Reviews

Aboriginal P rspectives on Criminal Justice

by Chris Cunneen (ed.), Australian Institute of Criminology (monograph); 1992; 94 pp; softcover, $20.

A recent international report documenting various infringements of human rights placed Australia well down the list of 'advanced' industrialised states in its treatment of specific groups of people. One of the principal indices of human rights abuses was the treatment of Australia's indigenous people, particularly concerning the continuing high levels of incarceration of Aboriginal people.

Indeed, as Chris Cunneen, the editor of *Aboriginal Perspectives on Criminal Justice*, has pointed out elsewhere, the institutionalisation of Aboriginal people has now shifted from missions and reserves to the equally brutalising prisons and detention centres. Statistics by the Australian Bureau of Statistics for 1986 indicate that the proportion of Aboriginal and Torres Strait Islander people in prisons, police custody and detention centres far exceeds their representation in the general population.

For example, in the more extreme cases such as Western Australia, Aboriginals and Torres Strait Islanders make up 2.7% of the State's population but account for 73% of those in juvenile detention, 54% in police custody and 34% in prison. In the Northern Territory, Aboriginal and Torres Strait Islander people account for 22.4% of the general population but constitute 57% of those in detention centres, 76% in police custody and 69% in prison.

Since 1986 the proportion of indigenous people in custody has almost certainly increased, and Aboriginal and Torres Strait Islander people account for up to 35% or more of the adult prison population. It is also disturbing to note that the high rate of Aboriginal deaths in custody continues unabated.

Aboriginal Perspectives on Criminal Justice attempts to address a range of issues concerning criminal justice in Australia from a largely indigenous point of view – although most of the contributions are based on the experience in New South Wales. To highlight the racist and profoundly unjust nature of the Aboriginal experience in the criminal justice system, the editor has brought together contributions by academics, a consultant, a solicitor, members of Aboriginal legal agencies, poets and photographers. The result is a professionally eclectic, though thematically unified, monograph which casts a long shadow over the naive ideology of 'equality before the law'. The picture is one of continued brutalisation and oppression of Aboriginal people by the agents and institutions of criminal justice.

Indeed, as Pat O'Shane, a magistrate in New South Wales, points out, despite the establishment of organisations such as the Aboriginal Legal Service and the release of major reports such as *Aboriginal Deaths in Custody* and *Racist Violence* by the Human Rights and Equal Opportunity Commission, the situation facing Aboriginal people in terms of criminalisation and imprisonment has worsened. Although the ALS and other bodies have attempted valiantly to confront the racism and disadvantage Aboriginals experience, the lack of necessary funding and resources has made the task extremely difficult. It is not surprising that the discourse on the criminal justice system from the black perspective is replete with references to poor 'relations' with police, 'social control' of communities, 'over-policing', and the abuse of basic human rights, particularly in prisons (as outlined in a recent report by Amnesty International).

Karen Fletcher's essay on the *Summary Offences Act* 1988 (NSW) illustrates the way police practice relating to 'drunkenness' offences invariably targets Aboriginal rather than non-Aboriginal communities. This differential practice is compounded by the failure of the police to exercise discretion in favour of issuing summonses. Indeed, as Fletcher remarks: 'Many Aboriginal leaders contend that this failure to utilise the summons procedure where appropriate is an illustration of their intention to show that they "control" Aboriginals in the communities' (p.20).

In a penetrating analysis of the concept of 'over-policing' Chris Cunneen illustrates the high level of police control of Aboriginal communities. As well as being the occasional focus of attention by 'specialist' police units such as the commando-like Tactical Response Group, communities with high proportions of Aboriginals such as Bourke, Roebourne, Halls Creek and Wiluna, are routinely subject to excessive police control. He also points out the 'under-policing' or the tendency of police to respond slowly and inadequately to crimes perpetrated against Aboriginal people. Cunneen argues that over-policing and under-policing should be viewed through the prism of historical colonial relations in Australia.

The main theme threading through the monograph is the direct association between Aboriginal over-representation in the criminal justice system with entrenched socio-economic and political disadvantage resulting from over 200 years of structural racism in Australian society. This is most graphically expressed by Sharon Payne in an essay on Aboriginal women and the law: 'It may be said that the issues facing Aboriginal women and the criminal justice system are a double indemnity: a reflection of the wider issues of dispossession, alienation, poverty and discrimination which feature customarily in the everyday life of Aboriginals, as well as the socio-economic position of women

generally within a male dominated 'western' society' (p.39).

In recognition of the disadvantages and the need to reassert Aboriginal claims and rights to self-managed conflict resolution and legal practice, James Crawford outlines a number of areas in which a 'definable body of rules, practices and traditions accepted by the community' (p.54) may be fully articulated in legal process and practice. Possible areas of concern include traditional marriage, distribution of property, child custody, criminal law, sentencing, community justice, fishing and hunting rights.

While the relationships between customary law and the dominant legal system are often extremely difficult to reconcile as to ensuring the right to individual legal protection, tribal laws challenge jurisprudence and legal practice, particularly as to liability. However, whereas the exercise of customary law in the context of dominant legal structures may be problematic, community justice mechanisms such as Aboriginal courts (as in Queensland, Western Australia and the Northern Territory), informal methods of dispute resolution and the passage of by-laws point to possible ways of effectively empowering Aboriginal people (although by-laws may be used as a method of more rather than less control of communities).

Changes to legal processes and structures cannot be separated from the continuing need to address structural disadvantage experienced by Aboriginal people. So long as the indigenous people of Australia are denied the means for social, economic and political empowerment (such as land rights), they will continue to experience the excesses of state control in increasing criminalisation and incarceration.

RICHARD HIL

Richard Hil teaches social work and community welfare at the University of North Queensland, Townsville.

Enterprise Bargaining: A Practical Approach

by Paul Ludeke and Brad Swebeck; The Federation Press, Sydney; 1992; softcover, $25.

Enterprise Bargaining: A Practical Approach by Paul Ludeke and Brad Swebeck purports to provide a practical rather than political, legal or academic approach to enterprise bargaining. The reader should not be deceived by this claim nor the slimness of the volume. The material is detailed and at times heavy going. It is likely that this book will draw an audience of lawyers and experienced participants in the industrial relations system rather than the general community. The language suggests that the authors assume readers are familiar with legal and industrial relations terms and concepts . . . novices beware!

The book provides an interesting historical overview of the development of enterprise bargaining in an award based industrial relations system with a detailed analysis of the April and October 1991 National Wage cases. Appendix A is a helpful summary of the principles emerging from the April 1991 National Wage case and Appendix B deals with the October 1991 case. It is unfortunate that the reader has to digest the preceding chapters before reaching the straightforward summary of the National Wage cases and their relevance to the process of enterprise bargaining.

Since *Enterprise Bargaining* was published in February 1992, there have been significant changes to the legislative provisions affecting enterprise agreements (that is agreements reached after employer/employee negotiations covering such matters as wages and conditions which are designed to accommodate the needs of an individual workplace) at both federal and State levels. These changes are the result of the political attention during the recent elections focusing on including enterprise bargaining in the Australian industrial relations system.

The Commonwealth *Industrial Relations Act* now has Part VI Division 3A, Sections 134A-134N, operative from 23 July 1992. The Prime Minister has foreshadowed further federal legislation to promote enterprise agreements in a speech on 21 April 1993. In New South Wales the *Industrial Relations Act* is now law.

The Liberal victory in Victoria last year radically altered the approach to enterprise bargaining in Victoria. Industrial relations was a significant issue in the Victorian election and the Kennett Government moved quickly to introduce the *Employee Relations Act* 1992. The Act came into operation on 1 March 1993. On that date all awards were terminated requiring employers and employees to opt back into the award system if the workplace did not want to resort to collective or individual employment contracts.

In Tasmania, the *Industrial Relations Amendment (Enterprise Agreements and Workplace Freedom) Act* came into operation on 1 March 1993. The Act permits enterprise agreements which are ratified by an Enterprise Commissioner. There have also been developments in the other States following State Wage cases.

While the legislative framework is important for understanding the limits of enterprise bargaining and safeguarding minimum conditions, perhaps what is most needed is a guide to the mechanics of bargaining. Chapter 5 discusses strategies in enterprise bargaining but its perspective is on 'what' to consider in negotiating rather than 'how' to negotiate. Given that enterprise bargaining is a reality for many employers and employees, those faced with the process require assistance in practical matters such as selecting who is most appropriate to negotiate, how long the negotiation will take and taking steps to ensure the negotiations are fair to all parties, safeguarding minimum standards, and considering the input of third parties, dispute resolution and enforcement. Chapter 5 goes some of the way to addressing these issues from the employers' perspective.