

Instead of by-laws the Commission has proposed changes to some offences under Australian law in order that they can apply to discrete Aboriginal communities. In addition, the Commission has suggested that there should be an offence similar to trespass that applies to discrete communities. Therefore, if a member of a community is causing too much trouble the community justice group could ask that person to leave for a period of time. If that person refused to leave the community the police could be asked to remove the person and charge them if necessary. The Commission thinks that the focus should be on processes developed by the community itself but where necessary Aboriginal communities will be protected by Australian law as is the case for any other Western Australian.

The potential benefits of the Commission's proposal for community justice groups are that it will:

- assist Aboriginal people to develop their own processes for dealing with justice issues within their community;
- recognise aspects of Aboriginal customary law in a practical way with as little interference as possible by the Australian legal system;
- strengthen the cultural authority of Elders;
- reduce offending;
- improve the potential for Aboriginal people to be diverted away from the criminal justice system;
- reduce the rate of Aboriginal imprisonment;
- provide more effective sentencing and bail options for courts;
- enable Aboriginal people to be actively involved in the criminal justice system;
- assist in improving the level of understanding of the criminal justice system in Aboriginal communities; and
- assist in improving the broader governing capacity of Aboriginal communities.

ABORIGINAL CUSTOMARY LAWS PROJECT

Have your say ...

The Law Reform Commission of Western Australia wants to hear your opinion about the proposals discussed in this document.

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Community Justice Groups

The Commission has proposed that any Aboriginal community will be able to set up a community justice group if they wish to and the group members will be chosen by their community. Each relevant family, social or skin group in the community will be able to have an equal number of members. In addition, because the Commission wants to make sure that Aboriginal women are fully protected, community justice groups must have an equal number of men and women from each relevant group.

Community justice groups can play an important role in the criminal justice system. For example, a community justice group could provide programs and services to help members of their community stay out of trouble and stop them from entering the criminal justice system. A community justice group might also play a role in supervising offenders while on bail or subject to court orders. One of the most important roles is for members of a community justice group to provide information and evidence to courts about Aboriginal customary law and other relevant cultural issues.

For discrete Aboriginal communities (that is, those communities with specific physical boundaries) the Commission has also proposed that a community justice group could set community rules and decide the punishment if those rules are broken. The Commission has not put any limits on the nature of these rules and penalties except that they must not breach Australian law. The Commission thinks that this option is better than the current by-law scheme in Western Australia. The Commission believes that the by-law scheme means that Aboriginal people are bound by an extra set of laws in addition to their own customary laws and the general criminal laws of Australia. By-laws often just copy other offences under Australian law and there is nothing to suggest that the by-law scheme has been successful in dealing with social and justice issues in Aboriginal communities.

Community justice groups in action

In order to show how a community justice group could operate in practice, two case studies are set out below. Of course, a community justice group may decide to deal with the circumstances in these examples in a different way.

Case study 1

A young Aboriginal male lives in a community where the community rules ban the use of alcohol. This man has been caught a number of times drinking alcohol at the community as well as at a nearby town. The community justice group has already warned the man to stop drinking, including during a community meeting. The man is again caught drinking alcohol but this time he has assaulted his partner by pushing her hard enough that she fell to the ground. He does not have any history of violence.

The community justice group holds a meeting with the offender and the victim. All agree that because this is the first time the offender has been violent it would not be appropriate to refer him to the police. During the meeting it was agreed by all parties that the offender must spend three months at the community's outstation and stop drinking alcohol. During the time at the outstation he would be supported by Elders who think that he should become more involved in traditional activities and that this will improve his respect for his culture, community and family.

If all goes well then the offender is diverted from the criminal justice system but at the same time the offender is getting help and support to stop offending. On the other hand, if the offender does not stick to the agreement the community justice group could consider other options such as sending the matter to the police or asking the offender to leave the community.

Case study 2

An Aboriginal boy from a discrete community is arrested by the police in a nearby town for burglary. He and four other children broke into the local liquor store and stole alcohol and cigarettes. The boy had left his community to meet up with his friends in town. He had been drinking alcohol prior to committing the burglary. This boy does have a criminal record, but this is his first serious offence.

The police arrest the boy in the town at night and because they cannot find a responsible person he spends the night in custody. The next day he appears in court before the local magistrate. The magistrate asks to hear from a member of the community justice group who is in court that day to talk about another matter. This person says that he is surprised about the boy's behaviour and suggests that he has been spending too much time with his friends in the town. At the community alcohol is not allowed. The member of the community justice group also tells the court that the boy would benefit from a bush trip program that is being run by Elders in the community.

The magistrate delays the sentencing for three months and places the boy on bail to a responsible person. The member of the community justice group agrees to be the responsible person.

After three months the boy and member of the community justice group reappear in court and tell the magistrate that the boy completed the program and appears to be settled. The magistrate then decides to dismiss the charge under s 67 of the *Young Offenders Act 1994* (WA). If the boy had not attended the program then the magistrate would be able to sentence the boy in the usual manner.