

FINAL REPORT

FUTURE DIRECTIONS: COURTS AND INDIGENOUS CULTURAL AWARENESS CONFERENCE 2002

12-14 June 2002, Alice Springs

Conducted by the AIJA's National Indigenous Cultural Awareness Committee to:

- Explore the effectiveness of past cultural awareness programmes conducted or sponsored by the AIJA from both an indigenous and judicial perspective; and
- Examine ways of strengthening the judiciary's understanding of indigenous issues and strengthening the ongoing relationship between the judiciary and the indigenous community.

Background

Since 1994, the AIJA has sponsored indigenous cultural awareness training programs in all Australian jurisdictions. These have been designed to implement Recommendation 96 of the Final Report, Royal Commission into Aboriginal Deaths in Custody:

"That judicial officers and persons who work in the court service and in the probation and parole services whose duties bring them into contact with Aboriginal people be encouraged to participate in appropriate training and development programmes, designed to explain contemporary Aboriginal society, customs and traditions. Such programmes should emphasize the historical and social factors which contribute to the disadvantaged position of many Aboriginal people today and the nature of relations between Aboriginal and non-Aboriginal communities today.

The Commission further recommends that such persons should wherever possible, participate in discussion with members of the Aboriginal community in an informal way in order to improve cross-cultural understanding"

Summary of Conference Proceedings

WEDNESDAY 12 JUNE

The Conference was held to coincide with a meeting of the National Aboriginal Justice Advisory Council (NAJAC), which was held in Alice Springs on 12 June. Proceedings began with a joint (informal) meal on the Wednesday evening, at which the delegates were welcomed by AIJA National Committee Convenor, Judge Mary Ann Yeats.

THURSDAY 13 JUNE 2002

Delegates were welcomed to the conference on Thursday morning, by Mrs Pat Miller, on behalf of the traditional owners, the Lhere Artepe Aboriginal Corporation.

The keynote address was then given by Mr Patrick Dodson, Chairperson, Lingiari Foundation. In an address entitled 'Getting Through the GAP', he voiced his discouragement that, 10 years after the Royal Commission into Aboriginal Deaths in Custody, imprisonment rates for Aboriginal people in Australia have worsened, rather than improved. He said that has, in fact, been a public policy swing against Aboriginal people over the past 10 years. Mr Dodson called for substantive, rather than practical, reconciliation. This, he said, should involve recognition of Aboriginal culture and law which would empower Aboriginal people to find their own solutions to community problems. Patrick also suggested that courts should bear in mind the concept of 'cultural match', meaning that cultural

communication is a two-way process and involves providing mechanisms for Aboriginal people to take positions of power, control and ownership of the administration of justice.

Each jurisdiction was then invited to provide an overview of their programs and initiatives. These included:

- Seminars, conferences and training for judges and magistrates;
- Visits by judges and magistrates to Aboriginal communities and organisations and establishing/maintaining communication channels;
- Employment of Aboriginal Liaison Officers;
- Production of instructional/reference/resource materials eg. benchbooks, lists of relevant referral agencies, programs
- Provision of interpreters;
- Changes to courtroom layout and design;
- Sentencing initiatives:
 - involving Aboriginal elders/community representatives on the bench (indigenous courts) or in circle sentencing;
- releasing offenders to community-run programs

A number of the presentations included discussions of the factors that were thought to contribute to successful cultural awareness programs for the judiciary. These included:

- Creating opportunities for dialogue between judicial officers and indigenous people;
- The importance of proper planning;
- The need to address underlying issues contributing to the over-representation of indigenous people in the justice system;
- The importance of holding seminars in an environment that was culturally appropriate and comfortable for all participants.

Following the overview, workshop sessions were held. Participants were invited to identify the issues arising in setting Future Directions for Cultural Awareness Programmes, including, but not limited to:

- Mentoring indigenous lawyers and law students
- Role of indigenous 'liaison' officers within court administration
- Recruitment and employment of indigenous people in courts – problems, barriers, how may they be addressed?
- Getting judges involved in cultural awareness programmes
- Organisational commitment (judicial and indigenous) to delivery of future programmes
- Identification of relevant individuals and organisations in each state/territory - consultation with Aboriginal organisations
- Community visits by judges/magistrates: what problems?
- Do cultural exchanges raise unreasonable expectations of the approach judges/magistrates may take to Aboriginal offenders?
- How should judges/magistrates become informed about cultural information and cultural factors concerning individual offences or offences generally?
- How cultural awareness projects can deal with concerns such as the appearance of special treatment, concern about contact with potential witnesses/parties, concern about being involved in a "political agenda".
- Aspects of the judicial culture which Aboriginal employees find oppressive or offensive.

Following the workshops, a plenary session was held to collate the findings. A number of key issues emerged. They included:

1. How to involve the judiciary in training and other initiatives;
2. How to build networks/gateways/relationships/trust between the judiciary and indigenous communities;
3. How to recognise, respect, encourage and support traditional law and custom – 'the table'

4. How to build indigenous participation in the justice system – in the judiciary, lawyers, court staff and officers, liaison officers etc.

Among a number of problems that were raised, was the possibility of 'capture' i.e. that programs that were developed by individual initiatives may be 'captured' and institutionalised by the bureaucracy. They may then fall victim to competing institutional priorities, particularly where budgets are an issue. An example was given of judicial education programs in New Zealand, involving visits to Maori communities. These had been brought under the auspices of the Judicial Training Institute and then it had been found that there were pressures to curtail the program.

FRIDAY 14 JUNE 2002

The morning began with an address by traditional owner, Mr William Tilmouth. He spoke about the lived reality of Aboriginal law in the Northern Territory and the use of the western legal system to oppress Aboriginal law and culture. He noted that the ad hoc recognition of customary law meant that indigenous people are continuing to face double jeopardy with regard to punishment. They are also discriminated against within the western legal system and over-policing of the Aboriginal community is also a major problem.

He referred to the description of western law as 'tablecloth law;' – Aboriginal law is the table, the solid structure underneath. Whitefella law is like the tablecloth that covers the table, so you can't see it, but the table is still there. He called for the legal system to deal with the reality and recognise Aboriginal customary law in its entirety.

The conference then heard a number of presentations on indigenous courts, both from Australia and overseas. It included presentations from:

Judge LS 'Tony' Mandamin – Alberta, Canada, on the Peacemaker Court
Judge Jim Rota – New Zealand on the work they have been done with the Maori community in New Zealand
Magistrate Chris Vass – South Australia on the Noongya Court
Mr Andrew Jackomos and team from the Ministry of Justice in Victoria – Victoria on the Koori Court
Magistrate Doug Dick, New South Wales – on the circle sentencing initiative in the Shoalhaven Magistrates' Court
Magistrate Kathy Deland from the Northern Territory, Magistrates Court on working with traditional Aboriginal communities

The conference was also addressed by Mr Tauto Sansbury, Chair of the National Aboriginal Justice Advisory Committee. Tauto noted that NAJAC focuses on the criminal justice system and the underlying issues concerning Aboriginal deaths in custody. They are community based and do not believe their function can be done by a government department. NAJAC's national budget is only \$15,000 annually.

He introduced Alison Hunt, a western Arrente woman from Hermannsburg. Alison brought a painting by her daughter depicting the empowerment of Aboriginal people in her area. Alison spoke of the need to change the white system to understand the Aboriginal system. She said customary law cannot change. Aboriginal people cannot change. The white system has to change..."

The final session of the conference was a plenary session to develop strategies for future. It was agreed that the judiciary needed to show leadership, both in terms of promoting and encouraging judicial officers to participate in cultural awareness training and other initiatives.

The question of seeking future funding was also discussed and it was agreed that the AIJA should continue to seek assistance from government in funding future programs. However, it was noted that there is a lot that can be done without funding, and that courts should also try to include cultural awareness initiatives within their regular internal conferences and activities as a way of attracting judicial officers who make not attend special interest program.

It was also agreed that bodies such as the Judicial Conference of Australia might be able to undertake more of a lobbying role in relation to the bigger picture, social justice issues.

It was suggested that judges should also take an active role in encouraging education on these issues from law school onwards, so that new graduates coming into the legal profession have this understanding from the beginning of their careers.

It was agreed that building good relationships between the courts and indigenous communities was a very important part of implementing Recommendation 96. It was suggested that mechanisms be set up to provide contact points for judges who are on circuit to facilitate regular liaison. It was also suggested that the Regional Aboriginal Judiciary Advisory Committee structure in Victoria might be a good model for other jurisdictions to consider, as a mechanism for encouraging ongoing liaison between the courts and the indigenous community.

It was also agreed that there needs to be greater recognition of indigenous customary law and greater indigenous involvement and ownership of the administration of justice in indigenous courts and other sentencing initiatives.

Conclusion

Feedback from the participants to date indicates that one very useful aspect of the conference was the opportunity to share information about various initiatives in the area of indigenous cultural awareness that are underway in courts and justice departments around the country. It was commonly remarked that much of this information was not readily available or easily accessible to people otherwise than at conferences such as this. One useful role of the AIJA may be to expand its role in acting as a clearing house for this type of information, possibly by use of its website.

A number of common themes emerged from much of the discussion at the conference. They included the need to build bridges between the courts and the indigenous community, to encourage face-to-face interaction and discussions, to look for practical solutions that also take into account the broader picture of indigenous disadvantage, and to bear in mind that cultural exchange is a 'two-way' process.

It is clear from the conference that the cultural awareness training for the judiciary and the courts generally needs to be ongoing, and that it is particularly important to ensure that judicial officers dealing with indigenous people have that training. The Committee also noted the importance of establishing processes that would involve judges at a local level.

The conference also successfully identified particular areas where further work could be recommended. These include as mentoring schemes for indigenous lawyers and court employees, the use of indigenous liaison officers, interpreters, court companions and appropriate legal representation for indigenous people in courts.