

TASKFORCE SUB-COMMITTEE: ABORIGINAL WOMEN AND THE LAW

RECOMMENDATIONS

1. There be established a Permanent Committee with some members being judicial officers (one from the Supreme Court) to monitor the operation of the courts as they affect Aboriginal people and to work in with the proposed Aboriginal Justice Advisory Committee. On the committee should be an equal proportion of Aboriginal women and men.
2. More Aboriginal women Justices of the Peace be appointed to courts where there are a considerable number of Aboriginal women defendants, subject to the general limitation that only Magistrates and Judges should be able to impose imprisonment.
3. Efforts be made to increase the numbers of Aboriginal lawyers and other persons to represent Aboriginal persons in courts and to increase legal positions and the number of women as para-legals (including at private firms); also the education and quality of service of legal representation for Aboriginal women by the provision of specific courses at Universities and at post-graduate level.
4. Aboriginal women be placed in court offices at all levels (including as support and resource persons) in particular where Aboriginal women are involved in court proceedings and processes. All court staff be given ongoing cultural awareness training.
5. All Justices of the Peace and other judicial officers attend cross-cultural awareness courses which include information as to the rights of Aboriginal women in Aboriginal society, otherwise the judicial officers not be allowed to sentence aboriginal women defendants. Aboriginal women be consulted as to the content and conduct of these courses.
6. Appropriate Aboriginal advisors be consulted by judicial officers on matters relating to culture where that is relevant - e.g. on questions of penalty.
7. Aboriginal persons (including counsellors) be available for Aboriginal women to discuss legal processes with, before they get to court. The Aboriginal Legal Service be given more personnel, funds and organisation to assist with the problems of Aboriginal women.

8. All service providers be required to provide information (including visual), which is meaningful to Aboriginal women in the appropriate Aboriginal language.
9. All prosecutors (police and DPP) attend more extensive cross-cultural awareness courses and other training courses (eg as to the availability of support structures) to make them aware of victims' rights and needs. Aboriginal women be employed as lecturers.
10. Appropriate child-care facilities be made available at all courts.
11. More appropriate penalties and/or remedies be imposed on Aboriginal men who have committed crimes of violence, particularly serious crimes against Aboriginal women; penalties that better reflect the seriousness of such offences.
12. Court processes be taught in all schools, commencing in upper primary, in order that people can know how the system can help them.
13. The courts and the criminal justice system in Western Australia recognize and acknowledge that there is a need to incorporate Alternative Dispute Resolution processes into the resolution of disputes which involve Aboriginal people.
14. A Permanent Committee be appointed, to be comprised of equal numbers of Aboriginal men and women from a broad spectrum of the community to be chaired by a Judge to follow up and implement the recommendations number 15-21 (following).
15. Aboriginal community based panels of key women be appointed by the communities to be part of the Justice Ministry - but supervised by Aboriginal persons within the Ministry - to assist in the apprehension and control of offenders against women and children. The panels to have the responsibility of laying charges, whether or not there are complaints received from the victims, with the power to make recommendations to the courts concerning the disposition of the matters - for example, cautions and appropriate counselling.
16. Properly remunerated Aboriginal women counsellors be appointed, funded by the Ministry of Justice and Department of Community Development, Health Department and all other Government Departments relevant to Aboriginal people to counsel women who have been assaulted.
17. A review of the system of restraining orders be undertaken - see the separate report on this subject.
18. Aboriginal women educators be appointed to go into the field and educate women through community based programmes concerning sexual abuse and family violence.

19. Further funding be provided to increase community policing by Aboriginal persons - including patrols within the communities.
20. Safe places be established for the protection of women and children victims of assault to be funded by the Commonwealth.
21. Shire offices be involved to assist victims of violence - also with remedial measures - e.g. safe houses; work for offenders.
22. Greater efforts be made by government departments to ensure that information on legal issues and the rights of Aboriginal women are produced and accessed by Aboriginal women.
23. The ability of non-Aboriginal persons to represent Aboriginal clients be improved so as to increase the trust and willingness of Aboriginal persons to access such services. This be done within law schools as well as via the provision of specific courses at post-graduate (continuing legal education) level.
24. More resources be made available to the Aboriginal Legal Service for the creation of a separate women's issues unit within the Service to enable the ALS to better serve the needs of Aboriginal women; also for an "after hours" crisis service.
25. A separate Aboriginal Women's Legal Service be established in order to overcome the conflict of interest situations which prevent the ALS from acting for Aboriginal women and to fully serve the legal needs of Aboriginal women.
26. The Courts of Petty Sessions identify restraining orders to be served on Aboriginal people and have these Orders directed to the Aboriginal Affairs Unit of the WA Police Force (where that Unit is available), so they can be served in the most expedient manner possible.
27. The Police Department require officers in charge to direct any orders that non-Aboriginal officers are having difficulty in serving on Aboriginal persons to the Unit (where practical). Further, if an Aboriginal police aide is attached to a station, that he/she be recognised as the most appropriate officer for this task - "with support".
28. Court services and/or the Police Department develop a strategy to better inform those people going through the process of obtaining restraining orders of the realities and practicalities of the steps of the process, in order to minimise the trauma which can result from a complete lack of knowledge or understanding of these processes.
29. Court services and the Police Department give more credence to expressed concerns by Aboriginal people concerning their personal safety when having to attend court.

30. The reality of Aboriginal inter-family conflict be taken into account. If a person feels the need to be protected from a family group, there be provision for this without that person having to initiate separate actions.
31. There be far more care taken in explaining the conditions and default provisions concerning bail to Aboriginal women. They often do not fully understand the consequences of default. The bail legislation be amended to provide a discretion in the court whether to order forfeiture of bail.
32. There be a review of the whole system of fines and default of payment of fines and the replacement of fines where practical by culturally appropriate sentencing options e.g. work orders to be performed with Aboriginal organisations.
33. When fines are imposed the courts take more account of the ability of the offender to pay the fine e.g. if the offender's only source of income is social service payments, is a fine ever appropriate? Query the effect of a fine on the provision of necessities for the offender's children.
34. A new system of dealing with fine defaulters be established - e.g. a muster day at each local authority for the assignment of appropriate tasks.
35. Panels of Aboriginal persons associated with the Justice Ministry be appointed to assist with the supervision of female Aboriginal offenders.
36. More Aboriginal women be appointed as police officers (not police-aides). There be a full police training facility established in the Kimberleys.
37. An education unit be established to educate Aboriginal people as to why women are appointed as police officers.
38. When Aboriginal women are appointed to the police force efforts be made by the Department to support them in their positions as they are often subjected to extra pressures within and without the Department.
39. Better cross-cultural awareness education be instituted for all serving police officers to be assessed in the same way as other components of their courses.
40. More extensive police promotion and training programs be established to reflect Aboriginal issues in all their components and satisfactory completion of these programs be required before promotion is recommended.

41. Police officers be given more training to deal with cases of violence toward, and sexual abuse of, Aboriginal women and girls. The training be directed at giving victims supportive, sympathetic and culturally appropriate treatment.
42. The Police Department develop mechanisms for ensuring that only police officers suited to work with Aboriginal people are posted to locations with substantial Aboriginal populations.
43. The Police Department more closely examine the needs of Aboriginal women in remote communities for police services and develop a strategy towards improving service delivery to such women and communities.
44. Victims of sexual abuse be referred as quickly as possible by police to an appropriate helping agency such as Aboriginal Women's Refuges or the Sexual Assault Referral Centres which agencies should have Aboriginal women on staff.
45. There be proper procedures instituted to ensure that the young children of women who are detained or arrested are properly cared for while their mothers are away. There be no night-time apprehension of women with young children unless it is absolutely necessary.
46. Police officers do their best to ensure that the bail reporting conditions of women with children are the least disruptive to the children as possible.
47. Police officers do their best to ensure that bail conditions do not unnecessarily disadvantage women with little property and no sureties.
48. The Equal Opportunity Act be amended to allow for alternative methods of complaint (e.g. verbal) and pursuit of grievances, which are more accessible to Aboriginal women. The Aboriginal Legal Service and police officers be encouraged to instigate inquiries and pursue complaints on behalf of aggrieved persons and refer such complaints, where appropriate, to the Equal Opportunity Commission. Extra resources be allocated to the Aboriginal Legal Service to cover this area.
49. There be specific rules in police manuals and in courses concerning the above matters.
50. There be appropriate screening of offending police officers.
51. The recommendations of the Royal Commission into Aboriginal Deaths in Custody be fully implemented as a matter of urgency, especially those recommendations that have particular impact on Aboriginal women.

TASKFORCE SUB-COMMITTEE: ABORIGINAL WOMEN AND THE LAW

INTRODUCTION

52. This section of the report focuses on the experiences of Aboriginal women of the law. The Taskforce notes that neither gender nor race alone can fully account for the experiences which Aboriginal women face before the law, in whatever area. As women they are expected to inhabit the 'private sphere' that all women -- Aboriginal and non-Aboriginal -- are expected to inhabit. The legal system is reluctant to interfere in this private sphere and, as a result, leaves many women without the service that they require and should be entitled to. However, Aboriginal women also face problems additional to those faced by non-Aboriginal women. As Aboriginal persons they also experience problems due to racism which other women do not face. An additional factor that affects the relationship between Aboriginal women and the law is socio-economic position. Aboriginal women are often in lower socio-economic positions than many other persons in society, including other women. The experiences of Aboriginal women must thereby be considered in light of these wider considerations -- that they may be triply denied power under and before the law -- and thus any attempt to remedy these inequities has to look at a broader range of underlying causes than those focussed on in respect of the rest of the Taskforce Report in respect of women in general.

53. The task of evaluating the experiences of Aboriginal women under the law is a large one. The topics that could be covered range from civil to criminal law; Aboriginal women as offenders; offendees; as care-givers and persons affected by the operation of the criminal justice system on close relatives; the laws themselves as well as their operation; and access to knowledge about those laws and to the legal system itself. In the time available the Taskforce could not cover every relevant consideration and so focused on matters that were of particular concern to Aboriginal women.

54. The Sub-Committee on Aboriginal Women included a majority of Aboriginal women members; further, the Sub-Committee consulted additional Aboriginal women about matters of particular concern (a list of people who attended meetings and were consulted is appended). The Sub-Committee made drafts of its report widely available to Aboriginal people, distributing them throughout Western Australia through individual Committee members and attendees, through the Aboriginal Affairs Planning Authority and the Aboriginal Legal Service. The Sub-Committee endeavoured to get as wide a feedback, from as wide a range of

Aboriginal women as possible, both in order to recognise that Aboriginal women are those who best know what their particular concerns are, as well as to recognise that experiences among Aboriginal women vary widely, especially between women in the more remote communities and those in the metropolitan areas.

55. In addition to direct and indirect consultation, the Sub-Committee considered various data, reports and articles written about the experiences of Aboriginal women and other Aboriginal persons under the law. The Sub-Committee notes, with concern, that there is a dearth of readily available official information concerning Aboriginal women. It is clear from the UWA Crime Research Center statistical reports, for example, that Aboriginal women are even more grossly represented in the criminal justice system than Aboriginal men, yet even these reports do not provide adequate statistical information on the positions and experiences of Aboriginal women. This kind of information is not produced publicly by government agencies. This is of concern because the Sub-Committee considers that proper study does and will reveal the disadvantaged positions of Aboriginal women compared with both other Aboriginal and non-Aboriginal persons. But it is only with full and proper information that the full extent of the problems can be properly repealed.

56. Despite this, information does exist in more detail than is provided in this report. It exists in relation to both problems experienced and suggested reforms. That information is not simply repeated here. This report briefly summarises some of the problems experienced and concentrates more on practical measures that can be implemented in order to overcome the problems identified. As noted above, the problems identified are those which the Aboriginal women consulted felt were of particular importance for the Sub-Committee to address. Readers are directed to the further reports that the Sub-Committee considered, such as: ALRC, Equality Before the Law: Women's Access to the Legal System (1994); National Committee to Defend Black Rights, Miscarriages of Justice in Australia: Aboriginal Girls and Women (1992); Allbrook Cattalini Research, Report to the Office of the Family on Domestic Violence: Special Needs of Aboriginal Women Living in Aboriginal Communities (1992); Audrey Bolger, Aboriginal Women and Violence (1991); Equal Opportunity Commission, Review of Police Practices (1990); NSW Women's Co-ordination Unit, Aboriginal Women and the Law; and the Crime Research Centre (UWA), Crime and Justice Statistics for Western Australia: Annual Reports.

Recommendation

57. The Taskforce endorses the findings and recommendations of these reports and recommends that their recommendations be implemented as a matter of urgency.

REPORT OF THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

58. The Royal Commission's Report does not aim to focus on measures to resolve problems faced by Aboriginal women in particular. However, the deaths of 11 Aboriginal women were investigated by the Commission and, further, its recommendations are of relevance to Aboriginal women. The Taskforce notes that, in relation to the deaths of the Aboriginal women in particular, most of the deaths were found to result from insufficient attention being paid by police to health problems suffered by the women at the time of arrest or incarceration. Further, it was reported that many of the women were incarcerated because it was thought to be "for their own good". While many of the background social factors that led to the health problems of those women or to their offending are beyond the scope of this report, the Taskforce endorses the Royal Commission's findings that these much wider issues, as well as the larger question of self-government and self-determination, must be addressed before the representation of Aboriginal women in the criminal justice system and their experiences of the law can be improved.

59. Recommendations of the Royal Commission that the Taskforce considers are of particular importance to Aboriginal women include those concerning adequacy of information (41-47), social, cultural and health factors (48-57, 63-76, 246-271, 321-327), relations with police (60-61, 222-225), young people (62, 72, 234-245), diversion from custody (79-121), care while in custody (122-167), community policing (214-220), police complaint procedures (226), and police aides (233).

Recommendation

60. That the recommendations of the RCIADIC be fully implemented as a matter of urgency, especially those recommendations that have particular impact on Aboriginal women.

THIS REPORT

61. There is not one group of people of Aboriginal background who all have the same beliefs. Further Aboriginal people often have different cultural and spiritual values to other non-Aboriginal people.

62. Remote communities have special needs. These should be further investigated with the proposed committees consulting with particular communities.

63. There is at present not enough support within the justice system for Aboriginal women who are victims of offences or witnesses. This places unnecessary pressures, not only on women but on Aboriginal people in general. It is compounded by their lack of understanding of their legal and civil rights. The language used in courts is something that many Aboriginal people have difficulty in understanding. This often leads to confusion.

64. Some Aboriginal women who are the victims of family violence, face the legal system with little or no knowledge of what they are about to encounter, eg when appearing in court as the victim of an assault by a husband or de facto. This adds to the sense of powerlessness which Aboriginal women face as part of their daily lives. They are often confronted with a system which is totally foreign to them. The court procedure is often time-consuming and complicated. It is European based. The issue of cultural differences is not recognised by many agencies associated with the justice system.

65. On many occasions there has been difficulty experienced by Aboriginal women in their attempts to make applications for restraining orders. Aboriginal women need to be employed in the courts in this connection. Even the simple process of making payment of a fine is often met with indifferent service from the staff at courthouses in the way they deal with Aboriginal persons.

66. Staff at courts often have none or little knowledge of the cultural differences and issues which affect Aboriginal women. Therefore access to agencies within the criminal justice system is not being utilised by Aboriginal women. Another problem is the courthouse itself. This is seen to be a place where Aboriginal people are sentenced to gaol. Justice system agencies are often situated in the same building.

67. The courts themselves are often overcrowded with small waiting rooms (if any) which do not cater for Aboriginal women who often have a number of children of pre-school age. This makes it difficult for a woman to appear in the court and tends to put her at a disadvantage within that court. That disadvantage may unwittingly influence the Magistrate, Justices of the Peace, bench clerk, prosecutor, or court orderly in how they approach the matter.

68. In the courts there is often stereotyping concerning Aboriginal people - unconscious bias - resulting in:

1. An inappropriate attitude and lack of understanding on the part of judicial officers to Aboriginal victims of assaults.
2. An inappropriate reliance on "customary attitudes" - eg rape not as serious as in some other cases; accused has lost his "culture", etc.

3. Some Aboriginal men receiving lesser penalties than others for crimes of violence, particularly serious crimes of violence against women.
4. Some Aboriginal women receiving more severe penalties than other women for some charges.
5. An inappropriate attitude and lack of understanding on the part of prosecutors and other persons in the court process toward Aboriginal women.

69. Additionally to the above, some Aboriginal women have difficulties with the language and other culture difficulties with courts - they often do not understand what is going on or the aim of the process. Some Aboriginal women do not have the finance or the know-how to activate court process.

Recommendations

70. There be established a Permanent Committee with some members being judicial officers (one from the Supreme Court) to monitor the operation of the courts as they affect Aboriginal people and to work in with the proposed Aboriginal Justice Advisory Committee. On the committee should be an equal proportion of Aboriginal women and men. Aboriginal women are not being anywhere near enough protected by the judicial system, directly and indirectly. The Committee should include persons from the Aboriginal Unit of the Ministry of Justice, the Aboriginal Legal Service and people from the different parts of the State.

71. More Aboriginal women Justices of the Peace be appointed to courts where there are a considerable number of Aboriginal women defendants, subject to the general limitation that only Magistrates and Judges should be able to impose imprisonment.

72. Efforts be made to increase the numbers of Aboriginal women as lawyers. There are only two at the present time in Western Australia. Aboriginal Legal Service scholarships and other methods should be supported to achieve this. Currently there are six cadetships available in private firms in this State. There are 14 Aboriginal women at law schools in Western Australia.

Other efforts should be made to increase the numbers of Aboriginal lawyers and other persons to represent Aboriginal persons in courts and to increase legal positions and the number of women as para-legals (including at private firms); also the education and quality of service of legal representation for Aboriginal women by the provision of specific courses at Universities and at post-graduate level.

73. Aboriginal women be placed in court offices at all levels (including as support and resource persons) in particular where Aboriginal women are involved in court proceedings and processes. All court staff be given ongoing cultural awareness training.
74. All Justices of the Peace and other judicial officers attend cross-cultural awareness courses which include information as to the rights of Aboriginal women in Aboriginal society, otherwise the judicial officers not be allowed to sentence Aboriginal women defendants. Aboriginal women be consulted as to the content and conduct of these courses.
75. Appropriate Aboriginal advisors be consulted by judicial officers on matters relating to culture where that is relevant - e.g. on questions of penalty.
76. Aboriginal persons (including counsellors) be available for Aboriginal women to discuss legal processes with, before they get to court. The Aboriginal Legal Service be given more personnel and funds and organisation to assist with the problems of Aboriginal women.
77. All service providers be required to provide information (including visual), which is meaningful to Aboriginal women in the appropriate Aboriginal language.
78. All prosecutors (police and DPP) attend more extensive cross-cultural awareness courses and other training courses (eg as to the availability of support structures) to make them aware of victims' rights and needs. Aboriginal women be employed as lecturers.
79. Appropriate child-care facilities be made available at all courts.
80. More appropriate penalties and/or remedies be imposed on Aboriginal men who have committed crimes of violence, particularly serious crimes against Aboriginal women; penalties that better reflect the seriousness of such offences.
81. Court processes be taught in all schools, commencing in upper primary, in order that people can know how the system can help them.

ALTERNATIVE DISPUTE RESOLUTION

82. Courts and the criminal justice system are often not effective in serving Aboriginal people due to:
- (i) a perception in the Aboriginal community that these are alienating processes which they are forced to endure.

- (ii) the adversarial nature of the courts and the language used by officers of the courts, Judges, Magistrates, Justices, and lawyers.
- (iii) the recognition that these processes demand "ownership" of the dispute in question.
- (iv) judgments which are very often confusing to the people involved and are not perceived by Aboriginal people as affording justice to injured parties, victims or offender.

83. Aboriginal people's disputes are very often multi-party disputes which involve the immediate, or extended family of the central parties; and

84. Aboriginal people in dispute often require options for the resolution of their disputes, that recognize and incorporate the need for an ongoing relationship to form a central aspect of the resolution process.

Recommendation

85. The courts and the criminal justice system in Western Australia recognize and acknowledge that there is a need to incorporate Alternative Dispute Resolution processes into the resolution of disputes which involve Aboriginal people.

86. "Alternative Dispute Resolution" is a general term for a diverse range of processes available as alternatives to litigation for the resolution of disputes. These processes include mediation, conciliation, negotiation and arbitration among others. Alternative processes for dispute resolution exist in courts, the legal profession and community organisations throughout Australia.

87. A successful Alternative Dispute Resolution (ADR) process has already been established in Western Australia for Aboriginal people.

88. The Aboriginal Alternative Dispute Resolution Project has developed an expertise in applying an ADR process that incorporates the principles of mediation/conciliation, to the resolution of disputes which fall into the area of Aboriginal inter-family feuding.

89. These disputes are often very intense disputes, involving many parties and often resulting in a number of serious injuries to people and the subsequent charging by the police of numbers of people.

90. The ADR process recognizes the existence and severity of these incidents and the history of the dispute, yet allows for satisfactory outcomes to be mediated, or negotiated between and

by families, which incorporate their need to have a positive ongoing relationship and will permit them to continue to live in the same community.

91. There are some direct parallels between the Aboriginal feuding situation and the Aboriginal domestic violence situation, particularly in terms of these outcome related needs.

92. If Aboriginal victims of domestic violence are not being served by the adversarial processes of the justice system - and the reasons for this relate directly to their perceived need to negotiate a settlement based strongly on mutually agreed options which will allow for the future to be considered - then it would seem there needs to be an exploration of the possibility that the justice system incorporate these needs into service delivery for its clients.

93. A means of developing this concept would involve the courts administration meeting with community mediation services, such as the AADRP, CY Mediation, Gosnells Family/Neighbourhood Mediation and Family Mediation Service, to develop a better understanding of what the local community has to offer in this area, as well as to perhaps conduct research into the relationship which has developed in other States between courts and community mediation services.

COMMUNITY RESPONSE TO FAMILY VIOLENCE

94. Some Aboriginal women and children who are abused and assaulted by men are in a different cultural position to other citizens. As a result different responses to domestic violence against Aboriginal women need to be applied - measures that give more control to Aboriginal women and their communities than current laws and practices do. In line with the recommendations of the RCIADIC, some Aboriginal communities need to take responsibility for the policing and disposition of their own affairs and for the education of their members on such matters. The Taskforce endorses the recommendations made by the Bolger and Allbrook Cattalini reports, and makes additional recommendations below.

Recommendations

95. A Permanent Committee be appointed, to be comprised of equal numbers of Aboriginal men and women from a broad spectrum of the community to be chaired by a Judge to follow up and implement the following recommendations, being 97-103.

96. Aboriginal community based panels of key women be appointed by the communities to be part of the Justice Ministry - but supervised by Aboriginal persons within the Ministry - to

assist in the apprehension and control of offenders against women and children, The panels to have the responsibility of laying charges, whether or not there are complaints received from the victims, with the power to make recommendations to the courts concerning the disposition of the matters - for example, cautions and appropriate counselling.

97. Properly remunerated Aboriginal women counsellors be appointed, funded by the Ministry of Justice and Department of Community Development; Health Department and all other Government Departments relevant to Aboriginal people to counsel women who have been assaulted. These counsellors should not be directed to carry out their functions according to departmental policy. We support initiatives to train Aboriginal women counsellors such as the Yorgun Aboriginal Women Counsellors at Manguri and those at the Centre for Aboriginal Studies Counselling course at Curtin University.

98. A review of the system of restraining orders be undertaken - see the separate report on this subject.

99. Aboriginal women educators be appointed to go into the field and educate women through community based programmes re sexual abuse and family violence.

100. Further funding be provided to increase community policing by Aboriginal persons - including patrols within the communities.

101. Safe places be established for the protection of women and children victims of assault, to be funded by the Commonwealth.

102. Shire offices be involved to assist victims of violence - also with remedial measures - e.g. safe houses; work for offenders. The women usually do not want their men to go to prison but alternative forms of protection are necessary. Local communities need to be involved with perpetrators of violence to assist in a proper co-ordination of efforts.

ACCESS TO LEGAL ADVICE AND SERVICES

103. Aboriginal women have reported that they have difficulty in obtaining information on the law, on their legal rights, on legal services available, and difficulty in accessing legal services.

104. In relation to legal information, it appears that much information that is available is not being accessed by Aboriginal women - information such as pamphlets put out by government departments. Of particular importance is information in relation to family violence and victim compensation.

105. In relation to access to legal services, Aboriginal women reported a lack of trust in or willingness to access services that do not employ Aboriginal people. In relation to services

offered to Aboriginal women who have been abused and/or assaulted by men, there was a reported preference for those providing legal services to be Aboriginal women rather than men.

106. The Taskforce notes that there are only 2 Aboriginal women lawyers working in WA. While there are 14 Aboriginal women law students (out of 25 Aboriginal law students) at Murdoch and UWA law schools, most have only recently begun their studies. It will be a few years before they will be able to offer their legal services.

107. Another reported problem in relation to access to legal services concerns the Aboriginal Legal Service (ALS) and the inadequacy of the legal services it provides to Aboriginal women. The ALS currently has a general policy that does not allow it to represent one Aboriginal person against another Aboriginal person (or one group of Aboriginal persons against another group) where there is a conflict between family or community members. This policy arises from the conflict of interest which prohibits any legal service acting for both parties to a dispute as well as the perceived need for the ALS to not be seen to take sides in any dispute, between families or community members. This policy acts to disadvantage some Aboriginal women by preventing their representation particularly in cases of violence against Aboriginal women by Aboriginal men. For example, in a case of domestic violence, where an Aboriginal man is charged, the ALS will act for that man in his defence, which may involve the ALS lawyers cross-examining the Aboriginal woman complainant.

108. The ALS will however arrange for representation in family law matters, in criminal matters and in personal injury matters.

109. Further, the ALS is often unable to represent the women in, for example, claiming criminal injuries compensation where an Aboriginal man is the offender. While the ALS is able to "brief out" representation (i.e., pay another lawyer to act instead of the ALS) where the ALS is unable to act, this is only where the ALS determines that the case has sufficient legal merit to warrant the cost and where it has sufficient funds to do so. The experience of Aboriginal women reported to the Sub-Committee is that such "briefing out" does not occur frequently enough to satisfy the concerns of Aboriginal women and it often leaves them without adequate representation.

110. Historically, the ALS was a body established to provide representation to Aboriginal persons before the criminal courts. It is as a result of this emphasis on criminal representation that the internal conflict policy disadvantages Aboriginal women. The ALS is currently revising its internal conflict policy, and other policies and practices that may reduce Aboriginal women's access to legal services, and is considering how it may better serve the legal needs of Aboriginal women. However, it does appear that some restrictions will always remain on the ability of the ALS to fully serve the legal needs of Aboriginal women while at the same time

properly representing Aboriginal men before the criminal courts, if only those restrictions which all lawyers and law firms face in not being able to represent both parties to a dispute.

Recommendations

111. Greater efforts be made by government departments to ensure that information on legal issues and the rights of Aboriginal women are produced and accessed by Aboriginal women. This may entail redesigning the presentation of such information. It will certainly entail the provision of such information outside the metropolitan areas. In particular, the money that has been allocated in the WA government budget for information materials on family and domestic violence should be spent immediately on the proposed information programs.

112. More Aboriginal people, particularly Aboriginal women, be encouraged to obtain law degrees and be supported in their studies. The Taskforce notes with approval the efforts of Murdoch University, UWA and NTU law schools in establishing the Pre-Law Programme (WA and NT) to help Aboriginal law students succeed in their studies. These programs should be supported by the government and be funded on an ongoing basis. The Taskforce also notes with approval the efforts being made by the Law Society of WA to support Aboriginal law students through its Aboriginal Cadetships program. Such programs should be funded to enable more such cadetships to be offered.

113. The ability of non-Aboriginal persons to represent Aboriginal clients be improved so as to increase the trust and willingness of Aboriginal persons to access such services. This should be done within law schools as well as via the provision of specific courses at post-graduate (continuing legal education) level.

114. More resources be made available to the Aboriginal Legal Service for the creation of a separate women's issues unit within the Service to enable the ALS to better serve the needs of Aboriginal women; also for an "after hours" crisis service.

115. A separate Aboriginal Women's Legal Service be established in order to overcome the conflict of interest situations which prevent the ALS from acting for Aboriginal women and to fully serve the legal needs of Aboriginal women.

RESTRAINING ORDERS

116. Restraining orders are usually dealt with in the Courts of Petty Sessions. This has led to problems of the spouse being there as well as members of the extended family. This puts

Aboriginal women at risk of being harassed, abused, intimidated and even being assaulted after the proceedings.

117. Aboriginal women who have been successful in the procedure of making an application for a restraining order believe they have the protection of the criminal justice system. However they soon become disillusioned because the process often fails them. This is mainly due to a number of reasons:-

118. Firstly, the serving of the order is the responsibility of the police. This leaves the serving of the notice or order to individual police officers who often think that it is pointless serving the orders as "they will only get back together again". This is considered to be more likely with Aboriginal people.

119. Secondly, the identification of Aboriginal persons on whom the restraining order has to be served is difficult for the police officers and often leads to a number of attempts to serve the order.

120. Thirdly, the current process which people go through to obtain a restraining order is too stressful. Therefore an easier process needs to be developed and implemented by the court system. If the applicant is elderly, frail, or is a mother with young children, or a person unable or fearful of taking time off work, then the stress of having to go through a number of hearings whilst the other party is seen to draw out the process, sometimes on doubtful pretexts, becomes much too stressful for too little result.

121. There is a need for the justice system to better inform those who seek to use this process as to the realities involved, such as the fact that depending upon the other demands placed upon a particular police station or officer, and depending on whether or not the officer can locate and have the person concerned accept the order (identification of Aboriginal people by non-Aboriginal police officers is a problem), the reality is that it could take some time to serve a restraint order on an individual. People who are not familiar with the process have regularly expressed their disbelief/amazement at the discovery that they have not been covered by the protection of the order, as they thought, upon leaving the courtroom, where the defendant has not been present when the order was made.

122. The situation has arisen where people have made statements to police officers regarding the breaching of orders which have been served and should therefore have been recorded. The offenders have been taken into custody, but released when officers did not lay other charges, disregarding the current restraint order/s.

123. There is a very real and recurrent problem in that Aboriginal people have been and still are, subject to harassment and threats when they attend courts - either as witnesses or as

persons who have initiated action against another person or people. It is still very much a part of Aboriginal culture that if a person offends against an individual, that person offends against the family. This in many cases, includes the extended family.

124. Most Aboriginal people applying for restraining orders are people not familiar with, or with little confidence in, the court system. Many of them therefore do not apply for orders for these reasons.

125. There are several suggestions which may result in a more effective means of serving restraint orders on Aboriginal people who are involved in creating trouble among other Aboriginal people.

Recommendations

126. The Courts of Petty Sessions identify restraining orders to be served on Aboriginal people and have these Orders directed to the Aboriginal Affairs Unit of the WA Police Force (where this Unit is available), so that they can be served in the most expedient manner possible.

127. The Police Department require officers in charge to direct any orders that non-Aboriginal officers are having difficulty in serving, to the Unit (where practical). Further, if an Aboriginal police aide is attached to a station, that he/she be recognised as the most appropriate officer for this task - "with support".

128. Court services and/or the Police Department develop a strategy to better inform those people going through the process of the realities and practicalities of the steps of the process, in order to minimise the trauma which can result from a complete lack of knowledge or understanding of these processes.

129. Court services and the Police Department give more credence to expressed concerns by Aboriginal people concerning their personal safety when having to attend court. When an incident of harassment happens at a courthouse, as in any other area, the Aboriginal community knows about it and if it suits some people's purposes, they will use that incident as an example in their threats against those who may take them to court.

130. The reality of Aboriginal inter-family conflict be taken into account. If a person feels the need to be protected from a family group, there should be provision for this without that person having to initiate separate actions. Obviously, the person should still prove the claim to the court's satisfaction, but once having done so, the person should not be placed in a situation where money dictates whether or not that person can proceed with the action. This situation can be addressed in part by allowing for more than one person to be named on a restraint order. Alternatively the court take into account a person's financial circumstances so that a

lack of available resources in the short term is not the determining factor in any Aboriginal person being denied access to this means of protecting themselves or their family.

BAIL

Recommendation

131. There should be far more care taken in explaining the conditions and default provisions concerning bail to Aboriginal women - they often do not fully understand the consequences of default.- The legislation should be amended to provide a discretion in the court whether to order forfeiture of bail.

FINES

132. The imposition of fines which is a frequent penalty often indirectly discriminates against Aboriginal women because of their socio-economic position and has resulted in a disproportionate number of Aboriginal women being imprisoned.

Recommendation

133. There be a review of the whole system of fines and default of payment of fines and the replacement of it by culturally appropriate sentencing options e.g. work orders to be performed with Aboriginal organisations. Such alternatives will require more Aboriginal supervisors, equipment and child care. Funds could be obtained from the Federal Government for appropriate measures.

134. When fines are imposed the courts take more account of the ability of the offender to pay the fine e.g. if the offender's only source of income is social service payments, is a fine ever appropriate? What is the effect of a fine on the provision of necessities for the offender's children?

135. A new system of dealing with fine defaulters be established - e.g. a muster day at each local authority for the assignment of appropriate tasks.

136. Panels of Aboriginal persons associated with the Justice Ministry be appointed to assist in the supervision of female Aboriginal offenders.

ABORIGINAL - POLICE RELATIONS

137. The Taskforce notes with approval the thorough study done by the Equal Opportunity Commission of the WA Police Department, including of Aboriginal-Police relations. The study highlighted that there was considerable room for improvement in Aboriginal-Police relations in Western Australia and made recommendations for its reform. The Royal Commission IADIC also made a number of recommendations in this area which the Taskforce also recommends to be fully implemented. The evidence provided to the Taskforce indicates that some of the problems identified in these two reports still exist.

138. Often when Aboriginal women access the legal system it will relate to four main areas:

- (i) As a result of family violence, marriage and relationship breakdown.
- (ii) As a result of a criminal matter - as the defendant.
- (iii) As a result of their children or children in their care who have committed offences. This is often the case in the Children's Court and is a very distressing time for Aboriginal women.
- (iv) As a result of inter-family disputes - feuding.

139. The extended family may well be a significant factor when determining the course of action required at the time.

140. Police officers are usually the first contact that Aboriginal women have when dealing with the matters mentioned earlier and from experience it is clear that the Police Force is male dominated, and has individual members who have no or little understanding of Aboriginal culture and the status of Aboriginal women.

141. Recently an Aboriginal cross-cultural awareness program was conducted within the Police Force which targeted current serving members. However, this program was recently cut back as funding, which was supplied by the Department of Employment, Education and Training, was exhausted.

142. The program was delivered to both the metropolitan and country members of the Police Force. Whilst the exact numbers of police officers who have attended these sessions is not known, it has not covered all the current serving members. At this stage there is no commitment from the Police Department to continue with this program (as opposed to training at the pre-service level) as a part of in-service training. There is an evaluation of the program to be conducted by the Centre for Police Studies at Edith Cowan University.

143. The Police Department has recently released an Aboriginal Employment Strategy which is a five year plan and addresses the need for more Aboriginal people in the Police Force across the board as police officers, Aboriginal police aids and cadets.

144. Currently there are 70 Aboriginal police aides serving in all regions throughout the State, including 11 in the metropolitan area who are attached to various Police Stations near to where there is a significant number of Aboriginal people residing. The number of Aboriginal women police aides is 2 for the State with 1 in the metropolitan area and 1 in the country. There is limited opportunity for Aboriginal women not only in the Police Aide Scheme, but in the Police Force in general.

145. It is often the women who contact the police when it comes to such issues as family violence and feuding. These women are victims and have a number of reasons for resolving the violence. The women are often the cornerstone of Aboriginal families and they can see the damage violence does to the family unit. Relating to a male police aide is difficult as usually the violence that has been perpetrated against them and their family has been by an Aboriginal man.

146. The Police Department recognises the value of women in such sections as the Child Abuse Unit and units that deal with sexual assault. On occasions female police aides have been utilised where Aboriginal women are concerned. However this occurs on an irregular basis allegedly due to a mistaken view as to the status of Aboriginal women in the community in general. Little consideration is given to cultural differences.

147. Aboriginal women are also discriminated against by some police officers and are given "special" attention - too much attention and/or harassment. For example:

- (i) young Aboriginal women are stopped in the streets and asked questions more often than other women;
- (ii) at police stations they are sometimes spoken to in a manner which reveals a lack of knowledge and respect;
- (iii) at the courts there are problems with the way they are treated - e.g. at the Courts of Petty Sessions;
- (iv) also in parks and other public places; e.g. at funerals.

148. Perhaps because of a lack of knowledge and difficulties with liaison matters, police officers do not know the Aboriginal people well enough. Aboriginal women are not being properly protected by some police officers when there are domestic and other assaults. Some

police officers often refuse to enforce restraining orders, make excuses and show a lack of sympathy. One reason for this may be the attitude of the courts to breaches of such orders.

149. Police officers who are unsuited to work with Aboriginal people are sometimes placed in areas with large Aboriginal populations.

150. Aboriginal women who have experienced direct discrimination have felt unable to lodge complaints about police treatment.

Recommendations

151. More Aboriginal women be appointed as police officers (not police-aides) - other nationalities in Australia do not have police aides. There be a full police training facility established in the Kimberleys, perhaps at Broome.

152. An education unit be established to educate some Aboriginal people as to why women are appointed as police officers.

153. When Aboriginal women are appointed to the police force efforts be made by the Department to support them in their positions as they are often subjected to extra pressures within and without the Department.

154. There be better cross-cultural awareness education for all serving police officers to be assessed in the same way as other components of their courses.

155. There be more extensive police promotion and training programs to reflect Aboriginal issues in all their components and satisfactory completion of these programs be required before promotion is recommended.

156. Police officers be given more training to deal with cases of violence towards, and sexual abuse of, Aboriginal women and girls. The training must be directed at giving victims supportive, sympathetic and culturally appropriate treatment.

157. The Police Department develop mechanisms for ensuring that only police officers suited to work with Aboriginal people are posted to locations with substantial Aboriginal populations.

158. The Police Department more closely examine the needs of Aboriginal women in remote communities for police services and develop a strategy towards improving service delivery to such women and communities.

159. Victims of sexual abuse be referred as quickly as possible by police to an appropriate helping agency such as Aboriginal Women's Refuges or the Sexual Assault Referral Centres which agencies should have Aboriginal women on staff.

160. There be proper procedures instituted to ensure that the young children of women who are detained or arrested are properly cared for while their mothers are away. There be no night-time apprehension of women with young children unless it is absolutely necessary.

161. Police officers do their best to ensure that the bail reporting conditions of women with children are the least disruptive to the children possible.

162. Police officers do their best to ensure that bail conditions do not unnecessarily disadvantage women with little property and no sureties.

163. The Equal Opportunity Act be amended to allow for alternative methods of complaint (e.g. verbal) and pursuit of grievances, which are more accessible to Aboriginal women. The Aboriginal Legal Service and police officers be encouraged to instigate inquiries and pursue complaints on behalf of aggrieved persons and refer such complaints, where appropriate, to the Equal Opportunity Commission. Extra resources be allocated to the Aboriginal Legal Service to cover this area.

164. There be specific rules in police manuals and in courses concerning the above matters.

165. There be appropriate screening of offending police officers.

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