

Chapter Four: Aboriginal People in Western Australia

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CHAPTER FOUR

Aboriginal People in Western Australia

4.1

TRADITIONAL LANGUAGE GROUPS AND REGIONS

4.1.1 Language Regions and Groups

Between 1988 and 1994 researchers from the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) undertook an intensive map-making exercise of Aboriginal language regions within Australia. The researchers identified 19 separate language regions within Australia which were broadly congruent with natural environmental regions or drainage basins¹. Within those 19 regions are many hundreds of distinct language groups and languages.

The AIATSIS researchers identified 99 traditional language groups within five language regions in the State of Western Australia. Those five regions are the South West Region, the North West Region and the Kimberley Region; and part of each of the Desert and Fitzmaurice Regions.

4.1.2 AIATSIS Map

A map depicting Western Australian language regions and groups is contained on the following page². A broad summary of some of the physical and cultural features of those regions is contained in the succeeding pages.

Note that the English spelling of Aboriginal words, including the names of language groups and place names may vary quite markedly from source to source (eg “Noongar”, “Nyungah” and “Nyungar”).

¹ D Trigger ‘Some Aspects of Cultural Diversity Throughout Indigenous Australia’ in F McKeown (ed) *Native Title: An Opportunity for Understanding* Proceedings of Induction Course conducted by the National Native Title Tribunal at the University of Western Australia, Nedlands, 1 – 3 December, 1993, p 29.

² The map was kindly provided by Mr Peter Bowen, Manager, Geospatial Unit, National Native Title Tribunal, Perth.

4.1.3 The South West Region

Geography: This area largely consists of woodland area, with abundant food and other resources. The easternmost areas are arid, ultimately giving way to desert. Historically, because of its natural advantages, this area supported the densest Aboriginal population in the State.

Culture: Much of this region is the homeland of peoples who speak the various dialects of the Nyungar (or Nyungah or Noongar) language. At the northern boundary of this region the country becomes known as Yamadji (or Yamatji) country.

Contact with white settlers: Intensive contact with white settlers commenced in 1825 with the establishment of a military base in King George Sound. By 1830 dispossession of the Nyungar people commenced in earnest as white settlers pushed into the interior regions of the country. In 1832 the "Battle of Pinjarra", a massacre of Aboriginal people, took place.

Survival of culture: Despite almost complete dispossession by white farmers and traders, Aboriginal communities remain strong in the small regional towns. Inter-connected family groupings remain the basis of Aboriginal communal life, even though many members have dispersed from the region.

There are 17 traditional language groups within the South West Region, which are listed below.

Note: * indicates that the group's language boundary extends into South Australia.

- *Mirning** (Madura, Eucla, Deakin, Nullarbor area)
- *Ngatjumay* (Balladonia area)
- *Malpa* (Kambalda, Lake Lefroy, Lake Cowan, Norseman, Lake Dundas, Johnston Lakes area)
- *Wudjari* (Ravensthorpe, Esperance, Cape Pasley areas)
- *Nyaki-Nyaki* (Newdegate, Lake Grace, Corrigin, Merriden, Kellerberrin areas)
- *Goreng* (Jerramungup, Gnowerangerup, Katanning areas)
- *Minang* (Mount Barker, Denmark, Albany, Cape Vancouver area)
- *Bibbulman* (Manjimup, Pemberton, Blackwood River area)
- *Wardandi* (Cape Leeuwen, Augusta, Margaret River, Cape Naturaliste, Busselton area)
- *Kaniyang* (Bunbury, Harvey, Collie and Kojonup area)
- *Wiilman* (Wagin, Narrogin, Williams, Pingelly area)
- *Pinjarup* (Pinjarra, Mandurah, Waroona area)
- *Wajuk* (Perth, Rockingham, Kwinana, Yanchep, Toodyay area)
- *Balardung* (Beverley, York, Northam, Goomalling, Wyalkatchem, Quairading, Wongan Hills area)
- *Yuat* (Moore River, Gingin, Moora, Dalwallinu, Jurien area)
- *Kalaamaya* (Southern Cross, Mukinbudin, Lake Moore, Lake Barlee area)
- *Amangu* (Geraldton, Dongara, Eneabba, Three Springs, Mullewa, Morowa area).

4.1.4 North West Region

Geography: The North West Region comprises two major districts, the Gascoyne and the Pilbara. A number of islands, including Dirk Hartog Island and the Dampier Archipelago lie off the western coast; the coastal plains are flat and low-lying: low tablelands lie inland from the coastal plains.

Culture: The country in the southern area of this region is often described as Yamadji country. Rock paintings were an important part of traditional culture. Places such as Gallery Hill and Depuch Island contain many examples of early rock art.

Contact with white settlers: Port Hedland, the first coastal town in this area, was established for the purpose of servicing the pastoral industry. Many Aboriginal people worked in the pastoral industry, often, but not always, under very poor working conditions. Others were “blackbirded” to work on pearling vessels. In 1872 sixty Aboriginal people were killed at the “Massacre at Flying Foam Passage”. Racial tensions became extremely high in the early 1980s following the death of 16 year old John Pat in police custody in Roebourne.

Survival of culture: during the period 1946-48 Aboriginal stockman maintained a strike against their working conditions in the pastoral industry. Subsequently a number of outstation communities, such as Yandearra and Strelley, were established, often on freehold or leasehold title. Some outstations in the Pilbara range in size from 56,000 to 484,000 ha.

There are 28 traditional language groups within the North West Region, which are listed below.

- *Badimaya* (Mount Magnet area)
- *Watjarri* (Wilga Mia, Murchison River area)
- *Nhanta* (Northampton, Kalbarri area)
- *Malkana* (Dirk Hartog Island, Denham, Hamelin area)
- *Yingardda* (Carnarvon, Shark Bay, Gascoyne Junction, Wooramel area)
- *Maya* (Cape Cuvier, Lake McLeod area)
- *Payunga* (area north of *Maya*)
- *Tharrgari* (area south-east of *Payunga*)
- *Thalanji* (Exmouth Gulf, North West Cape, Learmonth area)
- *Purduna* (area south-east of *Thalanji*)
- *Wariyangga* (area east of *Tharrgari*)
- *Thiin* (area north of *Wariyangga*)
- *Jiwarli* (area north of *Thiin*)
- *Jurruru* (area north of *Jiwarli*)
- *Pinikura* (area north-west of *Jiwarli*)
- *Yinhawangka* (Paraburdoo area)
- *Ngalawangka* (area east of *Yinhawangka*)
- *Banjima* (Tom Price, Wittenoom area)
- *Kurramma* (Pannawonica, Hamersley Range area)
- *Nhuwala* (Onslow area)
- *Martuthunira* (Dampier area)
- *Jaburrara* (Karratha, Dampier Archipelago area)

- *Yinjibarndi* (Fortescue River area)
- *Ngarluma* (Roebourne, Whim Creek area)
- *Palyku* (Jigalong, Newman area)
- *Nyamal* (Marble Bar, Gallery Hill, Shay Gap area)
- *Kariyarra* (Port Hedland area)
- *Ngarla* (Goldsworthy area)

4.1.5 Desert Region

Geography: Much of the Desert Region is low-rainfall, with arid conditions and sandy desert in the Gibson Desert, Great Victoria Desert and Nullarbor Plain areas. However, there are also mountain ranges near the South Australian and Northern Territory borders. The population density is very low.

Culture: People in the western areas may describe themselves as Wongai (or Wongji). There is a rich art culture: waterholes figure prominently in traditional songs, stories and paintings.

Contact with white settlers: The first non-Aboriginal people to move into the Desert Region were pastoralists and missionaries. The discovery of gold in Kalgoorlie in 1893 transformed the economy of the region, although for the most part Aboriginal people did not receive the benefits.

Survival of culture: Many former mission stations and pastoral properties have come under Aboriginal control. To some extent the traditional art is commercially exploited today, creating a local economic base.

There are 26 traditional language groups within the Desert Region, as listed below.

Note: * indicates that the group's language boundary extends into South Australia;
° indicates that the group's language boundary extends into the Northern Territory.

- *Wangkatha* (Kalgoorlie-Boulder, Menzies, Lake Rebecca, Lake Ballard, Leonora and Lake Carey area)
- *Nganganyatjara** (Warburton area)
- *Ngalea** (Rawlinna and areas north)
- *Nakako** (area north of *Ngalea*)
- *Pitjantatjara** (Petermann Range area)
- *Mandjindja* (Great Victoria Desert area)
- *Tjalkanti* (Laverton and areas north to Lake Wells)
- *Nana* (area north-west of *Tjalkanti*)
- *Tjupany* (Meekatharra, Lake Annean, Wiluna area)
- *Wawula* (Carnarvon Range, Little Sandy Desert area)
- *Mardu* (Lake Disappointment area)
- *Ngaanyatjarra* (Warburton area)
- *Ngatatjara* (area north of *Ngaanyatjarra*)
- *Pintupi*° (Lake McDonald, Lake McKay area)
- *Ngarti*° (Balgo area)
- *Warlpiri*° (north-east of *Ngarti*)
- *Kuwarra* (Leinster area)

- *Nakako* (area east of *Mandjindja*)
- *Kukatja* (area west of *Ngarti*)
- *Yulparitja* (area north of *Mardu*)
- *Nyangumarda* (Telfer, Throssell Ranges area)
- *Karajarri* (Bidyadanga area)
- *Mangala* (Great Sandy Desert area)
- *Walmatjarri* (area east of *Mangala*)
- *Jaru* (Halls Creek area)

4.1.6 Kimberley Region

Geography: The most north-westerly part of the Kimberley Region consists of rugged terrain with tropical summer rains, high summer temperatures and woodland vegetation. The southern part of the region comprises arid desert.

Culture: This region is extremely complex culturally and linguistically. It is famous for its artistic culture, featuring the Bradshaw, Wandjina and Gurangara rock art, as well as rare bark paintings.

Contact with white settlers: Although the explorer Dampier first discovered the Kimberley in the 17th century, it was one of the last areas to be colonised, due to its distance from other population areas and its difficult terrain. In the 1880s pastoralists from the eastern seaboard drove cattle into the west Kimberley, and graziers brought sheep from the coast into the east Kimberley. A brief gold rush in the late nineteenth century created settlements such as Hall's Creek.

Survival of culture: In the last half of the twentieth century traditional Aboriginal culture was severely affected by the building of the Ord River Dam near Kununurra, which flooded a huge expanse of country and many important sites. Later, the discovery of diamonds in the Lake Argyle created further industrial development.

The 27 traditional language groups within the Kimberley Region are listed below.

Note: ° indicates that the group's language boundary extends into the Northern Territory.

- *Jukin* (Broome area)
- *Yawuru* (area south of *Jukin*)
- *Ngumbarl* (area north-west of *Jukun*)
- *Jabirrabirr* (Cape Baskerville area)
- *Nyul Nyul* (area north of *Jabirrabirr*)
- *Bardi* (Lombardina, Cape Leveque area)
- *Djawi* (islands in King Sound)
- *Nimanburu* (King Sound area)
- *Nyikina* (Derby, Looma, Noonkanbah, Fitzroy Crossing area)
- *Warwa* (King Sound area)
- *Unggarangi* (area north-west of *Warwa*)
- *Umida* (Koolan Island area)
- *Unggumi* (area east of *Warwa*)
- *Punuba* (Fitzroy River area)
- *Gooniyandi* (south-east of *Punuba*)

- *Worla* (King Leopold Ranges, Durack Range area)
- *Ngarinyin* (Drysdale River area)
- *Worora* (Augustus Island, Collier Bay, Prince Regent River area)
- *Wunambul* (Bonaparte Archipelago, Bigge Island area)
- *Gamberre* (Cape Bougainville, Kalumburu area)
- *Miwa* (Cape Londonderry area)
- *Kwini* (area south-east of *Miwa*)
- *Yijji* (area south-east of *Kwini*)
- *Doolboong* (Wyndham, Ord river area)
- *Kadjerong* ° (area east of *Doolboong*)
- *Miriwoong* ° (Kununurra, Lake Argyle area)
- *Kija* ° (Lake Argyle, Turkey Creek area)

4.1.7 Fitzmaurice Region

A portion of the language area of the Gurindji people extends from the Northern Territory into Western Australia. Most of the Gurindji language area is located in the Fitzmaurice Region in the north-west of the Northern Territory.

4.1.8 Survival of Aboriginal Languages

In research findings published in 1990, only four Aboriginal languages within Western Australia were identified as being “healthy” or “strong” (meaning a language which is actively transmitted to and used by children³). Of those, only one, *Yinjibarndi* is contained within the North West Region: it is spoken in what is known in non-Aboriginal terms as the Fortescue River area. The remaining “healthy” languages are spoken in the Desert Region: *Nyangumarda* (Telfer, Throssell Ranges area), *Jaru* (Halls Creek area) and four varieties of the language described as “Western Desert”: *Mandjindja* (Great Victoria Desert area) *Mardu* (Lake Disappointment area), *Ngaanyatjarra* (Warburton area) and *Kukatja* (area west of *Ngarti*)⁴.

³ A Schmidt *The Loss of Australia's Aboriginal Language Heritage* Aboriginal Studies Press, Canberra, pp 1,2.

⁴ Schmidt, n 3, p 4.

4.2

SUMMARY OF LEGISLATIVE MEASURES 1886 - 1998

In 1886 the first statute in relation to the Aboriginal people of Western Australia was enacted. The *Aborigines Protection Act 1886* (50 Vic No 25) established the Aborigines Protection Board in which vested the responsibility of matters relating to the health, welfare and advancement of Aboriginal people within the colony.

In the succeeding decades more than one hundred statutes affecting Aboriginal people were enacted in Western Australia⁵. A useful summary of early legislation affecting Aboriginal people is contained in the judgment of Owen J in *Judamia v State of Western Australia*⁶. See also the discussion of early history by the High Court in *Western Australia v Commonwealth (Native Title Case)*⁷.

The legislative measures which were effected by the *Aborigines Act 1905* (WA) and the *Native Administration Act 1936* (WA) are now widely criticised. Pursuant to the former law, the Chief Protector of “aboriginal people” was empowered to effect measures for the relief, protection and control of Aboriginal persons. Under the latter Act every “native child” (elaborately defined in terms of bloodline) was made the legal ward of the Commissioner for Native Administration. The Minister was empowered to remove any Aboriginal person *inter alia* from a reserve, district or hospital. Accordingly, many families were dispersed and fragmented. The *Native Administration Act 1936* (WA) imposed a permit system for entry into certain towns and regulated matters such as marriage, health, employment and the management of money or property. Aborigines camped near towns could be moved on by the local “Protector”, usually a policeman.

However, exemption from the operation of the *Native Administration Act 1936* (WA) could be obtained by Aboriginal persons who renounced their Aboriginality. Such renunciation required the abandoning of links with Aboriginal culture, language and traditions. The severance process compounded the suffering of many Aboriginal people who had been forcibly removed from their traditional country. In 1954 the *Native Welfare Act 1954* (WA) repealed the most draconian statutory measures, but under its provisions the removal of children still occurred.

The first “progressive” law enacted in respect of Aboriginal people was the *Aboriginal Affairs Planning Authority Act 1972* (WA), which created the Aboriginal Affairs Planning Authority and created the Aboriginal Lands Trust.

A detailed examination of general laws enacted in relation to Aboriginal people is beyond the scope of this Benchbook. However, the major enactments which have governed or impacted upon the lives of Aboriginal people in Western Australia are contained in table form on the next page.

⁵ See the discussion in J McCorquodale *Aborigines and the Law: A Digest* Australian Studies Press, Canberra, 1987.

⁶ Unreported, WA Sup Ct, 23 January 1995, No 950137.

⁷ (1995) 183 CLR 373.

LEGISLATION	MAIN FEATURES
<i>Aborigines Protection Act 1886</i>	<ul style="list-style-type: none"> Established the Aboriginal Protection Board (APB) with responsibility for Aboriginal health & welfare
<i>Aborigines Act 1897</i>	<ul style="list-style-type: none"> APB replaced by an Aboriginal Dept (AD) with similar responsibilities; appointed the Chief Protector (CP)
<i>Aborigines Act 1905 (WA)</i>	<ul style="list-style-type: none"> Law for the “better protection and care” of Aborigines; Governor empowered to declare areas prohibited to Aboriginal people and to declare Aboriginal reserves; CP became guardian of all Aboriginal and “half-caste” children under 16 years; could remove “orphaned” or “needy” children to missions or institutions; Police and justices of peace had extensive powers
<i>Native Administration Act 1936 (WA)</i>	<ul style="list-style-type: none"> AD replaced by Dept of Native Affairs (DNA): CP replaced by a Commissioner, who became the legal guardian of all Aboriginal people under 21 years; Permitted the removal of Aboriginal people to any reserve, district, hospital or institution.
<i>Native (Citizenship Rights) Act 1944 (WA)</i>	<ul style="list-style-type: none"> Permitted Aboriginal people to apply for citizenship if they relinquished traditional connections.
<i>Native Welfare Act 1954 (WA)</i>	<ul style="list-style-type: none"> This law repealed much of the discriminatory measures, but still permitted the removal of children; DNA replaced by Dept of Native Welfare (DNW).
<i>Electoral Act Amendment Act 1954 (WA)</i>	<ul style="list-style-type: none"> Aboriginal people granted status to vote and stand for Parliament.
1967 Amendments to Australian Constitution	<ul style="list-style-type: none"> Section 51 (xxvi) Constitution amended, Federal Govt empowered to legislate for Aboriginal people; Section 127 Constitution repealed; Aboriginal people to be counted in the Census.
<i>Aboriginal Affairs Planning Authority Act 1972 (WA)</i>	<ul style="list-style-type: none"> DNW replaced by Aboriginal Affairs Planning Authority; Aboriginal Lands Trust created; Responsibility for Aboriginal education, health, housing etc devolved to mainstream Departments.
<i>Aboriginal Heritage Act 1972 (WA)</i>	<ul style="list-style-type: none"> Law to facilitate the protection of Aboriginal sacred and significant sites.
<i>Aboriginal Education (Supplementary Assistance Act 1989 (Cth)</i>	<ul style="list-style-type: none"> Financial assistance given to encourage completion of secondary & tertiary education.
<i>Council for Aboriginal Reconciliation Act 1991(Cth)</i>	<ul style="list-style-type: none"> Established Reconciliation Council with mandate to heal societal divisions, promote a united Australia.
<i>Aboriginal and Torres Strait Islander Act 1991 (Cth)</i>	<ul style="list-style-type: none"> Established ATSIC, a representative body; ATSIC Commissioners devise, implement and monitor programs; conduct research; advise Minister.
<i>Land (Titles and Traditional Usage Act) 1993 (WA)</i>	<ul style="list-style-type: none"> Unsuccessful attempt to substitute rights of “traditional usage” for the native title rights recognised in <i>Mabo</i>.
<i>Native Title Act 1993 (Cth) / Land Titles Validation Act 1995 (WA)</i>	<ul style="list-style-type: none"> Establishment of native title regime following <i>Mabo</i>; extensive validation of extinguished native title.
<i>Native Title Amendment Act 1993 (Cth) / Land Titles Validation (Amend) Act 1998 (WA)</i>	<ul style="list-style-type: none"> Imposed more restrictive native title regime; extended validation of extinguishment.

4.3

DEMOGRAPHIC COMPARISONS

The 1996 Census revealed stark demographic comparisons between Aboriginal and non-Aboriginal Western Australians. The summary of data contained below is drawn from that Census⁸.

4.3.1 Population/Households

The 1996 Census recorded that 3% of Western Australia's population (56,205 people) identified as Aboriginal. Forty per cent of those were under the age of 15 years - almost double the proportion of the total population under 15 years (22%). Seventy per cent of Aboriginal people lived outside the main urban centres, compared with 36% of the total population.

Eight per cent of Aboriginal households contained two or more families (compared with 1% of all households); 40% of Aboriginal households had at least three children under the age of 15 years (compared with 21% of all households).

The median weekly income of Aboriginal families was less than two-thirds of that received by all families: \$492.00 compared with \$762.00.

The majority of Aboriginal households (79%) lived in rented dwellings: this compares with 30% of total households which lived in rented dwellings. Seventy per cent of all non-Aboriginal householders owned or were purchasing their own home.

4.3.2 Employment

In 1996 the labour force participation rate of Aboriginal people was 47% compared with 63% of the total population in Western Australia. The unemployment rate for Aboriginal people (19%) was more than double that of the State's total population (8%). Fifty-eight per cent of Aboriginal females aged 15 years and older were not in the labour force.

4.3.3 Education

In 1996 one-third of the State's Aboriginal population was attending an educational institution. Fifty-five per cent were attending primary schools. Fifty-three per cent of Aboriginal persons aged 15 to 17 were students, compared with 78% of the total population in that age group in Western Australia. Only 10% of Aboriginal persons over the age of 15 possessed a post-school qualification. In rural areas, 5% of Aboriginal people had post-school qualifications: in major urban centres that figure rose to 16%⁹.

⁸ Australian Bureau of Statistics *Census of Population and Housing: Aboriginal and Torres Strait Islander People, Western Australia, 1996*, 2035.5.

⁹ Australian Bureau of Statistics, *Census of Population and Housing*, n 8.

4.4

CRIMINAL JUSTICE

4.4.1 Overview of the Crime Rate

In 2000 Western Australia recorded an average or below average rate of crime for most offence categories, compared with other States and Territories. However, it recorded the highest rate of burglary of any State or Territory, as it has done since 1993¹⁰. The rate of motor vehicle theft has declined steadily since 1996, and is now one of the lowest in the country. However, compared with the 1999 data and taking into account population growth, the total number of offences reported to police increased by 4.9% from 15,692 per 100,000 to 16,465 offences per 100,000 people¹¹.

In 2000 the highest level of violence, including the highest rate of sexual offences, was recorded in the Kimberley. About three-quarters of all crime reported in the State occurred in the metropolitan area, and Perth recorded the highest rate of robbery offences¹².

4.4.2 Aboriginal Participation in Crime

Historically it has not been possible to obtain accurate data relating to the ethnicity of defendants before Western Australian courts. In 2000 improved data-retrieval methods permitted a higher degree of accuracy in the assessment of the extent of Aboriginal involvement in the criminal justice system¹³. That research results clearly demonstrates that Aboriginal people in Western Australia - particularly women – continue to be disproportionately involved in crime, both as offenders and victims.

The level of over-representation of Aboriginal persons in police arrest statistics has been steadily increasing since 1990. In 2000 Aboriginal people were almost ten times more likely than non-Aboriginal people to be apprehended by police. In 2000 the arrest rate of juveniles had increased only slightly from that recorded in 1999, but the arrest rate of Aboriginal women had increased significantly. In many cases the apprehensions of Aboriginal women related to good order offences or suspected driving offences. However, Aboriginal women were more than 32 times more likely than non-Aboriginal women to be arrested for crimes against the person¹⁴.

In 2000 a total of 10,697 charges were finalised in the Supreme and District Courts of Western Australia. The District Court dealt with the overwhelming majority (92.3%) of those charges. Convictions were recorded in respect of 79.2% of those charges, which involved 3,361 distinct persons¹⁵. Aboriginal persons comprised 20.6% of those 3,361 distinct persons¹⁶.

¹⁰ Australian Bureau of Statistics *Recorded Crime, Australia 2000*, 4510.0.

¹¹ AM Ferrante, J Fernandez J, NSN Loh *Crime and Justice Statistics for Western Australia: 2000* The University of Western Australia Crime Research Centre, November 2001, p vi.

¹² Ferrante et al, n 11, p vi.

¹³ Ferrante et al, n 11, p 66.

¹⁴ Ferrante et al, n 11, pp vi-vii.

¹⁵ Ferrante et al, n 11, p 67-68.

¹⁶ Ferrante et al, n 11, p 68.

In 2000, based on crimes reported to the police, the victimisation rate of Aboriginal persons was more than five times that of non-Aboriginal persons: 5,453 per 100,000 compared with 1,054 per 100,000¹⁷. There is abundant evidence that the victimisation of Aboriginal women is an extremely serious problem¹⁸. Much of the sexual and other forms of violence suffered by Aboriginal women occurs within the family:

"A recent study of assault cases against Aboriginal women revealed that in 53% of cases, the offender was known to the victim, and in 69% of these cases the violence was 'domestic', that is, the offender was the spouse or partner of the victim." ¹⁹
(footnote omitted)

More than 70% of Aboriginal victims were women; by comparison, less than half of non-Aboriginal victims (46%) were women²⁰.

Statistics such as those briefly outlined above starkly demonstrate the continued over-representation of Aboriginal people in the criminal justice system.

The Chief Justice of Western Australia, the Hon David Malcolm AC CitWA, has emphasised that Aboriginal over-involvement in the Western Australian criminal justice system is a community problem which requires community solutions. In *Clinch v R*²¹ His Honour stated:

"[The] failure to address the social and economic problems of our Aboriginal communities by culturally sensitive programmes aimed at developing self-reliance and self-esteem on the part of such communities, so as to remove the causes of violence and crime, will continue to produce bitter, angry and alienated individuals who pose a serious threat to the safety, lives and property of others. Domestic violence, sexual assault, child abuse, burglary, car theft, other offences and juvenile crime are all symptoms as well as consequences of the continuing failure to address these problems, which are all too often associated with alcohol and drug abuse. There is a compelling need to reduce the potential for crime by investment in appropriate social and economic programmes from which the dividends will be not only a reduction in the incidence of crime, and in particular violent crime, but a reduction in the very high costs to the community of the direct and indirect costs of crime. Experience with the implementation of a number of community-based programmes recommended by the former State Government Committee on Young Offenders directed at the reduction of juvenile crime in particular areas has provided convincing evidence of the potential of such programmes." ²²

4.4.3 Aboriginal Incarceration Rates

¹⁷ Ferrante et al, n 11, p vi.

¹⁸ See *inter alia* Western Australian Chief Justice's Taskforce on Gender Bias, *Report of the Chief Justice's Taskforce on Gender Bias* 30 June 1994.

¹⁹ H Blagg *Crisis Intervention in Aboriginal Family Violence: Summary Report* Crime Research Centre, University of Western Australia, 2000, p 5. Dr Blagg reported that the rate of violence directed towards "family" in general was higher in Aboriginal than in non-Aboriginal communities, constituting 22.6% of homicides and 17.2% of serious assault in Aboriginal communities, compared with 14.8% and 4.4% respectively in non-Aboriginal communities.

²⁰ Ferrante et al, n 11, p vi. This correlates with the high rate of violent offences recorded in the Kimberley, Pilbara, Central and South Eastern region.

²¹ (1994) 72 A Crim R 301.

²² *Clinch v R*, n 21, at 309.

Aboriginal people remain highly over-represented in all forms of custody. The imprisonment rate for Aboriginal offenders declined from 5,076 per 100,000 adult persons in 1990 to 2,579 per 100,000 adult persons in 1997. However, in 2000 it had increased to 3,340 per 100,000 adult persons. The relevant rates of incarceration for non-Aboriginal persons were 187 per 100,000 in 1990; 124 per 100,000 in 1997 and 172 per 100,000 in 2000.

These statistics indicate that in 1990 Aboriginal people were 27 times more likely than non-Aboriginal persons to be incarcerated: in 2000 Aboriginal persons were almost 20 times more likely than non-Aboriginal people to be incarcerated²³.

A number of recent reports have examined the circumstances of Aboriginal persons within Western Australian prisons, in particular:

- Auditor General *Waiting for Justice – Bail and Prisoners in Remand*, Performance Examination Report No 6, Western Australia, October 1997;
- *Report of an Inquiry into the Incident at Casuarina Prison on 25 December 1998*, 19 March 1999;
- *Report of the Standing Committee on Estimates and Financial Operations in Relation to Financial Management of Prisons*, Report 29 to the Legislative Council;
- *Report of an Unannounced Inspection of Eastern Goldfields Prison*, Office of the Inspector for Custodial Services, Western Australia, August 2001.

On a more positive note, a wide variety of non-custodial dispositions, such as work and development orders, intensive supervision orders, and community based orders increasingly are being made in respect of Aboriginal offenders. In 2000, Aboriginal offenders served 68% of all work and development orders made by Western Australian courts²⁴.

4.4.4 Aboriginal Justice Council

Recommendations 2 and 3 of the *Royal Commission into Aboriginal Deaths in Custody: National Report* (Final Report) advocated the establishment of independent Aboriginal Justice Advisory Committees in each State and Territory²⁵. The proposed function of such bodies was *inter alia* to monitor the implementation of the recommendations made in the Final Report, and to advise governments of Aboriginal perspectives on criminal justice matters. In 1992 an Aboriginal Justice Advisory Council was established in Western Australia to give interim effect to those recommendations.

In 1994 a permanent advisory body to the Western Australian Government was formally established. This body, the Aboriginal Justice Council (AJC), is funded on a recurrent basis by State and Commonwealth Governments, and has been further assisted by grants from the Aboriginal and Torres Strait Islander Commission. The AJC receives ongoing secretariat support, which includes research and policy

²³ Ferrante et al, n 11, p 142.

²⁴ Ferrante et al, n 11, p ix.

²⁵ E Johnston QC, Vol. 3, AGPS, Canberra, 1991, p 30.

assistance, from the Indigenous Affairs Department. Mr Glen Colbung is currently Acting Chairperson of the AJC.

A number of community justice initiatives have been sponsored jointly by the Indigenous Affairs Department, the Department of Justice and the Police Services. Such community initiatives include the introduction of Aboriginal Street Patrols, which have proved highly effective in country and metropolitan areas.

Seven Regional Aboriginal Justice Councils have been established in the State: namely the Metropolitan, Southwest, Murchison/Gascoyne, Goldfields, Pilbara, West Kimberley and East Kimberley Regional Councils. Those Regional Councils advise the AJC on matters of local and regional importance, with a view to establishing appropriate support mechanisms for Aboriginal communities throughout the State.

Both the AJC and the Regional Councils explore and assess the broader social justice issues which underpin Aboriginal over-involvement in the criminal justice system. In 2000 an Aboriginal Justice Plan²⁶ was developed jointly by the AJC and the Justice Coordinating Council, a body of Ministers and Chief Executive officers of Government agencies with responsibility for justice-related issues. The purpose of the Aboriginal Justice Plan is to reduce Aboriginal over-involvement in the criminal justice system *inter alia* by the promotion of primary preventative measures, the implementation of measures of social and criminal justice reform, and the increased involvement of Aboriginal people in the planning, monitoring and delivery of services to Aboriginal people²⁷.

²⁶ Aboriginal Affairs Department, *The Western Australian Aboriginal Justice Plan 2000*, Perth, 2000.

²⁷ Indigenous Affairs Department *Government of Western Australia: 2000 Implementation Report*, June 2001, pp 6-8.

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