INDIGENOUS ISSUES IN THE WA JUSTICE SYSTEM
TEACHER AND STUDENT RESOURCE

STEPS TAKEN TO ADDRESS INDIGENOUS ISSUES IN THE WA JUSTICE SYSTEM

This resource is for both teachers and students to use for future reference after the FBLEP ‘Indigenous Issues in the WA Justice System’ empty court activity.

Aboriginal Legal Service of WA (ALSWA)
The Aboriginal Legal Service of Western Australia (ALSWA) provides legal representation and support services for Aboriginal and Torres Strait Islander people in Western Australia and was established in 1973.

As well as Perth there are 17 ALSWA offices located in Albany, Broome, Bunbury, Carnarvon, Derby, Fitzroy Crossing, Geraldton, Halls Creek, Kalgoorlie, Kununurra, Laverton, Meekatharra, Newman, Northam, Roebourne, South Hedland and Warburton.

ALSWA provides a criminal law duty service at many metropolitan and country courts, which includes bail applications, remands and pleas. There is a legal advice service during weekday office hours. In emergencies, legal advice can also be provided by phone after hours. Lawyers and Court Officers visit prison and lockups to provide prisoners with legal advice and also represent people in trials or appeals. ALSWA criminal law staff also make sure the criminal courts know about cultural matters that apply, such as communication styles and punishment.

ALSWA provides legal advice in all types of civil law and human rights matters, including discrimination, compensation for injury, police complaints, wills, debt, and coronial inquests. ALSWA lawyers can represent people in all State and Federal courts.

Community and prisoner support is provided by ALSWA for Aboriginal and Torres Strait Islander women in Western Australia. This includes visiting women in the community, in refuges and in prisons and providing support and referral so that women can access ALSWA and other services as required. All ALSWA services are available to prisoners and ALSWA also runs a prisoner support and rehabilitation program. ALSWA also assists women with domestic violence issues.

Community and prisoner support is provided by ALSWA for Aboriginal and Torres Strait Islander men in Western Australia. This includes visiting men in the community and in prisons and providing support and referral so that men can access ALSWA and other services as required. All ALSWA services are available to prisoners and ALSWA also runs a prisoner support and rehabilitation program.1

Australian Human Rights Commission: Aboriginal and Torres Strait Islander Social Justice (1992)


FBLEP – Indigenous Issues in the WA Justice System Teacher and Student Post-Visit Resource
Revised May 2013
Page 1 of 7
The Australian Human Rights Commission advocates for the rights of Indigenous Australians and works to promote respect and understanding of these rights among the broader community.

The position of the Aboriginal and Torres Strait Islander Social Justice Commissioner was created by the federal parliament in December 1992 – a response to the findings of the Royal Commission into Aboriginal Deaths in Custody and the National Inquiry into Racist Violence. It was also a response to the extreme social and economic disadvantage faced by Indigenous Australians.

Social justice is about making sure that every Australian – Indigenous and non-Indigenous – has choices about how they live and the means to make those choices. It also means recognising the distinctive rights that Indigenous Australians hold as the original peoples of this land.

The Commission’s role includes reviewing the impact of laws and policies on Indigenous peoples, reporting on Indigenous social justice and native title issues and promoting an Indigenous perspective on issues. In addition, the Aboriginal and Torres Strait Islander Social Justice Commissioner monitors the enjoyment and exercise of human rights for Indigenous Australians. The AHRC Act and the Native Title Act 1993 (Cth) require that the Aboriginal and Torres Strait Islander Social Justice Commissioner produces an annual Social Justice and a Native Title Report. These reports are tabled in Parliament. ²

The Western Australian Aboriginal Justice Agreement (AJA) 2004
The Western Australian Aboriginal Justice Agreement (AJA) was a partnership between Government and Aboriginal communities to work together at a state, regional and local level to improve justice outcomes for Aboriginal people.

The three over-arching outcomes of the AJA were:
1. Safe and sustainable communities
2. Reduction in the number of victims of crime
3. Reduction of the over-representation of Aboriginal people in the criminal justice system.

The Department of the Attorney General leads the AJA initiative and the following agencies are signatories:
- Department for Child Protection;
- Department for Communities;
- Department of Corrective Services;
- Department of Indigenous Affairs;
- Western Australian Police;
- Aboriginal Legal Service of WA; and
- The Drug and Alcohol office of WA.

Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture (2006)

In 2000 the Attorney General of Western Australia announced the Aboriginal Customary Law Terms of Reference given to the Law Reform Commission of Western Australia (LRCWA).

Recognising that:
- all persons in Western Australia are subject to and protected by this State's legal system; and -
- there has been and continues to be a need to recognise the existence of, and take into account within this legal system, Aboriginal customary laws.

The Western Australian Law Reform Commission inquired into and reported upon Aboriginal customary laws in Western Australia other than in relation to Native Title and other issues related, for example, to the ownership, possession or occupation of land with particular reference to:
- how those laws are ascertained, recognised and applied by Aboriginal communities in Western Australia;
- whether those laws should be recognised and given effect; and, if so, in what manner, and in particular whether:

(a) the laws of Western Australia should give express recognition to Aboriginal customary laws, cultures and practices in the administration or enforcement of Western Australian law;
(b) the practices and procedures of the Western Australian courts should be modified to recognise the needs and interests of Aboriginal people;
(c) the laws of WA relating to the enforcement of criminal or civil law should be amended to recognise the needs and interests of Aboriginal people; and -
(d) provision should be made for Aboriginal communities to identify and apply Aboriginal customary laws and practices.3

In September 2006 the LRCWA submitted its final report to the Attorney General on Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture. The final report made 131 recommendations on ways to improve the interface between Aboriginal customary law and the Western Australian justice system.

The 131 recommendations were grouped around themes including, but not limited to,: Overcoming Aboriginal Disadvantage in WA, Office of the Commissioner of Indigenous Affairs, Recognition of Aboriginal Customary Law, Aboriginal People and the Criminal Justice System, Aboriginal Community Justice Groups, Aboriginal Courts, Criminal Responsibility, Sentencing, Police, Prisons, Coronial Inquests, Indigenous Cultural and Intellectual Property Rights, Family Law, Care and Custody of Aboriginal Children, Family Violence and the Protection of Aboriginal Women and Children and Customary Hunting, Fishing and Gathering Rights

The Aboriginal Benchbook for Western Australian Courts 2008 (Second Edition)
The Benchbook was informed by the recommendation of the Royal Commission into Aboriginal Deaths in Custody that judicial officers participate in appropriate cross-cultural training and development programs so that contemporary Aboriginal society and customs

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were understood in context of the historical and social factors contributing to contemporary Aboriginal disadvantage.\(^4\)

The Aboriginal bench book provides broad descriptions of traditional and contemporary Aboriginal society, culture, language and law; it suggests ways of addressing the language and communication issues which can arise in court proceedings involving Aboriginal people; and it discusses relevant legal principles relating to pre-trial and criminal proceedings and sentencing.\(^5\)

**Equality Before the Law Benchbook 2009**
The Equality before the Law Bench Book is intended to provide WA judicial officers with an understanding of the range of values, cultures, lifestyles and life experiences of people from different backgrounds, together with an understanding of the potential difficulties, barriers or inequities people from different backgrounds may face in relation to court proceedings. It offers practical examples of how to take appropriate account of these differences in court and tribunal proceedings.\(^6\)

**Kalgoorlie – Boulder Community Court**
The Kalgoorlie-Boulder Community Court is a sentencing court service that is more culturally inclusive and relevant for Aboriginal people than traditional courts. The community court only operates during the sentencing process. It does not involve different laws or use customary Aboriginal law. The court is part of the Magistrates Court of Western Australia.

The Kalgoorlie-Boulder Community Court has an informal structure. The magistrate sits at a special table with the other participants, including the offender and their family. The magistrate is assisted by Aboriginal elders and respected people. They are court members and provide information and advice on social and cultural issues. Participants use plain language rather than technical legal terms usually used in courts.

The Aboriginal Community Court retains all the sentencing alternatives as the conventional Magistrates Court. This includes the power to send offenders to prison. However, a major goal of the Court is to make sentencing orders that are appropriate to the background and situation of the offender. This will not make the sentence ‘easier’, but will provide an opportunity for offenders to complete an order. Victims continue to have a voice in the sentencing process.

The magistrate has the ultimate decision regarding the sentence handed down. However, the Aboriginal members of the Court will provide information to help them make an informed decision. Aboriginal members will also speak directly with the offender to make them take notice of what effect their behaviour has had and encourage them to make change.\(^7\)

**Western Australian Chief Justice Wayne Martin told the Committee that:**


If we involve the Aboriginal people in the sentencing process, the sentencing process becomes a much more collegiate, constructive, cooperative, positive and collaborative process than merely the imposition of punishment—punishments that in the case of Aboriginal people are often irrelevant because they impose a fine that they cannot afford to pay or they go to prison yet again. It is a way of encouraging and facilitating the notion that this is an Aboriginal problem that needs to be addressed by Aboriginal people. They need to take ownership and control of the responsibility for addressing those problems. … The trouble is that these courts are measured in terms of their impact on recidivism rates, which is a very short-term, blinkered and narrow way of assessing their efficacy. In Kalgoorlie we know qualitatively that the process has formed a bridge between the Aboriginal community and the court process.8

Aboriginal Court Liaison Officers (ALOs)
Aboriginal Court Liaison Officers are employed by the Department of the Attorney General. The role of these officers is to support Aboriginal people and help them through the court system.

ALOs are available to help:
- explain to people how the court works;
- get people ready for court;
- provide advice and assistance in managing fines;
- organise access to other court support services; and
- provide advice and information to judicial officers and court staff about Aboriginal culture.

ALOs are available at the Perth Magistrates Court, Perth Children’s Court, Albany Court, Broome Court, Carnarvon Court, Kununurra Court, South headland Court and Roebourne Court.9

Family Court Indigenous Family Liaison Officers
The Family Court of Western Australia has its own Indigenous Family Liaison Officers (IFLO).

The IFLOs are available to help by:
- assisting family consultants and judicial officers in their ongoing management of cases involving Indigenous families;
- participating in case assessment conferences;
- liaising with individual families, giving evidence and providing ongoing information and support; and
- providing advice to the court on relevant policy and practice issues impacting on service delivery for Indigenous people experiencing separation and family breakdown.10

Aboriginal Mediation Services

9 Dr Jeannine Purdy, Equality before the Law Benchbook, (Department of the Attorney General WA, 2009).
10 Ibid.
Aboriginal Mediation Services provides culturally appropriate dispute resolution services to Aboriginal and Torres Strait Islander peoples to assist in addressing inter and intra-family feuding.

Aboriginal Mediation Services provides a service that embraces the principles of mediation, conciliation, facilitation and negotiation. It is applied with proven procedures and practices to assist in resolving inter-family and inter-personal conflict affecting Aboriginal and Torres Strait Islander peoples in WA.

In addition to mediating disputes the service aims to provide a training program designed to assist communities to develop the necessary skills to resolve conflict.

If the service cannot assist in resolving a dispute the service will make every attempt to provide information about appropriate agency or support group that may be able to assist.11

Aboriginal Visitors Scheme
The Aboriginal Visitors Scheme provides support and counselling for Aboriginal detainees and prisoners in prisons, juvenile detention centres and police lock-ups throughout Western Australia.

It is operated by the Department’s Offender Management and Professional Development division, which is managed separately from prisons. Visitors are Aboriginal people committed to assisting and supporting detainees and prisoners in their local areas. They are employed on a casual, rostered basis but are available at all times to help those in custody.

The aim of the scheme is to ensure:
- means are provided for reducing the likelihood of deaths and/or self-harm
- conditions of those in custody improve through consultation, advice and information to decision-makers
- Aboriginal community groups are properly informed on conditions of custody.

Detainees and prisoners may see visitors during their rostered visits or at other times, if necessary. Families of those in custody can contact the scheme directly if they are concerned about a relative in custody.12

Prison Work Camps
While at work camps, prisoners undertake a range of valuable work projects in local communities. Instead of these prisoners being a drain on public resources, they become a resource for communities. Each year they undertake approximately 75,000 hours of work in regional communities, repaying WA with about $1m worth of work.

The State's first prisoner work camp specifically for Aboriginal prisoners – on the traditional lands of the Millstream-Chichester National Park – was established in February 2000. In 2001 and 2002, two camps were established in the Kimberley – one near Derby and another

at Wyndham. The camps at Millstream, Derby and Wyndham are particularly critical in returning indigenous prisoners to their traditional lands and keeping them close to their families and communities.

In 2008, work camps celebrated ten years of service to the community. There are now seven prisoner work camps operating from Walpole to Wyndham.13

Aboriginal Language Centres and Interpreting Services in WA
Interpreting services for Indigenous people appearing in WA courts are available in Broome, South Headland, Geraldton, Halls Creek and Kununurra.

Aboriginal people who are able to deal with everyday matters in English experience difficulties when faced with the specific technical terminology and concepts employed by doctors, lawyers and police officers.

The use of interpreters can have a significant impact on organisational spending. Matters can be dealt with efficiently and cost-effectively as delays due to misinformation and miscommunication are reduced or eliminated all together.

Translations into appropriate Indigenous languages ensures that the target audience fully understands which results in the target audience making informed decisions; the same as for English speakers.

Aboriginal language interpreters work with the following organisations; The Aboriginal Legal Service of WA, the Director of Public Prosecutions, WA Police, the Supreme, District and Magistrates Courts of WA, the Department of Corrective Services and many others.14

Obviously there is a limit to which agencies like courts and corrective services can address these deep seated issues, which have defied resolution for many years now. But that is no excuse for not trying.15


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