JCA Colloquium

Customary Law – Western Australia

The Hon Wayne Martin
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Before preparing this paper, I had the inestimable advantage of reading the papers to be presented by Chief Justice Brian Martin and Judge Mary Ann Yeats. They have covered the field of the issues arising in relation to Aboriginal customary law so comprehensively that it is unnecessary for me to duplicate their work. Instead, I will try and put their work in an historical and social context, and will provide an overview of the initiatives that are being pursued in Western Australia to improve the delivery of justice to Aboriginal people. I will conclude with some brief observations of my own on customary law.

Aboriginal over-representation in criminal justice

The over-representation of Aboriginal people in the criminal justice system in Australia is well-known. It has been the subject of many studies, reports and recommendations. Despite the effort that has been applied to addressing the problem of Aboriginal over-representation, the situation has steadily worsened for both indigenous men and women. Let me provide some dimensions to the magnitude of this problem with some statistics. In Western Australia, while Aboriginal people represent between 3% and 4% of the state's population, tonight more than 42% of prisoners in custody in Western Australia will be Aboriginal. That means that one in 16 adult Aboriginal men in WA will spend tonight in prison. The rate of imprisonment per head of Aboriginal population in Western Australia is double that of the Northern Territory.

And perhaps most depressingly of all, the situation is even worse for Aboriginal youth. Western Australia has two juvenile detention facilities

- Rangeview and Banksia Hill. Tonight, about 85% of the inmates of each of those facilities will be Aboriginal youths. Across Australia, indigenous young people are 20 times more likely to be incarcerated than non-indigenous young people. A study in Western Australia in 2004 found that non-indigenous juveniles are more likely to be cautioned and less likely to go to court than indigenous juveniles. A Queensland study on youth criminal trajectories suggests that indigenous young people are much more likely than non-indigenous youth to progress from the juvenile system to the adult justice system. And a study in New South Wales has shown that rate of progression to be about nine times higher than for non-indigenous juvenile offenders. Other commentators have observed that indigenous youth tend to enter the system at much younger ages and with greater frequency. Earlier this year, a report released by the Australian Institute of Health and Welfare found that nationally in 2004-5 indigenous young people under juvenile justice supervision were younger on average than their non-indigenous counterparts.

In Western Australia, the indigenous juvenile detention rate in 2004 was 654.6 per 100,000 indigenous juveniles. Tragically, that is by far the highest detention rate in the country. It is 50 times greater than the rate for non-indigenous juveniles and double the national rate for indigenous juveniles. This paints a bleak picture made even bleaker by the fact that about 50% of the indigenous community are aged 20 years or below. Another committee has reported that 'cycles of intergenerational offending, where children of prisoners commit offences that result in their own imprisonment, is common for indigenous families'.

In the remote communities of Western Australia, there is almost no prospect of employment. So there is no incentive for children to go to school, or for their parents to send them to school. Young men in those

communities have much more chance of going to prison than they have of completing secondary education. And if young people don't go to school or work, the chances of substance abuse rise, with adverse effects on physical and mental health, and criminality. Overcrowding because of the inadequate housing in these communities increases the risk of sexual abuse. The point I make is that these things are all interrelated, which leads me to the topic of the causes of indigenous crime.

The causes of indigenous crime

Just as with crime committed by non-Aboriginal persons, the causes of crime committed by Aboriginal people are many and varied. Much has been written on the subject by those better qualified than I to venture views in this area. However, I do not think it takes scientific qualifications or social surveys to conclude that there is a causal relationship between the great disadvantage suffered by indigenous Australians in employment, housing, education and health and their gross over-representation in the criminal justice system. I subscribe firmly to the view enunciated by the Royal Commission into Deaths in Custody to the effect that much indigenous criminality is the symptom of these general underlying causes. It follows that unless and until those underlying causes are addressed, it will be difficult, and probably impossible, for the justice system to make any significant progress in reducing indigenous crime.

Employment

Average gross household income for Aboriginal and Torres Strait Islander peoples is significantly less than that of non-indigenous people. Unemployment amongst Aboriginal and Torres Strait Islander peoples is in the order of three times higher than the rate for non-indigenous

Australians. At the time of the 2001 census, only 52% of Aboriginal and Torres Strait Islanders over the age of 15 reported participation in the workforce.

Education

While there have been improvements in post-secondary education participation, and in retention rates to year 12, Aboriginal and Torres Strait Islander peoples are less than half as likely as non-indigenous Australians to have completed post-secondary qualifications of at least certificate level 3, and about half as likely to have completed year 12.

Health

Aboriginal and Torres Strait Islander peoples have a significantly lower life expectancy than other Australians - an estimated difference of about 17 years for both men and women. They also enjoy markedly less per capita access to primary health care provided by general practitioners.

In the areas of the country apart from the south-eastern corner, 75% of male and 65% of female Aboriginal and Torres Strait Islanders die before 65 years of age, compared to 26% of males and 16% of females in the non-indigenous population. Aboriginal and Torres Strait Islander babies are twice as likely as non-indigenous babies to be low birth weight babies (less than 2.5kg) and have an infant mortality rate which is three times higher than non-indigenous babies. In Western Australia, 18% of Aboriginal children have a recurring ear infection, 12% a recurring chest infection, 9% a recurring skin infection and 6% a recurring gastro-intestinal infection. Aboriginal and Torres Strait Islander men are hospitalised for ischaemic heart disease at twice the rate of the general population, and for women it is four times the rate.

For psychological and behavioural disorders, the hospitalisation rate of indigenous people is double that of the general population, and for assaults or self-harm, for males the hospitalisation rate is seven times higher than the general population and for women a staggering 31 times higher. Aboriginal women are between five and seven times more likely to be the victim of an assault or sexual abuse than non-Aboriginal women.

A holistic approach

Many indigenous Australians live without secure housing in households with incomes below the poverty line, marginalised from mainstream health and education services and with very limited opportunity for gainful employment. I am one of those who think that until we come to grips with the inequalities and disadvantages that challenge the indigenous members of our community, indigenous people will continue to be significantly over-represented in the criminal justice system, and there will be little that can be done within that system to reduce their over-representation.

Of course, this view provides no justification for failing to do whatever we can within the criminal justice system. However, it does point to the need for an holistic approach to these issues, in which the various agencies of government responsible for addressing the areas of inequality and disadvantage to which I have referred work together with each other and with those responsible for the delivery of justice and corrective services, to redress the adverse consequences which have resulted from the delivery of government services by departments operating as separate silos. Health, housing, education and the provision of employment are obviously related issues - particularly in remote communities. And the

delivery of justice - that is, police, courts and corrective services, must also be integrated with those other services.

History

Tomes have been written on the history of interaction between Aboriginal people and white settlers during the colonisation of Australia. Any meaningful review of the topic is well beyond the scope of a paper such as this. However, a brief overview provides a context for the consideration of the recent Commonwealth legislation relating to customary law.

There is of course controversy as to the precise extent of the murder, violence, sexual abuse and mistreatment perpetrated against Aboriginal people during the 19th and 20th centuries. I do not propose to enter into that controversy, other than to observe that the documented history of the settlement of Western Australia reveals many instances in which the interaction between the original inhabitants of our land and the white settlers resulted in violence and murder, more commonly against black people than against white. It is also worth remembering that since the colonisation of Australia, there has been a long history of sexual abuse of young Aborigines, but until relatively recently, the perpetrators were predominantly non-Aboriginal.

In Western Australia, the concern of the Colonial Office at the mistreatment of Aboriginal people was so great that it insisted that provision be made in the Constitution of Western Australia obliging the State to set aside at least 1% of its annual revenue for the advancement of Aboriginal people (*Constitution Act 1889* (WA)). However, that provision was never honoured.

Continued concern at the state of Aboriginal people in Western Australia led to a major Royal Commission being appointed to inquire into the subject in 1904. The Royal Commissioner was Dr Walter Roth, Protector of Aborigines in Queensland. He was later hounded from office when it was revealed that he had paid an Aboriginal couple to adopt a particular sexual position which he then photographed, allegedly "for scientific purposes", particularly for the purpose of "ascertaining the connections (if any) between the highest apes and the lowest types of man". (quote taken from a letter from Dr Roth to Bishop White of 19 June 1904) His recommendations resulted in the *Aborigines Act 1905*, which was loosely modelled on the Queensland legislation of 1897. The provisions of that Act appear extraordinary from the perspective of 2007.

Under the Act, the Chief Protector of Aborigines was appointed the legal guardian of all Aboriginal children up to the age of 16. He was given power to manage the property and earnings of all Aboriginal people. Sexual relations between Aboriginal women and non-Aboriginal men were an offence under the Act, and Aboriginal women could only marry non-Aboriginal men with the prior consent of the Chief Protector.

The Act provided that the oath of an Aboriginal woman was not sufficient to prove paternity.

Before any person could employ an Aborigine, they were obliged to apply to the local protector of Aborigines for a permit. The terms and conditions of employment were to be resolved between the employer and the local protector.

The Governor of the state was empowered to declare 'prohibited areas' in which any Aboriginal person not employed with the permission of the local protector could be arrested and removed. The Governor was

empowered to declare Aboriginal reserves, and the Minister could order the removal of Aborigines to any such reserve or district without any court process or mechanism of appeal. Police and justices of the peace were given powers to order Aborigines out of town, and local protectors and police were given the power to order Aborigines to move their camps from one area to another.

Aborigines in breach of the Act could be arrested without warrant and imprisoned for up to six months on the order of a magistrate or two justices of the peace.

A number of reserves were created under the Act and used for the re-settlement of large numbers of Aboriginal people. The largest was the reserve at Moore River/Mogumber, made famous by the feature film 'Rabbit Proof Fence'. A.O Neville was also depicted in that film. He was the Chief Protector of Aborigines between 1915 and 1940. He has been depicted variously as 'Mr Devil', a ruthless dictator, and as a 'benevolent but embattled public servant fighting valiantly for a neglected cause'. My review of the literature suggests that there may be an element of truth in both of these depictions. On any view, he was an enthusiastic social engineer. However, hindsight tells us that many of his designs were hopelessly and tragically misguided. It is ironic that the land in Perth upon which the District Court building is now being constructed, was formerly the site of Mr Neville's office. I understand that there was a culturally appropriate cleansing ceremony before construction started.

Although the precise form of the legislation by which Aborigines were controlled in Western Australia was altered during the first half of the 20th century, the powers of control remained draconian. The Commissioner for Native Affairs, the successor to the Chief Protector of

Aborigines, remained the legal guardian of all Aboriginal children except state wards until 1963. Although legislation providing for the grant of a form of "citizenship" was passed by the Western Australian legislature in 1944, a condition of its grant was proof that the person concerned had "dissolved their native and tribal associations". Upon grant of citizenship, the Act deemed the person to be no longer a native or Aborigine. However, citizenship could be lost on conviction of criminal offences, or proof that the person was "not living a civilised life". Until the 1960s, it was common for Aboriginal people to be excluded from towns, with the result that they often clustered on the fringes of towns, sneaking in and out from time to time. The provision of schooling was haphazard and intermittent. And, of course, Aboriginal children continued to be removed from their families well into and indeed after the 1960s.

These legislative provisions were undoubtedly paternalistic and discriminatory. However, their removal during the 1960s was to prove to be just as disastrous for Aboriginal people in Western Australia.

During that decade three things occurred, almost simultaneously, which were to have a profoundly adverse effect upon Aboriginal people living in Western Australia. The first was the requirement that Aboriginal workers be paid equivalent wages to white workers. That had the consequence that many Aboriginal stockmen and their families were evicted from cattle stations in the north of the state. They were dislocated from their country, and forced to live in artificial settlements with which they had no particular affinity or connection. They were deprived of gainful employment. At about the same time, the prohibition upon Aboriginal people drinking in hotels was removed. The third development was the long overdue grant of citizenship to Aboriginal

people, with consequential entitlement to social welfare benefits. The combination of unemployment, removal from country, the provision of welfare and the grant of drinking rights was to prove disastrous, almost genocidal, despite being borne of the best of motives.

I do not draw attention to this sorry history for the purpose of attempting to evoke a sense of collective self-guilt, because that does not appear to me to be particularly constructive. Rather, I draw attention to these matters because they put the response of Aboriginal people to the recent Commonwealth legislation purporting to preclude consideration of Aboriginal customary law during the course of the sentencing process in an historical context. White Australia has consistently failed to recognise and acknowledge Aboriginal customs and practices in favour of a policy of enforced assimilation and integration; delivered paternalistically. History tells us that this approach has never been successful.

The WALRC Report (2006)

In September 2006, the Law Reform Commission of Western Australia (WALRC) delivered its final report on its reference into Aboriginal Customary Laws. The report was subtitled 'The Interaction of Western Australian Law with Aboriginal Law and Culture'. I should disclose my interest in this Report, because I was chairman of the Commission at the time it requested the provision of this reference.

Like every other Law Reform Commission that has inquired into the subject, the WALRC recommended that the legislation governing sentencing in Western Australia be amended to provide that the cultural background of an offender is a factor relevant to the sentence to be imposed and to further provide that when sentencing an Aboriginal

person, the court must consider any relevant and known Aboriginal customary law or cultural issues.

The recommendations of the WALRC have been misrepresented in some media reports as proposing one legal system within Western Australia for Aboriginal people, and another legal system for non-Aboriginal people. That proposition is simply untrue. The Commission has made it abundantly clear that any recognition of Aboriginal customary law must occur within the existing framework of the Western Australian legal system, and that it did not support the establishment of a separate formal legal system for Aboriginal people to the exclusion of Australian law.

The recommendations made by the Commission with respect to the creation of Aboriginal community courts have also been misunderstood and misrepresented. Under the Commission's recommendations, there has been no suggestion that an Aboriginal community court might impose a punishment according to Aboriginal customary law. All sentences imposed upon adult offenders are imposed pursuant to the *Sentencing Act 1995* (WA), and all juvenile offenders are subject to the *Young Offenders Act 1994* (WA), and the WALRC has not recommended otherwise.

Nor has the Commission recommended that Aboriginal courts be controlled by Aboriginal elders. Under the Commission's recommendations, and current practice in the Community Courts in Kalgoorlie and Norseman, the role of the elders assisting the court is to advise the court, and in some cases, to speak to the accused in a culturally appropriate manner. But it is the judicial officer that presides and determines the sentence to be imposed. All normal rights of appeal apply to the determination.

The Commission's first recommendation was that the state adopt a genuine whole of government approach to the design, development and delivery of services and programmes to Aboriginal people in Western Australia. You will gather from the observations I have already made that I strongly support that recommendation, and the primacy it was given in the Commission's report.

The Commission made 130 other recommendations, a review of which is obviously beyond the scope of this paper. I will, however, mention some.

Fundamental to all recommendations was the Commissioner's acceptance of the proposition that Aboriginal people, as members of a distinct indigenous culture, have the right to the legal protection necessary to allow their culture to survive and flourish.

One recommendation which is significant in my view, is the recommendation that the *Constitution Act 1889* (WA) be amended to recognise the unique status of Aboriginal people as the descendants of the original inhabitants of the State. Another recommendation was for the repeal of mandatory sentencing laws, which have operated in a discriminatory way against Aboriginal people. Other recommendations relate to the provision of effective diversionary options for Aboriginal offenders. And as I have mentioned, the Commission made a recommendation for the establishment, as a matter of priority, of Aboriginal community courts for both adults and children in both regional locations and in the metropolitan area of Perth.

Aboriginal community courts

Aboriginal community courts currently operate in Norseman and Kalgoorlie. They operate under the existing legislative framework

applicable to the courts when sentencing, and without specific legislative authority or sanction. They operate in a similar fashion to other courts of that character which now operate in all mainland states. Their practices and processes are perhaps most similar to the Koori courts of Victoria. This is probably due to the fact that one of the magistrates involved in their creation, Magistrate Dr Kate Auty, has extensive experience of the operation of the Koori courts in that state.

There have been other less formal attempts at the creation of Aboriginal community courts from time to time in other parts of Western Australia - including at Wiluna, north of Kalgoorlie and Yandeyarra, south of Port Hedland. However, the Kalgoorlie and Norseman courts have been created with express government approval and support, and are regarded as the prototypes for other courts of a similar kind which are to be progressively created in other parts of Western Australia - initially in the regions, but hopefully in due course in the metropolitan area.

I strongly support these initiatives and take every opportunity to encourage government to expedite the creation and development of these courts. I would also like to see the greater involvement of Aboriginal community representatives in the course of the sentencing processes of the superior courts, and hope to explore that possibility through the work of the Indigenous Justice Task Force, to which I will now refer.

Indigenous Justice Task Force

Magistrate Sue Gordon conducted an inquiry which included an inquiry into the sexual abuse of Aboriginal children in Western Australia. She reported in 2002. Her recommendations included the greater provision of health workers and police in remote communities.

As a result of the implementation of those recommendations, I think it is fair to say that Western Australia is further advanced in relation to the identification of sexual ill-health and the apprehension of sexual offenders in remote Aboriginal communities than some other jurisdictions. Sexual health workers have now been in place in a number of remote communities for some years, and modern and secure police stations have been built in those communities, and a permanent police presence provided.

Through these means, it has been possible to obtain a sufficient degree of confidence and trust to obtain the disclosure and report of sexual offences in a number of Aboriginal communities. Most recently, this has led to a significant number of charges being laid against alleged offenders in Kalumbaru and Halls Creek, which are both communities in the East Kimberley region of Western Australia. At the time of writing, about 50 people had been arrested and over 200 charges had been laid in respect of alleged offences in those two communities. This is about the same number of offenders and offences as we would expect over about three years in the entire Kimberley region. Informed observers apprehend that when the investigative task force moves to other communities in the East Kimberley, and in due course to the West Kimberley, the numbers of charges and alleged offenders will increase exponentially. When resources permit, investigative attention will be directed to the Pilbara and the central desert, where it is quite possible that similar results may be experienced.

The effect of the laying of these charges on the communities concerned has been well-described in a letter I have seen from a correspondent who is well qualified and experienced to comment on such matters. He wrote:

> "The arrests have seriously jeopardised the stability and morale of the communities involved. While it is acknowledged that the safety of victims is paramount, concern also exists for the families of those involved. People related to victims and perpetrators find themselves in difficult circumstances with each other. The media scrutiny of the cases has had serious effects in the communities to the degree that the shame and tragedy has rendered them even more powerless and marginalized. Indicators are that the social fabric of these places has become even more fractured so as to render them more dysfunctional than they already were. People have left Kalumburu in significant numbers to live in towns accompanying the victims or the alleged perpetrators. Those who remain exist in a heightened state of tension with each other and the life of the communities has been seriously disrupted."

In these circumstances, it is obvious that the justice system must endeavour to expedite the resolution of the charges that have been laid in order that the communities concerned can commence the healing process. To that end, I have created and chair a committee which we have styled the 'Indigenous Justice Task Force'. It includes the Chief Judge of the District Court, the Chief Magistrate, the President of the Childrens Court, the Deputy Commissioner of Police, the Director of Courts and Tribunal Services in the Department of the Attorney General, the Director of Legal Aid, the Principal Legal Officer in the Aboriginal Legal Service and the Director of Public Prosecutions. We meet fortnightly. Our objective is:

> "To bring together the judiciary and the relevant agencies involved in the delivery of justice services, to plan sufficient court, legal and support services in order to expeditiously dispose of the increased number of child sex abuse cases in remote indigenous communities."

We have many challenges. The lack of basic infrastructure is one of them. The Kimberley covers a bigger area than the State of Victoria. There are only three jury courts in the entire Kimberley region - one in Broome, one in Derby and one in Kununurra. The facilities available for the taking of evidence from vulnerable witnesses in those locations are

currently inadequate. There are significant problems finding accommodation for visiting personnel in the Kimberley - the police have had to sleep in swags under the stars, and it is not uncommon for judges and their staff to have to stay in dongas. Telstra advise that one of the reasons for their inability to attend to provide the communication links needed for the installation of remote witness rooms is that their personnel have nowhere to stay. Prospective jurors are in scarce supply in the Kimberley, and it is not uncommon for the residents of Broome to be required to perform jury duty three times a year. Defiance of a summons to perform jury duty is common. The juries we empanel largely comprise white people. They are not representative of the Kimberley community.

However, despite these challenges, we remain optimistic that we will be able to achieve the prompt resolution of these cases. All relevant agencies are coordinating their resources. The police, the DPP and Legal Aid have dedicated personnel to the exercise. Judicial resources will be allocated when the cases progress a little further.

Our present strategy is to endeavour to get the cases beyond committal stage as soon as possible. That will enable them to be case-managed in a superior court as soon as possible. This should not prove difficult because in Western Australia we only have paper committals.

Once the matters are committed to a superior court, we are keen to promote the use of mediation to achieve an agreed outcome wherever possible. To that end, we plan to extend the criminal mediation project which has been operating in the Supreme Court of Western Australia since the latter part of 2006 to include these cases.

However, there are a number of aspects of these cases which may require early attention if we are to achieve that objective. In some cases, the first

issue to be addressed is the admissibility of videotaped interviews of alleged offenders. It seems likely that there will be objections to admissibility in a number of cases, for a variety of reasons. In those cases in which objection is to be taken, we propose to convene voir dires as soon as possible after committal, in order that admissibility can be assessed and determined. If there are a number of such cases (as seems likely), we will set up rolling lists in appropriate locations in the Kimberley, with a judge or judges and adequate numbers of prosecutors and defenders in order to deal with as many cases as possible in each set of sittings. Because of limited accommodation and courtroom availability, we will, if necessary, sit over weekends.

It is possible that decisions with respect to the admissibility of interviews may lead to the early resolution of some of those cases. In other cases, there will be some uncertainty as to whether or not the complainant will attend to give evidence and, if so, whether she will maintain her complaint. It seems not unlikely that some alleged offenders may defer their plea until it has been established whether the complainant will in fact attend court and maintain her allegations under oath.

So the next phase in our project will be to list cases for the taking of the complainant's evidence as soon as possible. That evidence will be recorded on video, and will include both evidence-in-chief and cross-examination. It will be played to the court in any subsequent trial. Of course, in order for cross-examination to occur, there will have to be full prosecutorial disclosure before that stage is reached, and that is another area of priority. As with the voir dires, we would propose to list the taking of the complainant's evidence on a rolling basis and, if necessary, utilise the weekends. We are optimistic that the early taking of

the complainant's evidence will again assist in the resolution of some of the cases involved.

For those cases that continue, prosecution and defence have been invited to consider applying for an order that the case be tried by judge alone. If such applications are made and granted, the logistical difficulties involved in conducting trials will be significantly diminished, because a wider range of courtrooms can be used. We will also be able to sit longer hours.

And as I have already mentioned, I am optimistic that this project will provide an opportunity for us to explore ways of enabling greater Aboriginal community involvement and input into the sentencing process in the superior courts. The precise means through which that might be achieved is under active consideration.

Customary law

I will conclude with some brief observations on some of the topics identified by Chief Justice Martin and Judge Yeats in their papers.

The first observation I would make is that the experience and approach of the courts of the Northern Territory depicted by Chief Justice Martin in his paper corresponds very closely to the experience and approach of the courts of Western Australia. It is our experience that customary law is not an optional or ephemeral aspect of the lives of the inhabitants of our remote communities - it is central to their culture, behaviour and existence. A court ignoring customary law would move into some unreal and artificial parallel universe, remote from the real world. It would not be sentencing the offender, but some mythical person who does not exist.

A court proceeding in this way would be perpetuating the failure to respect and acknowledge the customs and practices of the first inhabitants of this continent which has been a characteristic of its colonisation and which has accompanied the dispossession and social and cultural dislocation of Aboriginal people in pursuit of a policy of enforced assimilation.

Because, so far as I am aware, the government of Western Australia does not support the Commonwealth legislation relating to customary law, it seems unlikely that I will be called upon to interpret the effect of that legislation, or legislation of a similar kind. Nevertheless, it would not be appropriate for me to venture a dogmatic opinion as to the proper interpretation of that legislation. However, it does seem to me to be at least open to argument that in the course of sentencing, that which would be relevantly taken into account is not customary law itself, but rather, the subjective belief of the offender, induced by virtue of his or her cultural heritage. On that view, the Commonwealth legislation would not prevent the subjective beliefs of the offender being taken into account during the sentencing process, even if the beliefs had their source in customary law. However, the legislation could potentially affect objectively assessed defences.

However, if the legislation does have the effect of excluding customary law from consideration during the sentencing process, then, as Yeats DCJ points out, it could also have the effect of excluding from consideration circumstances of aggravation - such as, the effect of a relationship between victim and offender under customary law which would aggravate the offence.

As Martin CJ and Yeats DCJ point out, the significance of the Commonwealth legislation should be kept in numerical perspective. There are in fact very few cases in the Northern Territory and Western Australia in which reference has been made to customary law as a factor in mitigation of sentence. There have been no cases in Western Australia in which it has been suggested that sexual abuse was justified by reference to customary law, and as Martin CJ's paper reveals, only two 'promised bride' cases in the Northern Territory.