

BALANCE

LAW SOCIETY NORTHERN TERRITORY

Edition 3/2006

May & June



**Law and Justice issues in
Indigenous Communities**

Law and justice in Indigenous communities

In early May this year, Alice Springs Prosecutor Dr Nanette Rogers was interviewed on the ABC's Lateline program about violence and abuse in indigenous communities in Central Australia.

Host Tony Jones was visibly shocked by the revelations, and I must say that sitting in my living room watching the story unfold, I too was shocked. Being a civil litigator, and not a long-term Territorian, the full detail was new to me, but for many connected to the legal profession in the Territory the story was probably distressingly familiar - violence, sexual abuse, substance abuse and despair.

This has sparked a broader debate about law and justice issues in Indigenous communities and the role of customary law in the justice system. Coming as the story did, right at the beginning of Law Week and my visit to Alice Springs for associated events there, it was a coincidence that gave me both an opportunity to speak with Nanette, and other practitioners in Alice involved in the area. In addition, I was thrust quickly into the role of having to speak to various media outlets and, as a result, went seeking views and information on issues of law and social policy that I unashamedly admit I knew very little about.

I found that if you ask ten different lawyers for an opinion on this issue, you get ten different opinions - and that situation no doubt applies to the general Territory population. Issues of Indigenous justice evoke passionate opinions from people and the complexity of the issue means that there are no easy answers

In an attempt to further explore the debate about law and justice issues in indigenous communities, the Law Society Northern Territory invited a wide range of people to contribute an article on the issue for *Balance*, including lawyers, judicial officers, politicians, academics and Indigenous leaders. These articles make up this edition's cover story.

The issue of law and justice in Indigenous communities isn't new. We can only hope that the new and sustained attention leads to the necessary funding and practical solutions to real problems.

The Northern Territory's Correctional Services statistics¹ tell a story about the high level of contact Indigenous Territorians have with the criminal justice system.

On 30 June 2005, there were 662 Indigenous prisoners



Allison Robertson, President

in custody in an adult correctional institution in the NT - 81 percent of total prisoners.

The rate of imprisonment of adults in the Northern Territory for 2004-05 is estimated to be 547 per 100,000 adults. For Indigenous adults in the NT for 2004-05 the rate was 1,687 persons per 100,000 Indigenous adults.

On 30 June 2005, female prisoners represented three percent of the Northern Territory prison population. Consequently, it is safe to assume that the vast majority of prisoners in the Northern Territory are adult Indigenous males.

The most common offence for prisoners held in custody on 30 June 2005 was assault (39 percent of prisoners), followed by sexual assault (11 percent of prisoners).

Simply looking at the treatment of perpetrators and victims in the criminal justice system is insufficient to fully address the problem. Plenty of Indigenous men are currently going to gaol and we haven't seen many improvements yet. Rehabilitation, education, health, substance abuse and causes of offending behaviour must also be addressed.

The proposal to remove the consideration of customary law and cultural context as mitigation in criminal cases is misguided, possibly discriminatory and potentially fetters judicial discretion. The Law Council of Australia has recently completed a major submission to the Law Reform Commission of Western Australian on the issue of customary law², which is an excellent work, and is highly recommended reading, touching as it does on the options for recognition of customary law, its place in current legal systems, and wider issues of self-determination, infrastructure and services.

Every accused person appearing before the court is given the opportunity to provide mitigation and personal circumstances for the court to consider in sentencing. Why should this be any different for indigenous people or people from any other ethnic background?

Continued page 5...

Model Laws update

The new Legal Practitioners Bill 2006 (NT Bill) adopting the national model laws for the NT legal profession is now getting closer to finalization.

At the request of the Department of Justice, the Law Society Northern Territory Council has recently provided comments on a number of outstanding policy issues.

At the national level, the next version of the Model Bill is close to finalization and should be released in late July 2006. The Law Council of Australia (LCA) National Practice Working Group, of which I am a member, has been considering a number of outstanding policy issues and providing comments to the Officers Working Group, which consists of a number of Standing Committee of Attorneys-General Officers and some LCA representatives. The LCA has made securing user-friendly legislation a priority.

The work being put in to finalizing the Model Bill has been considerable and finalization of the document is close, although some issues of disagreement remain and a number of issues will require ongoing consideration. The NT Bill is still in its drafting stage and will require some amendment to include amendments to the Model Bill.

Legislation based on earlier versions of the Model Bill has been enacted in some other jurisdiction (it in turn is being amended to pick up amendments to the Model Bill).

It is likely, at this stage, that the NT Bill will be introduced at the October 2006 Legislative Assembly Sittings. Subject to passage at the December 2006



Barbara Bradshaw, Chief Executive Officer

Sittings, the NT Bill is expected to commence on 1 March 2007.

Based on the experience of other jurisdictions, it would appear at this stage that the major areas of concern for NT practitioners are likely to be the following:

- * Practising certificate issues
- * Costs
- * Trust accounting requirement

It is likely that the Northern Territory's Mandatory CPD scheme will commence at the same time as this legislation.

The Council of the Law Society Northern Territory is beginning to consider practical issues. We will shortly commence a CPD program which outlines some of the major issues relating to the NT Bill. This will be based on those being used in other jurisdictions, but will be tailored for Territory practitioners.

Law and justice in Indigenous communities cont...

The mandatory sentencing experience clearly showed us that one-size-fits-all sentencing doesn't work and is contrary to the principles of justice. Continued attempts to curtail the independence of the judiciary only undermine the legal systems attempts to deliver justice.

ENDNOTES

1. Office of Crime Prevention (2005) Northern Territory Department of Justice Correctional Services Statistical Summary 2004 - 2005. Available from: http://www.nt.gov.au/justice/ocp/docs/statistics/20051201_NTCS_StatsSummary.pdf.
2. Law Council of Australia Aboriginal Customary Law - Submission to the Law Reform Commission of Western Australia (29 May 2006). Available from <http://www.lawcouncil.asn.au/sublist.html?section=LCA&year=2006>

DEADLINES

Contributions to Balance are welcome. Copy should be forwarded to the Editor of Balance, Law Society NT, either via fax: 08 8941 1623 or email: publicrelations@lawsocnt.asn.au.

Advertising rates can be obtained from the Society on tel: 08 8981 5104 or downloaded from our website: www.lawsocnt.asn.au.

Upcoming deadlines:

July - August edition - Monday 24 July including a health and well-being feature

September - October edition - Friday 22 September including a feature on pro bono issues in the NT

November - December edition - Monday 20 November