

# THE KOWANYAMA ABORIGINAL COMMUNITY JUSTICE GROUP AND THE STRUGGLE FOR LEGAL PLURALISM IN AUSTRALIA<sup>1</sup>

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## Introduction

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that Aboriginal Australians were victims of entrenched racism and discrimination in the justice system. To redress this, the Royal Commission made funding available for developing innovative and community-based justice programs. This paper examines the operation of one scheme in the remote Aboriginal community of Kowanyama in far north Queensland. To date, there have been encouraging results in reductions in crime and better rehabilitation of offenders. These suggest that community control and self-management can be of great benefit in crime prevention, conflict resolution and offender management in remote Aboriginal communities. Proposals for urban and region-based Aboriginal justice bodies along similar lines have been suggested in Queensland but are yet to be given trials. The model developed at Kowanyama suggests that one potential threat to

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the development of local justice schemes in other Aboriginal communities comes from the broader interaction between communities and government agencies, including the police, magistrates and corrective service officials. Such agencies may seek to regulate and limit the community-based processes required in the establishment and operation of justice groups in Aboriginal communities. The success of the model is dependent upon willingness on the part of government to recognise and respect the capacity of Aboriginal communities to develop and manage their own distinctive approaches to local justice. It also requires concrete measures to empower the members of the justice group by strengthening their knowledge of and confidence in dealing with the mainstream justice processes and institutions.

*Aboriginal involvement in local justice in Queensland*

When in 1991 Aboriginal community leaders in Queensland were given the opportunity to comment on legislation affecting Aboriginal people in Queensland, they called for greater autonomy and community self-management in the administration of justice and law (QLRC 1991: 8, 33).<sup>2</sup> Following this report,

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<sup>2</sup> The Aboriginal community representatives appointed to constitute the Queensland Government's Legislative Review Committee (QLRC) (formed to report on the appropriate legislation for the administration of Aboriginal and Torres Strait Islander communities in Queensland, raised the questions of the appropriate mechanisms for the administration of justice, and of the importance of community self-government. The report recommended the conferment on Aboriginal communities of the power to take control of justice mechanisms for themselves. All the recommendations indicate the perceived need for Aboriginal autonomy, so that communities might decide important questions themselves, and so be 'self-determining' (QLRC 1991: 8). The Committee believed that additional powers should be given in the relevant legislation to enable the recognition of customary law and community involvement in the administration of justice, policing and correctional services. Significantly, the Committee sought an acknowledgment from legislators that the communities themselves were best placed to determine what justice mechanisms should operate in their communities (QLRC 1991: Recommendation 41, at 33).

there have been several initiatives in the local administration of justice and law and order in Aboriginal communities in Queensland. Notable examples include the establishment of the Aboriginal Law Council at Aurukun, which regulates alcohol use within the its community,<sup>3</sup> of an Aboriginal elders network across Cape York Peninsula, which is active in promoting culture and healing programs in north Queensland correctional institutions,<sup>4</sup> and of local justice groups at Palm Island and Kowanyama in 1994. Another justice group was established at the Pormpuraaw community in 1995. During 1996-1997 several other communities including Hopevale, Yarrabah and Thursday Island in the Torres Strait submitted funding applications to the Queensland Government to establish similar groups modelled largely on the Kowanyama justice group. Several other proposals are currently in train.

My own involvement with these initiatives was in the capacity of Policy Officer with the Laws, Justice and Culture Section which administers the Local Justice Initiatives Program in the Queensland Office of Aboriginal and Torres Strait Islander Affairs. In this capacity I had the opportunity to observe, monitor and assist in the development of community initiatives over the 1994-1995 period. I have maintained my links with the community subsequently as an independent researcher. This continuing contact has provided me with an insider's view of local developments and the opportunity for return visits to the community to monitor continuing developments. I am now concerned to promote the importance of these community initiatives as examples of viable self-management practice at work, and to relate the operation of the schemes to the prospects for Aboriginal autonomy in law and justice in view of the growing acceptance of the need for alternatives and innovative responses at the community level.

The case which I examine here, the local justice group at Kowanyama, is promising for a number of reasons, including the reductions in the level of crime

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<sup>3</sup> The establishment of the law council at Aurukun was initially supported as an Alternative Governing Initiative based on community development work supported by Yalga-binbi Institute for Community Development. An amendment was made to the *Local Government (Aboriginal Lands) Act 1978* to recognise and give power to the Law Council.

<sup>4</sup> Eric Deeral from the Hopevale community has received assistance from the Queensland Government in further developing a proposal for a network that links an actively functioning network of elders across Cape York. This body is already playing a vital role in disseminating information, developing ideas about sentencing, and in the rehabilitation and cultural and spiritual healing of inmates at Lotus Glen Correctional Centre (Deeral 1995: 7-8).

and recidivism since its establishment, and its promotion of internal forms of conflict resolution. Here there is strong evidence of successful management of community justice. This suggests that self management and community empowerment are appropriate counters to the legacy of mission and government administration and the continuing problems of institutional racism, high crime rates and over-representation in custody.

*The problems of over-representation and systemic bias in the mainstream criminal justice system*

The first evaluation report of the progress of governments in implementing the 339 Recommendations of the RCIADIC is scathing about governments' failure to deliver adequately on these recommendations. It notes that the number of deaths in custody continues to rise and that the only significant change is that the location of the deaths has shifted from police watch houses to correctional institutions (Commonwealth of Australia 1997: 13, 15-22). The RCIADIC's identification of some basic problems with the criminal justice system had echoed calls from Aboriginal and Torres Strait Islander communities for greater autonomy and local control. It is the rate of progress on this issue that is central to turning the tide and reducing the incidence of deaths in custody. (See especially RCIADIC Recommendations (2, 87, 88, 104, 114, 116, 187, 214, 215, 220, 221 and 223).

One of the major long term goals identified by the RCIADIC was to allow each community to develop the means to resolve disputes and to deal with offenders in culturally appropriate ways. The RCIADIC also found that many indigenous people were victims of entrenched racism and discrimination within mainstream criminal justice and legal institutions. This insight and the appalling statistics on the high level of over-representation of Aboriginal and Torres Strait Islander peoples within correctional institutions has prompted a questioning of correctional practices.

For example, in Queensland a report was commissioned by the Minister for Police and Correctional Services, on the results of consultations with far north Queensland Aboriginal and Torres Strait Islander communities with respect to offender management strategies. The report, by the Ministerial Liaison Officer to the Queensland Minister for Police Corrective Services, Gavin Palk, showed that in 1995 Aboriginal and Torres Strait Islander people in Queensland were 14 times more likely to be incarcerated than others. At the time there were 584 Aboriginal and Torres Strait Islander people in custody, i.e., 24% of the prison population came from a group that comprised 2.3% of the total population of the State (Palk 1995: 3-5). In far north Queensland 780 new Aboriginal and Torres Strait

Islander inmates had arrived in correctional centres in the 12 months to February 1995. Most of these were transported from isolated and remote communities for mostly short term stays (Palk 1995: 10).

In relation to Kowanyama, the Palk findings indicate that in 1995 the number of offenders on community based orders was 26, that a total of 45 offenders had been incarcerated over the preceding twelve months, and that there were currently 16 offenders in northern correctional facilities (Palk 1995: 22-23). Palk's report, as well as unofficial police statistics, reveal that offences against persons have been particularly common, in part because of alcohol consumption but also because of ongoing family feuds and the operation of payback (Palk 1995: 23).

Figures for Kowanyama conform to statewide trends in incarceration. The most common offences for Aboriginal and Torres Strait Islander offenders as at April 1994 were:

- Offences of violence - 60%
- Property offences - 27%
- Motor vehicle offences - 5%
- Disorderly conduct - 5%

(QCSC 1995: 8). The following distribution of offences has been identified among Aboriginal and non-Aboriginal offenders respectively:

- Offences against persons - 63.7%; 44.5%
- Robbery and extortion - 4.2%; 10.4%
- Property offences - 15.8%; 19.5%
- Offences against good order - 6.4%; 3.8%
- Drug offences - 0; 12.6%
- Motor vehicle - 5.5%; 5.2%
- Other - 1.3%; 1.6%
- Unknown/Not stated - 3.2%; 2.2%

(QCSC 1995: 9). On 7 October 1995, 311 of the 675 inmates (male and female) were Aboriginals or Torres Strait Islanders, i.e., 46% of the total prison population at the two northern Queensland correctional centres (QCSC, 1995: 1). 75% of Aboriginal and Torres Strait Islander inmates had committed prior offences, a figure which confirms a high level of recidivism (QCSC 1995: 9).

The high levels of incarceration suggest a continuing high incidence of crime and recidivism. As of April 1994, of the 2301 Aboriginal and Islander people under the supervision of the Corrective Services Commission, 22% were in custody and 11% on community-based supervision orders. The remainder were subject to

parole and early release programs (Queensland Government 1994-95: 50). This suggests that, on a State-wide basis, progress has been slow in implementing some of the recommendations of the RCIADIC, notably: Recommendation 92, regarding the use of imprisonment as means of last resort; Recommendation 104, on community input into appropriate sentencing; Recommendation 113, on community involvement in the development of non-custodial sentencing options; and Recommendation 216 on appropriate funding and support for community alternative community-based initiatives.

Inevitably, the Palk report advocated a basic change in orientation. The question was, what alternatives were available and what models could be drawn upon?

*Critical reflections on the theory and practice of local (popular) justice*

The concept of local or popular justice<sup>5</sup> has been the subject of intensive discussion internationally with strong contributions from Canadian scholarship seeking to evaluate innovative proposals and trials among Canada's indigenous communities (Finkler 1983, 1988; LaPrairie 1996; Clairmont 1996; Crnkovich 1996). Much of this scholarship sounds a cautionary note, suggesting that the outcomes of schemes can be less than clear cut, and inviting more careful consideration of the potential constraints and pitfalls, as well as possible benefits, of popular justice schemes.

This body of literature also serves to locate and define the notion of popular or local justice as denoting legal pluralism, a situation where different orders can coexist with the formal state system to provide for more autonomy at the community level. It involves an alternative and informal framework for justice that is preventative, accessible and meaningful to local communities (LaPrairie 1996: 3). According to LaPrairie:

Popular justice is defined in contradistinction to State justice as a response that is localised, formally requires no special expertise, and utilises broader prescriptions and sanctions (La Prairie 1993,

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<sup>5</sup> I view local justice and popular justice as interchangeable terms. The international literature uses 'popular justice' as its standard description of informal or community-based initiatives in justice. 'Local justice' is the term that has been regularly employed in the Queensland context of expanding Aboriginal community initiatives in justice and is more appropriate for this discussion of the initiatives at Kowanyama.

quoted in Clairmont 1996: 132).

In broader discussions popular justice is not just seen as a set of ideas and practices but has been elevated to something of an ideology with adherents and advocates bound to its appeals and merits. Depew links popular justice to

an ideology and assumption set which promise a quality of justice and a range of related practical benefits that cannot be achieved or are difficult to achieve through the more conventional, formal justice apparatus of the State (Depew 1996: 23).

Of course these claims have an intuitive appeal, but Depew warns us that there are grounds for more critical and sober reflection on the actual achievements of popular justice projects. Indeed, a major preoccupation in recent theorising about popular justice has involved closer scrutiny of results and outcomes (Abel 1982: 308; Crnkovich 1996; LaPrairie 1996; Clairmont 1996: 132 and Depew 1996).<sup>6</sup> LaPrairie cautions against the assumption that popular justice may be a panacea any more than the formal justice system (LaPrairie (1996: 4). Empirical studies confirm that the consequences of applying ill-conceived and inappropriate models and practices of popular justice can be counter productive, if not disastrous (Crnkovich 1996: 170-174)<sup>7</sup>.

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<sup>6</sup> Abel in particular notes the tendency for discrepancies between the premises and assumptions about the popular justice framework and the results actually achieved in concrete cases (Abel 1982: 308). He refers to cases of decriminalisation leading to the seemingly inevitable consequence of increases in the range of actions subject to criminalisation, and contradictory scenarios in which informal conflict management strategies increase rather decrease the levels of conflict in communities (Abel 1982: 268). Further contradictions are noted in cases where informal mediation practices are subject in turn to the professional influences of mediators and psychologists, once again diverting the practice to a more formal and mainstream orientation. Informal methods may not provide sufficient protection to individuals and communities who may otherwise have access to the safeguards of due process available in the formal legal system.

<sup>7</sup> Crnkovich's (1996) study is a strong testament to the dangers of non-consultative external imposition. In the case of an Inuit community a visiting judge implemented a circle sentencing practice derived from a completely separate Indian community without any consultation with the Inuit community of how it might work and what role the community representatives might play or how the practice might relate to Inuit custom or tradition. Justice Stuart had earlier issued a warning: "If simply imposed upon communities by the justice system, community alternatives will fail"

This scholarship recognises the potential for popular justice initiatives to fall to the risks of compromising pressures and unintended outcomes, particularly in the struggle to achieve local autonomy and effectiveness against incessant pressure toward incorporation into the formal justice system. Similar pressures can bear on initiatives in Aboriginal communities, including those operating at the remote Aboriginal community of Kowanyama. The risks of incorporation or stagnation are borne out in earlier Australian experience. A community justice model was introduced at Echo Island in Australia's Northern Territory in 1982 to facilitate local social control mechanisms and customary law. The scheme was never fully implemented, in part because of government resistance and also because of a lack of community involvement. Two lessons may be drawn from this experience: that it is necessary to take account of the lack of real commitment from government, and that there is a need for more complete involvement and consultation with local Aboriginal residents prior to project implementation (Buchanan 1994: 17).

### The Establishment and Functioning of the Kowanyama Community Justice Group

#### *The opportunities for local justice in Kowanyama*

The ambivalent outcomes identified in prior case studies, and the critical reflection in the scholarship just referred to alert us to the importance of identifying the impediments to and opportunities for successful local justice administration in remote Aboriginal communities. Depew (1996: 43-46) urges us to take account of the distinctive and diverse circumstances of Aboriginal communities, that are often overlooked in general discussions of popular justice. According to this approach, aspects of local history, social structure, geography, demography and politics are all critical factors in the special challenges and opportunities for local justice administration at the remote Aboriginal community of Kowanyama.

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(cited in Crnkovich 1996: 170). Crnkovich's study reveals that this method was far from appropriate for the Inuit people concerned and suggests that officials accommodating reforms and alternatives in local communities should be willing to have their models adapted and reconstructed to reflect local values and customs (Crnkovich 1996: 175).

Kowanyama is an isolated community with few self-sustaining economic enterprises or bases of continuing contact with the main urban and regional centres in northern Australia. It is a community far removed from the pressure of late capitalism (Alber 1981: 310) and from some of the pressures for social change experienced by communities in other geographic locations (Depew 1996: 46). Kowanyama has a relatively homogeneous Aboriginal population of some 1200 people comprising three tribal or family groups, namely, Kokoberra, Yir Yoront and Kunjen, that are connected traditionally to the lands in the immediate vicinity of the current township (Sinnamon, n.d.: 3; Bottoms n.d.). Apart from tourism and some outside commercial fishing there is little continuing contact with European Australians. Some government employed service providers such as teachers, health workers and the State police are placed in the community for varying periods, but often for only short term placements. A number of longer term community residents are employed as administrators by the Kowanyama Community Council.

At Kowanyama legacies of community initiative and distinctive aspects of social organisation, demography and geography have influenced the development of the justice group. The group is a local justice initiative that has been locally conceived and formulated. It is not an externally imposed government model but is based on community views and priorities generated from carefully managed community consultation processes. Another distinctive feature is that the members are not subject to professionalising pressures. Community elders participate on a voluntary basis and receive no salary. They are not required or paid to perform professional roles like those of psychologist, counsellor or trained mediator. The roles performed are influenced by understandings of customary roles and practices adapted and applied by community elders to suit contemporary community problems and needs. The elders also display a strong commitment to serving the Kowanyama community and not those of state agencies per se. The members may seek to cooperate with these agencies to achieve the group's goals, but would be most unlikely to accede to any role which reduced it to an instrument of State control.

The Kowanyama Aboriginal community has already established for itself a reputation as progressive and innovative. Since 1987 the community has been administered by an Aboriginal Community Council on Deed of Grant in Trust Lands reserved for the benefit of Aboriginal community residents. The *Community Services (Aborigines) Act 1984* provides for the operation of the Community Council and a framework for community government that enables the Council to administer its own by-laws for the purposes of ensuring good government in accordance with local Aboriginal custom (Buchanan 1994: 17). The Council deals with a broad range of issues including community justice, land and natural resource management, indigenous customary law issues, housing and

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other local government functions. In 1991 the community established a Land and Natural Resources Management Office which operates to promote an active community role in resource use, planning and conservation on community lands.<sup>8</sup>

The establishment of the Kowanyama justice group in 1994 builds on the success of the operation of the Land and Natural Resources Management Office. In turn, the achievements in the operation of the justice group provide some basis to challenge some of the deterministic and pessimistic assumptions in the literature about popular justice and other community initiatives. On the basis of the Kowanyama experience, I would suggest that popular or local justice options are not inherently flawed, but need to be flexible, adaptive and appropriate to their sites of application. A framework of local autonomy and a legacy of self-government at Kowanyama are significant counters to the pressures of mainstream incorporation.

The strength of the Kowanyama justice group is its confidence in having developed a mode of operation that is locally based and community driven. Because of this the justice group can provide for more accountable and appropriate mechanisms and processes, reflecting Depew's emphasis on familiarity with local conditions and needs, consideration of responses to best suit local circumstances, including knowledge of locally available resources, and understanding of how local arrangements be given legitimacy and authority (Depew 1996: 28). The capacity to operate in this way reflects the careful processes of consultation and community participation instituted from the initial development of a project proposal through to the implementation, establishment and operation of the justice group.

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<sup>8</sup> Viv Sinnamon, the Director of the Land and Natural Resources Office at Kowanyama indicates that the people seek communal governance of the lands they occupy and have established the Office to achieve this end (Sinnamon 1994: 2). The *Strategic Directions* statement of the Council outlines the community's vision for the exercise of Aboriginal rights and the continuance of Aboriginal culture to govern the use and conservation of natural resources. Specific objectives include: maximising Aboriginal control; ensuring community determined development of Aboriginal lands and natural resources; and use of indigenous and academic knowledge in a professional way, especially to minimise conflict within the community wherever competing valid interests are expressed (Kowanyama Aboriginal Land and Natural Resource Management Office 1994: 8, 12-14; Sinnamon n.d.: 8).

*The establishment of the Kowanyama justice group*

In 1993 the Queensland Corrective Services Commission made money available to the Kowanyama community to engage Yalga-binbi Institute for Community Development as consultants to explore the opportunities for local justice administration in the community. The general principles guiding the consultation strategy were influenced by the Blackman-Clarke study of Aboriginal attitudes to Corrective Services practices in far north Queensland (Blackman and Clarke 1991). They advocated the principles of community participation and local knowledge of law and justice issues in a preventative framework drawing on local Aboriginal conceptions of authority and behaviour control as a framework for local justice administration.

A lengthy and detailed consultation process was undertaken by Yalga-binbi consultants, who were given a free hand by the Queensland Corrective Services Commission to deal directly with the community. Residents at Kowanyama were asked their views about whether they wanted a local justice body, who might sit on such a body, and who possessed appropriate authority, were fair minded and respected within the community. Community members were also asked to identify the senior people in the community who were considered representative of the major family-clan groups. Workshops were held to ensure that community members would be the decision makers in determining whether and in what ways the community might take more responsibility and control of law and justice issues.

This carefully managed process established that there was strong support for a justice group with its membership nominated (not self-appointed or elected) by representatives of each of the three family groups whose authority in the community was widely recognised. The establishment of the Kowanyama justice group in April 1993 reflected the consultation process, with the appointment of 18 members, consisting of 3 men and 3 women from each of the three family groups in the community, nominated by the community on the basis of their recognition as leading authority figures within each of the groups.

Further community workshops were held to clarify the aims and objectives of the justice group. These have been formulated and modified over time. Maria Aiden and Evelyn, two leading figures on the justice group, attended the Queensland Corrective Services Conference in October 1995, where they explained the aims of the Kowanyama justice group. These are to:

1. help the Kowanyama community deal more effectively with its problems of social control,
2. address the issues of law and order in a way that the community

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- understands to be right and in accordance with its own customs, laws and understandings about justice,
3. consult with magistrates about punishments and sanctions considered appropriate by Kowanyama people,
4. recommend, and if appropriate carry out certain kinds of community punishments for offenders,
5. take action to prevent law and order problems in the community,
6. work closely with Council to put appropriate by-laws in place and help Council make Kowanyama a more peaceful place,
7. hear social and justice complaints from the community,
8. provide recommendations to government departments on justice matters,
9. identify social and justice issues in the community,
10. gain recognition from the government and judiciary for the role of the justice group,
11. provide avenues for consultation with the community about justice issues by government and the judiciary,
12. be fair, just and impartial when carrying out its roles,
13. provide advice to the Children's Court and the Department of Family Services about juvenile justice matters, and
14. provide advice and assistance to the Kowanyama Community Development Officer (Justice) in setting up programs and supervising offenders.

*Community problems at Kowanyama*

From 1903 to 1967 the Kowanyama community was run as the Anglican church Mitchell River mission, and was, according to informants, a peaceful and orderly community. It was organised around three separate areas based on the three family-clan groupings. Kowanyama did not experience the displacement and relocation of people across diverse areas of the State that occurred in many other areas of Queensland. During the mission years Kowanyama was a 'dry' community, that is, it had no outlet for the sale of alcohol. This changed after 1967 when the government took over the administration of the reserve. The reserve community had been destroyed by cyclone Dora in 1964 and a new community was now built of standard government housing, with intermixing of family groups. There was government pressure to establish a community canteen for the sale of alcohol.

From 1967 to 1987 Kowanyama was administered as a government-controlled reserve. Alcohol was introduced and made readily available through the government-run canteen, and with this came the attendant problems of alcohol-

related violence and growing law and order problems. These problems have persisted in the post-1987 period of community self-government.

Today Kowanyama police readily identify the community as a violent place, particularly on nights of pay days, when there is excessive alcohol consumption. The National Aboriginal and Torres Strait Islander Survey, investigating community perceptions about law and order problems, reveals that 20.2% of respondents amongst Aboriginal communities in the Cooktown region (which includes Kowanyama) reported having been physically attacked or verbally threatened. This compares with the overall response from Aboriginal people across Queensland of 8.8%. Further, 27.7% of respondents in the Cooktown region reported being arrested in the preceding five years (Australian Bureau of Statistics 1994a: 60). Further detailed information showed that 53.8% of male and 60% of females in remote Aboriginal communities considered family violence to be a problem in their community, as opposed to 13.6% of Aboriginal males and 35% of Aboriginal females in the State capital Brisbane (Australian Bureau of Statistics 1994b). A profile of Aboriginal and Torres Strait Islander offenders in northern correctional facilities in Queensland as at 7 October 1995 indicated that 62% of offences by Aboriginal and Torres Strait Islander inmates were committed under the influence of alcohol (compared to 37% for other inmates), some 16% were established to be not alcohol related, and 22% were either unknown or unstated (QCSC 1995: 6).

The frequent incidence of alcohol and family related violence suggests that Kowanyama conforms to a pattern recognised by Depew (1996: 45-46) as characteristic of remote indigenous communities in Canada. Local social conditions of isolation, together with strong interaction between known members of the community connected by kinship and familiarity can contribute to particular kinds of tensions. Another factor in Kowanyama, shown in the cyclical nature of crime, is that residents are unable to escape the town boundaries in the wet season because the roads are impassable. Community tensions and problems tend to swell during this season, which can last from November to April. These factors can cause or exacerbate certain kinds of problems involving kinship and family tensions, and interpersonal and domestic violence. Depew regards these as a social order problem rather than a crime problem:

Indeed, where incidents occur they are usually spontaneous or 'explosive', or situational rather than premeditated, and they are usually alcohol-related and repetitive (Depew 1966: 45).

Depew observes that the social nature of the problem means that legalistic responses are often inappropriate. The State's written law is designed to regulate relations between individuals who are strangers, not relations between family and

kin:

Thus, it has only a minimal or narrow understanding, capacity and ability to respond in appropriate, relevant and legitimate ways to socially-based justice problems and needs of people who are closely interrelated and connected by long-term relationships and interaction (Depew 1996: 46).

The relationship in the community of Kowanyama between alcohol-related violence, social relationships and community isolation requires consideration of appropriate policing strategies and responses. There has been little consideration of these in Kowanyama until recently.<sup>9</sup> Historically, community-police relationships could only be described as poor. The monthly pattern of fly-in magistrate's sittings dealing with a long list of court appearances resulted in a parade of offenders being removed from the community to be incarcerated in Lotus Glen correctional centre located some 400 kilometres away. Doubts about the usefulness of this measure are increased by the frequent assertion that jail is often not seen as deterrent. Kowanyama police have suggested that a 'rites of passage' syndrome prevails whereby younger people can prove their manhood by spending some time in a correctional facility. Prison is sometimes locally referred to as "my second home" and jail can be perceived as a place to get away from the pressures and boredom of humdrum community life. Correctional facilities offer the security of a place to sleep, access to reasonable food, an organised recreation program, and access to training and support mechanisms that may not be available at home. But on the other hand, before the establishment of the justice group, community based deterrents did not operate. The perception expressed by local police and community members is that traditional authority and control mechanisms had been seriously undermined. The inevitable outcome of mission and then government policy since 1903 has been the progressive weakening of social structure and local traditional authority.

The breakdown of Aboriginal community authority has been exacerbated by the destructive effects of excessive alcohol consumption. Alcohol use is endemic in

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<sup>9</sup> Matters improved in late 1995 with the placement of a new Police Sergeant with a commitment to better community police relations, and the adoption of informed and more appropriate community policing strategies in accordance with the Queensland Government's Remote Aboriginal and Torres Strait Islander Community policing strategy.

other Aboriginal communities across Cape York communities.<sup>10</sup> The Aboriginal and Torres Strait Islander Survey found that 85% of people in Cape York Aboriginal communities identified alcohol as a major health and social problem in their community (Australian Bureau of Statistics 1994b: 15). The State Police service based at Kowanyama has identified a weekly pattern in criminal activity and formed target strategies to deal with high risk times relating to alcohol induced violence. This corresponds with the latter part of each week (Wednesday to Friday), which is the period of high alcohol consumption. The direct connection between violent crime and excessive alcohol consumption cannot be overstated. A liberalisation of trading hours resulting in the extension of the opening hours of the canteen from 10.00 a.m. to 10.00 p.m. in 1996 was followed by a 51% increase in assault-related offences (Kowanyama Police Statistics, 1996-97).

The issue is notoriously difficult to deal with as alcohol is widely used for recreational purposes and as an outlet for boredom, and also provides a lucrative source of revenue to the Community Council. Community-wide use of alcohol does not appear to have been questioned by the justice group. However, cases of under-age drinking, some isolated incidents of petrol sniffing and instances of mothers abandoning their children to visit the canteen have been dealt with swiftly and effectively in the forum of the justice group. Blackman and Clarke's study shows that, as a consequence of alcohol use (which they treat under the heading of drug use), significant law and order problems remain widespread:

In all of the communities we visited we found there were major problems of social control. In each one there were extremely high rates of local imprisonment to aid in the control of behaviour associated with drug abuse. Indeed, people felt deeply the powerlessness of traditional norms in controlling, not only drug related behaviour, but that of their children. Every segment of the community . . . expressed their sense of powerlessness explicitly (Blackman and Clarke 1991: 6).

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<sup>10</sup> A similar connection between community problems and alcohol has been identified in the near-by Aboriginal community of Aurukun. There a law council has been established to deal with the control of alcohol use. The re-establishment of elders' community authority is focused around the central issues of alcohol use and abuse (Adams, Catelain and Martin 1994).

*Responses to local conditions and problems*

The historical experience of contact with missions and reserve administration in Kowanyama has resulted in new forms of power and influence in the community. There are some influential external agencies, and a new community power structure has been established in the community council. There are contested concepts of order, control and authority, and different understandings of customary law. Studies often refer to the resilience of Aboriginal styles of thought and authority, but are often unrealistic. Nevertheless, despite this disruption of customary practices there are strong claims that elder authority and local and culturally based practices are being used to make a significant difference to the local administration of law and order. These claims are reflected in a press release following the Customary Law Conference in Kowanyama in July 1997:

Kowanyama was selected for the conference due to the success of the justice group in utilising traditional methods, to dramatically reduce crime and offences being committed on the community during the previous three years.

The week long conference was extremely positive, with most delegates accepting that there are two laws currently operating in Aboriginal communities, and asserting the potential for traditional laws to reduce crime and assist their communities, through the knowledge of the Elders and respect for Aboriginal laws and culture.

The release from the Community Council suggested that it was the knowledge of the Elders that was making all the difference. My investigation suggests that it is more than this. According to Depew, misleading dichotomies between traditional and western domains hold sway, as a result of which there is a lack of comprehension of the contemporary scope for change, of competing lifestyles and values, and of factions and dissent within communities. Depew adds:

These considerations place the development of popular justice, including its ideology, in a far more complex environment than is acknowledged by those who advocate a more straightforward approach to aboriginal worldview and language as the foundation for aboriginal justice developments. (Depew 1996: 50)

It is necessary to focus on the range of measures and strategies being applied at the community level at Kowanyama. Some of these may be influenced by notions of traditional authority and wisdom, or by customary law, but some may be completely new, derived from ingenuity and common sense in response to urgent

contemporary needs. The common attribute of the elements that are contributing to beneficial outcomes is that they are community-based, involve local people in the administration of justice and the planning of community-wide responses, and conform to community needs and priorities. To understand the current situation it is necessary to adopt a practical focus on the activities of the justice group, the relationships it is developing with other community bodies and government agencies, and its role in assisting in the formulation of community development oriented strategies to improve community life in its broadest sense.

The practice of the pilot justice group established in Kowanyama in 1993 was guided by the simple assumption that social problems and unacceptable behaviour were not separable from community life, so that any preventative and rehabilitative response should come from the community.<sup>11</sup>

Drawing on the Blackman-Clarke (1991) study, the model at Kowanyama contains three key elements:

community participation by provision for local people to have the opportunity for a say in the operation of community justice and justice issues;

measures to promote an understanding amongst mainstream participants in the justice system of the operation of the program from the point of view of community and justice group members; and

preventative action through a community approach drawing on the strength of local traditions, structures and patterns of authority to promote a greater sense of community ownership and responsibility for local justice issues and problems.

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<sup>11</sup> Blackman and Clarke argued that traditional structures of authority and social control and broad areas of ceremonial and social life were still strong in communities in far north Queensland, and had a role to play in the administration of justice (Blackman and Clarke 1991: 23). In these communities, traditional sanctions relating to local crime still came into play, irrespective of the actions taken by the local police or the courts. Blackman and Clarke recognised the potential in these circumstances for alternative arrangements to administer law and order involving a greater level of self-management. The areas identified for extended community involvement included alternative sentencing, community-based custodial arrangements, the development of community-based initiatives, and the identification of the factors that impacted on recidivism.

A Community Development Officer (Justice) is employed by the Community Council and has the job of facilitating the activities of the group, taking minutes at weekly meetings and ensuring that instructions of the Justice Group are carried out. Importantly, the person in this role is independent from the community in ways that are consistent, transparent and in accordance with legislative requirements. In my discussions with John Adams of the Yalga-binbi Institute for Community Development, the point was strongly put that the model upon which the justice group at Kowanyama was based established a critical role for this community support officer. For the justice group model to work effectively, Adams suggests that it is imperative that this person be knowledgeable about the legal system so that they can not only inform and guide the justice group, but also empower it by making the members more aware of how a justice group is expected to work, how it should treat the people from its communities, and what are the opportunities for introducing new, alternative ways and for establishing better relationships with justice agencies and institutions.

The critical importance of this is underlined by the experience of the initial appointment to this position of an indigenous person from outside the Kowanyama community. This person resigned in 1995 and left the Kowanyama community after experiencing frustration resulting from a lack of training and support, and subjection to retributions and recriminations for the performance of the functions of the post. This experience of threatened recrimination underlines the importance of the officer maintaining a certain distance from the community so as to be free from expectations of family loyalties, and the propensity to engage in recrimination against the person who is responsible for supervising and administering parole orders and acting on the recommendations of the justice group.

#### *The emphasis on corrections*

The range of activities performed by the Kowanyama justice group were in the initial phases of the group's operation strongly oriented toward community corrections. Research conducted by Finkler on Inuit communities and correctional issues in Canada highlights the potential for the application of Aboriginal and community-based approaches in correctional policy (Finkler 1983, 1988). His research identifies an alternative range of approaches including the recognition of special needs, opportunities to pursue traditionally oriented practices, innovative and culturally relevant practices, and the use of citizens' advisory boards (Finkler 1985: 321-324, 1988: 417-118). Community involvement in corrections provides the opportunity for the community itself to impress on offenders the boundaries of

acceptable behaviour. Finkler notes of Inuit communities:

Presently, the offender's removal from the community precludes this opportunity for accountability to the community or his confrontation with self. Consequently, the involvement of leaders, elders, and church people in counselling, through the traditional means of group confrontation, enables the community to emphasise to the offender that his actions are disrespectful of Inuit lifestyle and culture, and that he must learn to be accountable for his actions. (Finkler 1985: 324, quoting Finkler 1981: 101)

This emphasis on community involvement in corrections and alternatives to institutional sentencing is also evident in the strategies for community corrections being developed at Kowanyama. In part this reflects the good relationship of the justice group with the Queensland Corrective Services Commission. Corrective Services provided the grant money to fund the community consultation process to establish the group and currently provides the funding for the position of the Community Development Officer (Justice) to the extent of \$35,000 per annum. The vision and confidence displayed by the Queensland Corrective Services Commission in support of these arrangements deserves full recognition and support. Even so, the Commission expects a number of necessary functions to be undertaken by the justice group with the support of the Community Development Officer (Justice). These are discussed in the immediately following subsections.

#### *Functions in relation to probation and community service orders*

Visiting magistrates and corrective services officials can have greater confidence in alternative sentencing arrangements such as community service if there are appropriate supervisory and enforcement arrangements in place in the community. The justice group is empowered by Corrective Services to monitor and deal with breaches of community service orders. This is one of the critical advantages of linking the functions of the Community Development Officer (Justice) to that of community corrections officer. All such sentencing arrangements are brought to the attention of the Justice Group which then has a formal role in ensuring that orders are adhered to. Breaches are monitored and referred back to Corrective Services via the Community Development Officer (Justice). It is now regular practice of the Queensland Corrective Services Commission to allow inmates from the Kowanyama community and the neighbouring Pormpuraaw community to enter an early release program based at an outstation Aboriginal correctional facility known as Baa's Yard located between Kowanyama and Pormpuraaw. It is a routine practice for Corrective Service officials to write to and await receipt of

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formal instructions and advice from the Kowanyama justice group about the timing, conditions and arrangements for release of inmates back into the Kowanyama community at the completion of their sentences or for other matters such as cultural leave to attend funerals. Those on parole who are allowed to re-enter the community are brought before the justice group, who advise the parolee of the terms and conditions of their parole (usually relating to instructions to refrain from drinking alcohol for a prescribed period) and remind the parolee of their broader responsibilities to the community. The authority of the justice group in these matters is demonstrated in the minutes of its meetings. I have seen records of advice to cancel the parole of an individual who failed to abstain from alcohol consumption after being allowed to re-enter the community.

### *Visits to inmates at correctional institutions*

Members of the Kowanyama justice group along with elders from other communities across Cape York Peninsula are actively involved in an Elders Education and Spiritual Healing program. Elders from the Kowanyama community undertake to visit Lotus Glen Correctional facility in Mareeba near Cairns to provide counselling, support and advice to Aboriginal inmates. The program has the full support of the Queensland Corrective Services Commission. It also serves to promote and reinforce the leadership role of Aboriginal community elders.

### *Use of outstation correctional facilities*

Whilst custody in the large State correctional facilities may not always be appropriate, there is a widespread conviction expressed by justice group members and the State police that there remains a basic need to remove offenders, particularly serious ones, from the community. Often this is in the best interests of the offenders, who may be subject to pay back and retaliatory action within the community. Nevertheless, because of the strong belief that jail does not serve as an adequate deterrent, all the players in the Kowanyama community, as well as some senior representatives of government are convinced that community outstation correctional facilities are the best option for the future. This possibility has been a matter of considerable deliberation in the justice group since September 1995. There are many difficult issues to resolve relating to funding, supervision, administration and so on, but this does appear to be the critical emerging issue for the administration of law and order issues on remote Aboriginal communities.

The merit of community-based measures is that they promote a stronger sense of community responsibility and ownership rather than leaving the problem to outside and distant impersonal government agencies. Furthermore, community responsibility can also promote an emphasis on rehabilitation, atonement and restitution to those aggrieved, and result in more effective sanctions.

*Links with the judiciary and Aboriginal magistrates courts*

Another broader function sought by the justice group is the making of recommendations for sentencing to visiting magistrates, and to Protective Services and Juvenile Justice officers from the Queensland Government. This practice is now widespread at Palm Island Aboriginal community off the east coast of Queensland near Townsville. However, visiting magistrates, who spend approximately one day per month in Court sessions at Kowanyama, have a wide discretion in choosing whether to consult with local communities about sentencing. When the Justice Group was established the magistrates showed little interest in their views. To consult or not remains the prerogative of the magistrate who is not subject to directives or influence in this regard from the Department of Justice and Attorney General. There is an opportunity open to persuade them of the benefits of this practice by reference to the practice at Palm Island and in the Family Law Court (Commonwealth jurisdiction). The latter now requires judges to consult with authority figures in Aboriginal communities about appropriate recommendations of the court in relation to child custody arrangements.<sup>12</sup>

A related recent move of the Kowanyama community is to work toward putting law and order by-laws in place, and training Aboriginal Justices of the Peace to serve as a Magistrate's Court.<sup>13</sup> The Queensland Government is currently providing Justice of the Peace training to residents in remote locations. Under new arrangements to suit remote communities, two trained Justices of the Peace can sit together to constitute a Magistrate's Court. They are empowered to hear a

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<sup>12</sup> The question of reform of court processes and practices is a separate though highly topical matter, especially following the contribution of the Chief Justice of the Family Court, Justice Nicholson, who has taken a strong public stance on Aboriginal customary law issues relating to family law. His views were outlined in his address to the Indigenous Customary Law Forum, Parliament House, Canberra on 18 October 1995.

<sup>13</sup> The Queensland Government in 1994 took the initiative of empowering Aboriginal Deed of Grant in Trust Communities to take specific roles and responsibilities for the development and administration of Council by-laws.

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range of offences and levy fines up to \$2500 or impose up to six months' imprisonment. Five current members of the Kowanyama justice group have received this training but have not yet exercised the role of Magistrate.

In addition to these functions, which Corrective Services encourages the justice group to perform, there are others which the group has undertaken.

*Conflict resolution and dispute mediation*

Another set of critical innovations pioneered by the Kowanyama justice group relate to preventative actions and mediation activities. These have evolved in response to changing community needs and the expectation that matters of conflict and dispute will be dealt with effectively before they get out of hand. These include:

- mediating disputes (domestic family and inter-family),
- curbing anti-social behaviour through the imposition of sanctions and curfews and asking people to leave the community,
- responding to complaints and requests for assistance from the community,
- responding to referrals from the police, and
- night patrols of the canteen areas and public places.

*Re-establishment of elder authority and local custom*

The justice group draws its authority from various sources. For some on the justice group it draws on traditional wisdom, for others on their links with Council (the current chair of the justice group being also the Chairperson of the Kowanyama Aboriginal Community Council). Others in turn draw authority from being recognised leaders or spokespersons for one of the three family or tribal groupings in the Kowanyama community. The trend of diminishing elder authority has been arrested following the establishment and operation of the justice group.

Those elders involved with the justice group whom I have met have disavowed any interest in a return to customary ways involving violence and the cycle of pay-back. They do not see local autonomy as involving these. Emphasis has instead been placed on identifying appropriate family responsibility for dealing with problems. The aim is for crimes and problems to be handled within the family and clan structures rather than by disinterested or inappropriate third

parties. I learnt that quite specific and subtle forms of control were exercised that accorded with local custom. These included avoiding people or not making them welcome at particular homes, forbidding access to the community canteen, and asking people to leave the community for varying periods of time. Reconciliation was furthered by bringing problems out into the open. Meetings and confrontations of adversaries were also used. Growling and shaming (public humiliation) promoted socially acceptable behaviour. Such methods have been operating particularly effectively in cases where parents and other adults have neglected family responsibilities of caring for the young and aged. Mothers who have abandoned their children in order to go to the canteen to drink and socialise have been required to go before the justice group. The humiliation this involves for the mother is said to result in a the desired changes in behaviour. Similar incidents involving the introduction of petrol sniffing practices and the supply of alcohol to children have also been countered with swift and effective responses from the justice group. In cases where losing face in the wider view of the community is feared, the prospect of being made to appear before the justice group to account for actions and hear its directives is proving to be a powerful deterrent. Campaigns aimed at protecting the youth are seen as especially important in breaking the cycle of alcohol, violence and crime that have been all too prevalent in the community over recent years.

#### *The focus on young people*

Young people are a central focus in the interventions of the Kowanyama justice group. An important aspect of the exercise of elder authority is that it is based on the genuine commitment of the justice group members to care for and provide leadership for the young people. They appear to be strongly motivated by a desire to reverse the consequences of the breakdown of elder and community authority which has been pervasively felt in the area of juvenile crime. Kowanyama police records indicate that, just prior to the establishment of the justice group, juvenile crime was extremely high with offences in the vicinity of 40-50 per month (Bimrose and Adams 1995: 41). The major offences committed by young people were break and enter and shoplifting. School truancy and under age drinking have also been issues. Accordingly, the justice group has introduced a range of measures focusing on young people, and in this area is achieving the most important results. Elders are gaining the respect of the new generation of young people who are again being brought to account for their actions in a forum of community scrutiny, accountability and retribution. There has been an astonishing reduction in juvenile crime in Kowanyama, with perhaps as few as 10 juvenile offenders requiring police attention over a two to three year period. So, what is the justice group doing to make such a difference?

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The focus on young people has included a range of initiatives. In conjunction with a recent police recruit to the Kowanyama community in 1992-93, who has displayed a strong personal commitment to effective policing and good community relations, the justice group introduced the 'kids and cops' program. This involved recruiting young people between the ages of 8 to 14 as honorary local police to assist the Police Constable in evening patrols to ensure the community was safe and secure. Young people donned the blue shirts with official police emblems and volunteered their time to work with the constable to make the community a safer place by checking that public buildings were locked and unsupervised children had something to do. Reward programs were introduced with holiday excursions to out of the way places organised as rewards for good behaviour. The police officer concerned, Constable Hiscox, explained that many of the younger ones actively involved in the program were those who were earlier offending. He argued that the program worked by giving them responsibility and incentives. A disappointing development has been the departure from the Police service of the constable as a result of poor relationships with other serving and superior officers who seemed to resent this closeness and commitment to the community.

Justice, crime prevention and community development have become inseparable. The emphasis on young people has prevailed with the justice group working closely with the Community Council to provide activities and support through the establishment of sport and recreational activities, the development of community infrastructure, such as swimming pools, a sporting field, additional football stadiums, a cricket pitch, and reward camps, and the purchase of a community bus for outside excursions. A major achievement in 1996 was a community campaign to sponsor the Kowanyama Taipans touch football team which won an international football tournament in Fiji.

*The involvement of the whole community in policies for young people*

The justice group has also linked with other community bodies and protagonists to improve the prospects for young people. As particular issues of concern have emerged the justice group has initiated community wide meetings and urged community wide responses. One example was the calling of a community meeting to deal with the problem of school attendance, at which the school community, the police, Kowanyama Council, the Police and the justice group were all represented. This was in response to a request for assistance from the school principal. The meeting resolved on a number of actions to deal with the problem of poor attendance at school, and was followed by an active campaign to ensure young people left for and arrived at school each day. Resolutions recorded in the justice group minutes were: to fine parents \$50 if they failed to get their children

to school; to prohibit sales in the general store to children in school hours; and to involve the justice group in herding children back to school.

The justice group undertook to monitor attendance. It assists school liaison officers in making sure young people arrive and stay at school. Negotiations with the manager of the community store are undertaken to ensure refusal of service to young people during school hours.

Another school-based measure was the 'adopt an elder initiative'. This has been implemented to involve elders from the community in classes at the Kowanyama school. The elders provide direction and support to the school as well as participating in teaching about matters relating to culture and appropriate behaviour. The school community in turn responded to the justice group's initiative and consequently received an invitation for a permanent representative to sit on the Kowanyama School Education Committee.

#### *Police and justice group relations*

In October 1995, in the interests of encouraging better relations with the police, the justice group resolved to invite the State police officers to attend the general business sections of weekly meetings. This initiative aimed to facilitate closer collaboration and information exchange between the two bodies. The legacy of community distrust of and poor relations with State police begins to be turned around in late 1995. That was the time of the arrival of a new Police Sergeant with a strong record in dealing with Aboriginal communities having been previously placed at the Aboriginal community in Cohen. Following the establishment of a better relationship with the Police, matters of a minor nature have been referred by the police back to the justice group for action and resolution.

Policing practice in remote Aboriginal communities in Queensland is now guided by specific strategies and policy guidelines (Queensland Government 1995-96: 299-300). In a population which consists primarily of Aboriginal and Torres Strait Islander people, the guidelines provide for the provision of appropriate policing services informed by strategies of working closely with the communities to address community problems and establish crime prevention protocols, and specific training of Police personnel to prepare them for service in remote areas. This extends earlier established practice of employing local Aboriginal residents as community police. The State Police service has recently appointed an Aboriginal State police officer to Kowanyama. The performance indicators for this remote area policing strategy refer to enhancing community safety, improving police-community communication, and increasing the number of non-arrest/non-

custodial interactions between community residents and the police (Queensland Government 1995-96: 299-300).

As a consequence, more appropriate and better informed policing strategies have now been implemented. There is a greater preparedness to work with the community, to ask people for ideas about how problems should be sorted out, and to help people to save face by dealing with matters in a confidential and culturally sensitive way. Proactive policing campaigns have also been introduced aimed at curbing alcohol-related public disorder, increasing foot patrols and entering the canteen area. Police are also applying planned objectives and strategies aimed at managing and reducing the fear of personal violence. This includes targeting high risk times corresponding with high use times of the canteen, and participating in public meetings involving the Council and the justice group aimed at dealing with alcohol related violence.

#### *Relations with other government agencies*

There is a great deal of pride and conviction about the autonomy and credibility of the Kowanyama justice group stemming from its self-reliant experience in establishment, development and expansion of its functions and roles. I noted with considerable irony a letter sent late in 1996 to the community from the Queensland Government inviting applications for funding assistance to establish a justice group in Kowanyama when such a group had already existed since April 1993. The point is that, apart from seeding monies for consultant support in planning for the justice group, the Kowanyama community has made its own way in establishing this innovative and successful program.

Members of the Kowanyama justice group are indeed wary of close government involvement. There is a perception that close government scrutiny, particularly from welfare oriented departments, might lead to the curtailment of local customs and practices which are producing beneficial outcomes. The justice group is particularly sensitive to close scrutiny from child welfare agencies which may not support the measures the justice group feels appropriate in managing the behaviour of young people.

#### **Evaluation of the Operation of the Kowanyama Justice Group**

Acknowledgment of the successes of the Kowanyama justice group was marked in 1995 by the *Australian Violence Prevention Award* when the Australian Heads of Government issued the justice group a Certificate of Merit for its work. The

efforts of the Kowanyama justice group were also acknowledged in a special radio broadcast program produced by the Office of the Commissioner for Aboriginal and Torres Strait Islander Social Justice on the subject of Aboriginal Community Justice and Mediation. Program II in the series: *Bringing Them Up the Proper Way: Aboriginal Justice and Kids*, made special reference to the justice group model at Kowanyama.

There have been across the board impacts on law and order and justice issues in the Kowanyama community as a result of the activities of the justice group. These are reflected in the crime rates, especially in the dramatic decline in juvenile offences since the establishment of the justice group in March 1994. These are summarised in the following table.

*Table 1: Decline in Juvenile Offences*

No. of offences per month:

Pre-March 1994 - 40-50

March-November 1994 - nil

December 1994-March 1995 - 2

March 1995-December 1996 - n/a

January-July 1997 - 3

Figures for 1993-1994 are derived from Bimrose and Adams (1995: 40-41). I have gathered the data for 1996-1997 on the same basis as Bimrose and Adams by accessing local records and charge sheets from the Kowanyama Police service. I am grateful for the cooperation of the Kowanyama Police service.

The Kowanyama police statistics reveal other significant decreases in adult crime levels (Adams and Bimrose 1995: 37, 40). For example, for the period 1 October 1993 to 1 October 1994 there was an 82% decrease in break and enter charges (from 207 to 37), a 91% decrease in stealing, a 68% decrease in assault and an 83% decrease in domestic violence applications.

Police officers at Kowanyama suggest that 1995 was a period of dramatic improvement with more modest changes occurring in the period up to July 1997. Improvements are apparent in the period 1996-7. The Police report general downward trends in the areas of firearms, break and enters and theft. Other areas

are less clear cut. In first six months of 1996 trends in Police charges featured 7% decrease in property offences, 50% decrease in stealing and 25% decrease in break and enter offences. Break and enter offences involving the general store declined dramatically (100%), reflecting the implementation of the policy of barring of children in school hours. However, wilful damage offences increased by 67% and cases of assault by 51%. These increases have been linked by the Kowanyama Police to the advent of extended trading hours, confirming that alcohol-related violence remains the single biggest continuing law and order problem in the community. There has also been a marked increase in traffic offences, a 44% increase in drink driving and 108% in all traffic offences. This increase reflects a local police campaign to target drink driving offences. In the second half of 1996, reports and cases of assault fell by 24%. Dramatic change occurred in the area of property offences in 1996-7 with an overall reduction of 40% in the number of offences, a 36% decline in break and enter charges, 58% decline in cases of wilful damage and 80% decline in sexual assault and rape (Kowanyama Police Statistics).

A factor noted by the Police is that the decline in property offences may be largely attributable to the incarceration of repeat offenders. An assessment of the justice group's achievements needs to be tempered with the realisation that a range of circumstances can affect the rate of crime. It has already been noted that the incidence of crime can be affected by the onset of the rainy season when reduced opportunities for recreation, outlets and escape from the community are limited because of impassable roads. This suggests that the pattern of crime may be cyclical, and declines in rates are not necessarily solely attributable to the operation of the justice group. Its activities do not at this time cut across police responsibilities for major offences. The police choose to refer minor matters to the justice group but do not see it as having a role in matters of a serious criminal nature. Table 2 groups some of the major categories of offences to establish longer range trends following the establishment of the justice group. There are dramatic improvements in offences against property and noticeably less dramatic improvements in the area of offences against the person.

Broader theoretical and empirical studies on the ambiguities of local justice sensitise us to the need for realism in assessing its limits and possibilities. These insights can be usefully applied in seeking a balanced assessment of the Kowanyama experience. It is apparent that Kowanyama is now a safer community than it was in 1993. The incidence of crime is lower and the capacity of the community to resolve problems before they become greater has been well established. However, a complete reversal of fortune in Kowanyama has not eventuated. The high incidence of personal assaults and alcohol related violence are continuing problems that have not been amenable to control by the justice

group. Alcohol use and sale is a major stumbling block. Here the potential for a conflict of interest exists, since profits from the sale of alcohol are reported to provide the Community Council with annual revenues approximating \$1.5 million. Several members of the justice group are members of the Kowanyama Council, and it has been suggested by the Community Development Officer that sly grogging is a wide-spread practice that neither the justice group nor Council wishes to confront. Results in other areas need to be assessed in the realisation that some of the major repeat offenders are currently in jail.

*Table 2: Kowanyama Police Statistics Before and After Establishment of Justice Group*

| Offence                        | 1/1/93-<br>1/10/93 | 1/1/94-<br>1/10/94 | 1/1/96-<br>30/6/96 | 1/7/96-<br>31/12/96 |
|--------------------------------|--------------------|--------------------|--------------------|---------------------|
| Break and enter                | 207                | 37                 | 15                 | 10                  |
| Stealing                       | 123                | 11                 | 20                 | 12                  |
| Property offences              | 17                 | 92                 | n/a                | n/a                 |
| Offences against Person        | 47                 | 31                 | 42                 | 33                  |
| Rape                           | 1                  | 3                  | 6                  | 2                   |
| Domestic violence applications | 6                  | 11                 | n/a                | n/a                 |

Notes: Offences against person includes assault, unlawful wounding and grievous bodily harm. There is no record of any cases of murder in the periods included. Sources: As for Table 1 above.

The Kowanyama justice group has demonstrated a greater potential in other areas, notably in dealing with juveniles, intervening in family and community disputes before they get out of hand, and working collaboratively with Council to improve opportunities and quality of life within the community. This supports Abel's argument on the scope of informal justice options, which he says work best in relation to dealings with young people and with family disputes (Abel 1982: 272-3). In reference to research undertaken by the Glucks in the 1950s, Abel contends that progressive and early intervention with juveniles can prevent the slide into

criminal behaviour and recidivism (Abel 1982: 272). Similar claims are made about family conflicts where formal institutions generally intervene too late to make a difference (Abel 1982: 273). In Kowanyama the justice group is seen by community members as a body which they can approach for advice and intervention in family matters. Mediation and dispute resolution are part of the regular functions undertaken by the justice group.

The establishment of the justice group provides an opportunity for a better articulation between the community and the formal justice agencies and officials working in the community. Substantial progress has been made in community corrections and with the local police. A better relationship with the judiciary is yet to be realised but remains an area of possible improvement with the impending institution of Aboriginal Magistrate Courts in the community and some recognition of the role and authority of the justice group on the part of visiting magistrates. The potential for progress is demonstrated in this regard by the significant developments at the Aboriginal community of Palm Island, where the receipt of pre-sentencing reports from its justice group is now a regular part of court procedure. Other changes have resulted from more enlightened policing strategies, and a preparedness on the part of Corrective Services to rely on the justice group's judgement in dealing with matters of parole and in supervising community service orders.

#### Aboriginal Local Justice and Formal State Law

The Kowanyama Community Council and the justice group are alive to the potential for their principles and practices to form the basis of a separate system of Aboriginal law (Kowanyama Council press release following the Customary Law Conference in Kowanyama 7-11 July 1997). Such a prospect is clearly denied by the statements of the local police service and visiting magistrates. Their conviction is that there can be only one system of law in Australia. The juvenile justice agency in the Queensland Government has also argued that is not possible for Aboriginal law to operate is so far as matters of confidentiality and due process are enshrined in the *Juvenile Justice Act 1992*. Their view is that the scope of Aboriginal justice bodies must be restricted to advisory functions (Bimrose and Adams 1995: 58). Yet at Kowanyama local Aboriginal conceptions of authority are affecting children and are producing socially responsible behaviour in ways that the juvenile justice system could never achieve. Aboriginal practices of shaming and public humiliation and some cases of physical punishment occur and achieve their desired results.

The issue of the legal standing and authority of the justice groups reflects the dilemmas involved in working out the scope and boundaries of legitimate action. A conflict has already emerged as mainstream agencies and legal processes seek to use justice groups as a tool to achieve closer incorporation of communities into mainstream legal processes and institutions. This is a particularly significant issue as the Queensland Government seeks to take broader responsibility for the promotion and expansion of the justice group model through the Local Justice Initiatives Program.

Not surprisingly, the Yalga-binbi review argued for optimal autonomy for the justice groups. The review found that:

Justice group members are of the view that their actions are necessary for the effective application of Aboriginal law for social control and justice. Partial legitimisation by European law is likely to undermine the very structures, processes and principles perceived by many to be the key to the groups' effectiveness (Bimrose and Adams 1995: 3).

This line of argument is antithetical to the program objectives developed for the Local Justice Initiatives Program. The guidelines state that the objective is to "increase Aboriginal and Torres Strait Islander communities' knowledge and skills related to the mainstream justice system" (Queensland Government 1996: 6). The distinctly assimilationist tones contained in this program description, together with the shift of program responsibility to the Office of Aboriginal and Torres Strait Islander Affairs, gives rise to a risk that the program models for justice groups pioneered at Palm Island and Kowanyama may be compromised. Indignation has been expressed by the Aboriginal and Torres Strait Islander Commissioner at the threat to Aboriginal autonomy posed by the integrationist policy orientations of Australian governments. Dodson protests:

Is the status of our [Aboriginal] culture to be scrutinised in the name of another culture's priorities? Is our survival as peoples to be decided at the whim of another culture? (Dodson 1996: 7)

The Kowanyama case demonstrates that there is an opportunity for a balance or reconciliation of local and state institutions, informal and formal law, in remote Aboriginal communities. This was foreseen by Sheppard who notes that:

Community justice schemes incorporate a wide variety of initiatives which may be useful to communities in dealing with crime and associated problems. These might involve purely traditional ways of settling disputes. Or they could be established

formally as in the case of community courts in the non-indigenous sense of courts incorporating innovative procedures including mediation and negotiation. Community justice schemes could also incorporate community policing, night patrols, diversion of people from criminal justice systems and reliance on community authority structures such as elders' councils (Sheppard 1994: 10).

The Kowanyama justice group model shows that local conceptions of law and good process can be observed and justice and social order issues managed with controlling input from the community. Furthermore, it represents a broadening of mainstream justice through the introduction of methods of mediation, dispute resolution and crime prevention inspired by indigenous practice and tradition. Indeed, this model provides for mechanisms and processes developed by indigenous Australians from which the wider Australian community can learn and develop.

This is not simply a matter of replacing state laws with local practices, which is neither desired nor conceivable, but of introducing alternative and complementary mechanisms and allowing the community some autonomy and discretion without the intrusive monitoring of external agencies. What is occurring at Kowanyama is well conceptualised by Bimrose and Adams:

The groups have applied or accessed those processes and structures of the legal system they find useful and they have adapted practices and processes of Aboriginal Law to contemporary community contexts. Yet it is not simply a synthesis of the two laws... it goes further. It is about recognising that there are two laws: Aboriginal Law with its rules processes and principles for keeping social order and settling disputes and European law with its codified laws, legal systems, law enforcement and community corrections agencies. The justice groups believe it is about finding ways for these two systems to co-exist. (Bimrose and Adams 1995: 59)

There is now growing support for the opening of further opportunities for Aboriginal self-management in the justice system. The view of Michael Dodson, the Aboriginal and Torres Strait Islander Social Justice Commissioner, is that:

the role of our [Aboriginal] laws in the resolution of disputes and the maintenance of social control is a real option. They exist and they are alive with the potential to assist where nothing else

seems to work. (Dodson 1996: 5)

## Conclusion

The diversity and integrity of the measures introduced at Kowanyama suggests that the model goes well beyond a simple advocacy of a return to 'Aboriginal ways' whose exponents, Depew warns us, often make unrealistic extrapolations, and naive and overly general assumptions about 'Aboriginal culture' (Depew 1996: 49). Depew's important exhortation is to the effect that debates and theorising about future directions in Aboriginal local justice should go further and be attuned to the complex realities of indigenous communities. This study of the Kowanyama experience shows how a carefully managed consultation process and community involvement in all stages in the development and operation of alternative justice arrangements can provide workable options. The justice group model at Kowanyama provides a mechanism for community control and input: it shows that it is possible for the community to have its say in the administration of justice, and its prescriptions and recommendations are contributing to broader community development processes that are making Kowanyama a safer and better place to live.

The justice group at Kowanyama is a promising case of self-management achieved with minimal assistance from government, and in many respects without much awareness on the part of government. Ironically, this may in fact be one of the model's greatest strengths. My hope is that, with the opportunities for the extension of the justice group model to other communities, government funding now being available, others will be mindful of the strengths of the Kowanyama justice group based on community ownership, control and autonomy. The significant challenge for the bureaucrats and politicians who oversee this area of program development is to avoid reverting to the familiar habits of seeking to control, incorporate and assimilate. This challenge was well appreciated by Coombs, whose study of the options for Aboriginal autonomy calls into question:

the insistence in our policies towards Aborigines that their future requires that they abandon their Aboriginal way of life and actively seek to become assimilated into our industrial, urbanised society, accepting its work ethic and related values, acquiring its skills and ceasing to exist in any significant sense as a distinct people within Australian society. (Coombs 1994: 5)

The test in this instance is whether the Queensland Government can offer useful support for local initiatives rather than seeking to reorient communities toward acceptance of existing mainstream legal processes and institutions. The latter strategy flies against the whole thrust of the international current of reform in indigenous affairs toward respect and acknowledgment of cultural difference and

diversity and of the capacity of indigenous peoples to manage their own affairs.<sup>14</sup> Government agencies and employees who deal with indigenous communities directly are challenged to give such support and recognition. To do so would be both a matter of common sense and an effective and efficient way of dealing with justice and rehabilitation.<sup>15</sup>

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<sup>14</sup> In the areas of international law and human rights there is increasing emphasis on the recognition of customary laws and practices as a matter of basic human rights. The draft *UN Declaration on Indigenous Rights* affirms the right of indigenous people to have their customs and practices recognised by the governments and laws of a given country. Article 33 of the draft Declaration reads:

Indigenous people have the right to promote, develop and maintain their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognised human rights instruments (Reprinted in Dodson 1994, Appendix 4: 256).

The International Labour Organisation approaches the question of the recognition of customary laws more directly. The *Convention on Indigenous and Tribal Peoples in Independent Countries* (ILO Convention 169 of 1989), Article 8 reads as follows:

In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws. These people shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, wherever necessary, to resolve conflicts which may arise in the application of this principle.... (cited in Dodson 1994, Appendix 4: 228-241).

<sup>15</sup> An area of continuing concern will be to monitor the integration of local justice initiatives with the broader operation of other government law and justice agencies, and to promote the acceptance by these agencies of the aims and operation of the justice groups. Local initiative will be thwarted by unresponsive and unsupportive

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government, as at Echo Island in the Northern Territory in the 1980s. There is also a risk of politicisation of the program if government succumbs to the temptation to demonstrate quick results on law and order. It is already apparent that funds made available to support local justice initiatives have been used as non-recurrent grants to support the provision of infrastructure and youth camp programs on an ad hoc basis. Whilst these are worthwhile endeavours, they only indirectly facilitate greater community control or the capacity for effective management of local problems.

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