

# Ground Breaking Research

## that looks to the real impacts of the Intervention

**Aboriginal Communities and the Police's Taskforce Themis: Case studies in remote Aboriginal community policing in the Northern Territory.** - James Pilkington October 2009

The Law Society Northern Territory Indigenous Legal Issues Committee has been following up recommendations released in a report which captures the perceived community perceptions of the new police presence in remote communities. Due to the Northern Territory Emergency Response (NTER) commonly known as the 'Intervention', the Government built 18 new police stations in Aboriginal Communities in the Northern Territory. It came to be called the 'Police's Taskforce Themis'.

NAAJA and CAALAS undertook research which examined community perceptions regarding the new police presence. The research is thought to be the first of its kind. It involved 331 surveys of Aboriginal people in 14 of the 18 Communities, and around 70 interviews with elders, community representatives, police and other service providers in those communities. This data was supplemented with statistical data from the courts and from the police.

Overall, the report confirmed that people in remote communities supported an ongoing police presence. 75% of respondents wanted a permanent police presence and 53% believed the police were doing a good job. But there were vast differences between communities. For example, the proportion of people who believed that police were doing a good job ranged from 11% to 85%.

Whilst most people supported an ongoing police presence, they also

spoke about how police in remote communities can better engage with the community and work in an appropriate manner with community members. Many respondents identified police officers who were inactive, including failing to respond to reports of crimes including domestic violence. Others spoke about the heavy-handed use of police powers under the *Liquor Act* post-Intervention, including random searches of houses, confiscation of alcohol not intended to be consumed in restricted areas, and police searches of bags in an intrusive and public manner.

Perhaps most importantly for remote policing in the Northern Territory, the report calls for a redefinition of what is "culturally appropriate." It instead uses the term, "Appropriate policing," which involves police developing an understanding of all aspects of life in the Aboriginal domain, not just culture, but also politics and social realities, including day-to-day realities such as the lack of transport options.

The report also has implications beyond the policing realm. It is not just police who urgently need to develop an understanding of all aspects of life in the Aboriginal domain. The Government and the justice system as a whole must expand their understanding of Aboriginal people and work harder to build relationships of trust with the people they serve if they truly want to improve the safety of Aboriginal people in remote communities.

## Recommendations

The report outlines practical recommendations which are aimed at Northern Territory police, Aboriginal legal aid organisations, shires and Government departments, as well as people living in the communities themselves. These recommendations aim for a co-operated approach and mutual understanding of issues affecting Indigenous people in remote communities.

A snippet of the recommendations are as follows:

### For Police

1. It is suggested that there be clear guidelines and increased monitoring, perhaps by an oversight committee, of police exercising their powers under the Northern Territory Liquor Act.
2. Police should develop a procedure on community engagement in the absence of an existing community representative structure. Police can, with local assistance, identify the different family groups and then identify people who can liaise on behalf of that group with police, including people of both genders and young people.
3. The importance of having police at a station that can issue driving licences, car registration and gun licensing should not be underestimated.

4. An ability to adapt their practice to serve a non-mainstream community, should be taken into consideration in deciding which police to send to work in an Aboriginal area.
  5. The police may wish to consider joint submissions to government with Aboriginal organisations in areas where there is a common understanding, particularly for action to ameliorate the drivers of offending as discussed in the research. Considerations around training and career development in light of the research:
  6. Training for work in the Aboriginal domain should be experiential, practical and ongoing, and should include:
    - Holding effective community meetings
    - Experiencing kinship and its importance
    - Recognising and dealing with poison relationships
    - Effective communication with people with poor English and literacy
    - Avoiding factional capture
    - Effective engagement with the community in the absence of representative bodies
    - Aboriginal community dynamics and politics
    - Engaging with alternate dispute resolution mechanisms
    - Dealing with at-risk youth, particularly in the context of underage sex between teenagers
    - Respectful treatment of elders
- For governments, shires and Aboriginal organisations**
1. Aboriginal legal organisations should clarify whether police are allowed to conduct random searches of premises on Aboriginal land under the Northern Territory Liquor Act, because it is a grey area legally, either by getting external expert opinion or taking on a test case in this area.
  2. Priority should be given to clarifying or amending Section 59A(1) of the Northern Territory Interpretation Act so that remote Aboriginal land (outside gazetted roads and townships) is treated as private land for the purpose of determining both what is or is not an offence, and police powers of access to this land.
  3. Priority should be given to amending the NTNER Act with respect to reducing the area of land which is Alcohol-restricted to a certain radius around communities, or else amending the Northern Territory Liquor Act to reduce the area in which police can conduct random searches and confiscate unopened alcohol to the restricted areas themselves. Most complaints regarding police behaviour stem from police exercising their powers under this Act.
  4. Priority should be given to the establishment of Community Law and Justice Groups, or at least community structures that can provide direction in this area and a point of contact for the police.
  5. All other states have an independent Ombudsman to investigate police complaints and it is suggested that the Northern Territory be brought into line with the rest of Australia.
  6. Buildings that can act as bush court rooms should be identified and bush courts should be set up in those communities distant from existing courts and with high offending rates, high numbers of outstanding warrants, and not identified as being amongst the first wave of police stations being converted to permanent stations.
  7. Priority should be given to the establishment of safe drinking places with water, shade, away from the road, and a means of transport home for those judged in an acceptable state to come back to the community.
  8. Priority should be given to the establishment of alternative transportation, either as a local business or a shire service, both within communities and between communities and regional centres. Assistance in transport to court may also be necessary.
  9. Priority should be given to an effective and comprehensive community work order system. This is also likely to be cost-beneficial for government, given the high cost of maintaining a large prison population with a tendency to recidivism. The growth in crime, court volumes and the Northern Territory prison population has come despite increases in police numbers, police powers, restrictive laws and the severity of punishment in the Northern Territory. Alternatives to populist policies are likely to be more effective in reducing crime, as Aboriginal people themselves testify.

### For community members

1. Community Law and Justice groups have been effective in the past, and there is a lot of government documents that give them authority. For example, police have been directed to take on board community input. External support can be obtained from Aboriginal Legal Aid. It is also a way of providing direction to night patrol. People might like to look at stories of other groups that have made a big difference in the past.
2. There are a number of 'grey areas' in Australian law with respect to Aboriginal land. The biggest one is to do with police power to search houses

- in Aboriginal communities. Legal Aid needs to test the law on this issue. To do this we need someone to come to us with a formal complaint to do with random police searches of houses.
3. If you think the police have done something which is not right, for example, searching people's houses without permission, contact Aboriginal Legal Aid. In the past, people have generally only put in complaints on violent behaviour by the police, but people can complain in other areas as well, like police going where they shouldn't. This will help make clear the limits of police power.
- Areas for further research**
1. Determining whether policing in communities which have had longer-established police stations fits the conclusions of this research, as well as examining police activity in communities without a permanent police presence. In particular the issue of police procedure with regards to larger-scale community conflict did not come up in the communities surveyed and this is likely to warrant a degree of investigation.
  2. Determining whether policing in urban areas in the Northern Territory conforms to the 'over-policing' model or not.
  3. Criminology from an Aboriginal viewpoint, including; what is and is not considered problematic, what the drivers of offending are from an Aboriginal perspective, and how the current legislative setup impacts on offending rates.
  4. Understanding what Aboriginal people consider to be effective punishments and deterrents. The research has indicated that community work orders or restrictions to outstations are considered preferable, but more needs to be done in this area.
  5. A review of the situation with regards to DVOs and the effectiveness of the Northern Territory's Violent Crime Reduction Strategy.
  6. An examination of feuding and drivers of long-term between-family conflict would be valuable, including recommendations on mediation and reconciliation in this context.
  7. An examination of lodgments by offence type at selected individual bush courts and regional town courts.

The Law Society's Indigenous Legal Issues Committee will continue to take a keen interest in the issues raised in the report and to advocate for the report recommendations to be implemented as far as possible. The Committee has been pleased to see the take up by Northern Territory Police in relation to some of the key recommendations in the Pilkington report. However, there are other far-reaching recommendations that have broad implications for the courts, Correctional Services and other service providers in remote communities in relation to the concept of what is appropriate service delivery to remote Northern Territory residents.

The Committee is also keen to see a renewed focus on local justice solutions, such as Community Law and Justice Groups that allow for elders to play a meaningful role in the criminal justice system. James Pilkington, the author of the report will be speaking about these issues at the upcoming 'Access to Justice and Pro Bono Conference' in Brisbane to be held at the end of August 2010." ●

## Michael Kirby Wins Gruber Justice Prize

**R**etired High Court Judge and former member of the Northern Territory Bench has become the first Australian to win the internationally renowned Gruber Justice Prize worth \$US500,000, which he shares with Professor John Dugard of South Africa and the Indian Law Resource Centre.

The prize recognises Mr Kirby's contribution to human rights and justice issues over a long and distinguished career. Mr Kirby has

championed the cause of victims of unjust regimes and discrimination based on sexual orientation, and has played a major role in the development of international human rights law, including laws relating to privacy and HIV/AIDS.

The Gruber Prize for Justice is awarded by the Peter and Patricia Gruber Foundation, a US philanthropic organisation based in the U.S. Virgin Islands. The Justice Prize is presented to individuals or organisations for contributions

that have advanced the cause of justice as delivered through the legal system. It is intended to acknowledge individual efforts, as well as to encourage further advancements in the field and progress toward bringing about a fundamentally just world.

The prize 2010 will be officially presented at George Washington University in Washington, DC, on 11 October. ●