(from page 10)

making his findings and recommendations. See too transcript of proceedings before the Aboriginal Land Commissioner, Gray J, in the Palm Valley Land Claim (March 1994) and in the Tempe Downs Land Claim (November 1994); article by Dr Deborah Bird Rose Women and Land Claims , Issues Paper No 6, January 1995, Native Titles Research Unit, AIATSIS; and Aboriginal Land Commissioner's Report Year Ended 30th June 1995 pp 8-9 and 31-37. In the State of Western Australia and Ors v Minister for Aboriginal and Torres Strait Islander Affairs of the Commonwealth of Australia (supra) the Court did allow (one only of) the female counsel for Western Australia to have access to certain materials, notwithstanding that they were to be seen by initiated men only. Contrast this with the many land claims where females were excluded altogether in such circumstances.

31. In the Birthday Mountain Land Claim (GOPRINT, 1995) the Aboriginal Land Tribunal (Qld) declined to accept into evidence a statutory declaration regarding secret women's business, which statutory declaration was to be viewed by women only. Since all of the members of the particular Tribunal were male and could therefore not see the document the evidence never saw the light of day.

32. See Black CJ at p 29, Burchett J at 27-28 and Kieffel J at 23.

33. At 27-8 of his reasons for decision.

34. Note that in Norvill (supra) Burchett J, at p 29 of his reasons, suggested that the problem in that case could perhaps be resolved by the appointment of a female decision maker. This suggestion has apparently been taken up.

35. Aboriginal Land Tribunal (Qld).

36. AGPS, 1979 - see para 55. See too Limmen Bight Land Claim, AGPS, 1981, para 39. For more detailed discussion of this practice see G Neate, Aboriginal Land Rights Law in the Northern Territory op.cit. pp 201-207; G Neate, Determining Native Title Claims , op. cit. at pp 520.7-522.2; G Neate Proof of Native Title op.cit. p 18. See too Graham Hiley QC Aboriginal Land Claim Litigation (1989) 5 Aust Bar Review 187 at 195.

37. Toohey J departed from this practice in the Alligator Rivers (Stage II) Land Claim, AGPS, 1982, and made an order excluding two witnesses from the hearing whilst a third was giving evidence, in circumstances where credibility was critical. See too observations by Maurice J in his Reasons for Decision during the Warumungu Land Claim, reasons delivered 1st October 1985 at p 9. See too comment in The Queen v Australian Broadcasting Tribunal; ex parte Hardiman (1980) 144 CLR 13 at 35.

38. See paper by Graham Hiley QC "Aboriginal Land Claim Litigation" (1989) 5 Australian Bar Review 187 at 188-9, 194.

39. See for example critical comment made by (from page 9) Maurice J in Warumungu Land Claim, AGPS, 1988 at para 2.7.1.

40. See for example the Nicholson River (Waanyi/ Garawa) Land Claim, AGPS, 1985 where families had been split up and dispatched to various places such as Doomadgee, Mornington Island, Burketown and Palm Island. In some cases the Aborigines had been prohibited from performing ceremonies and observing their culture.

41. In the Lakefield National Park and Cliff Islands National Park Claim (supra at para 2.18) the Aboriginal Land Tribunal sat in private to hear and test assertions by the claimants' experts to the effect that certain restrictions should be imposed in relation to access to and use of certain documentary evidence. This preliminary private hearing was extensive and resulted in the Tribunal satisfying itself that it would be appropriate to order some of the restrictions sought. See Reasons for Decision 9 June 1994 especially at paras 26-30, 83-95 and Orders at pp 32-33.

Supreme court notes

Sentencing - Criminal Law - Procedure

The Queen -v- Nagas

Judgement of Gallop, Angel & Thomas JJ delivered 13 October 1995.

The respondent pleaded guilty to one count of grievous harm, one count of the deprivation of liberty and one count of steasling contrary to sections 181. 196 (1) and 210 of the Criminal Code ("the Code") respectively. In summary these charges arose from the following agreed facts: the respondent threatened the victim (a taxi driver) with a knife and directed the victim to drive to certain locations. Subsequently, the respondent stabbed the vicitm in the chest, neck and arm. The respondent then removed a tupperware container containing money from the taxi and left the area.

In sentencing the respondent, the Court said that this was an exceptional case in light of the respondent's subjective factors (such as being a female, a mother of two children, having no criminal,history, and having been in employment). Accordingly the repondent was sentenced to an effective head sentence of fifteen months imprisonment. The Court also fixed a non-parole period of five months and 13 days.

The Crown appealed against the leniency of the sentence pursuant to section 414 (1)(c) of the Code, inter alia, on three bases: (1) the ultimate sentence was manifestly inadequate in all the circumstances of the case; (2) the court erred in fixing a non-parole period that manifestly inadequate; and (3) the court misdirected itself in concluding that general deterrence was not significant because the respondent was a female and the incidence of criminal activity of the kind by females was low.

In approaching the appeal, the Court of Criminal Appeal the ("Court") bore in mind the well-established principle with respect to: appeals by the Crown in respect of sentencing; limiting the exercise of an appellant court's jurisdiction with respect to a discretionary sentence.

As to (1) and (2) above, the Court rejected the Crown submission that the evidence established that the respondent had acted with premeditation, that the Court erred in not giving sufficient weight to the objective factors of the case and the need for general and specific deterrence, and that too much weight was given to the respondent's subjective factors. In relation to the latter submission the Court said that in the circumstances of this case the sentencing court would have been entitled to take into account the effect of imprisonment upon the respondent's children. The Court went on to say that hardship caused to an offender's part in the children is not normally a circumstance which a Court may take into account, but this policy appears to be subject to three recognisable exceptions" first, family hardship may be a gound for mitigation of the sentence where the particular circumstances of the family are such that the degree of hardship is exceptional and considerably more severe than a deprivation suffered by a family in nor,al circumstances as a result of imprisonment; secondly. where the offender is the mother of young children; and thirdly where both parents have been imprisoned simultaneously or other family circumstances mean that the imprisonment of one parent effectively deprives the children of parental care.

As to (3) above, the Court said that it is clearly established that allowance is made for the fact that in practice women are treated with less severity than men. Whether the reason for that leniency is predicated upon the lower recidivism rate of women, prevalence of a particular type of crime, general deterrence or simply compassion, that principle is well established.

Accordingly, the Court dismissed that appeal.

Mr J Lawrence instructed by NAALAS for the respondent

Mr R Noble instructed by the office of the Director of Public Prosecutions for the appellant.