

Conclusions

In free societies, the State's ability to enforce the law is always limited. The threat of detection and punishment needs reinforcement by social pressure to conform. In the current age of aggressive individualism, social cohesion is stressed. Authority is routinely questioned, and personal rights, including economic self-interest, regularly claim precedence over other values. Laws which many consider are impermissibly restrictive of personal freedom and outside the legitimate sphere of state control, particularly laws which regulate the use of alcohol and other substances for relaxation and recreation, are extremely difficult to enforce and frequently disregarded by many. Social problems, including "law and order" problems, are widespread in contemporary Australian society, irrespective of race, colour or culture. Poverty, welfare dependency, alcohol and other substance abuse, violence, especially family violence, and poor parenting, ranging from disinterest in education to neglect and abuse, are prevalent.

Social problems are especially visible in small, poor, remote communities, whatever their race or culture. Such communities commonly have limited facilities and public services, high costs for basic goods and other services, little economic activity, few local opportunities, comparatively low educational standards, high unemployment, welfare dependency and heavy alcohol consumption. Boredom, frustration and anger can deprive people in such communities of morale and energy, produce a debilitating inertia and encourage antisocial behaviour. Isolation and peer conduct and approval can normalise misbehaviour. Problems grow and interlock, reinforcing each other, and can be transmitted between generations.

It is unrealistic to expect every small, poor, remote community with entrenched problems to produce a leader who is willing and able to solve social problems in ways which have wide acceptance within the community. On the other hand, such problems cannot be eradicated or significantly altered by outsiders without community support. Government influence is diminished by distance, local attitudes, the expense of intervention and the rigidity and complexity of Government structures and processes.

Much the same dilemma presents on a smaller scale in dysfunctional families and individuals. Outside intervention and assistance is essential but insufficient. A troubled individual, family or community must accept an appropriate level of responsibility, but will be unable to cope with unrealistic expectations and demands. The nature and extent of the external assistance which is given and the process by which it is given must not only provide essential services but empower the person, family or community to deal with underlying problems and their causes and develop a capacity to function effectively.

When alcohol abuse is causing violence and violence is leading to the incarceration of offenders, the alcohol abuse must cease before violence and incarceration will end. If children are to live happily with their families in a harmonious and orderly community, the conditions necessary for that to occur must be created by the people who live there, who must make good parenting the community norm. The Government's task in such circumstances is to encourage the community to accept responsibility, to empower it to deal with its problems, to assist it to do so and to provide necessary resources, facilities and support.

For the purpose of this Study, Cape York is the northern part of Queensland, from Mossman in the east and across to Kowanyama in the west and up to the Northern Peninsula Area communities at the tip of Cape York. Its area is approximately 137,200 km². Its total residential population is about 13,000, including approximately 7,000 Indigenous people in the Cape York communities which are part of the Study, of whom almost half are children under the age of 18. Some live in the townships of Cooktown, Laura, Weipa and Coen, but most live in small, poor, remote communities of between 200 and 1,200 people. Although more than \$73 million of State-controlled funds and much more from other sources is spent in these communities each year, the lives of the people are ravaged by tragedy, poverty, alcohol and other substance abuse, violence and poor health. The community landscape is one of social and economic privation. The children's futures are bleak. A destructive cycle has been established. Aboriginal children are over-represented in child protection cases. Child abuse, including sexual abuse and neglect, is linked to

heavy drinking and other social and health problems, including self-harm and suicide, parenting difficulties, abuse of the victim's own children, crime and incarceration.

The consequences of colonisation, dispossession, relocation, removal of children, including to dormitories, denial of rights, brutality and racism did not cease when the wider community adopted a more sympathetic and benevolent attitude to Aboriginal Australians in the latter part of last century. Land had been taken and history, languages and customs had been lost or substantially damaged. For many Indigenous people, continuity, identity, dignity, spirituality and self-esteem have been drastically eroded. Many are effectively trapped between their traditional cultures and a complex, rapidly changing, mainstream Australian society. Many members of the Cape York Indigenous communities, and in some cases the communities as a whole, are, and for the foreseeable future will continue to be, traumatised by past events and present circumstances. Understandably, there is widespread confusion, anger, resentment and distrust in the communities. It is not a matter of blame or shame that these communities need help.

After the importance of land to Indigenous people was belatedly acknowledged, some land has grudgingly been made available, initially in the form of Government grants and more recently, even more reluctantly, Native Title has been politically recognised. On Cape York, land grants have been largely based on the fallacious concept of "community", which had its historical foundations in the missionary practice of collocating disparate and often dissimilar groups from different areas to a place which well-meaning white people considered suitable.

The Cape York communities are artificial, recently established constructs. Their social and economic sustainability was not carefully considered when land was made available. An assumption that Indigenous people would be compelled or would choose to assimilate seems to have been accompanied, or replaced over time, by assumptions of Indigenous cultural homogeneity devoid of contradictions or conflict, an absence in Indigenous people of universal human characteristics such as self-interest and ambition, and the irrelevance of surviving traditions and laws related to extended family structures, leadership roles, the early autonomy of children and violent conflict resolution. It also seems to have been assumed that communal land ownership supplemented by mainstream services was sufficient to meet Indigenous needs and that the communities would indefinitely depend on financial support from public funds, at least unless and until some unexpected economic development occurred despite community ownership of the land. Services including health, education and justice were provided by rigid bureaucratic structures and processes, which excluded local participation. Differences between the wider community and the people in the communities were seen to confirm preconceptions about their inferiority which did not justify any change in the nature and manner of delivery of services to accommodate the needs of the people to whom they were provided. Unsuitable local governance arrangements and the white culture of rights, including "rights" to drink and to welfare, were suddenly provided to people whose traditional family and leadership arrangements had been severely damaged. Little, if any, attempt was made to prepare them for the radical changes in their lives or to assist them to replace lost values and social structures.

Formal power in the communities is now vested in persons chosen by the process of elections. Most of the communities consist of a number of clans. Often one clan is dominant, usually by dint of numbers. Frequently, one individual or group is better placed than others to use the voting process to gain power. Many people in the communities passively delegate responsibility to others. Disinterest based on futility and lost self-esteem reflect the level of their disempowerment. Refuge is sought in unrealistic hopes that the communities would provide a satisfactory, self-sustaining Indigenous existence if only more facilities and services were available locally, at least if local facilities and services were equivalent to those in capital cities.

Some Indigenous politicians encourage these views. Aboriginal politics include the usual range of ambitions, animosities, rivalries and competing agendas. Local power provides significant influence and opportunities. Some of the people who represent the Cape York communities are motivated by high ideals and work selflessly for their people. Indigenous leadership provided much of the impetus for the

Government to establish this Study. As in the wider community, others pursue personal advantage or benefits for family members and associates. Some are said to exploit vulnerable members of their communities by, for example, the illegal supply of liquor at inflated prices. Some of the inevitable criticism of this report and the Study process will be genuine and might be warranted. Some will be tactical. Some will be territorial. Vested interests usually oppose change.

Communication between outsiders, including public officials, and the people in the communities is impeded by lack of interest, cultural barriers and justifiable resentment at the constant outside research and debate about their lives without any noticeable improvement in their circumstances. Ignorance of Indigenous cultures makes it difficult, if not impossible, for outsiders to identify when culturally based claims and objections are sincere and when they are spurious or manipulative or when spokespersons are misrepresenting or distorting community opinion. Public officials are understandably apprehensive that they will be subjected to allegations of racism, paternalism or cultural bias or that their tasks will be made more difficult by community opposition if there is conflict between them and local spokespersons.

The concept of “partnerships” between governments and Indigenous people which is referred to in the terms of reference is supported by the Council of Australian Governments (COAG), Reconciliation Australia (the body established by the Council for Aboriginal Reconciliation in December 2000 to continue to promote reconciliation) and the Aboriginal and Torres Strait Islander Commission (ATSIC). The brief in Volume 2 includes a discussion of the purpose of “partnerships” and the limited extent to which they have been given practical effect on Cape York up to this time. There seem to be two broad policies involved in the Queensland Government’s approach, namely, (i) coordination between government agencies and program flexibility; and (ii) Government consultation with Indigenous communities and shared responsibilities.

While “consultation” and “shared responsibilities” are commendable objectives and appropriate process is an important component in empowerment, unrealistic burdens should not be imposed on communities which need help, irrespective of whether that is done in the name of self-determination. Further, effective and accountable public administration requires a clear, precise allocation of responsibility for decisions and actions. Responsibilities cannot be evaded or disguised by “sharing” them. Concepts such as “partnerships”, “shared responsibility” and any other concept should not be allowed to give rise to misleading or confusing perceptions that organisations or individuals have Government authority when they do not do so. Further, there are no individual or collective rights which justify violence to women and children or subjecting children to other abuse or neglect.

The ongoing accretion of concepts, plans, structures, organisations, strategies, programs and processes and the vague generalisations in which much of the discussion of problems in the Cape York communities takes place overwhelm and exclude most of the ordinary people in the communities. The endless series of meetings and discussions which have become a feature of the interaction between Government and Indigenous politicians are also time-consuming and expensive, especially because of the organisation required and the travel involved. Consultations are a form of empowerment and meetings can provide opportunities for information and ideas to be exchanged and decisions to be made. However, when problems are as serious and urgent as they are in the Cape York communities, consultations must produce decisions which are translated urgently into effective action.

Overall, the policy of coordination between agencies and program flexibility has not yet produced a significant change in approach by the various departments and agencies which are involved in overlapping activities on Cape York. Hierarchical structures and strict processes narrowly confine the authority of the public officials directly involved, each of whom is required to give effect to his or her agency’s policies and practices, including policies and practices relating to service delivery. Government officials directly involved in the communities have little discretion to make decisions or take action according to local needs. Any “flexibility” is largely controlled by senior officials, who are seldom well informed of those needs. Coordination is largely a euphemism for committees. As large meetings of public officials and

sometimes Indigenous politicians are repeated at various levels in the public sector up and down the lines of authority which stretch between North Queensland and Brisbane, decisions become more and more removed from the communities to which they relate and useful information, including details of successes and failures, becomes immersed in verbiage.

Chapter 5 (Government Services and Funding) of the brief in Volume 2 of this report contains a section which illustrates the remarkable complexity and inevitable duplication involved in the present, unsuccessful attempts by the State Government to improve conditions in the Cape York communities. For convenience, the material portion of the chapter is repeated as a schedule to the summary of the brief in this Volume 1 of the report. Further detail is to be found elsewhere in the brief, including attachments 1 and 2 in Volume 3 of this report. To understand the full complexity and duplication involved in current arrangements, it would be necessary to refer also to Commonwealth Government and ATSIC activities. Even as this Study was in progress, new structures have been created. Most recently (so far as I am aware), a Cape York "summit" resolved that a Cape York Justice Commission should be established with broad functions.

The complexity and cost of the arrangements which have been, and continue to be, developed to provide services to about 7,000 Indigenous people in a number of small communities have major consequences for these ordinary people. Informal exclusion of the people in the communities from participating in the resolution of their social problems is as objectionable and damaging as formal exclusion. For most, complexity is as inaccessible as rigidity. As exclusion is tacitly accepted, responsibility is avoided and opportunities for individual development are lost. Unnecessarily complex structures and processes for decision making are not only formidable barriers to effective Government action which can be easily manipulated by any Indigenous person or group prepared to do so but major obstacles to real participation by the people who live in the communities in decisions which critically affect their lives. Further, the highly complex structures and processes disguise the fundamental reality that, as mentioned in the introduction, the options available to reduce alcohol and substance abuse and breaches of the law and to protect people in the community from violence are very limited.

One consequence of the complexity is to delay action which must be taken to solve the problems in the communities, allowing the problems to become further entrenched and to damage more lives. Another consequence is to drain the energy and erode the morale of both the people in the communities and the public officials who are sent to work there, many of whom are unsuitable, poorly trained and inadequately resourced.

Public money which is unnecessarily diverted to inefficient and ineffective decision-making processes and administration obviously reduces the amount available for community services and development. The constant creation of new organisations, structures and programs also multiplies the time, effort and cost each community must expend in seeking funds and reduces the funds available to other programs which are often treated as failures without having had a chance to succeed. When large sums of public money are unsuccessfully spent in dealing with social problems, any suggestion of waste quickly erodes political commitment based on mainstream support.

Perhaps the worst instance of rigid adherence to theory in the face of proven failure concerns the supply of alcohol. The use of marijuana and other illegal drugs is expanding in at least some of the Cape York communities, but alcohol is their common curse. In practice, the "right" to drink, and indeed to drink to excess, dominates all other considerations. A right to drink is effectively treated as paramount to the right of other people to safety, the right of families to food and shelter, the right of children to nutrition, sleep, education and innocence and the right of a community to peace and order.

The terms of reference implicitly confirm that violence, which is contrary to the Criminal Code and other Queensland laws, including violence involved in conflict resolution and traditional punishment, is illegal and unacceptable in the Cape York communities. Further, the terms of reference plainly intend that

Queensland laws restricting the use of alcohol and other drugs and requiring the education of children be enforced in the communities. Alcohol will continue to be destructive in the communities unless the law is enforced. Community development and advancement are impossible while the communities are ravaged by excessive alcohol consumption and alcohol-related violence. Until a new behaviour pattern becomes stabilised in the Cape York communities, the criminal justice system will continue to be a major point of contact between many of the people and mainstream society.

Life in small, remote communities has features which must be brought to account in the enforcement of the criminal law. For example, reduction of a charge in return for a guilty plea has potentially greater significance when victim and offender live close by and both are known to the entire community. It is probably easier in such circumstances to intimidate or bring other pressure to bear on a victim by involving the victim's family or friends for that purpose, and it is probably easier for local powerbrokers to enforce their views on the community. Shame and fear of police and courts also inhibit victims. It can be difficult for members of a community to police the conduct of their extended family and neighbours or to sit in judgement of them. Community attitudes and behaviour can compromise the integrity of the administration of criminal justice and disadvantage victims of violence unless they are provided with appropriate support which takes account of community conditions.

Punishment for offences always involves contradictory factors. Both the communities and society generally have a common interest in humane responses which recognise the circumstances which have produced the present social problems and do not exacerbate and perpetuate a cycle of deprivation, resentment, frustration, anger and crime. On the other hand, harmony and order in the communities is essential. The interests of offenders are often different from those of victims and potential victims. There is usually tension between the objectives of deterrence and rehabilitation.

It would be impossible in the brief time available to identify what customary law might apply in each of the Cape York communities, what its sources were and to whom, by whom and in what manner it might be applied, or to discuss the current role of traditional law (for example, in Native Title hearings) or the wider use which it might play in Indigenous communities. Although sentences for offences in the communities related to alcohol and drugs must be imposed in accordance with the general law including the material legislation, it does not follow that kinship and other relationships and traditional roles are insignificant. An offender's personal circumstances are always relevant to sentencing. Balanced opinions from community elders and leaders concerning Indigenous laws and customs which do not favour either the offender or the victim or put forward an unacceptable view of the conduct which should be permitted or tolerated in the community are potentially useful in determining an appropriate sentence, especially because sentencing options are more limited for offenders in remote communities where supervision and rehabilitation programs are often unavailable. Sentences proposed by community elders may also provide creative possibilities for addressing the offenders behaviour that are more relevant and rehabilitative than those traditionally available to courts.

The mistakes of the past will be further compounded if present economic realities are ignored. The opportunities which are available to the people in the Cape York communities are severely restricted. The communities are subject to the same economic forces as the remainder of Australia. No race, culture or community can be cocooned from those imperatives. Unless Cape York communities embrace the social change needed for their children to participate in the new economy, their prospects are barren. Even if social and cultural needs support the continuation of the communities irrespective of economic limitations, the communities are not assisted by false assumptions about their future which disguise fundamental difficulties and encourage unrealistic hopes. It is impossible to plan on such a basis.

Social change does not mean assimilation, either coercive or elective. People in the communities need not abandon their cultures in favour of mainstream values. There is no legitimate basis for an assumption that Indigenous cultures are static and will either freeze or wither and disappear. Like other cultures, Cape York ways of being and living will continue to evolve provided that they are not destroyed by the current

community lifestyles. However, because of the circumstances in which the Cape York communities exist and the external conditions, both in Australia and overseas, the Indigenous people from those communities must learn how to participate in the wider community as well as preserve and continue their traditions. People in the communities must become bi-cultural in the sense that they must develop skills and experiences which enable them to live successfully both in their historical community and in the wider community as they choose. Indigenous cultures will not survive indefinitely unless the children who are to carry on those traditions in the future are provided with opportunities and support which enable them to participate in mainstream society. The support which is needed includes arrangements and resources to undertake education outside the communities as the children progress from primary to secondary and tertiary education. At the moment, children from the communities are commonly emotionally, socially and educationally unprepared for living and education away from their familiar environment, and the strangeness of urban life, culture shock, home-sickness and educational disparities lead to a high failure rate.

Literacy, numeracy and school attendance and completion data graphically illustrate that the substantial investment of public funds on education in the Cape York communities is not yielding satisfactory returns. A substantial amount of money is also spent in training, much of it in correctional facilities such as Lotus Glen, with similar lack of success. That is not surprising. There are virtually no employment opportunities in the communities, and education and training have no obvious relevance to the only lifestyle which appears to be available. Community land ownership probably inhibits private enterprise and associated employment opportunities.

Consideration should also be given to other fundamental economic issues. Asset ownership would increase community pride and social engagement. The poverty cycle and welfare dependency might not be able to be reduced without opportunities for home ownership and employment. People who save and accumulate assets have stronger self-esteem and better health conditions. People are most easily encouraged to save for home ownership and the education of children. Financial incentives which encouraged savings for education, good parenting and good citizenship would benefit individuals who save and their communities and should, in time, reduce the public funds expended because of social problems in the communities. It is folly for these matters simply to be ignored.