CRIMINAL LAWYERS ASSOCIATION OF THE NORTHERN TERRITORY
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"REMOTE JUSTICE"

Bush Courts – A Forum

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Introduction

In keeping with the theme of this years Criminal Lawyers Association Conference, "Remote Justice" I thank the organisers of the Conference for committing a session to the subject of "Bush Courts". This part of the work of the Criminal Justice System in the Northern Territory has until recently been largely ignored in professional gatherings – there is no CLE programme on "Court Out Bush". The challenge for all of us working in "Bush Courts" is to ensure that although the setting is remote the quality of justice must not be.

I have understood "Bush Courts" to mean Courts in remote and regional settings outside the major centres of Darwin, Alice Springs and Katherine. Of course questions of remoteness are somewhat relative, for delegates outside of the Northern Territory, perhaps Alice Springs is regarded as remote, let alone the thriving metropolis of Katherine. "Bush Courts" in some respect operate at the margins of the legal profession although for Northern Territory Magistrates they are a significant part of our work. The regular professional participants are primarily members of the Aboriginal legal services, the local police prosecutors, the Community Corrections Officer the circuit Magistrate and associated court staff. The appearance of civilian prosecutors is limited to contested matters and committals – those matters attract the participation of Witness Assistance Service. The Aboriginal Women's Legal Services and Family Violence Services also participate more regularly. Occasionally there are appearances in regional centres by Legal Aid Commission lawyers, most notably in mining towns and other remote areas where by virtue of industrial activity there is a large non-indigenous population. The appearance of practitioners from the private profession in Bush Courts is rare. For practitioners and judicial officers who are involved regularly in remote work, it is at once difficult and relentless work and at the same time the most rewarding, especially if we are interested in the lives and culture of Indigenous people.

In case delegates haven't heard, there is renewed interest in Indigenous communities from both the Northern Territory and Federal governments. The greater involvement by governments arises of course after the report on the extent of child sex abuse in Aboriginal communities in the Wild/Anderson Inquiry *"Little Children Are Sacred*". So far as I can ascertain the Northern Territory Magistrates Court sits in a number of the communities central to the current Federal Government intervention or sits in regional towns that service those communities. The Federal measures announced concern acquiring five year leases over indigenous communities of 100 people or more (although not limited to them) where those communities are located on *Aboriginal Land Rights (Northern Territory) Act* land or on titles issued under the Community Living Areas Legislation. (See media release

Minister for Families, Community Services and Indigenous Affairs, 21 June 2007). Delegates less familiar with the work of the Courts in the Northern Territory might be interested to know the extent of the bush work conducted by Magistrates and practitioners.

The Top End
Administered from the Darwin Court

- Alyungula (Groote Eylandt)
- Daly River (Nauiwu)
- Galiwinku (Elcho Island)
- Jabiru
- Milikapiti (Snake Bay)
- Nguiu (Bathurst Island)
- Nhulunbuy
- Numbulwar
- Oenpelli
- Wadeye (Port Keats)
- Pirlingimpi (Garden Point)
- Maningrida

Central Australia
Administered from Alice Springs Court

- Herrmansburg
- Ali Curung
- Elliot
- Kalkaringi
- Kintore
- Lajamanu
- Mutitjulu
- Papunya
- Ti Tree
- Tennant Creek
- Yuendumu

Administered from Katherine Court

- Barunga
- Borroloola
- Timber Creek
- Ngukurr
- Mataranka

My colleagues, and I am sure the practitioners who appear enjoy bush work immensely although it has complex challenges that primarily revolve around conducting Courts in the context of the social deprivations of regional communities that are now being recognised nationally. As is now widely reported, the Federal measures include additional police from other jurisdictions and army members to be based in communities, changes to the Aboriginal Land Rights (Northern Territory) Act permit system, for the alcohol restrictions and changes to the receipt of welfare payments. (Media Release, 21 June 2007). Like most of you, it is difficult to know what the implications will be for work in the Courts generally and Bush Courts in

particular on the affected communities. Of course we all hope for improvements in the lives of the residents of the communities we serve.
Local conditions vary greatly between communities even when the physical distance between them is not great. (An example is Yirrkala and Gunyarngara (Ski Beach) – one dry, one not. Not even half an hour's drive apart. The dynamics of these two communities and how they deal with problems are accordingly quite different). Languages and cultural issues are highly localised and this in part accounts, I think for different approaches taken in circuit courts in different communities and regions. The language and cultural issues are both fascinating and demanding in terms of ensuring appropriate support services can be utilised for the benefit of witnesses or defendant or their families. I think all of the legal services who work "out bush" would agree with that. I intend to address some of the ways that the Court is attempting to engage local communities and deal with aspects of some of the commentary on those forms of engagement.

Current Methods of Engagement with Indigenous Communities where the Court Sits

Community Courts

Community Courts have primarily been operating in Nguiu (Tiwi Islands) and Nhulunbuy with a few matters being heard via the Community Courts in each of Milikapiti, Pulurumpi, Tennant Creek, Daly River, Katherine, Maningrida, Galiwinku and very recently Oenpelli. These are relatively informal processes directed at providing a wider range of participation before the Court including families of the participants, respected persons from the community or senior clansmen and women. In Nhulunbuy one senior clansman and one senior clans woman have been made Justices of the Peace in acknowledgment of their role in the Community Court and the broader justice system.

Although Community Courts in the Northern Territory have some similarities to circle courts and statutory based Indigenous Courts in other jurisdictions, there is no legislation setting them up. The language issues on remote and regional courts are far more complex than in a number of regional centres elsewhere in Australia where English is the primary language of the circle court. Most Magistrates who sit in Community Courts take the view that s104 Sentencing Act enables them to accept the information: "A Court may, before passing sentence on an offender, receive such information as it thinks fit to enable it to impose the proper sentence". Initially practitioners and Magistrates were reluctant to deal with matters concerning violence between partners, spouses or other relatives, however particularly in the Tiwi Islands and Nhulunbuy, these matters have now become a regular process for dealing with spousal violence. The process allows some open discussion about what needs to happen to prevent a perpetrator from continuing with violent conduct and can deal with issues on why the victim hasn't been reporting. Although naturally everyone is very focussed in the present climate on child sex abuse, the great bulk of the serious bush court work involves violence between intimate partners, primarily on women. Often the two "issues" are not unrelated.

An interim evaluation was completed of the Darwin and Nguiu Community Courts in August 2006. It identified a number of procedural issues and some areas where there is still some philosophical debate. One of the positive outcomes noted "it

would appear the Community Court was able to make the offenders accept responsibility for their actions as they feel some accountability to their communities". In relation to the Tiwi Island situation the review reported that 60% of respondents believed that the Community Court had increased community participation in the sentencing program. The review also reported that support for the court in the Tiwi Islands is linked to the role of the Community Elders who sit in the Court. The review states:

> "The role of the elders is to provide assistance and advice to the Magistrate on community issues relating to a case or the offender or victim. This offers the elders the opportunity to present to the Court the community needs and preferences in relation to the sentencing outcome. This, according to respondents, provides a sense of community responsibility and accountability for the joint decisions made by the Court. There appear to be specific factors in these indigenous communities which may be responsible for the relative success of the Court there. These are:

- A community corrections officer is based on Bathurst Island which is one of the Tiwi Communities;

- The Tiwi are a homogenous group with the same language and kinship affiliations;

- There are well established ancillary services as well as the sports club, the strong women group, alcohol and drug services, CDEP and several local small businesses and there are well functioning community government councils on both the Tiwi Islands and the Daly River communities".

My colleague Vince Luppino SM has conducted the majority of Community Courts on the Tiwi Islands particularly in the 2006-07 period. From information provided to me by the Community Courts Co-ordinator Mr Joel McLennon, it would appear that a number of the earlier problems identified with the Community Court have been or are gradually being resolved at least in the context of the Tiwi Islands. I am informed that the majority of cases being dealt with are aggravated assaults and regular use has been made of the Community Corrections run Indigenous Family Violence Program. The respected persons attendance levels are high, there are approximately six or seven who attend on each occasion. The primary language spoken is Modern Tiwi and there are a number of strong Modern Tiwi interpreters available making the process possible. Mr Kevin Doolan, a community worker currently employed in diversionary programs on the Tiwi Islands has made his expertise available to the Court to ensure that kinship groups are properly represented from the four major Tiwi Island clans. I am advised that currently the victim is always present and generally supported by NAAFVLS (North Australian Aboriginal Family Violence Legal Service). This is an important development. Fortunately on the Tiwi Islands there are a number of programs available for alcohol rehabilitation. This is not the case in many communities. The correctional services officer sits regularly with the Community Court. I am advised that apart from aggravated assaults in the setting of family violence, other offences include cannabis and driving offences and to a lesser degree property offences.

In areas where Community Courts are seen as a positive way of dealing with engagement between the Court and the community, the issue for the Court and no

doubt for practitioners and service providers, is simply that of time. There is not a lot of spare time on Bush Courts. It looks as though it will be necessary to extend sitting times in various communities in the Tiwi Islands given the current level of interest from the community in the Court proceedings and the sense that the Court wants to increasingly engage the community in the hope for more satisfactory outcomes.

The other Court where Community Courts are held regularly is in Nhulunbuy, a regional centre rather than a community or outstation. Nhulunbuy services a number of Aboriginal communities the two closest being Yirrkala and Gunyarngara (Ski Beach). Although users of the Court are Yolgnu Language speakers, there are some 26 Yolngu languages and people identify primarily with their particular language. This means Community Court processes, for what would otherwise be simple matters are complicated with sometimes two or three languages being spoken and interpreted in the one proceeding. When available, the Court engages its own interpreter so that the discussion between people can be interpreted to the Court in English. The cases vary greatly in whether they appear to be having the desired effect on defendants, victims and the rest of the community however the process generally has led to some interesting outcomes utilising local Yolgnu procedures for dealing with offenders, in particular the incorporation of a procedure late 2006 and early 2007 involving a ceremony concerning men who were in trouble with the Yolngu law and the general law. In a number of cases of aggravated assault on partners those processes involved public admissions of guilt and denunciation in front of 300 persons and witnessed by the victim. Mr Bellach (solicitor from NAAJA) arranged affidavits (as required by s104A *Sentencing Act* NT) that various people spoke to. It was heartening to hear of a traditional process being utilized for community denunciation of acts of violence against partners. The then police prosecutor in Nhulunbuy attended part of one of the ceremonies and also reported back to the Court on what had occurred when the matter resumed. Below is an extract from one of the affidavits concerning one of these matters:

> "1. I am Djuŋgaya for the Dhalwaŋu clan nation through my mother (nändi) who was a Dhalwaŋu woman. Through this position I have responsibility and legal authority in relation to the Ŋärra ceremony as well as other public ceremonies for the Dhalwaŋu clan. I am also responsible for running the Ŋärra ceremony day to day.
>
> 2. A Ŋärra Men's Ceremony was held at Gän Gan Homeland for approximately 2 weeks, finishing on 26 November 2006. the Ceremony required preparation over a 6 month period prior to the Ceremony.
>
> 3. The Ŋärra Ceremony involved 6 Yirritja clan nations from around Arnhem Land. These clans are Dhalwaŋu from Gän Gan and Gurrumuru, Yithuwa from Blue Mud Bay, Nunggurrgaluk from Numbulwar, Gupapuyngu from Galiwin'ku.
>
> 4. The Ŋärra was held at Gän Gan because it is the Dhudiŋärra, meaning the political legal centre for the Dhalwaŋu clan.
>
> 5. One part of the preparation for the Ŋärra involved digging white clay from a sacred area at Gän Gan and delivering parcels of the while clay

to the clans which were requested and required to attend the Ŋärra. This process is similar to issuing a summons requiring a person to attend Court proceedings.

6. A second method of summonsing each clan involved sending a sacred dili bag (Gän) to each clan.

7. Other preparation for the Ŋärra over the preceding months involved the making of sacred objects like arm bands and sacred dili bags.

8. The Djuŋgaya for the Dhalwaŋu clan were responsible for delivering the clay and Gän to the Djuŋgaya for each of the other clans.

Reasons for the Ŋärra Ceremony

9. There were 3 reasons that the Ŋärra ceremony was organised. Firstly, it was a ceremony for the old men who's time was getting close (gupa ŋamatham). In this way it becomes the last ceremony for the old men who pass over responsibility to the next generation of leaders.

10. Secondly, it was a ceremony for the young men who were in trouble with Yolŋu and Balanda law.

11. Thirdly, it was a ceremony for the initiation and teaching of youth.

The Ŋärra Ceremony

12. The Ŋärra ceremony involved an external part which was witnessed by all members of the 6 clans and an internal part. The internal part is sacred and secret (Ma<u>d</u>ayin').

13. "D" attended the internal Ŋärra process for one week.

14. As part of the Ŋärra "D" underwent raypirri within the internal sacred Ŋärra process. Raypirri means learning to understand and respect Yolŋu law but also to be personally disciplined to continue to strive to live according to law.

15. On the second last day of the Ŋärra "D" underwent a particular ceremony involving an admission of guilt by "D" and a public denunciation of his wrongdoing witnessed by approximately 300 male members of 6 clans. It then involved a public undertaking, again witnessed by the Yolŋu present, that "D" would not re-offend.

16. Following the internal Ŋärra, "D" attended the external Ŋärra which was held around the Karrarak Tree. This included a public buŋgul (ceremony and dancing). "D" emerged from the internal Ŋärra wearing a sacred dili bag (Gä<u>n</u>) and arm band symbolising publicly that he had been through reypirri, and had been disciplined for his wrongdoing. The victim in this matter, "D's" wife was among those present to witness this".

For some time there has been an extensive evaluation taking place of the Nhulunbuy Community Court. I am advised it is not ready for circulation within government at this stage but the author in the Department of Justice has permitted me to include the following preliminary findings which may be of interest to those of you who practice from time to time in the Community Courts.

"NHULUNBUY COMMUNITY COURT EVALUATION
PRELIMINARY FINDINGS – JUNE 2007

55 cases t 30/12/06 of which 38 were finalised.

Re-offending rates appear to be better than normal Magistrates Court (40% compared to 60%). Caution that not enough time has elapsed (2 years since last separation) for many offenders.

Concentration on objectives should focus on community understanding and involvement in the court that should in time strengthen the community and reduce offending.

Satisfaction levels obtained by interview were high for both the process and outcomes in the Court.

Court did not result in more sentencing options but did see an increase in the use of outstations for probation – ie. away from alcohol.

Cases include a high number of family violence (nearly 40%) – community considers that the Community Court is suitable for these cases as resolution of conflict in a mediated way is seen as a good outcome. Women partners as victims of violence do not want (generally) their male partner imprisoned – they simply want them to stop hurting them. Hence often AVOs are frequently ignored by women who seek out their partner.

Property offences are next highest category with driving offences being third.

Community Court at Nhulunbuy (and now at Galiwinku) has not been costly to date with Community Corrections support but could be improved by more sitting days with some part time administrative community support. Estimated cost for 2 years is 20% of Community Corrections Officer and $18,000 in payments for services.

Community members sometimes refer to the court as a 'family court or clan court' clearly identifying the role of the family/clan in the process.

This may be the future – ie. concentrating on the involvement of family/clan in cases that involve their members. Care needs to be taken to not have the court seen as Yolgu Court that operates under Yolgu traditional law – it is a normal court under NT law but with a high emphasis on community participation for improved and longer term outcomes for the benefit of the victim, the offender and the community.

> This embodies the principles of restorative justice of restoring harm, changing offending behaviour and community satisfaction in the outcomes.
>
> The evaluation of the Darwin and Tiwi Islands Community Court was conducted in August 2006 and this report should be complete in July 2007. This report will include recommendations for a more formal trial, additional resourcing and a simple legislative base with some standardised Court Rules that can be adapted for each community where a Community Court is held".

Community Courts have a number of complexities and it would appear from the Nhulunbuy Community Court Evaluation that consideration will be given to simple standardised legislation, court rules and issues concerning resourcing of the Community Court. Interestingly there are different conclusions expressed by the Wild/Anderson report and the evaluation on whether this should be called a "Yolngu Court". I have no strong preference but if it is to follow the recommendation about being named after a language, it is not correct to say it is a "Yolngu" – there are 26 languages, (unlike the Tiwi Islands) with different members of different groups appearing in the one case. There is also the misconception that it may be able to apply Yolngu law. There are significant limitations to that – some people are disappointed that the Community Court isn't all about traditional law. Currently Community Courts have the status of "pilot programmes" and a decision will need to be made on whether they will become a permanent feature of "Bush Courts".

The Wild/Anderson report notes a number of criticisms of Community Courts. Many of these issues I happen to think have been resolved but it recommends (recommendation 74) "that, having regard to the success of Aboriginal Courts in other jurisdictions in Australia, the Government commence dialogue with Aboriginal communities aimed at developing language group-specific Aboriginal Courts in the Northern Territory". As far as I am aware, Community Courts are one of the few processes available in the Northern Territory to directly confront defendants and require them to account for their actions publicly.

It may be that we do see legislation emerging in the near future that will provide a stronger base for Community Courts or a process similar to Community Courts. In the context of child sexual abuse, there would obviously need to be a number of significant safeguards put in place both in legislation to ensure satisfactory outcomes. This needs to be considered very carefully on whether it would ever be appropriate. In fact it is very rare for Magistrates to hear criminal cases concerning child sexual abuse as most cases are beyond our jurisdiction. Child witnesses are no longer called to give evidence in committals. (Magistrates are more likely to deal with those cases in the *Family Matters* Court). There have been many doubters in the profession concerning Community Courts and similar initiatives – mainly from people who don't appear in them. As with any process, there are different levels of compliance and satisfaction but ask yourselves the question? Is a more inclusive model of sentencing likely to be more successful in Bush Communities than our standard process?

Law and Justice Committees and the Yuendumu Mediation and Justice Group

A number of Walpiri communities have had law and justice committees involved in a variety of activities to facilitate dialogue between the community and the government over law and justice programs. Constructive measures involving practical programmes such as safety houses, women's shelters and night patrols were developed. A number of these community programs as part of their activities have provided advice directly to the Court on their views on sentencing. Although law and justice committees operate in a number of Central Australian communities a recent further development is the "*Yuendumu Mediation and Justice Group*".

The Yuendumu Mediation and Justice Group (YMJG) have developed detailed protocols for its operation. Magistrate Melanie Little has worked with the Yuendumu Community for some time on this. The objectives contained in the protocols are stated to be to "improve access to justice; strengthen community safety and security, and provide support and mentoring to community members". Selection and membership procedure is covered and independence of members of the group from Council and other organisations is also dealt with. Reference is also made to the Youth Justice Court *pre-sentence conferences* which in time will provide another opportunity for communities to recommend sentences for Youths in the Youth Justice Court. The pre-sentence conference meets without the Magistrate and provides a report that recommends the sentence.

The first Court at Yuendumu involving the YMJG sat only recently on 13 June 2007. The following information was provided by Melanie Little SM: A pre-court meeting was held on 12 June and a written report with sentencing options and information about each person was collated and circulated to defence, prosecution and community corrections before Court started. The YMJG sat at a table opposite the Court staff, to the right of the Magistrate and involved three or four members as well as the co-ordinator, (Mr James Tey) being present for the whole Court. Other members of the group sat at the back of Court and there was a deal of interaction between the bench and the members of the YMJG. After pleas were entered the Community Corrections officer handed up the YMJG submissions to the Magistrate which were received as exhibits. Lawyers involved in the cases referred to the reports in their submissions. When Community Corrections' assessments were required the Ms Little requested that corrections invite the Mediation and Justice Group to be involved. Magistrate Little (who presided) thought the day was successful especially as it was the first time that this group was involved. The YMJG is also involved in other justice related activities including phone links with the prison and Don Dale Youth Detention Centre and organising the drink driving course in Yuendumu. That commences in July.

Lajamanu Law and Justice Committee

The following is provided by Melanie Little SM:

> "The Law and Justice Committee in Lajamanu has been established for many years. Community Corrections from Katherine, and the Aboriginal Community Corrections Officer based in Lajamanu service the Committee (largely as an extra to their job). After a pre-court meeting they provide the Court with

sentencing suggestions in the same way as set out with respect to Yuendumu and indeed the Lajamanu group was used as a model for the Yuendemu Group. Members of the Group attend court, though as it is a very small court room are not able to all sit in court at the same time. The other Law and Justice Group members sit outside while court is in session and this is arguable just as important. Their presence at Court is very important in communicating that the Community is involved in the Court process. Their participation is positive. They have a post-court meeting the day after court to discuss the outcomes and use that as an opportunity to learn more about how the court works and their role in the court. This could not happen without the commitment of all concerned. A documentary film is now being made about the Lajamanu Law and Justice Group, including its role in and at the Court. Danielle Loy had the inspiration for the film after attending Lajamanu Court when she was working with CAALAS and seeing the difference made by the involvement on the Law and Justice Group. She is now writing and film making and we are hoping that the film will be released soon".

A number of similar programs involving procedures with elements from the law and justice committees and Community Courts are being developed in other locations but it is fair to say are still in their infancy. Any further development depends a great deal on whether communities themselves think the projects are useful, whether governments choose to legislate and whether appropriate human resources can be made available. Programmes suggested by Communities are well worth trying and for the doubters, consider whether the way things have been done in the past is working.

Impediments to Greater Engagement with Indigenous Communities on Bush Courts and More Effective Compliance with Court Orders

Time, space and support service resources are recurrent themes in Bush Courts. The needs are great but the services to support those needs are not. The expanding utilisation of programs engaging with indigenous communities to a larger extent in the Court process involves far more Court time and preparation time for police, lawyers and other services than the usual circuit times allow. It is likely that in the near future courts at Nhulunbuy and the Tiwi Islands will be expanded so that Magistrates sitting in those locations can work with all parties to develop more constructive processes. Magistrates enjoy bush circuits, so spending more time "out bush" won't be a problem but it means less judicial resources in the main centres where there are also needed for busy listings.

Not all Bush Courts are suitable for development of expanded sittings for broader participation. "Top End" practitioners and Magistrates will be aware of representations made by the Court and various other parties in relation to the inadequate facilities for the Court at Wadeye. There are no facilities for the parties to interview witnesses or clients; the Court is attached to the police station which although practical for the purpose of dealing with people in custody, because of its layout, the Magistrate needs to walk through the operational area of the police station to use even the most basic facilities. This raises problems of perceptions in terms of compromising the neutrality of the Court; there are no witness facilities (not even a witness box) and there is barely any space for members of the community to

sit or stand if they wish to watch proceedings. This is a recurring theme at a number of Court facilities throughout the Northern Territory. Mutitjulu is a community where the room used for Court is totally inappropriate despite a new police station being built – there is no appropriate facility. It does impact in my view on our ability to properly service communities and does nothing to engender an atmosphere of mutual respect with local people wondering what its all about going to a strange meeting at the "Education Centre". I note my colleague the Coroner, Greg Cavanagh has recently commented on the Wadeye facilities as he is hoping to hold a significant Coronial Inquest there shortly. Recently he was reported saying "the Wadeye community court is "about as big as a public toilet"." This all raises the issue of whether sensitive cases to refer again to current interest in cases concerning children and other vulnerable people can be heard at all in communities or whether they should all be transferred to major centres. The problem then is "who pays" for everyone's attendance, including defendants and their support persons.

Over the last few years there has been a significant increase in police numbers throughout the Northern Territory. Now there will be a further increase from other jurisdictions. It is difficult to predict what the flow-on effects of both Northern Territory and Federal measures will be in terms of impacting on resources of the Court and the ability to properly and comprehensively deal with matters in the relevant communities. One view is that new police stations and police will of course lead to an increase in charges and consequently an increase in matters before the Court. This therefore impacts on the time that the Court will need to spend on bush communities. Another school of thought is that greater enforcement of liquor restrictions will result in more people moving to regional towns and being dealt with in major centres such as Darwin, Alice Springs and Katherine and that the resources will need to be placed in those centres. In terms of the now famous "Rivers of Grog" comment by *"Little Children are Sacred"* Co-author Pat Anderson, given most of the communities where the court sits are "dry", the Rivers of Grog flow far more freely in the major centres – Alice Springs, Tennant Creek, Katherine, Nhulunbuy and Darwin.

If there is an increase in the prosecution of child sex cases as a result of the recent concentration of interest there is a problem conducting these cases on most communities or the smaller regional centres. Many of the "Courts" out bush are rooms tacked on to police stations or rooms in Community Council Offices or education centres. Like Wadeye, they don't even have a witness box let alone more sophisticated facilities available in almost all Courts in the country. If the greater numbers of police, police stations and more investigative resources involve more people being charged, some thought will need to be given to upgrading of facilities where Courts sit on communities. I understand it is not good economic sense to build stand alone Court houses in communities where the court visits for only a few days per month but to properly deal with cases, especially those that involve complex family and clan relationships, simply needs better facilities to deliver a better quality of justice. I would like to think that Northern Territory practitioners, even those who rarely attend Bush Courts would support that need.

Issues for Bush Courts Arising from *Little Children are Sacred* and the Federal Measures

There are a number of recommendations and indications of directions in *"Little Children are Sacred"* that may require consideration as they could impact on how we

proceed in "the bush". On the information available at the time of writing, there would appear to be a divergence between the direction taken in some of the *"Little Children are Sacred"* recommendations and the Federal measures announced on 21 June 2007. In very general terms, the *"Little Children are Sacred"* report points to greater involvement from the Indigenous community in sentencing: (For example the recommendation 39 encouraging the development of alternative models of sentencing that incorporate Aboriginal notions of justice….) and recommendations 71 – 73 concerning community justice and involvement of Aboriginal law in terms of how it can strengthen Northern Territory law. These issues are not referred to in the Federal Minister's press release announcing the Federal measures although under the heading "The Northern Territory Government will be expected to": It is states "remove customary law as a mitigating factor for sentencing and bail conditions"". That is of course a matter of significant policy and I wonder whether Indigenous practices that might be supportive of the community and the victim's rights and rehabilitation of the offender have been contemplated. I have mentioned one example in this paper (above) however there are plenty of examples of respected persons taking the offender back to country for rehabilitation or court orders made ordering people to go through apology processes and even the issuing of restraining orders against perpetrators of cursing. (Cursing is a real problem on some communities where people are cursed, they may be in danger of losing children and being isolated). I would hope some of the practices mentioned in this paper can still inform the basis of court orders if it is generally justified.

The Federal measures do not appear at this stage to deal with the Family and Children Services (Child Protection) area. There are a number of recommendations made in *"Little Children are Sacred"* including suggesting more child protection workers and particular recruitment of Aboriginal community workers. If those recommendations are implemented that may well change the type of practice on Bush Courts from the almost purely criminal practice to far more matters in the *Family Matters Court* (the child, need of care jurisdiction). That Court is rarely convened at Bush Courts at this stage. The *Family Matters Court* of course is not bound by the rules of evidence and makes findings on the balance of probabilities. Where a criminal case cannot proceed but there is still firm evidence on the civil standard of abuse or serious neglect, I would like to see a discussion about statutory procedure developed where perpetrators identified in the *Family Matters Court* on the balance of probabilities can still be placed on orders involving civil restraint and/or orders requiring them to undertake rehabilitation divorced from and separate from the orders made in relation to the child in *Family Matters Court* proceedings. I think there is opportunity for effective civil measures outside of the criminal process.

The Federal Minister's statement also states as a measure "Introducing welfare reforms to stem the flow of cash going towards substance abuse and to ensure funds meant to be for children's welfare are used for that purpose". At this stage the legislative mechanism for that has not been made available and it is unclear on how that will be determined. Leading activist Noel Pearson has suggested that process would involve a retired Magistrate and elders from a community in making the determination. That is likely to be a resource rich process if court processes are used and will keep many of us gainfully employed for years to come. A similar idea that is sometimes proposed in the Mental Health and Guardianship area is that the money received by inebriates ought to be part of an Adult Guardianship order so that it can be restricted to lessen the funds that are available for alcohol. That also is an individualised process but is potentially a process available in the NT with some

minor modifications to Guardianship Legislation. A number of members of some communities do not rely solely on welfare payments that have been so much of the discussion but rather rely on work, CDEP and royalty payments paid (say) quarterly by the Royalty Association. If that part of the measures concerning income control is legislated for, the result may be quite uneven throughout the NT, the result being dependant on the type of community concerned.

If a number of the Wild/Anderson recommendations are implemented concerning alcohol and drug programs and greater community involvement in justice, Bush Courts may well join other courts as a central part of the Criminal Justice System in the Northern Territory. The expansion of CREDIT NT, the *Alcohol Court* and the Indigenous Family Violence Programmes would be very welcome on the Bush Courts.