

Policing Remote Aboriginal Communities — Wiluna 1994

The final Report of the Royal Commission into Aboriginal Deaths in Custody and its 339 recommendations (and in Western Australia the two volume Regional Report of Inquiry into Underlying Issues in Western Australia by Patrick Dodson and the Regional Report of Inquiry into Individual Deaths in Custody in Western Australia by Commissioner O'Dea) was published in 1991. One of the deaths reported on by Commissioner O'Dea was that of Robert Anderson, who died on 6 July 1990 in Wiluna. Subsequent to the Royal Commission's reports, the Aboriginal Legal Service (ALS) published a report to the Western Australian Government on lack of progress in the implementation of the recommendations, entitled *Striving for Justice*.¹ The Government of Western Australia responded with an Implementation Report, through its Aboriginal Affairs Planning Authority, in December 1993. In April 1994 the state government published the two volume report of its *Task Force on Aboriginal Social Justice*. Much of the publicity given by the press to the conflict between the ALS and the government centred on the absolute numbers of recommendations "implemented" out of 339. What is important is that each of the Government, its Task Force and the ALS start by using the recommendations of the Royal Commission as the bench mark against which actions and inactions are to be measured.

In late 1994 the national press refocussed on the issues but in the context of the town in which Robert Anderson had died, following the release of a report commissioned by the Aboriginal Legal Service entitled *Counting the Cost — Policing in Wiluna 1994*.²

The report deals with one tiny isolated desert outpost but one which illustrates the problems and processes which surround so many of the issues highlighted by the Royal Commission and the arguments over the implementation of its recommendations. Wiluna is far removed from the social environments of the vast majority of Australia's people. What the media concentrated on were in fact the central issues of the report; over-policing, detention rates and the notorious meal allowance paid to police officers for supplying meals to prisoners and detainees.

But both the report and the associated community concerns raise a number of other issues of equally long standing. In some cases these have more important ramifications not only for isolated and Aboriginal-dominated communities such as Wiluna, but generally in criminal justice.

In early 1994, it seems, the local Mardu people became concerned about increasing arrest rates and removal of limitations on alcohol availability which the community had negotiated with the licensee of the town hotel. Against Mardu community wishes the hotel front bar, which had previously been closed at 7.00 pm, began to trade until 10.00 pm apparently after intervention by local police. The Mardu community had earlier successfully petitioned the hotel licensee to stop the sale of liquor in glass bottles, spirits and wine.

In June 1994 a Women's Health meeting in the town sent a submission to the WA Health Minister raising these and other policing matters. An independent Mardu Social Justice Committee was formed which commissioned the ALS to assess its claims of over-policing and expressed concerns about allegations of harassment and intimidation, exces-

1 Ayres, R, *Striving for Justice* (1993) Aboriginal Legal Service of WA.

2 Leicester, S, *Counting the Cost* (1994) Aboriginal Legal Service of WA.

sive police numbers, the charging of people with disorderly conduct as a means of detaining drunken persons, undue pressure to enter pleas of guilty and misrepresentation of facts by police, multiple charging and the laying of further charges when people questioned arrest and negative police attitudes towards community members.

All this arose in the context of a township of some 250 persons in 1994, around 200 of whom are the local Mardu people.

The town was historically more important. Wiluna is approximately 950 kilometres north-east of Perth and lies on the fringe of the traditional area occupied by the Mardu, most of whom continue to speak their traditional language and are actively involved in customary law practices. Communities both north-east, east and south-east travel within a huge central desert area for cultural purposes. In the early 1980s it had a population of between 800 and 1 200, but by 1991/92 this had declined to about 500 and by 1994 to some 250. The town's population, however, fluctuates dramatically. Community movements in or out of the town have a significant effect.

In response to the Alcohol Abuse Workshop Submission to the Health Minister, the police recommended establishment of a detention shelter for intoxicated persons and the establishment of an Aboriginal/Police Relations Committee. In September 1994 some 35 community members met with the Officer-in-Charge of Police. However, discussion about the establishment of an Aboriginal/Police Relations Committee foundered on the question of whether a number of significant non-Aboriginals from the town were to be included on the committee, or whether it was to be essentially comprised only of Mardu and police focussing on policing issues. The community then, through the ALS, commissioned the Report.

The Report is an impressive analysis of policing, court and detention figures in the town in the period 1 January 1994 to 31 August 1994, making comparisons with state averages, figures from other towns and earlier figures for Wiluna itself.

The major issues laid out by the study are set out below.

The first point to note relates to police numbers relative to population. In Western Australia at the time of the report there were some 4 141 police. Based on a state population of 1.6 million, this amounted to a ratio of 1:386. If that ratio applied to Wiluna the town would have one police officer. In fact it had six regular police and two police aides in 1994. Whereas since 1983 the population in the town had halved, police numbers had increased (including aides) from three to eight. In 1989 with a greater population it had only four officers or a ratio of 1:74 compared with the present 1:41.

At the same time, charge rates were rising. Measured against population, 1994 charges were running at approximately six times the rate of 1991/92. In 1991/92 total charges were 522, in 1993 they were 449. Yet in the first eight months of 1994, there were 1 071 charges.

Generally however these were overwhelmingly street offences, which made up 78 per cent of case loads compared to 40 per cent in 1991/92 and 22 per cent for the state generally. Charges under the *Criminal Code* made up only 9 per cent of the total, compared to 66 per cent state-wide. There were no charges for robbery, sexual assault or drug offences. Dishonesty offences, including stealing, car theft and break and enters, amounted to only 17 charges or less than 2 per cent compared to a state average of 35 per cent. Police had only submitted 12 traffic accident forms. Criminal Code charges had declined from 184 in 1991/92 to 92.

Likewise the number of distinct individuals charged was high, 297 (in the eight months) in a town with a population estimated at 250). Of these 99 per cent of charges were laid against Aboriginals.

For the eight months surveyed in 1994, 34 persons were sentenced by courts to imprisonment for an average term of 38.7 days. However a total of \$197 471 was imposed in fines. Detention for fine default seemed to account for 74 per cent of the lockup population compared to 44 per cent state-wide. Intoxicated persons (who are not charged) were detained at the rate of about two per day. In the earlier period three out of four had been taken home or to some other safe place. These total figures give an average daily incarceration of 23 persons, or almost 10 per cent of the population and about three times that of other Aboriginal communities.

These figures were all linked in the report to the meal allowance which continues to be paid in Western Australia to the officer-in-charge of each lock-up on a per prisoner per day basis. Enquiries under Freedom of Information legislation showed that the officer-in-charge, the local sergeant, had been paid in excess of \$41 000 in meal allowances for a five month period on top of his salary. It was also suggested that many of the meals supplied were in fact kangaroo meat, shot locally and at little cost.

On the other hand, while state-wide charges against juveniles in 1991 made up 36 per cent of charges laid in courts, in Wiluna such charges constituted only 7 per cent of total charges. Police powers to detain juveniles are much more limited than they are in relation to adults. It was reported that at a meeting of the Juvenile Justice Advisory Committee the officer-in-charge had suggested to the committee that the Wiluna lock-up be permitted to hold juveniles for longer periods.

These issues dominated media reports. Other justice issues focussed on by the report included the apparent conflict of interests between the role of the officer-in-charge of police in his police role and in his role as Clerk of Courts. It was alleged that the Wiluna Court was not issuing penalty notification slips to defendants who typically left court with little knowledge of the penalty imposed. Similarly it was said the court was not properly alerting persons arrested for unpaid fines of their right to convert the warrant into a Work and Development Order. Only \$36 984 in fines was converted to work and development orders in the period surveyed. Fourteen of the 24 which were converted, involved monetary penalties in excess of \$2 000 so that the defaulter might have been expected to be transferred from the lock-up to the nearest regional prison, Greenough.

Another issue focussed on by the Royal Commission was that of the use of a summons. Of 1 072 charges surveyed in Wiluna in the first eight months of 1994 only 10 were commenced by way of summons as distinct from charge and admission to bail. It was also alleged that inappropriate bail practices were to a significant extent responsible for 58 charges being brought under the *Bail Act* for breach of bail, and that persons protesting at their incarceration or arrest were commonly charged with a further offence of disorderly conduct. It was further alleged that bail was being deferred for extended periods despite lack of power under the *Bail Act*. Frequently bail was deferred overnight and then entered requiring attendance at the court the same day.

Nor were charges contested. Of 1 072 charges only five charges involved pleas of not guilty. This was attributed to language difficulties, lack of interpreters, lack of understanding of process and legal jargon and "subtle but effective intimidation resulting from a strong police presence in court and the lack of effective legal representation". Persons were legally represented on only 116 of 1 072 charges.

Another issue is court composition. Charges were heard on 99 separate court days during the eight months. The magistrate, who attends Wiluna only once every two months, was available to sit in court on only eight of the 99 occasions and deal with 92 of the 1 072 charges. Sentencing was therefore overwhelmingly performed by the one local JP.

In five cases, persons were sentenced to imprisonment for offences against the *Liquor Licensing Act* notwithstanding the fact that there were no provisions for such imprisonment in the existing legislation.

One fascinating glimpse into town life was the reference to a drinking compound having been erected away from the hotel and fenced on police instructions. Persons drinking in the compound (which has no toilet facilities) would be commonly charged with urinating in public. Persons found drinking even on private community-owned land would be charged with public drinking offences. A number of persons had been charged with refusal to leave the town hotel when asked or with re-entering when refused admission. No charges had been laid against the licensee for serving intoxicated persons or for other *Liquor Licensing Act* offences. At the same time it is suggested that the local police had not adequately responded to domestic violence allegations, although no statistical or other support was given for that.

Local Aboriginals alleged that the perceived unacceptable level of harassment and intimidation was one of the main reasons many people were avoiding Wiluna, prolonging their visits to other regions or camping outside the town.

It might be commented that the question of policing remote Aboriginal communities has been raised in another context elsewhere — that of the absence from certain communities of any police presence at all, leaving the community defenceless against unruly and unlawful elements. The recent establishment of a police presence at Balgo, for example, was in response to community wishes.

The issue can be thought of in terms of self-determination; however, where communities lack resources to adequately maintain their own infrastructure, as is usually the case, or where family or kinship groupings make this difficult, the issue is complex.

Following the compilation and release of the Report further meetings were held in the town, although without the presence of the Officer-in-Charge of Police. The agenda put forward by the local Aboriginal community included the following issues: reduction of the number of police, changing current police personnel, involving local Mardu Aboriginals in selection and training of police and in particular cultural training, arranging for external contracts for the provision of lock-up meals, action to ensure that the licensee of the hotel complied with service regulations, increased transport home of intoxicated people until a sobering up shelter was erected, provision of mattresses and blankets in the lock-up, installing an alarm system and more regular health visits. Interestingly it seems that the Health Service was also having difficulties with local police.

The concept of training for police itself raises difficulties. Because of the geography and the social circumstances of Wiluna the police practice is to turn over staff every twelve months. This makes selection and training difficult. The community expressed the hope that all current personnel would be changed, but individual support was given for one particular, sympathetic, constable to remain. The Regional Superintendent of Prisons is a keen supporter of cultural training within his service. Certainly sympathetic and trained personnel can make a vast difference.

In early 1995 after a dispute between the Aboriginal Legal Service and Wiluna Mardu people who alleged that the ALS had abandoned the town, the Chief Executive Officer of the ALS in Western Australia announced that delays in the appointment of a full time lawyer had been addressed despite funding and personality difficulties, and that legal services in the area would be strengthened. Mr Leicester, the former ALS officer who had prepared the Report had resigned in the meantime and was to practice privately in the town supplementing his income with other employment.

In other developments, the Police Department instituted an investigation into certain allegations made by individuals of police harassment against police officers in the town. In 1994 the new Police Commissioner announced a review of the meal allowance system.

It was subsequently reported that the rate of charges in the months from September to December had fallen to some 66 per month, compared to the average 1.8 in the eight months before that.³

It might be thought that to a large extent the problems in Wiluna were the product of a combination of system defects and a small number of police personnel influencing local practices. Such an issue might be thought of by some as essentially local and readily rectified by personnel transfer. The problem however of system defects remains. On 16 February 1995 *The West Australian* and *The Australian* newspapers reported that an internal police inquiry had been launched into claims that more than a dozen Aborigines had been physically and verbally abused by police in another remote Western Australian town, Roebourne, the town which became nationally known years before at the time of the death of John Pat. *Counting the Cost* is a report which highlights extreme social issues in a tiny and remote community but the issues go much wider, as the Roebourne allegations, although different, illustrate.

Hal Jackson

Judge, District Court of Western Australia

3 Leicester, S, "Policing in Wiluna" (1995) February *Alternative Law Journal/Aboriginal L Bull* at 16.