custom and Law and NT Law working along quite happily together. The same happens in WA and that is why these two Governments have a reluctance to get involved with the Brough bribe. To do so would tear apart the Traditional Communities that are in their borders.

Now that the shit has hit the fan, so to speak, the two Governments are left with a very messy dilemma. Do they continue to either turn a blind eye to the twin Laws situation, do they just chip away, one Traditional Law at a time, and only when someone makes a noise about it, or do they legislate to wipe out ALL Traditional Law. No wonder Claire Martin wants a 20 year Programme.

The other important point I wish to make before closing again relies on the fact that whilst on the one hand there are child brides there are equally as well Laws setting out when these brides can have sexual relations with their husbands. Our old Laws would have been very strict about when that time should be but I cannot give a definite age.

It seems to me that the age would have been 14 or 15. Whilst girls younger do enter into sexual relationships, to have gotten pregnant would not have been acceptable. This is Women's Business and I will stop this part of my argument here and move on to the second part of this point.

The problem the NT and WA Governments have is that they need to police the age of sexual consent and to do that they must find an acceptable way to talk to the Women Elders.

The two Governments either legislate to accept the practice of all Custom and Law or legislate to totally wipe out all Custom and Law. Then they have to accept the consequences arising from either action.

A difficult situation to be sure but, just maybe a white person will point out the problem.

Man jailed for sex with underaged promised wife

Message Stick Online
26 March 2007

THE NORTHERN Territory Supreme Court has sentenced a 32-year-old man to 14 months in jail for having sex with his underaged promised wife three years ago.

In 2003 when the Maningrida couple married under traditional law the victim was believed to be 13 years old.

Her legal marriage to the then 28-year-old had the blessing of both families.

In handing down his sentence, Justice Dean Mildren said that he did not consider the man to be a sexual predator and that the couple had spoken about having consensual sex.

But in March 2004 the law changed and while the marriage was lawful, the continued sexual relationship was not.

The man was also found guilty of assaulting his wife with a tree branch during an argument.

He received a total of 14 months in jail, suspended after six months.

With time already served the 32-year-old will be released in June.

We will finish our analysis of Custom and Law and Howard's Genocidal Practices with the following article. Dr Ken Brown wrote an article for that excellent Journal, the Alternative Law Journal.

We are unable to produce his actual article written for the ALJ so we give you a media statement teasing out your interest so that you may obtain the ALJ and read it..

Dr Brown looks at the legal issues of the promised wives court battles and the to-ing and fro-ing of the legal arguments. The Human Rights issues are also canvassed.

I have no real quibble with Dr Brown so I present the following article without further word.

Aboriginal men 'twisting customary law'

Ninemsn.com.au
4 April 2007

A DISTORTED or 'bulls***' version of customary law is espoused by some middle-aged Aboriginal men to justify their actions towards women and young girls, an academic says.

In an article published in this month's Alternative Law Journal, Dr Ken Brown looks at recent court decisions in the Northern Territory.

In all cases, the offenders are middle-aged Aboriginal men charged with unlawful under-age sex with 'promised wives' who argued for reduced sentences on the grounds of customary law.

Fifty-year-old Jackie Pascoe Jamilmira had his sentence slashed on appeal in 2002 to 24 hours in prison for having unlawful sex with his 15-year-old bride-to-be.

When the young girl tried to leave the outstation where he lived in Arnhem Land on August 22, 2001, Jamilmira took a 12-gauge shotgun and fired it into the air, frightening her into staying.

A pre-sentence report indicated Jamilmira was aware he broke the law but felt compelled to follow Aboriginal custom.

The Crown appealed to the Court of Appeal over the one-day sentence and a majority ruling increased the sentence to 12 months jail, suspended after a month.

Jamilmira's barrister argued in the High Court that the Court of Appeal should not have increased the sentence of a man who chose to follow his cultural obligations by having sex in a relationship supported by the Aboriginal community, without giving a warning to Burarra people to stop their traditional marriage practices.

Jamilmira is a member of a remote and traditional Aboriginal community where arranged marriages, often with girls under 16, are the cultural norm.

But in 2004, the High Court found there had not been any error in sentencing.

Dr Brown - awarded a doctorate by Charles Darwin University for his thesis on customary law - said some people in the judicial system were giving undue weight to claims made by defendants seeking to justify their actions by reference to cultural factors and traditional beliefs.

"In the 21st century modern international human rights conventions implemented to protect women and children should carry more weight than the claims of middle-aged men that are acting in accordance with their culture and traditional beliefs," he said.

Dr Brown also suggested there could be "a distorted or bulls*** version of customary law put forward by men to justify their misbehaviour towards women and young girls".

He said this version had no relation to true custom and was often the product of "community dysfunction".

The article also called on the judicial system to think of the victims before the offenders.

"What is essential is that judges are sensitive to the plight of vulnerable victims and ensure that, in the sentencing process, they give proper weight to the standards and values enshrined in contemporary international rights charters," Dr Brown said, adding that custom must be seen as adaptive and should not conflict with contemporary human rights values.

"Aboriginal women are already far less disposed to accept custom if it is oppressive or used to justify violence against them," he said.

The next issue of the Newsletter, due in May/June, will break from our thematic style to report on, and catch up with, several outstanding matters.

We will be looking at, in no particular order, a catch-up with recent TJ Hickey events, the Iemma knockback to adequately fund, in fact no funding, of the NSW Breaking the Silence Report, we will look at the NSW Jury System and its shortfalls, HREOC and their shortfalls, a catch-up of the police killing of Carl Woods in Perth, an overview of the Black Digger events in Redfern and, space permitted, a look at the proposed changes to the Review of the Forensic Provisions of the NSW Mental Health Act 1990 and the Mental

Health (Criminal Procedure) Act 990.

As they say, something for everyone.

THE COLOURED DIGGER

He came and joined the colours,
when the War God's rang,
He took up modern weapons to
replace the boomerang,
He waited for no call-up, he didn't
need a push,
He came in from the station, & the
townships of the bush.

He helped when help was wanting,
just because he wasn't deaf;
He is right amongst the columns of
the fighting A.I.F.
He is always there when wanted,
with his Owen gun or Bren,
He is in the forward area, the place
where men are men.

He proved he's still a warrior, in
action not afraid,
He faced the blasting red hot fire
from mortar and grenade;
He didn't mind when food was low,
or we were getting thin,
He didn't growl or worry then, he'd
cheer us with his grin.

He'd heard us talk democracy–, they
preach it to his face–
Yet knows that in our Federal
House there's no one of his race.
He feels we push his kinsmen out,
where cities do not reach,
And Parliament has yet to hear the
Abo's maiden speech.
One day he'll leave the Army, then
join the League he shall,
And he hope's we'll give a better
deal to the Aboriginal.

(By Sapper Bert Beros, a non-Aboriginal soldier in WWII. Written about an Aboriginal soldier, Private West).

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