ABORIGINAL CUSTOMARY LAW AND SENTENCING IN THE NORTHERN TERRITORY - A COMMENT

I had originally intended to present a paper to this Conference as a commentary on the paper by the Honourable Justice Mildren entitled **"REDRESSING THE IMBALANCE AGAINST ABORIGINALS IN THE CRIMINAL JUSTICE SYSTEM".**

However as I thought the position through it seemed to me that I might more usefully write a paper which, although directly concerned with the paper by Justice Mildren, was nonetheless not dealt with in it.

A SKETCH : ABORIGINAL PEOPLE AND THE CRIMINAL JUSTICE SYSTEM IN THE NORTHERN TERRITORY

First, though, because some of you at least will not be familiar with the position of Aboriginal people in the Criminal Justice System in the Northern Territory the following information might assist:

" Australian Bureau of Statistics estimates show that the resident population of the Territory increased from 154,421 persons in 1986 to 175,891 in 1991. In 1986 22% of this population (34,740 persons) were Aboriginal and Torres Strait Islanders; by 1991 the number had increased to 22.7% (39,910). This number of 39,910 represented 15% of the Aboriginal and Torres Strait Islanders in Australia (265,459), who in turn represented 1.6% of the total population of Australia. Of the 39,910 persons, 15.5% (6179) lived in Darwin.

Aboriginal people comprise the vast majority of persons at any given time serving sentences in Territory prisons, as the statistical data and graph at Appendix 1 indicate.

This data shows prisoners sentenced between 1990 and 1993, the breakdowns showing sentence lengths and some 17 categories of offences. The figures in brackets show the Aboriginal component. Thus of the 516 persons sentenced to various terms for assault over that period, 461 were Aboriginals; the 516 represented 16.25% of all persons sentenced for all offences in that period (3174), and the 461 represented 14.52% of that number. And so on. It can be seen that of the 3174 persons sentenced over that period, 2544 (80.15%) were Aboriginals. The graph shows that over the 5 year period 1989-1993, the percentage of persons n custody who were Aboriginal was fairly steady, varying between 77.91% and 81.97%. It will by recalled that Aboriginals represented some 22% - 23% of the Territory population about this time. Their gross over-representation and numerical dominance in prison is obvious."[1]

The appendix referred to appears at the end of this paper.

"The Northern Territory has consistently recorded the highest imprisonment rate, expressed as the number of prisoners per 100,000 of the population, of any Australian State, In 1992, imprisonment rates in descending order were :

NT 387	QLD 89.4
NSW 165.9	Tas 77.3
WA 154.4	Vic 67.4
SA 103.2	

(Some) statistical observations may be made in relation to the high imprisonment rate in the Northern Territory. First, the Northern Territory has among the highest non-Aboriginal imprisonment rates in Australia. The non-Aboriginal imprisonment rate in the Northern Territory, expressed as the number of non-Aboriginal prisoners per 100,000 of the non-Aboriginal population, is 134.4 compared to a national average of 101.6 (1992). Second, a relatively high proportion of the population is Aboriginal and the Northern Territory has a high Aboriginal imprisonment rate. The Aboriginal imprisonment rate, expressed as the number of Aboriginal prisoners per 100,000 of the Aboriginal population, is 1431.2 (1992 figures). [2]

THE COMMON LAW POSITION - AN HISTORICAL OVERVIEW

In the Northern Territory there is no statutory requirement that courts take Aboriginal Customary Law into account when sentencing. Why that is so will become clear in this paper. However, the Supreme Court of the Northern Territory has "a long history of taking into account Tribal Law when sentencing a Tribal Aboriginal". That history is referred to by Justice Mildren in **MINOR (1992) 59 A Crim R at 227, at 237 - 239:**

> " The Director of Public Prosecutions did not suggest that his Honour erred in taking the possibility of future payback punishment into account. There is ample authority for that proposition. Indeed the Northern Territory has had a long history of taking into account tribal law when sentencing a tribal Aboriginal. The earliest recorded example is in 1900 when Dashwood J sentenced an Aboriginal to three months imprisonment for the manslaughter of another Aboriginal: see Peter Elder, **Northern Territory Charlie** (unpublished thesis, University of Adelaide), p71. But the full rigours of the law remained for murder for which the sentence of death was the only option. Although in practice this meant a long stint in Fannie Bay Gaol, juries were reluctant to convict Aboriginals for murder for tribal killings due to the harshness of the law. Following a petition by a panel of 60 jurors to Sharwood AJ in April 1933 that Aboriginals be tried in accordance with their own tribal customs for the offences of murder or manslaughter when the offences were of a purely tribal character, The **Crimes Ordiance** 1934 (NT) and **Amendment Ordiance 1939 (NT) amended** and the **Criminal Law Consolidation Act** to abolish the automatic death penalty for Aboriginals and to include s 6A which permitted the court, in murder cases, to "receive and consider any evidence that may be tendered as to any relevant native law or custom and its application to the facts of the case and any evidence which may be tendered in mitigation of penalty" for the purpose of determining penalty. But this power was a matter of practice not confined to murder cases. Indeed in **Anderson** [1954] NTJ 240 at 248, Kriewaldt J said, after referring to s 6A:

> "In every case where I have been under a duty to pass sentence on a native, irrespective of the charge, I have hard such evidence as has been available throwing light on the background and upbringing of the native. Where tribal law or custom might possibly be relevant I have in every case endeavoured to inform my mind on these topics either by hearing evidence in court or perusing any material available to me which seemed to bear on the point."

As to payback punishment specifically, in **Jadurin** (1982) 7 A Crim R 182, the Full Court of the Federal Court of Australia, on appeal from this Court, dealt with a situation where a full blood tribal Aboriginal had undergone, and was still to undergo, tribal punishment. The appellant sought to have his sentence reduced to avoid being punished twice for what he did. Although the appellant failed, the court nevertheless recognised that the sentencing court was obliged to take into account the implications for a convicted Aboriginal with his own society. As the court (St John, Toohey and Fisher JJ) observed (at 187):

> "In the context of Aboriginal customary or tribal law questions will arise as to the likelihood of punishment by an offender's own community and the nature and extent of that punishment. It is sometimes said that a court should not be seen to be giving its sanction to forms of punishment, particularly the infliction of physical harm, which it does not recognise itself. But to acknowledge that some form of retribution may be exacted by an offender's own community is not to sanction that retribution; it is to recognise certain facts which exist only by reason of that offender's membership of a particular group. That is not to say that in a particular case questions will not arise as to the extent to which the court should have regard to such facts or as to the evidence that should be presented if it is to be asked to take those facts into account."

See also Atkinson v Walkely (1984) 27 NTR 34 at 37; The Recognition of Aboriginal Customary Laws (1986) 31 ALRC Vol 1, par 507.

The reason why payback punishment, either past or prospective, is a relevant sentence consideration is because considerations of fairness and justice require a sentencing court to have regard to "all material facts, including those facts which exist only by reason of the offender's membership of an ethnic or other group. So much is essential to the even administration of criminal justice" (per Brennan J in Neal (1982) 149 CLR 305 at 326; 7 A Crim R 129 at 145). The Australian Law Reform Commission pointed out that another reason for this attitude "derives from an important principle of the common law, that a person should not be punished twice for the same offence", noting that "in practice it appears that some balancing of punishments is done within both systems": ALRC Report, par 508. Malcolm CJ, in **Rogers and Murray** (1989) 44 A Crim R 301 at 307, explained the rationale in terms of the court's general power to take into account mitigating factors:

> "Race itself is not a permissible ground of discrimination in the sentencing process. If there were a different approach to the sentencing of Aboriginals based only upon their Aboriginal background this would be contrary to s 9 of the **Racial Discrimination Act** 1975 (Cth) which makes it unlawful to do

> "... any act involving distinction ... based on race ... which has the purpose or effect of ... impairing the recognition ... on an equal footing of the right to security of a person and protection by the State against violence or bodily harm whether inflicted ... by an individual, group or institution."

It follows from this that the sentencing principles to be applied in relation to a sexual offence committed by an Aboriginal must be the same as those in any other case. It is apparent, however, that there may well be particular matters which the court must take into account, in applying those principles, which are mitigating factors applicable to the particular offender. These include social, economic and other disadvantages which may be associated with or related to a particular offender's membership of the Aboriginal race.

See also **Juli** (1990) 50 A Crim R 31 at 37, where Malcolm CJ quoted with approval a passage from a decision of Muirhead J in **Iginiwuni** (unreported, Court of Criminal Appeal, NT, No 6 of 1975 12 March 1975):

> "Both Aboriginal and white people are generally speaking subject to the same laws. For years, however, the judges of this Court in dealing with Aborigines have endeavoured to make allowance for ethnic, environmental and cultural matters ..."

See also Kriewaldt J in **Namatjira v Raabe** [1958] NTJ 608 at 629-631. Indeed, for these reasons and as Aboriginals do not have the same concept of time as do white people, Kriewaldt J adopted the practice of imposing on Aboriginals substantially more lenient sentences than he would have imposed on white persons; **see Anderson** at 248; **Aboriginal Roy Pannaka** [1959] NTJ 453 at 454; although the nearer an Aboriginal's "mode of life and general behaviour approaches that of a white person, the closer should punishment on a native approximate punishment proper to a white person convicted of a similar crime" (**Anderson** at 249). There appears to be a similar practice in Queensland: **Friday** (1984) 14 A Crim R 471."

THE AUSTRALIAN LAW REFORM COMMISSION

In 1986 the Australian Law Reform Commission reported its investigations into "the recognition of Aboriginal Customary Laws".

Relevant for the purposes of this paper are these portions of its report:

"The Commission endorses the principles articulated in para 505-515, which have been worked out by Australian courts in cases involving traditional Aborigines, and which are set out in summary form in para 542. These principles, in the Commission's view, strike the right balance between what are, to some extent, conflicting requirements. On the one hand, for the reasons already given, the courts cannot incorporate or require traditional punishments or other customary law processes to occur as a condition to the release of offenders or of the mitigation of punishment. On the other hand, there would be no point in acknowledging the right of traditionally oriented Aborigines 'to retain their racial identity and traditional life-style' if no allowance were to be made for traditional forms of dispute-settlement. These do now exist in fact, and are now taken account of by police, prosecuting authorities and courts in a variety of

ways. As has already been demonstrated, the law's continuing disapproval of some traditional punishments does not mean that these cannot be taken into account." (Paragraph 516).

"The question is then whether these principles should be officially endorsed in some way as appropriate, and if so, at what level of specificity. If official endorsement is desirable, the only way this can be done is through legislation. It is not open to the executive government to instruct or guide Judges in the exercise of their independant powers, including their sentencing powers. Virtually all offences involving Aboriginal customary laws are offences against State or Northern Territory law, in relation to which the Commonwealth has, at present, neither standing to appear in court nor prosecutorial responsibility. These considerations would appear to favour legislative guidance being given. In addition, this is a difficult and controversial area, one in which the judges might fairly expect guidance from Parliament if the conclusions expressed in the preceding paragraph, arrived at after lengthy inquiry, were to prove acceptable to Parliament. A danger in such legislative guidance is that it may be regarded as fettering essential judicial discretions. A provision which required a judge to take Aboriginal customary laws into account in sentencing might be thought to create difficulties if in a particular case the judge decided that this was not appropriate. On the other hand such a provision would only require that a judge consider the relevance of Aboriginal customary laws in cases where, on the evidence, these have been an element in the offence. It would not require a judge automatically to give a lesser sentence, but it would be a direction fro the legislature that Aboriginal customary laws are an element to be taken into account in sentencing. For these reasons the Commission concludes that at least a general endorsement of the practice of taking Aboriginal customary laws into account is appropriate. It is not necessary to spell out in terms the various propositions discussed in para 505-515, but it should be provided in legislation that, where a person who is or was a relevant time a member of an Aboriginal community is convicted of an offence, the matters that the court shall have regard to in determining the sentence to be imposed on the person in respect of the offence include, so far as they are relevant, the customary laws of that Aboriginal community, and the customary laws of any other Aboriginal community of which some other person involved in the offence (including a victim of offence) was a member at a relevant time. It should also be provided that, in determining whether to grant bail and in setting the conditions for bail, account shall be taken of the customary laws of any Aboriginal community to which the accused, or a victim of the offence, belonged. The recommended formulation makes no specific reference to the need to take account of the views or opinions of the defendant's or the victim's community, although it was suggested in para 510 that the matter is sufficiently dealt with by the reference to local customary laws, by the existing practice of taking these matters into account and by the procedural provision recommended in para 531. This applies also the views of the victim's community (where this is a different community). At present the courts rarely take into account the views of the victim, or members of the victim's family, as to the appropriate sentence. But the fact that the accused has made restitution in some way to the victim or his or her family is undoubtedly relevant. For this reason, as well as in the interests of balance, evidence or submissions of the attitude of the victim or the victim's community towards the offence and its aftermath ought not to be excluded. But, for the reasons given, no substantive provision requiring these opinions to be taken into account is necessary." (Paragraph 517).

For a full outline of these principles see parargraphs 505-516 of that report and their summary in paragraph 542.

THE COMMONWEALTH - ITS RESPONSE

In 1994 the Commonwealth responded as follows to that report by ARLC:

"The ALRC made numerous recommendations relating to the recognition of customary law in the context of criminal law and sentencing. The Attorney General's Department has provided the following general comments about those recommendations.

As the vast majority of offences committed and prosecuted in Australia are offences under State or Territory laws, the ALRC recommendations need to be implemented by the States and Territories in order to have any real impact. Some States and Territories have already implemented some of the ALRC Report recommendations.

The small number of Commonwealth criminal offences that are prosecuted in Australia are dealt with by State or Territory courts exercising federal jurisdiction in accordance with State or Territory rules of evidence and procedure as applied by the Judiciary Act.

A further significant factor noted by the Attorney-General's Department is that Aboriginal people and Torres Strait Islanders rarely commit offences against Commonwealth laws. To place the ALRC's recommendations in context for the Commonwealth, the Department notes that out of an average of 600 federal offenders per year, their is seldom more than one person identified as an Aboriginal person or Torres Strait Islander at any one time in the prison system who has been convicted of a federal offences. This contrasts markedly with the number of prisoners convicted of offences against State and Territory law who are identified as being Aboriginal persons or Torres Strait Islanders.

In view of both the statistical position and the constitutional arrangements under the Judiciary Act in the area of criminal procedure and evidence, the Attorney-General's Department considers that implementation of the ALRC recommendations is primarily the responsibility of the States and Territories. Implementation by means of a Commonwealth law imposing requirements with respect to recognition of customary law on the States and Territories is considered to be an option of last resort, especially in view of the fact that, in the main, it will be State and Territory officials and judges who will be required to abide by those requirements. This caution is reinforced by the adverse reaction experienced by the Attorney-General's Department in 1987 when the Commonwealth required State and Territory courts to use separate sentencing procedures for the few Commonwealth offenders they dealt with every year.

The Attorney-General's Department has examined the ALRC's recommendations in detail and considers that in relation to most of the recommendations relevant to the Commonwealth; account can be taken of Aboriginal customary laws under the common law or existing legislation as outlined below.

The ALRC recommended that the Commonwealth enact sentencing legislation expressly requiring a court, when sentencing 'a person who is or was at the time of the offence a member of an Aboriginal community', to have

regard to the customary laws of that Aboriginal community (see clause 24 of the ALRC's draft Bill). The ALRC was also concerned about the mandatory sentences given for crimes against the person (such as murder). Because Commonwealth offences are not normally crimes against the person and do not attract mandatory sentences, this issue is the province of State and Territory law.

There is a present practise by the courts of taking the customary laws of the community of the offender into account when determining sentence but there has been no specific legislative endorsement by the Commonwealth of this practice.

Section 16A of the Crimes Act 1914 (the Crimes Act) allows factors such as the nature and circumstances of an offence, the personal circumstances of any victim of the offence, and the character, antecedents, age, means and the physical or mental condition of the defendant to be taken into account when sentencing offenders. The Attorney-General's Department considers that these factors enable customary law and traditions to be considered to a sufficient degree.

In addition, the Crimes and Other Legislation Amendment Bill 1994 has recently been introduced in Federal Parliament and if enacted will add 'cultural background' to the factors listed about.

Other provisions of the Crimes Act which enable customary law to be considered in relation to sentencing include section 17A which provides that a prison sentence is only to be imposed where the court is satisfied no other sentence is appropriate to the circumstances of the case; and subsection 19B(1) which confers a discretion on the court to discharge an offender without proceeding to a conviction.

No express provision has been made in Commonwealth legislation to allow the community of an Aboriginal or Torres Strait Islander offender or victim to make submissions about sentencing. However, there is nothing to prevent community opinion being considered by a court if defence counsel raises the issue.

In the present circumstances, the Attorney-General's Department has some reservations about providing specific legislative recognition of the customary laws or practices of any one group. The Department has, where the opportunity has arise, instead sought to provide general and non-discriminatory recognition capable of encompassing the laws and customs of all minority groups, for example, the above mentioned provision of the *Crimes and Other Legislation Amendment Bill 1994*.

In summary, then, the Attorney-General's Department has indicated that it does not consider the specific legislative provisions recommended by the ALRC to be necessary in view of :-

- the rarity of Commonwealth criminal cases in which Aboriginal customary law is a relevant factor;

- the adequacy of current provisions; and

- the Department's difficulties in reconciling the ALRC's recommendations for specific legislative recognition of customary law with current criminal law policy.3

THE NORTHERN TERRITORY SENTENCING BILL 1995

The Northern Territory Government has introduced into the Legislative Assembly the **Sentencing** Bill 1995. In Section 5 of that Bill the sentencing guidelines are set out. The Bill provides that:

(1) The only purposes for which sentences may be imposed on any offender are -

(a) to punish the offender to an extent or in a way that is just in all the circumstances;

(b) to provide conditions in the court's order that will help the offender to be rehabilitated;

(c) to discourage the offender or other persons from committing the same or a similar offence;

(d) to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved;

(e) to protect the Territory community from the offender; or

(f) a combination of 2 or more of the purposes referred to in this subsection.

(2)In sentencing an offender, a court shall have regard to -

(a) the maximum and any minimum penalty prescribed for the offence;

(b) the nature of the offence and how serious the offence was, including any physical or emotional harm done to a victim;

(c) the extent to which the offender is to blame for the offence;

(d) any damage, injury or loss caused by the offender;

(e) the offender's character, age and intellectual capacity;

(f) the presence of any aggravating or mitigating factor concerning the offender;

(g) the prevalence of the offence;

(h) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences;

(j) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

(k) time spent in custody by the offender for the offence before being sentenced;

(m) sentences imposed on, and served by, the offender in a State or another Territory of the Commonwealth for an offence committed at, or about the same time, as the offence with which the court is dealing;

(n) sentences already imposed on the offender that have not been served;

(p) sentences that the offender is liable to serve because of the revocation of orders made under this or any other Act for contraventions of conditions by the offender;

(q) if the offender is the subject of a community service order, the offender's compliance with the order;

(r) anything else prescribed by this Act to which the court is required to have regard; and

(s) any other relevant circumstance.

It is noteable that Section 5 of the Bill is silent on the issue of taking into account Aboriginal Customary Law when sentencing an offender.

In the second reading speech by the Attorney-General of the Northern Territory on 3 March 1994 this was said on that issue:

> "Mr Speaker, you will no doubt be aware that the issue of Aboriginal customary law has been a matter of public interest in recent times. This is an issue which the Government has thought long and hard about and it has reached the conclusion that, in view of the complexity of the issue, for the time being the question of customary law should continue to be dealt with by the courts using its discretion at common law to take the exercise of customary law into account as part of the sentencing process. It is an approach that for the most part has worked well in dealing with a difficult issue and this Bill does not seek to modify that situation.

There are a number of difficulties which this Government encountered in considering how customary law might be incorporated into general sentencing law:

* Should the courts be sanctioning punishments involving physical harm which may constitute offences under the criminal code or contravene human rights obligations?.

* How is the court to gather satisfactory evidence of the integrity of customary law, its obligations and implications, or on the other hand the nature and appropriateness of tribal punishment?;

* If tribal punishment was to from part of a sentence, what procedures would be adopted to ensure that it was properly carried out? Is it appropriate for the Department of Correctional Services or any public servant to supervise the imposition of tribal punishment? Where the punishment involves the infliction of physical harm, this may place Department employees in a difficult position.

For reasons like these, the Government believes that the approach historically taken by the courts under the existing common law - which takes the punishment into account rather than sanctioning it - is the most appropriate approach at this time."

CONCLUSION

Although the courts of the Northern Territory and especially the Supreme Court have for a very long time now applied Common Law principles when taking into account Customary Law on sentencing, it is suggested that a better approach would be to incorporate into the Sentencing Bill guide-lines in this area. "... This is a difficult and controversial area, one in which the Judges might fairly expect guidance from Parliament ..." (ALRC, Report Number 31, 1986, paragraph 517).

Furthermore, once the statutory recognition is given of the proper part that customary law should play in sentencing there will then be a duty on the Northern Territory Government to provide the funding and other resources necessary so that a court in taking into account customary law can have placed before it in the proper form all relevant material on this area. In this regard, the great body of research and data is already available but widely disbursed through many public and private agencies. Indeed, the 1986 Australian Law Reform Commission inquiry into the recognition of Aboriginal Customary Laws gathered a wealth of useful material. It is suggested that a new body be created which is quite separate from the present Northern Territory Department of Correctional Services. That body could very sensibly then collect all material and data presently available. Its primary function would, of course, be to assist the courts to give effect to the statutory guide-lines.

Such a body could have on its staff or available to it as required people in the following categories:

- Field Officers;
- Researchers;
- Anthropologists;
- Linguists; and
- Interpreters.

The Sentencing Bill 1995 was an opportunity for the Northern Territory Government to incorporate in its sentencing guide-lines as to the proper use of Customary Law. That failure to do so (particularly in light of the urgings of the Australian Law Reform Commission and the Commonwealth Government's response to that) is unfortunate and would seem to indicate a lack of political will. All those matters raised by the Attorney-General of the Northern Territory on the second reading speech of that Bill as reasons for not including guide-lines on customary law in the legislation are comprehensively answered by the Australian Law Reform Commissions investigations and report in this area.

Until such time as statutory recognition is given in the Northern Territory to the proper place of Aboriginal Customary Law in sentencing this very important area will be left solely to be dealt with by the courts applying Common Law principles to individual cases and without the invaluable assistance of the body it is suggested ought to be set up. Whilst individual cases from this approach may bring very worthwhile results both for the offender, his community, and the wider community it none the less falls very far short of what is needed - statutory guide-lines to assist the courts and an appropriate body charged with responsibility of putting before those courts all necessary material on this issue.

The most hopeful sign that the Northern Territory Government will in time provide statutory guide-lines in this area is the indication in the Attorney-Generals speech "that for the time being" things will remain in the Northern Territory as they have been for a very long time. It is to be hoped that the time before change to statutory recognition and the establishment of an appropriate body to assist the courts will be short.

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PRISONERS SENTENCED DURING THE PERIOD 1990 TO 1993 INCLUSIVE
BY MOST SERIOUS OFFENCE AND REMISSION PERIOD

OFFENCE	LESS THAN 1 MONTH	1-2 MONTHS	2-3 MONTHS	3-6 MONTHS	6-12 MONTHS	1-2 YEARS	2 YEARS & OVER	TOTAL	%
Murder							9 (4)	9 (4)	0.28% (0.13%)
Manslaughter							20 (14)	20 (14)	0.63% (0.44%)
Dangerous Act/Against the Person			1 (1)	3 (3)	7 (4)	19 (10)	17 (8)	47 (26)	1.48% (0.82%)
Assault	55 (47)	79 (70)	43 (36)	132 (121)	127 (119)	47 (43)	33 (25)	516 (461)	16.25% (14.52%)
Sex Assault & Offences	2 (2)	1 (1)	1 (1)	7 (6)	7 (5)	32 (26)	56 (48)	106 (89)	3.34% (2.80%)
Armed Robbery						1 (0)	12 (4)	13 (4)	0.41% (0.13%)
Robbery			1 (0)		4 (3)	14 (7)	16 (3)	35 (13)	1.10% (0.41%
Break, Enter & Steal	38 (34)	31 (29)	26 (21)	85 (75)	113 (90)	48 (32)	14 (6)	355 (287)	11.18% (9.04%)
Use Motor Vehicle	41 (36)	37 (33)	33 (28)	69 (61)	37 (33)	17 (15)	3 (2)	237 (208)	7.47% (6.55%)
Damage Property	47 (41)	12 (11)	5 (5)	10 (9)	10 (9)	5 (5)	2 (1)	91 (81)	2.87% (2.55%)
Stealing/ Receiving	46 (32)	18 (13)	17 (10)	33 (16)	25 (14)	9 (3)	9 (4)	157 (92)	4.95% (2.90%)
Utter/Forge/ False Pretence	8 (2)	3 (2)	1 (0)	13 (3)	11 (1)	12 (1)	3 (1)	51 (10)	1.60% (0.31%)
DUI/Exceed .08%	112 (94)	116 (106)	55 (50)	128 (119)	51 (44)	8 (7)	1 (1)	471 (421)	14.84% (13.27%)
Drive Whilst Disqualified	49 (45)	81 (74)	42 (35)	80 (79)	36 (32)	9 (8)		297 (273)	9.35% (8.60%)
Other Driving	34 (23)	5 (5)	2 (1)	4 (4)	2 (0)			47 (33)	1.49% (1.04%)
Drugs	25 (5)	7 (3)	6 (0)	3 (1)	16 (4)	23 (2)	18 (0)	98 (15)	3.09% (0.47%)
Justice Procedures/Other	282 (235)	43 (38)	33 (25)	107 (92)	90 (74)	52 (37)	17 (12)	624 (513)	19.67% (16.17%)
TOTAL	739 (596)	433 (385)	266 (213)	674 (589)	536 (432)	296 (196)	230 (133)	3174 (2544)	100% (80.15%)
%	23.28% (18.78%)	13.64% (12.13%)	8.38% (6.71%)	21.23% (18.56%)	16.88% (13.61%)	9.35% (6.17%)	7.24% (4.19%)	100% (80.15%)	

2648 - 83.43%
(2215) - (69.79%)

$\frac{2215}{2648} \times 100 = 83.65\%$

524 - 16.57%
(329) - (10.36%)

$\frac{329}{524} \times 100 = 62.79\%$

- Statistics are based on statistical information provided in the Department of Correctional Services Annual Reports
- Aboriginal figures in brackets
- Figures do not include fine defaults

FOOTNOTES

1. Sentencing: Taking Aboriginal Customary Law sanctions and community attitudes into account (from a Northern Territory perpestive), a paper delivered by the Honourable Sir William Kearney, a Justice of the Supreme Court of the Northern Territory, to the Fifth International Criminal Law Conference Sydney, Australia - September 25 to the 30th 1994, page 5.

2. Walker, Australian Prisoners 1992. Australian Institute of Criminology, Canberra, 1993; "Go Directly To Jail" Martin Flynn, Alternative Law Journal, Volume 19, Number 5, October 1994, at page 211.

3. Aboriginal Customary Laws - Report on Commonwealth implementation of the recommendations of the Australian Law Reform Commission 1994, at pages 11 - 14.