DAPTO HIGH SCHOOL

Legal Studies

Preliminary and HSC Courses

MEDIA FILE

Media Articles for use in course information, referencing in essay responses and study material.

CONTENTS

Contents cont...

Sydney Morning Herald, 12 March 2009

Australia will sign UN charter on indigenous rights: Dodson

Joel Gibson
Indigenous Affairs Reporter

AUSTRALIA could reverse its position on a United Nations charter of indigenous rights as early as May, the Australian of the Year, Professor Mick Dodson, says.

The Howard government had misgivings that the Declaration on the Rights of Indigenous Peoples would elevate customary law above Western law and conflict with aspects of government policy. But it is Rudd Government policy to support the declaration and it has been looking for a way to reconcile support with its own approach to indigenous affairs.

The declaration, which was adopted by the UN General Assembly in September 2007 after more than two decades of drafting, outlines the rights of an estimated 370 million indigenous people around the world.

Only Australia, the US, New Zealand and Canada voted against it.

The shadow attorney-general, Senator George Brandis, has warned that the declaration includes provisions "that go well beyond the rights recognised in Australian domestic law".

He said it conferred the right to seek compensation for land taken without permission and to veto projects affecting land, without providing recognition for the rights of third parties.

The Northern Territory intervention, which the Rudd Government will alter in the second half of this year, breaches about half of the charter's 46 articles, according to Claire Smith, an intervention critic and academic at Flinders University.

Professor Dodson said an announcement was imminent, in an interview published yesterday. "The Labor Party's politics has always been to support the declaration, to endorse the declaration. They're going to do that and it may be as soon as the next meeting of the Permanent Forum which will be at the UN headquarters in New York City in the last two weeks of May."

But he remained concerned that the Government's support would be watered down by "too many riders or qualifications or explanatory statements".

Yesterday the Government would say only that it supported the declaration's underlying principles and was "consulting with indigenous organisations, State and Territory governments and other key stakeholders on an appropriate public statement to reflect this".

Meanwhile, the United Nations has agreed to investigate a complaint against the intervention. The case, which claims the intervention is racially discriminatory, is being run by lawyers including George Newhouse on behalf of a group in the NT.

Sydney Morning Herald, 15 March 2009

Federal law aims to stop death penalty

Cynthia Banham
Diplomatic Editor

LAWS prohibiting states and territories from reintroducing the death penalty are being seriously considered by the Rudd Government and could be introduced this parliamentary term.

The *Herald* understands the Attorney-General's Department is looking at legislation that would incorporate into domestic laws Australia's obligations under an international treaty, the Second Optional Protocol to the International Covenant on Civil and Political Rights.

The move comes amid growing pressure from Labor MPs who want Australia to take a more principled stand on the death penalty and send a strong signal to the region that it is serious about being an abolitionist country.

Concern is mounting about the fate of the three Australians from the so-called Bali nine on death row - Scott Rush, Myuran Sukumaran and Andrew Chan. They are yet to file motions in the Indonesian courts for their sentences to be reconsidered but will most likely do so later this year.

Caucus and a cross-party working group on the death penalty were briefed last month by one of the barristers working for Sukumaran and Chan, Julian McMahon. This followed a briefing late last year by Rush's barrister, Colin McDonald, QC.

The new laws would probably be enacted under the external affairs power in the constitution, though the Government could also pass the laws through a referral of powers by the states.

Both options are being considered and the Government plans to consult states and territories about the issue.

If passed, states and territories would be banned from reintroducing the death penalty, which they can do now. While the Whitlam government outlawed the death penalty for federal offences in 1973, the last state to abolish it was NSW in 1985.

In 2003, after the September 11 attacks on the US and the 2002 terrorist attacks in Bali, the then prime minister, John Howard, suggested state Liberal opposition parties could raise the reintroduction of the death penalty as an election issue.

A number of concerned Labor backbenchers, including the NSW MP Chris Hayes, and the West Australian MP Melissa Parke, met the Attorney-General, Robert McClelland, on Tuesday to discuss the issue.

Mr Hayes, the member for Werriwa, told the *Herald*: "I thought Robert has a very good understanding of the position we are adopting, particularly where we say there is an overwhelming need to bring down domestic legislation prohibiting the reintroduction of the death penalty in states and territories [as] an indication of our overwhelming position of being an abolitionist country."

Some Labor MPs also want the Government to negotiate comprehensive agreements on law enforcement co-operation with partners in Asia, to make not implementing the death penalty a condition of that co-operation.

They believe imposing such restrictions would give those countries tangible benefits to move away from using capital punishment.

This follows harsh criticism of the Australian Federal Police for its role in tipping off the Indonesian police about the Bali nine after Rush's parents went to the AFP expecting the police could prevent their son leaving Australia for Bali.

The *Herald* understands a review of the guidelines governing such operations by the AFP, conducted after the Bali nine controversy, will be completed soon.

Sydney Morning Herald, 9 April 2009

Native title to be presumed in proposed law reforms

Joel Gibson
Indigenous Affairs Reporter

GOVERNMENTS and industry would have to **disprove** native title **exists** when a claim is made and claimants and governments would be able to disregard the "bucket loads of extinguishment" created by the Native Title Act under reforms suggested by the Chief Justice of the High Court, Robert French.

Justice French suggested three "modest proposals" to reform the 15-year-old native title process, borrowing the ironic term from the title of an extreme solution to poverty once offered by the satirist Jonathan Swift.

He said there should be a presumption in favour of a claimant's continued connection with traditional lands.

States and territories and other parties would be able to challenge it, but the onus of proof would shift from claimants.

If governments were concerned about an increase in compensation claims, the presumption could be stopped from applying to compensation cases.

Justice French ... native title changes. Photo: Erin Jonasson

The presumption would mean a break in contact with traditional lands - such as when indigenous people were moved off - would not torpedo a claim as it has often done.

"Such a presumption would enable the parties, if it were not to be challenged, to disregard a substantial interruption in continuity of acknowledgement and observance of traditional laws and customs," Justice French said.

The changes would not affect the "skeletal structure of native title law" but would assist the resolution of claims and alleviate the financial burden on claimants, Justice French wrote in an article in the Australian Law Reform Commission journal, launched yesterday.

It is the second time in a fortnight the country's most senior judge, who heard native title cases in the Federal Court, has suggested a new legal avenue for the improved recognition of indigenous rights.

The native title system is under review by the Federal Government because it has failed to deliver on its promises.

In another article, the Federal Indigenous Affairs Minister, Jenny Macklin, admitted the system had turned indigenous people against each other and millions in payments had been wasted.

The Government is working to reform native title so that the windfall from resources is invested for future generations.

But Justice French and others suggested reforms yesterday that go beyond what the Government has foreshadowed.

Operation of the legal system in relation to native title

Sydney Morning Herald, 4 June 2009

Victoria Revamps native title

Jewel Topsfield

VICTORIA will become the first state to settle native title claims out of court in one of the biggest overhaul of indigenous land rights since the Mabo judgment.

Under the shake-up, to be announced today by the Attorney-General Rob Hulls, traditional owners will be able to negotiate directly with the state without having to pursue onerous native title cases in the Federal Court.

Aboriginal groups will be able to forge agreements with the State Government to manage or jointly manage Crown land - including national parks - and access land for hunting and camping without a permit.

Traditional owners could be compensated for activities including mining, carbon capture and storage as a result of reforestation and the maintenance of wetlands under land-use agreements. Disputes over land use would be adjudicated by the state's planning tribunal.

Mr Hulls said the new system would save taxpayers money, provide certainty for all groups, including industry, and lead to land claims being resolved much faster.

The state has the worst land-return record.

"This is a landmark day, not only for Victoria but for Australia, as this state becomes the first to negotiate with traditional owners an alternative pathway for resolving native title claims," Mr Hulls said.

Under the current system, the only way for Aboriginal groups to make native title claims is through the Federal Court.

The Australian of the Year, Mick Dodson - who chaired a committee which developed the reforms - said that last year Victoria had the worst record of any state or territory when it came returning land.

There are now 15 native title claims in Victoria, most of which were lodged up to 10 years ago but are unresolved. "The way we've been going it would take a further 55 years to resolve the current claims," Mr Hulls said.

"We think there is a real opportunity for us to resolve 10 settlements in 10 years, which would see the current claims lodged in the courts withdrawn and over 90 per cent of the state resolved."

Owners who can demonstrate a traditional - rather than continuous - connection to land will be able to forge agreements with the State Government.

Sydney Morning Herald, 6 June 2009

Native title claimants due before justice done

Stephanie Peatling

THE native title system has been a "disappointment" to indigenous people, many of whom have died before the courts could deal with their claims, said the Race Discrimination Commissioner.

Tom Calma said indigenous people often came away from a native title claim with only "begrudging respect" but no practical change in their situation.

"The opportunity that native title provided has not been realised," he said in giving the annual Eddie Mabo lecture last night. "Native title law today is hardly justice."

Last Wednesday marked the 17th anniversary of the High Court's Mabo decision which dispelled the idea of terra nullius. It paved the way for indigenous people to make claims over their traditional lands. But since the decision the Native Title Tribunal has become clogged with cases.

There are now 500 awaiting decision and the tribunal estimates it will take another 30 years to resolve them. No one has made a successful claim for compensation under the provisions of the Native Title Act. The Federal Government has promised to reform the native title system.

Mr Calma said native title laws were still weighted against indigenous people because they had to prove their connection to the land had not stopped at any point since European settlement.

"For many groups the reasons the law won't recognise their native title is because at some point since colonisation, white settlement and policy meant that they lost their connection with their land, even if it was just for a moment; commonly because they were removed, separated from their families or prevented from practising their culture or speaking their language," he said. "The end result is a native title system which some say has simply formalised dispossession."

Mr Calma will shortly finish his five-year term as the Aboriginal and Torres Strait Islander and Race Discrimination Commissioner. Next month he will present his recommendations for the representative body for indigenous people should look like.

Last night Mr Calma said he wanted the body to have a "two way relationship" with the Government. "It should not simply be a body that operates like a seal of approval and ticks of government initiatives. It needs to be able to engage robustly with government to set the agenda, based on the evidence provided from indigenous communities."

He also called for a new approach to the high number of indigenous people in prison.

He wants government investment in a American policy known as justice reinvestment, where states put an estimate of the cost of keeping lawbreakers in prison and then invest a percentage of that amount in communities with high offence rates on programs addressing the underlying causes of crime such as substance abuse and poor education.

Operation of the legal system in relation to native title

Sydney Morning Herald, 6 June 2009, Opinion Page

A few home truths, after Mabo

TOM CALMA

Eddie Mabo was a man of courage and principle who fought for the inherent rights of the Meriam people, and ultimately for the rights of all Torres Strait Islanders and Aboriginal peoples. He acted on what he felt was a simple and certain truth.

Mabo's fight was not a popular one. It challenged a fundamental premise on which our society operated. He spoke about a fact that ... should have been self-evident to all. So this Mabo Oration is about some self-evident truths in Aboriginal and Torres Strait Islander affairs.

It is 17 years since the High Court recognised the continued existence of native title. It may seem a long time to some, but it is not a long time in the history of this country ... [and] should have been more than enough time to have built on Mabo's legacy. That has not happened to the degree it should have.

In the indigenous policy sphere we, the powerbrokers and policy influencers ... seem to have a perpetual desire to change and refine things, mistakenly believing that equates to improvement. Rarely do we ask ourselves, "What is wrong with this picture?"

By not asking this question, we can end up with policies ... incapable of ever achieving their objectives. Most often indigenous people are blamed when new initiatives fail. And, always, it is indigenous people and indigenous communities who suffer when they do. This approach is what Lieutenant-General John Sanderson, chairman of the Indigenous Implementation Board in Western Australia, calls, "riding a dead horse". Doing the same thing again and again even though it plainly isn't working. He recently said if you find yourself riding a dead horse, the best policy is to dismount. I agree. My first self-evident truth is we need to stop allowing governments to develop policies for our communities, in an insular and myopic fashion. Instead, governments need to develop a genuine and respectful partnership with indigenous peoples.

It doesn't matter how magnificent a proposal is ... or how much money is attached to it. It will all amount to a hill of beans if it does not meet the "reality test" of livelihoods ... Nor will it be legitimate in our eyes.

We need to be the central players in our own development. We have the right to determine the priorities for our communities and for our families. Like any community, we will make bad decisions from time to time. But the Government has acknowledged problems have flowed from a lack of engagement with indigenous people, and indicated support for a new national representative body. This is critical.

My next self-evident truth is our human rights should be adequately protected so that we are treated equally.

Over the past decade we have seen a convenient but destructive approach: to treat protections

> We need to be the central players ...

against racial discrimination as expendable, including in the Northern Territory. This is unacceptable ... Measures can be designed to protect women and children that are not racially discriminatory. I am pleased the Government intends to remove the suspensions, but it demonstrates the vulnerability of [all] our [human rights protections].

My next self-evident truth is that the criminal justice system is failing indigenous people ... We need to invest in crime prevention rather than funding criminalisation. It is a sad fact that indigenous imprisonment rates are unacceptably high. Since the Royal Commission into Aboriginal Deaths in Custody in 1991, some good initiatives have begun. But the bottom line remains: indigenous imprisonment and over-representation in the criminal justice system have not decreased, but are getting worse. We have seen a 48 per cent increase in indigenous imprisonment since 1996, and the gap between indigenous and non-indigenous imprisonment rates continues to grow.

When something isn't working we need bold and creative alternative solutions. One is a recent American development: justice reinvestment. It diverts a proportion of imprisonment costs to local communities with a high concentration of offenders, reinvesting that money in programs to address the underlying causes of crime. The result, unsurprisingly, is significant savings through the prevention of crime.

We are spending increasing amounts on imprisonment, but prisoners are not being rehabilitated and recidivism rates are high. Justice reinvestment is an idea worth seriously considering.

Finally, let me return to native title, one of the most complex and slowest parts of the justice system. There are over 500 claims waiting to be determined and the National Native Title Tribunal estimates it will take another 30 years to go through them. It is hardly justice. And it operates in such a way that the more a community was hurt by government's policies, the less likely they can gain recognition of their rights. For many groups, the law won't recognise their native title because white settlement meant they lost their connection with their land ... commonly because they were removed, separated or prevented from practising their culture. The compensation provisions have also failed abysmally. There has not been one successful compensation claim.

The result is a native title system which some say has simply formalised dispossession, and we must ensure it becomes a just system which goes some way to rectifying past injustices. We must return to the universal truths that exist - in our relationships, and from our history. Only by doing this will we achieve social justice for Aboriginal and Torres Strait Islander peoples and, in doing so, equality for all Australians. From self-respect comes dignity, and from dignity comes hope.

This is an edited extract from last night's Mabo Oration, delivered by the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma.

Sydney Morning Herald, 6 June 2009, Opinion Page

Bikie Laws sideline the rule of law

RICHARD ACKLAND

Other places in other times know only too well how bad laws can quietly creep upon the citizenry, pile up one by one and then destroy the very fabric they sought to protect. If there is any smouldering doubt that the Rees Government's anti-bikie gang law is a bad piece of work, the NSW Director of Public Prosecutions, Nicholas Cowdery, QC, has extinguished it.

In a paper quietly slipped onto his website, he systematically exposed the dangerous qualities of this new regime, bits of which have been stolen from the anti-terrorism cupboard. He describes this piece of legislative handiwork as a "giant leap backwards" for the rule of law in NSW.

It was all knitted together in response to the public bludgeoning of the Hells Angels associate Anthony Zervas at Sydney Airport in March. It's one thing for bikies to slaughter each other in the peace and quiet of their tattoo parlours or the bubbling laboratories of their drug plants. It's quite another matter when the violence spills onto the concourse of property that governments assure us are secure.

Soon after, we were subjected to clunky stage-managed parades of the Premier and the Police Minister, flanked by the chief coppers, grimly nodding a chorus of agreement to expanded "gang squads" and tougher laws.

There didn't need to be new laws. There needed to be more rigorous policing and law enforcement of the panoply of legislation that already exists - specifically the anti-criminal group provisions passed in 2007.

The Crimes (Criminal Organisations Control) Act of 2009 is what we now have as a political stunt in response to the bad blood at the airport. The Opposition, too timid to resist, also helped with the nodding. Even so, it's interesting to note that a leader of the Comanchero Motorcycle Club, Mick Hawi, who was charged with affray after the bollard-wielding activities near the check-in counter, got out of Silverwater after a friend posted a $200,000 security. Five others are still inside, having been refused bail.

In a nutshell, the new legislation provides for a two-step shuffle. First step - the police commissioner can apply to the Supreme Court for a judge to make a declaration that an organisation is a criminal outfit, or more precisely that its members associate for engaging in "serious criminal activity". This is activity that can attract anything from five years' jail. The important thing here is that only "eligible" judges can do this dirty work. They have to nominate themselves to the Attorney-General and he has to approve their eligibility. So far 24 have been "approved". Theoretically, the law could equally apply to a group of Newtown goths illegally downloading software.

Step two - the police commissioner can then apply to any judge of the Supreme Court (eligible or non-eligible) for a control order against a member of a "declared" organisation. All that is required is that "sufficient grounds" exist for making a control order. The sufficient grounds are not spelled out. Once made, a person subject to a control order cannot associate with another "controlled" person. Exceptions are provided for "close family members", for education courses or where they associate while in the nick

The onus is on controlled people to prove they fall within an exempted category. Jail awaits those who associate. A controlled person loses any state-granted licence to conduct a business.

Where Cowdery comes into his own is in spelling out what he modestly refers to as "troubling features". It is more like a lacerating exposure of a nasty and unnecessary law. There is no appeal of a declaration against an organisation or an order against an individual. Even where there has been a breach of the rules of procedural fairness, there is no right of appeal.

If the Police Commissioner classifies a bit of information as "criminal intelligence" then judges are required to hear that evidence in secret, in the absence of the parties to the proceedings and without their legal representatives.

The act says the rules of evidence do not apply to hearings associated with declarations of organisations. The prospect of an outfit being declared on the basis of hearsay evidence is quite possible. Eligible judges who make declarations are not required to provide reasons for their decisions.

On the two-tiered arrangement for Supreme Court judges, Cowdery picks his words carefully: "If an attorney-general should so desire, he or she has unfettered power to 'stack' the hearing of applications for declarations or organisations under the act with judges willing to enforce it". The attorney-general can revoke the eligibility of judges if they don't perform to "the Government's satisfaction".

In a letter to the *Herald* published on Wednesday, Hatzistergos said "allocation of judges is a matter for the courts". That's not entirely the picture. He has to approve those who hear applications for declarations. It is understood at least one Supreme Court judge has told the Attorney-General he no longer wishes to be considered "eligible". The whole idea is utterly repugnant.

What concerns the DPP is that this combination of power vested in the police commissioner, along with the use of "approved" judges, is not just a frightening "aggrandisement of power", it is usurpation of judicial power by the executive.

Why isn't the judiciary making a huge stink about it?

justinian@lawpress.com.au

Legal controls on state power

Sydney Morning Herald, 14 June 2009

Endangered Animal – charity worker biker now in firing line

By MATT KHOURY

RANDALL "Animal" Nelson is a founding member of the Kings Cross Bikers, a loose group of 20 or so ex-crims, ex-drunks and charity workers.

Smothered in tattoos, rings and bracelets, he wears a bunch of badges on his leather vest, including a Medal of the Order of Australia for charity work, presented in 2004.

Mr Nelson does toy runs to children's hospitals, unofficial outreach programs for the area's homeless and drop-offs to the aged.

"Our agenda is helping people less fortunate than ourselves," he said through his tobacco-stained beard.

The "young seventysomething" has not always been a saint. He had a couple of early stints at Long Bay Jail and made a final "just visiting" day-trip in the early 1990s, with motorbikes and strippers to raise the spirits of old mates.

"There's a few crims here and there [in the Kings Cross Bikers]. All types of people associate with us."

But the bikers and charities are worried that the Crimes (Criminal Organisations Control) Act 2009, dubbed the bikie laws, may put their good work at risk

"Technically, they could be outlawed, which just highlights the stupidity of the law," said Pastor Graham Long of the Wayside Chapel.

"Animal's one of the most docile, kind-hearted people you'll ever meet. He's in here all the time, usually to grab second-hand stuff to give it away to people."

The Reverend Bill Crews tells of the Kings Cross Bikers having tea and scones with senior citizens before driving delighted ladies around on motorcycles. "We've only got praise for Animal. The Kings Cross Bikers are just characters," he said.

A spokesman for Attorney-General John Hatzistergos said: "Just because someone's involved in charity work doesn't mean they're not involved in criminal activity. They could be disguising themselves. It's a matter for police to assess them."

Superintendent Tony Crandell, Commander of Kings Cross police, said they "are aware of a number of organisations operating within its boundaries".

Organisations operating lawfully would not be investigated, he said. "However, any illegal or antisocial behaviour will not be tolerated and will be investigated to the full extent of the law."

The Crimes Act 2009 pertains to any network, not only those on motorcycles. It can be enforced on any group suspected by the Police Commissioner and one Supreme Court judge of criminal activity.

Political rhetoric has focused on bikers. Premier Nathan Rees told Parliament: "For all their rough appearance, bikies are also sophisticated criminals who launder their money through a variety of businesses."

Opposition Leader Barry O'Farrell said: "I would have no problem if you put all the motorcycle gang members in two rooms and allowed them to shoot themselves to death."

But Mr Nelson doesn't care what they think. The city council allocated a motorcycle-only parking zone outside Kings Cross Library, where a photo-portrait of him sells for $3000.

"That's my office," he says. "But everybody's welcome. I fought for this place for everybody."

Legal controls on state power

Sydney Morning Herald, 14 June 2009

Men of colours stand united in face of bikie bill

Freedom riders... rival outlaw gangs roared through Moore Park yesterday to express their dismay about the State Government's Criminal Organisations Legislation Amendment Bill. Photo: Danielle Smith

By DYLAN WELCH

THE public relations war between the bikies and the Government has begun in earnest.

Bikies from 16 outlaw bikie gangs roared through Moore Park yesterday to protest against the crime bill that threatens to outlaw them all. The "freedom ride" is the latest attempt to swing public opinion against the State Government's Criminal Organisations Legislation Amendment Bill.

The bill, enacted following the fatal brawl at Sydney Airport between the Comanchero and the Hells Angels in March, is designed to outlaw alleged criminal groups.

Scenes unthinkable six months ago - Finks talking to Hells Angels, Rebels talking to Bandidos - became the norm as the members milled around while photographers and cameramen moved among them. Police in a dozen highway patrol and unmarked cars observed the bikies.

Authorities also closed the air space above the ride, forcing television helicopters to move out of the area.

A spokesman for the motorcycle clubs, known only as Ferret, said: "This bill involves every person in NSW.

"If people get out there and read the law they'll realise what it's about."

Duties

Sydney Morning Herald, 19 June 2009

GP Hid abuse, niece alleges

Louise Hall
Health Reporter

A WOMAN is suing her uncle of falling to fulfil his legal obligation as a doctor to report sexual abuse to authorities, after he allegedly became aware she was being molested by her father but did nothing.

The case will be back before the Supreme Court next week. The women, now 29, says her uncle, a Sydney doctor, had been negligent and in breach of his statutory duty in failing to report the sexual assaults to the police or the Department of Community Services.

Bill Madden, the national practice group leader of medical law at law firm Slater & Gordon, said the case would determine if doctors and other mandatory reported treating family and friends were liable for the psychological and financial harm cause to the victim because of their own failure to act.

Mr Madden said the case could also leave doctors open to be sued if they discovered yet failed to report that another doctor was having a sexual relationship with a patient.

NSW legislation says all people who provide health-care, welfare, education, children's and residential services or law enforcement to children must report suspected or actual abuse.

In 2007-08 the DOCS Helpline received 303,121 risk-of-harm reports. Of these, 226,766 were mandatory reporters.

The duty to report behaviour that puts patients at risk, such as drug abuse or sexual abuse, will be extended to 10 health professions – including optometrists, dentists, chiropractors, osteopaths, physiotherapists, pharmacists and psychologists – when national standards apply next week

Mr Madden predicted that in this case, the doctor might try to escape liability by arguing the information came via a private, family conversation.
However, at an interlocutory hearing in the Supreme Court in March, the court was told the uncle "acted as the family medical practitioner, writing prescriptions when they were needed and performing similar tasks".

The court heard the women's father began to sexually abuse her in 1985, when she was four.
He was charged and jailed two decades later.

She is suing her uncle, saying that at age seven she told her older sister of the abuse and her uncle was called over to the house by his sister (the plaintiff's mother) to counsel the father.

The abuse stopped for a time but resumed until 1991, when she was 11, when the sister witnessed an incident of abuse and the uncle was again called by the mother.

The women says her uncle's failure to report the abuse four years earlier allowed it to continue, causing her more harm.

By age 12 she was using alcohol and cannabis; by 18 she had been expelled from school, had developed a heroin addiction and was working as a prostitute.

Several psychiatrists have diagnosed her with psychiatric illnesses – including borderline personality disorder, complex post-traumatic stress disorder and depression – all linked to the years of sexual abuse and probably made worse by the uncle's failure to stop it.

Sydney Morning Herald, 20 May 2009

Bikie laws a threat to rights, says Cowdery

Andrew Clennell
State Political Reporter

THE Director of Public Prosecutions, Nicholas Cowdery, QC, has condemned the Government's new bikie laws as "very troubling legislation" that could lead to a police state and represent "another giant leap backwards for human rights and the separation of powers - in short, the rule of law".

Mr Cowdery's warning comes after a second wave of anti-bikie laws passed through Parliament this week, this time providing for penalties of up to five years' jail for members of a proscribed gang who "recruited" members.

Last month the Premier, Nathan Rees, insisted the first set of laws be rushed through Parliament after the death at Sydney Airport of Anthony Zervas during a bikie brawl. Those laws allow the Police Commissioner to move in the Supreme Court to proscribe criminal gangs and jail members who associate with each other.

But the laws are yet to be used and the Government will not say when they might be.

In a paper published on his website, Mr Cowdery says: **"There may be a need for better enforcement [rather] than for legal powers."**

He warns that the law "does not apply only to bikie gangs but 'to any particular organisation' in respect of which the Police Commissioner chooses to make an application.

"Where will the line be drawn?" he asks.

"These words cast a very wide net ... Why should the responsibility for identifying which organisations warrant being declared under the act be vested in the Police Commissioner, an unelected official?

"The spectre of a police state lurks here: an unacceptable slide from the separation of powers by linking the powers of the Police Commissioner with those of 'eligible' judges." Mr Cowdery says the fact the Attorney-General has the power to declare which "eligible" Supreme Court judge could hear an application to proscribe a gang meant an attorney-general could have "unfettered power to 'stack' the hearing of applications for declarations of organisations under the act with judges willing to enforce it".

The Attorney-General could also "revoke or qualify the authority of a judge to determine applications for declarations if he or she does not perform to the Government's satisfaction'.

He says that while this may not be the intention of the present Attorney-General, John Hatzistergos, "a provision so drafted left on the statute books is extremely dangerous and potentially open to serious misuse".

Mr Cowdery writes: "It matters not that the motives of the urgers or policy makers may be honourable ... we all need constantly to be alert to the erosion of rights and be proactive in preventing it ... This is especially a time for vigilance in NSW. Someone once described it as the price of liberty."

When Mr Rees rushed through the laws, he said it was "proportionate response to an escalation in violence [involving] outlaw motorcycle gangs". He said bikie gangs had "crossed the line" with the Sydney Airport brawl in March and subsequent shootings on "public streets".

The laws received initial internal opposition from Mr Hatzistergos.

Last year, the the fiercely independent Mr Cowdery described the Iemma government as as "ruthless" and guilty of "grubby" tactics and said Mr Hatzistergos was a "micro-manager" who had lost sight of the "bigger picture".

Recently, the Government legislated to give a future DPP a 10-year-term in the job, rather than open-ended tenure.

Mr Cowdery was unavailable for comment yesterday.

Sydney Morning Herald, 2 August 2007

$525,000 – the price of one stolen life

Todd Cardy

AN ABORIGINAL man taken from his family as a baby has been awarded more than $500,000 compensation in a South Australian court, a first for a member of the stolen generation.

Bruce Trevorrow was 13 months old when a neighbour drove him on Christmas Day in 1957 from his Coorong family home, south-east of Adelaide, to the Children's Hospital with stomach pains.

Hospital notes tendered to the South Australian Supreme Court show staff recorded that the child had no parents and was neglected and malnourished.

Two weeks later, he was given under the authority of the Aborigines Protection Board to a woman, who later became his foster parent, without the permission of his parents. He did not see his family again for 10 years.

In 1998, Mr Trevorrow sued the South Australian Government for pain and suffering, alleging he had lost his cultural identity, suffered depression, became an alcoholic and had an erratic employment history after being taken as a child from his family.

The court heard the 50-year-old was depressed due to a chronic insecurity and had been treated with antidepressants and tranquillisers since he was 10.

Justice Thomas Gray ruled in favour of Mr Trevorrow, saying the state falsely imprisoned him as a child and owed him a duty of care for his pain and suffering.

Justice Gray said that Mr Trevorrow had had a "tumultuous young adult life" and the removal of him from his family caused injury and damage, which manifested throughout his childhood and adult life.

"The plaintiff has, thus far, generally had a miserable life," he said in his findings. "He does not belong. He feels isolated. His depression has led him to abuse alcohol. This abuse has compounded his problems."

He rejected arguments that the child was not unlawfully removed from his parents because the Aborigines Protection Board was not part of the Government.

The Government was ordered to pay $525,000 for injuries, losses and false imprisonment.

Mr Trevorrow left court saying he would pay off his house with the money. "I thought that we would never get there," he said. "But the day's come when I've got the peace of mind to start my life."

A spokesman for the South Australian Attorney-General, Michael Atkinson, said the Government would seek legal advice before deciding whether to appeal.

The former Aboriginal and Torres Strait Islander Commission chairwoman, Lowitja O'Donoghue, said the judgment was "a great victory".

"It is time to understand there was a stolen generation, instead of all these history wars."

Sydney Morning Herald, 23 January 2008

Tasmania pays $5m to stolen generations

Joel Gibson
Indigenous Affairs Reporter

TASMANIAN members of the stolen generations and their children will be paid lump sums of about $58,000 and $5000 respectively in the next week under Australia's first - and only - compensation fund for Aboriginal children forcibly removed from their families.

The Tasmanian Government created the $5 million scheme in 2006 to compensate victims for the 19th- and 20th-century policies designed to assimilate them into mainstream Australia. The other states have apologised for the practice.

Last year Bruce Trevorrow, a 50-year-old South Australian, became the first victim to win compensation through the courts. He was awarded $525,000.

Of the 151 applications received by Tasmania's independent assessor, Ray Groom, 106 were found to be eligible for payment. Of those, 84 people were victims and 22 were the children of victims who had died. Forty-five claims were rejected.

The 22 children of stolen generations victims will share in $100,000 and the remaining $4.9 million will be split equally among the 84 living applicants who were removed, giving them about $58,000 each.

The Tasmanian Premier, Paul Lennon, said Tasmanians could not hope to move forward as a community without having the courage to address the wrongs of the past.

"Our process makes a clear statement about the tolerant, inclusive and progressive attitudes of the modern Tasmania," Mr Lennon said. "This is not the end of the process. Making these payments does not mean our job is done and reconciliation is complete. I am committed to working with the Tasmanian Aboriginal community into the future to ... forge stronger relations."

The Tasmanian activist and lawyer Michael Mansell said many of Tasmania's 8000 indigenous inhabitants had accepted that they were not eligible for the scheme, even though they were removed.

"We were just hoping that the process was fair and everyone I have spoken to, whether successful or not, has said they were satisfied with the process," he said.

Under the Tasmanian scheme, the onus was on the state to show it had done everything possible to return Aboriginal children to their families if they were removed.

Mr Mansell said Tasmanian Aborigines had great respect for Mr Groom, who was premier from 1992 to 1996 and introduced land rights legislation in 1995, two decades after it was passed on the mainland.

He said the scheme was a model for what could be achieved if the Commonwealth reversed its rejection of compensation for stolen generations of victims on the mainland - a reversal he is confident will happen.

"No matter how sincere Kevin Rudd's apology is, it will reach the general public and the broader Aboriginal community but not the actual victims, who are still suffering. For them, an apology is not enough."

Reconciliation groups have accused Labor of breaking an election promise because its policy is to "provide a comprehensive response" to the 1997 *Bringing Them Home* report, in which nine of 54 recommendations deal with compensation.

The Indigenous Affairs Minister, Jenny Macklin, said Labor would instead invest in closing the 17-year life-expectancy gap between black and white Australians.

Sydney Morning Herald, 4 April 2009

Activists say intervention must be reviewed

Stephanie Peatling

THE discriminatory elements of the Northern Territory intervention must be remedied now that Australia has officially supported the UN Declaration on the Rights of Indigenous Peoples, says the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma.

At a ceremony at Parliament House yesterday the Minister for Indigenous Affairs, Jenny Macklin, said the Federal Government's support for the declaration came after years of opposition by the previous government.

"Australia today takes another important step towards resetting relations between indigenous and non-indigenous Australians," she said.

Australia played a predominant role in drafting the 2007 declaration, only to vote against it, along with the United States and New Zealand.

The declaration sets out the rights and protections to which the world's 370 million indigenous peoples should be entitled. It calls for recognition to education, practise of traditional customs and land use.

The Federal Government says it will not have to change any policies or laws to be consistent with the declaration

Mr Calma said the Government's support for the declaration was a "watershed moment" in its relationship with indigenous people.

He said the challenge for the Government was to give meaning to the document's 46 articles because indigenous people remains marginalised and faced continuing discrimination.

"The declaration could be put to immediate use in Australia by providing guidance and articulating minimum standards to help the Government in addressing some of the discriminatory elements remaining in the Northern Territory intervention," he said.

Ms Macklin said she was still working on making the intervention into Northern Territory communities constituent with the Racial Discrimination Act.

Legislation to reinstate the act is expected later this year.

The Australian of the Year and co-chairman of Reconciliation Australia, Mick Dodson, said the Government's support for the declaration was "another great thing, another special thing" following the apology to the stolen generations by the Prime Minister, Kevin Rudd.

"This is yet another important piece in the jigsaw that is closing gaps," Professor Dodson said.

But indigenous campaigner Barbra Shaw, from the Mount Nancy Town Camp in Alice Springs, accused the Government of "absolute hypocrisy".

The intervention in Northern Territory Aboriginal communities contravened the declaration, she said.

"The Racial Discrimination Act remains suspended and Aboriginal communities remain under the control of an explicitly racist government," said Ms Shaw, an anti-intervention activist.

The Federal Opposition is against the declaration, it maintains that it will impose legally binding obligations on Australia.

The Opposition indigenous affairs spokesman, Tony Abbott, used a speech in Sydney to reverse his opposition to the apology. "It was a mistaken for us not to apologise," Mr Abbott said.

"I'm pleased when Kevin Rudd did decide to apologise that he was strongly supported by the Coalition."

Sydney Morning Herald, 3 July 2009

Labor acts to close Aboriginal health gap

Phillip Coorey
Chief Political Correspondent

THE Commonwealth will mandate the sale of healthy and affordable food in Aboriginal communities across the country in a bid to redress the "appalling" gulf in health and life expectancy between indigenous and non-indigenous Australians.

Under a handful of measures agreed to yesterday by the Commonwealth and the states, the operators of food stores within Aboriginal communities would lose their licences if they failed to maintain set standards.

The states, too, will have to account for every dollar they spend on indigenous education by detailing how the money is used and the consequent impact on enrolment, attendance, literacy, numeracy and retention.

And the Commonwealth and states have agreed to report every six months on progress or otherwise towards targets on improving health, education, housing and early childhood.

More than $46 million was allocated yesterday to improve data collection, an admission there was a paucity of information with which to gauge the extent of the problem.

"There is simply not enough statistical information to give us a clear indication of what's happening on the ground," the Prime Minister said.

The measures were agreed to at the Council of Australian Governments meeting in Darwin.

The meeting was preceded by the release of a Productivity Commission report which not only highlighted the scale of the problem but enabled the Rudd Government to blame the Howard government for the plight of Aboriginal Australia.

The report, based on data collected largely until 2007, when Labor won the election, measured 50 indicators, including six targeted for improvement under Kevin Rudd's "closing the gap" policy.

It found between little and no progress since 2001 in such areas as health, housing, literacy, numeracy, employment and living standards.

Mr Rudd's policy aims to close the life expectancy gap within a generation, halve the difference in infant mortality and employment rates within a decade and improve education.

Reports of child abuse and neglect among indigenous children were up to six times that of non-indigenous children but the Howard government's 2007 intervention in the Northern Territory might have helped increase the number of reports, rather than the incidence of abuse.

Mr Rudd called the report "devastating" while the Indigenous Affairs Minister, Jenny Macklin, said it was "a report on the Howard years".

The Opposition indigenous affairs spokesman, Tony Abbott, said the Government should crack down on truancy by fining parents whose children failed to attend school.

Ms Macklin said Centrelink already docked the welfare payments of parents whose children dodged school.

The Nationals senator Barnaby Joyce said the measures unveiled yesterday were little more then motherhood statements.

"Sure, it's a noble gesture but if I hear the word 'decisive' from Mr Rudd one more time I think we will all be violently ill," he said.

The mandating of food standards already exists in the Northern Territory communities where the intervention applies.

Sydney Morning Herald, 3 July 2009

Howard years a dark age for progress: Labor

Yuko Narusnima
Indigenous Affairs Correspondant

AN INDIGENOUS child in Australia is now six times more likely to suffer abuse or neglect than a non-indigenous child - and 28 times more likely to be jailed.

Despite government attempts to stamp out inequality on six social and economic measures, a biennial report by the Productivity Commission said disparities were widening or showing negligible improvement.

The impact of the intervention and the financial downturn on Indigenous and Torres Strait Islander people could not be properly measured because of delays in data collection and in policies taking effect, it said.

Gains made in employment and year 12 graduations were neutralised by improvements in the broader population.

The indigenous employment rate rose from 43 to 48 per cent in the five years to 2006 but still lagged 24 percentage points behind Australians in general.

High school graduation rates rose to more than a third but made no advance on the 74 per cent of non-indigenous students who completed year 12.

The Prime Minister, Kevin Rudd, said the report was devastating. "We have to redouble and treble our efforts to make an impact," he said.

The Indigenous Affairs Minister, Jenny Macklin, said the report was an indictment of the Howard government, which had introduced the intervention policy. She said the Coalition had to accept responsibility for the lack of progress since 2000.

"Tony Abbott [the Opposition spokesman on indigenous affairs] should recognise that this report is a report on the Howard years and recognise that there is a lot more that needs to be done," she told Sky News.

Ms Macklin was responding to a call by Mr Abbott for Labor to crack down on truancy to improve the employment and health prospects of indigenous people.

The *Overcoming Indigenous Disadvantage* report measured 50 indicators, including six targeted for improvement by federal and state governments at meetings in December 2007.

The goals were to close the life expectancy gap within a generation, halve the difference in infant mortality and employment rates within a decade and improve indigenous education at three levels: early childhood, literacy and numeracy, and high school graduations.

On no counts were significant improvements recorded.

In reading, writing and numeracy, the report said "there has been negligible change in indigenous students' performance over the past 10 years and no closing of the gap". In other areas, the gulf had widened.

The chairman of the Productivity Commission, Gary Banks, said unacceptable disparities persisted in every area measured and gains were measured in only 20 per cent.

Rates of imprisonment had risen by 46 per cent among indigenous women and 27 per cent among indigenous men in the eight years to 2008.

Juvenile detention rose 27 per cent between 2001 and 2007, making indigenous minors 28 times as likely to be jailed as non-indigenous minors.

The causes of disadvantage were linked, the report said, so alleviating a problem such as overcrowding in houses could have multiple health and learning benefits.

Instances of reported child abuse and neglect doubled in the eight years to 2008. Seven in every 200 indigenous children were now affected, six times the number of other Australian children. Growing intolerance and heightened awareness of crime could be behind the increase, the report said.

Although fewer indigenous communities were without electricity and sewerage, the latest available figures showed 32 still had no power system and 25 lacked reliable sewerage.

"The things that work generally work because of co-operative approaches between government and communities," Mr Banks said. The economic downturn would make future progress challenging, he said.

Sydney Morning Herald, 4 July 2009

Anger reigns in a place shamed before the world

Senior government officials detect mush resistance, partly because of the way Mutitjulu was singled out at the start.

Paul McGeough
Chief Correspondent in Mutitjulu

THEY reveal the aspirations of so many young Australians. Outside, teenagers play Aussie rules in the dirt - with grace and grit. Inside, the guitars and drums of the Mutitjulu Band belt out the same track again and again - *I'm Thinking Family*.

A tiny girl, as innocent as she is naked, saunters through the band. She taps at one of the drums, as children will. Elsewhere it would be cute but this is Mutitjulu, a community held up to the world as a dangerous place for children.

Two years on, child abuse and sex abuse cause anger, disquiet and uncertainty in the central Australian community that became a target for the Howard government's military-led intervention into Aboriginal affairs in the Northern Territory.

Anger - that the media and the government singled out Mutitjulu as so much worse than other communities. Disquiet - over how the issue should be addressed. And uncertainty - that perhaps abuse continues, but goes unreported.

A professional who visits the community regularly argued that official exaggeration - an inquiry found no evidence of a "pedophile ring", as claimed by the then minister for Aboriginal affairs, Mal Brough - had made it impossible to get the men of

FROM DREAMTIME TO REAL TIME

Mutitjulu to discuss child abuse. But he believed there still were cases of what he described as "drug-related" child abuse.

Vincent Forrester, the chairman of the community corporation, told the *Herald*: "I thought the intervention was about child abuse but there was never a child abused in Mutitjulu. They brought in the cops and none of this disgusting behaviour was found. We are not all drunks, woman-bashers and pedophiles."

Penny Fairweather, the manager of the community clinic, said there was no evidence of abuse in women and children who came to the clinic but she worried victims might no longer trust the centre because of the hostile nature of the early intervention. "Lots of women are finding courage to talk about it, despite the issue having been driven underground."

A senior woman said the issue remained sensitive. "We're trying to get people to talk but first we have to talk about other problems - drugs and alcohol, gambling and domestic violence - before they have the confidence to deal with this big one."

She paused before responding to a question on the intervention's usefulness against child abuse. "There's been no program to educate the community. There's been no consultation ... No one has come to us about this issue. It's a reason why we still don't know what this intervention is about."

Sydney Morning Herald, 4 July 2009

Between the rock and a hard place

Paul McGeough visited Mutitjulu – the crisis community that precipitated the Northern Territory intervention. He found mayhem and despair, but sparks of hope, too. This is his special report.

The barking is incessant, and menacing. Nearly 130 snarling dogs lunge at the sides of flimsy pens. The struggle to feed and water them overwhelms the dogman of Mutitjulu, but others fear coming too close in this dark corner of central Australia.

Rounding up the animals over years, the rheumy-eyed Louie James pushed a car wreck into each new cage to shelter the mostly-mongrel packs. On one bizarre reading, his is a triumph of outback "can-do" mentality - saving dogs on his terms. In reality, James has created a health and security monster which, two years on, defies the best efforts and huge resources of what began as the Howard government's emergency intervention in Aboriginal communities of the Northern Territory.

James spends nearly his entire welfare cheque - more than $700 a fortnight - on dog biscuits, freighted to the desert by the pallet-load. "I just have a couple of bites to eat and the rest of my money is for them," he says, nodding at the yelping scrum.

James thinks he is 63. He sleeps in squalor in an abandoned demountable public toilet block. He has ripped out fittings to make room for a burgeoning mess he calls home. He spends much of his days staring at the distance, hunkering in a lean-to of canvas he has stretched in the spindly branches of a punti tree, repeating again and again accounts of broken promises and of grant money that disappeared - either to rid the community of the dogs or to improve the hovel in which he lives. "Misused, stolen, misappropriated - you choose," he says, clutching a pup in his lap.

In the absence of any other official effort, the local shire is now grappling with the dog crisis. It thought the RSPCA might tackle James's mongrel pack - but not so remotely, apparently. It wondered about the police. No. Maybe the national park rangers at Uluru. Seemingly, no.

Mutitjulu exists in a complex, troubling void, somewhere between dreamtime and real time. Discovering its precise location - so hard up against Australia's grandest tourism showcase, Uluru - is a serious assault on the senses.

Without signposts, the turn-off from the road looping the Rock to this fractured, dysfunctional mess deviates from the well-heeled tourist procession a mere 100 metres from the world's biggest monolith.

This somehow encapsulates the incomprehensible circumstances in which a man and his dogs can defeat what a prime minister launched as an operation so urgent to a crisis so disturbing that the military had to lead. Overhauling decades of neglect and abandonment that made Aboriginal Australians the New World's most deprived indigenous peoples was a truly national challenge.

The anthropological layers of Mutitjulu's social catastrophe are as difficult to penetrate as the animosity and ill-will whipped up by the intervention as it enters its third year. "Apparently we're not Australian citizens any more," the high-profile local Bob Randall snaps. "They've put us back 25 years." Vincent Forrester, the recently appointed chairman of the powerful Mutitjulu Community Aboriginal Corporation, makes a single reluctant concession on the intervention's usefulness: "Some of the old pensioners like to have their income managed …"

Mutitjulu was the intervention's political attack point following allegations of horrendous child and sexual abuse. But just 800 metres off the road hauling well-heeled tourists circling Uluru, the results are mixed. There have been some improvements, but in the heart of such chronic societal breakdown, few seem to know which way to turn.

Like George Bush's invasion of Iraq, the propriety of the initial Howard strategy is still hotly debated, possibly even at the expense of progress towards refinements of the program by the Rudd Government. At its core, the intervention was billed as a war on substance abuse - grog and petrol; a mission to rescue children and women from abuse and violence, and by quarantining their income to be spent on food, clothing and household goods - not alcohol and tobacco; an attempt to close the black-white gap in health and education; and to create real jobs, instead of distributing "sit-down" money. But it also was seen as an effort to end a culture of welfare by embedding a new ideology in such a way that subsequent governments might only tinker with, not uproot.

Labor is moving to soften some of the sharper edges of the Howard program, but 57-year-old Forrester remains contemptuous. "Rudd is doing very well in job creation - hundreds more new public servants come out here in brand-new Toyotas to talk about projects," he snarls. "Toyota is doing very well but nothing ever happens here."

That's not strictly true.

Like most Mutitjulu residents, Judy Trigger, 55, has an open fire in her fenced yard. It's a place to gather - to sit and talk; to cook and eat. Trigger is one stout defender of the income management scheme at the intervention's core. "I tell the families it's good for tucker and clothes … maybe for a TV, a fridge or washing machine. It's really good - but some people don't like it."

Trigger did a list of changes brought by the intervention. "The clinic mob is helping really good; the respite help is really good for the old people; the store is running better and the kids get fed at school. "But we're still waiting for the old people's home, a swimming pool, the playground and the rec hall. We need to have a meeting to talk about new housing."

A few houses away, Barbara Tkikadu has covered all bases. There's a groundsheet in the sunshine, next to a wood fire protected from a biting winter wind by a sheet of roofing iron pinned to a fence. She's wearing a new pair of pink, knee-high ugh boots.

"The money is not going on grog any more," she says. Then, with a quiet laugh of apparent surprise at her own achievement, Tkikadu gets personal. "I was able to buy a car for the family. There's money for the little ones too," she adds, patting her stomach, pointing to her grandchildren and smiling.

But if Mutitjulu women are on board, male attitudes to the intervention range from ambivalence to open hostility. Senior government officials detect much resistance, partly because of the way Mutitjulu was singled out at the start.

Senior government officials detect much resistance, partly because of the way Mutitjulu was singled out at the start.

"They think they were picked on," said one, referring to the community's portrayal as a centre of child sex abuse. "It's been very difficult to make things happen, and it's only in recent weeks that the local suspicion is breaking down."

Just last month, a week or two shy of the intervention's second anniversary, Mutitjulu had its first network meeting of all service providers - school, police, shire, clinic, government business manager, job networker and contractors. Said a triumphant Dorothea Randall, a community activist and Mutitjulu Community Aboriginal Corporation

director: "This was a positive step forward, with all telling each other what they were doing. We haven't had that for a long time."

Randall takes as much heart from that meeting as she does from the level of community support for a coming workshop on drugs. "Mal Brough [the Howard government indigenous affairs minister] offered $400,000 to get rid of the Louie James dog problem," Randall says. "But money doesn't always solve these things. In that case it was dogs, but in other cases it's about getting kids to school or stopping drugs. I'm excited because people here are showing signs of wanting to do things for themselves."

There is debate in the community about jobs and encouragement of the young. Highly critical of the few jobs for locals in a national park on their land, the critique by one local revealed this self-examination. "It's not necessarily the fault of Parks or of the road contractors - there was an invitation to be involved, but our young people don't want to work."

But the Mutitjulu Community Aboriginal Corporation chairman, Vincent Forrester, sees his people locked out. Of a $20 million project to build a viewing area at the Rock, Forrester says, just one Mutitjulu man got work, and that was for $250 worth of site clearance.

He exaggerated - but not by much. The Department of the Environment, Water, Heritage and the Arts confirmed to the *Herald* that "in any month, up to six locals were employed ... with attempts to employ more proving unsuccessful". There are three indigenous workers on the present phase of the project - none is from Mutitjulu. Likewise, last month just five Mutitjulu people had full-time jobs in the Uluru-Kata Tjuta National Park - which includes Mutitjulu. Fifty-five get an occasional day's work - 13 in January, 28 in February, 33 last month.

Others pin hopes on leaner pickings. A $1.2 million project for staff housing for the community's respite care service is being held up because park management hasn't formally approved the Mutitjulu housing needed for the extra centre staff.

In a community where children swim in sewerage treatment ponds to escape the searing summer heat, the same authority is accused of stonewalling on approval for a swimming pool.

A spokeswoman says the national parks director had not received environmental impact statements for either project. Wheeling out an argument the community says it hears whenever it wants work done - water and power services to Mutitjulu are at their limit - the spokeswoman also seemed to confirm the locals' suspicion that neither would go ahead.

Not until last September did a community night patrol get up and running, putting local faces on the front line against alcohol and drugs. And the Northern Territory Government - well aware years ahead of Canberra's intervention of the community's crisis of substance abuse, teenage prostitution and sexually-transmitted diseases - had to be shamed into adequately staffing the new $2.4 million Mutitjulu police station. Police say both initiatives reduced "in-your-face crime and anti-social behaviour - domestic violence and hooning in vehicles".

NT authorities say more children attend school - up from a 57 per cent average primary school attendance to 73 per cent. But on the first day of a *Herald* visit last month, police good-naturedly patrolled the community offering an unspecified reward for older children to attend classes. Just a single teenager had shown up the previous day.

The most important development - in the eyes of Mutitjulu insiders and outsiders - was the decision by residents early this year to have Mutitjulu included in the MacDonnell Shire Council. Here they see the first opportunity in years to fix a debilitating crisis of decision-making and governance.

Before the intervention, Mutitjulu community's businesses and a good portion of services ordinarily provided by municipalities were run by the Mutitjulu Community Aboriginal Corporation, a locally elected body funded with $3 million a year from Canberra. But after 2006 allegations of young girls prostituting themselves in return for petrol which they sniffed, and of girls as young as five with sexually transmitted diseases, Canberra pulled its funding and appointed an administrator.

The role of the corporation and some of the most powerful community figures was controversially dragged into the spotlight. In January, the people of Mutitjulu took the big step of opting to join the 13 other communities that make up the sprawling new MacDonnell Shire. Intervention observers see the shire council as a competitive new pivot of local power that might help crack the corporation.

Through its control of business operations, the corporation remains a major player in community affairs. It owns and appoints the directors of Gumlake Pty Ltd, which runs Mutitjulu's community store as well as the Walkatajar Art Centre and souvenir shop and cafe at Uluru's Cultural Centre. These are described as a multi-million dollar operation, yet, when questioned, the corporation and locals acknowledge recent contributions to the community of a new wheelbarrow and shovels and brooms for households.

Aboriginal activist groups - such as the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council in Central Australia - have identified the likes of the Mutitjulu Community Aboriginal Corporation as providing lucrative power bases for new arrivals of part-Aboriginal descent who claim family links in the community.

They cite Mutitjulu as especially ripe and rich pickings. Many in Mutitjulu refuse to put their names to allegations against a clique now controlling the corporation, but complaints they made to the *Herald* are in addition to those articulated in official forums by the women's council. Arguing that Aborigines with urban backgrounds and a comparative educational advantage had a negative effect in remote communities, the council told a coroner's inquest in 2005: "Some of [them] are alleged by NPY members and suspected by the police to be the main suppliers of illicit substances - locals feel unable to provide names because these more recent arrivals are their relatives."

Says an outsider: "Mutitjulu runs on fear. Just about every bloke there has something to hide that is used against him - drug and alcohol abuse, theft, domestic violence. One guy has come good and now is a great worker. But he has a history of selling drugs and that history is used to threaten him - 'we'll dob you into the police.' " The informant pauses, then peels away another layer of the Mutitjulu onion. Getting at influences "under the surface" is very difficult "because people are very suspicious and others stand over them".

Mutitjulu has a battlefield's surreal tension. Such is the volume of allegations swarming between factions, often anonymously, that a federal official warns: "In Mutitjulu you don't know who's telling the truth, because so many people are having a go at each other."

Insiders and regular visitors say the controlling figure in the dominant faction of the corporation is Mario Giuseppe, 48. He, his wife Alice Giuseppe and half-brother Vincent Forrester occupy several positions on the boards of the corporation and its associated companies. Some allegations hurled at Mario Giuseppe have the weight more of a wild political stab than a forensically-provable case. It was impossible for the *Herald* to substantiate charges that the resources of the corporation were "Mario's private fiefdom," or that he might have been involved in circumstances which led to a 15-year-old girl taking her own life.

Interviewed by the *Herald*, Mario Giuseppe and Vincent Forrester addressed the allegations publicly for the first time - they denied them all. Yet the push is on for a community meeting to consider a vote of no-confidence in the corporation board, amid claims that Forrester was ineligible as a candidate for the Mutitjulu Community Aboriginal Corporation chairmanship, and alleged irregularities in the conduct of the meeting at which he was appointed.

In what amounts to a petition war, each side accuses the other of buying support. Giuseppe is accused of countering the call for a vote of no-confidence with his own petition signed by just "six or seven of his people who get handouts" and of "turning" a reformist candidate by selling him a car at a significant discount.

An organiser of the no-confidence push was Dorothea Randall, a director of both the corporation and the community clinic. She refused a *Herald* approach to discuss Mutitjulu politics, prompting an outsider to observe: "She's afraid because she is so bullied and harassed by the [corporation] gang and people are too scared to meet or to ask questions."

"Mario Giuseppe and his gang are very difficult to deal with," a regular participant

in the business of the community observes. "Philosophically, they're opposed to the intervention and they still have the power to direct political outcomes in the community."

When the *Herald* went to his home, Mario Giuseppe wielded an artist's paintbrush as he opened the door. Claiming he was too busy to talk about life in Mutitjulu since the start of the intervention, the man who sometimes refers to himself as a "Wogorigine", because of his Italian father, directed us to a pastoral holding on the road to Alice Springs, where he would attend a land ceremony the following day. He would talk then, he said.

By the next morning, however, his mind had seemingly changed. He denied knowledge of a petition demanding his removal from the community's businesses and snapped that "the positions I hold are confidential".

"Go away," Giuseppe said when we attempted another question. "Didn't you hear, I said 'go away,' " he bellowed, tilting his bulk towards me.

After Giuseppe spoke privately with Forrester, the latter apologised to us for his brother's attitude. "He's a grumpy sort of bloke," he explained. "But that's just his personality."

The interest by government officials and activists inside and outside Mutitjulu goes way beyond Mario Giuseppe's demeanour, however.

Apart from allegations of questionable business practices, the community is locked in tit-for-tat suggestions over the extent to which individuals - if any - could be implicated in the December 2006 suicide at Mutitjulu of a 15-year-old girl who, in death, is referred to as Kunmanara Forbes. The findings of the coroner, Greg Cavanagh, were handed down while the *Herald* was at Mutitjulu. They were the cause of community consternation - more for what wasn't said.

That Cavanagh harshly criticised the police investigation and welfare agencies that might have rescued the girl from her sex-for-petrol existence with Mutitjulu men surprised no one. But Forbes, who by 13 had contracted two STDs, made no complaint or admission to health workers and police who interviewed her.

A nurse at Mutitjulu testified she was discouraged from reporting Forbes to the authorities unless "the family agreed" - and then was sacked before her contract expired. An Alice Springs doctor, having reviewed the Forbes file, told Cavanagh: "It was almost like seeing a horror movie where you know what's going to happen at the end."

Accepting a woman police sergeant's evidence that she was unsurprised by Forbes's silence, Cavanagh wrote that "factors including community or cultural shame, lack of support systems, and adolescence itself all contribute to a difficulty for investigators in obtaining disclosures even when the surrounding circumstances strongly suggest there have been offences committed".

This reticence to alert authorities to what happens in Aboriginal communities was explained to us more graphically by a Mutitjulu local: "A lot of families here have reported things, but when nothing gets done, lives are at risk - so people who might complain close down."

Forrester voiced outrage at suggestions Mario Giuseppe might have condoned the petrol-for-sex ring in Mutitjulu. "Just because my brother has an Italian name doesn't mean that he's in the Mafia. I have questioned him about these allegations and he denies it all. He's an Aboriginal health worker, and he had nothing to do with the Forbes death.

"The coroner didn't call him ... they didn't call on his expertise, even though his recommendations that the Forbes case be referred to the police before her death were ignored. He tried to report the abuse of that girl - you don't get the pox from nothing - but others blocked him. It's abhorrent to say that he was involved in her death," Forrester says.

Drug abuse in Mutitjulu is blamed largely on Giuseppe and his power circle of community leaders. But Forrester says: "It's just kids with a bit of pot. And if you are checking here, you should check the kids at the University of Sydney."

Forrester claimed he was in the vanguard of protecting locals while police failed to deal with known criminals. "They're selling drugs, but the cops don't deal with them - so it's my job to find them and to get rid of them."

He vehemently rejected allegations from critics in the community, and official observers, that Giuseppe and some relatives and associates were drug dealers.

"That's character assassination - a load of rubbish. I challenge anyone to say that I have sold drugs. Look, I'm a flower-power child and I have smoked it, but I have never sold it. None of my family sells or sold it - not me, not Mario and not Luke [Mario's son]. They don't even smoke tobacco."

Forrester argues the community should elevate Giuseppe and others to pedestals to acknowledge their contributions to the community. "Mario and these guys have saved $250,000 by restructuring the businesses in the last three months ... we're pulling good profits and we have about $1 million in the bank."

He denied his and his half-brother's faction won support by selling discounted cars and offering other inducements. At Angas Downs, we were leaving when Giuseppe reappeared, advanced aggressively and shouted: "You just want a dirt file." Just as suddenly, he agreed to be interviewed. This time, he indicated awareness of the petition to remove him from the Mutitjulu Community Aboriginal Corporation top roles.

The January petition called for the banning of Mario and Alice Giuseppe and Harry Wilson from any role in Mutitjulu businesses. It was signed by more than 30 people who described themselves as traditional owners, corporation councillors and Mutitjulu residents, and declaring no confidence in the directors of Gumlake Pty Ltd.

"We are seeing things and hearing stories that make us worry - we are really worried about the money story," the petition said.

Giuseppe told the *Herald*: "It's not a political struggle. It's a get-Mario campaign and it has the backing of the Government." He argued the business books had been legally examined and verified and claimed those "forced" to sign the petition were given "shop money" by an instigator.

"I have the full confidence of most of the people in the community - they trust my judgment and the people behind the petition are jealous. All we're doing is clearing out human shit, most of it planted by the Government to bring this place to its knees."

Dismissing as "bullshit" the allegations of his and his family's involvement in drugs, Giuseppe told the *Herald*: "I smoke dope for myself - but I don't sell it." Denying any role in the death of Kunmanara Forbes, he said: "As a health worker I saw what was happening with her and I informed Bob Randall, the director of the community health centre [and a signatory to the anti-Giuseppe petition] and I told the senior nurses in the clinic, but nothing was done."

Giuseppe claimed the Federal Government opposed him because he was an early and vocal critic of the intervention - "I play chess with them, they don't like it and they want to bring me down. But this intervention of theirs is wrong, it's wicked and it's evil."

Back at the toilet block that is Louie James's home, dogs go wild at the rustle of plastic containing dog biscuits. James growls at them to hush and they growl back, baring their teeth. He dumps a dozen bags - each eight kilograms - into the cages, slashing the bags with a carving knife and spraying the biscuits across the red dirt. The barking gives way to the strange sound of dozens of dogs chomping on biscuits, something like pebbles rolling in a stream.

"It's going to hurt, but I know something has to be done," James concedes. "I can't look after them alone - it's cruel to try to keep them all."

Mutitjulu goes about its unreal ways. Louie James has been assessed over whether he can cope psychologically with the loss of the dogs - "it could destroy him," a shire official says. The council is drawing up a plan for police, park rangers, a local vet and its own staff to finally deal with the dog crisis. In the meantime, the shire has cornered the local market for dog biscuits, concluding that responsibility for the animals includes responsibility for their feeding.

"We see the dog issue as an emergency situation," says a shire officer, seemingly unaware that he has invoked John Howard's language in launching the intervention to wrestle Mutitjulu into the light.

Sydney Morning Herald, 4 July 2009, Opinion Page

A long, slow detour in the Northern Territory

PAUL McGEOUGH reports in today's *Herald* on the Mutitjulu community, near Uluru, and its reaction to the federal intervention in the Northern Territory. When the intervention was launched in June 2007, much was expected - rightly - of such a vigorous and radical move to assist indigenous communities. Less has been achieved than was hoped. Some community members - particularly women, who see the toll that destructive behaviour takes on families and children - defend the income management scheme which dictates how welfare payments can be spent. Others though resent the loss of freedom it entails. As McGeough reports, the division of opinion reflects a deeper division in the community over political control. But even so both camps have good arguments on their side. And the division in Mutitjulu is mirrored by a similar division of opinion in the wider Australian community.

The Productivity Commission's report on the performance of welfare measures to overcome indigenous disadvantage, published on Thursday, makes depressing reading. On most indicators, no significant progress had been made in the report's time-frame. Though indigenous Australians might have progressed in some areas - completing year 12, for example, or lifting the share of the population in work - the non-indigenous population had also progressed, leaving indigenous Australians as far behind as ever. On the remaining indicators, the situation actually got worse.

If that news was depressing, so was the Government's response. The Indigenous Affairs Minister, Jenny Macklin, described it as a report on the Howard years, an indictment of the government which had brought in the intervention. It was a ridiculous comment. On the intervention itself the report is patchy: when its statistics cover the intervention period at all, they stop in its early stages. Some, indeed, may appear worse because the intervention has meant more problems are reported.

More broadly though, no government on either side of politics has managed indigenous affairs well. The intervention - politically convenient though it may have been for Mr Howard at the time - was a genuine attempt to increase the resources available to treat long-standing problems.

That is not to argue, though, that the intervention has been a success. That verdict cannot be delivered yet. And it must be said that the intervention has always had a central conceptual flaw. By treating the long-standing, fiendishly complex problems of indigenous society as an emergency, it radically underestimates the time involved in treating them. The arrival of camouflaged soldiers and their equipment, health officials and welfare advisers, may play well on television, but how long will they stay? The problems the intervention was meant to address were certainly urgent, and needed urgent treatment of a type which they were not receiving. But they are also the long-term problems of a society which has become dysfunctional.

As the mothers of Mutitjulu attest, a short-term fix will work for a while - though it may be a questionable way to deliver government services. But what happens when the extra advisers and the additional resources go? The intervention was always a temporary measure, but little thought seems to have been given by those who devised it to what would come after it. Like the Iraq war, there was no exit strategy.

A sign that the Rudd Government, like its predecessor, still lacks such a strategy is Thursday's decision by the federal and state governments to require shops in Aboriginal communities to sell healthy food, or lose their licences. A ban on pies? Is that really the best we can now do for indigenous Australians?

To be legal the intervention had to set aside anti-discrimination legislation. It thus represents the return of a paternalistic approach to indigenous affairs, which most would have thought had been discredited and superseded in the 1970s or perhaps even earlier. Anti-discrimination laws represent the approach which superseded paternalism.

The granting of equal rights to indigenous Australians, and welfare programs targeted to address their disadvantage, formed part of it. Those rights still exist. They must at some stage, preferably soon, be returned to indigenous Australians living in communities. For better or worse - and quite possibly, let us admit, worse in the initial stages - they must live unsupervised, and by the rules which govern the rest of us. Pies and all.

Sydney Morning Herald, 4 July 2009

Promises galore, but change slow to come

Many feel that intervention has failed to deliver, writes . **Paul McGeough** in Gunbalanya.

Alex Siebert is angry - face ruddy and red; chest thrust forward; and a finger stabbing the air. The publican reckons he knows his enemies, and chief among them is the affable Dr Hugh Heggie, with his shiny bald head and his Bali bracelets.

Each swears he does a good job by this remote community in the Northern Territory, one of more than 70 that have been locked into "the intervention", a scheme billed as an "emergency" attempt to close a shameful gap between black and white Australia when it was launched by the prime minister, John Howard, in 2007.

To sit beneath the shade-cloth at the back of the local clinic, as the doctor discusses cases with colleagues or chats with the locals - sometimes in their own language - and to observe a near saintly dedication is, in a way, what we might expect from a good bush doctor.

But sitting on the lawns of the Gunbalanya Sports and Social Club, all that the feisty Siebert has to say makes sense too - until it is understood that his patrons are the doctor's patients and that the club's cash machines and urinals are black holes into which this deprived and sickly community chooses to pour millions of dollars each year.

As club opening time approaches on four afternoons each week, a reflexive action takes hold of Gunbalanya as anywhere between 300 and 600 people head for the club and the shade of its banyan trees - like termites, as Heggie put it. At the club, attendants haul the beer from the fridges by the full cartons - an exercise in binge selling that has to be seen as a break on binge drinking, so they sell them over the bar one at a time.

The doctor reckons Siebert jumped before he was pushed, by seemingly volunteering to wind back the club's trading hours and the strength of the beer - wine and spirits are not sold - before the intervention in mid-2007.

The doctor suspects Siebert manipulates the club's management committee and plays contacts in the police and NT Licensing Commission to win favourable treatment. And over the publican's protestations, Heggie still wonders if the books of the community-owned club are cooked.

Then his health professional's hammer blow hits the club: "[Since the restrictions came in back in 2007] the collective liver functioning of Gunbalanya has improved almost 100 per cent ... and more people are showing that they want to stop drinking."

The club sells only light beer, at $5 a can or stubbie. The lunch-time opening has been abandoned, and with it what locals still remember as binge-drinking no ordinary liver could survive, when men would commonly drink 20 cans of beer in an hour.

The club, the only beer joint in a community that otherwise is officially dry, is owned by the local Aborigines. Heggie has been in Gunbalanya for more than three years. But Siebert, as a local fixture for more than 20 years, sees the doctor as a Johnny-come-lately.

In the club conference room Siebert dumped a pile of Lever Arch files on a table for the *Herald*: the daily-takings book, bank statements, minutes of the committee's meetings. "You'll have heard a lot of what people don't know about the club," he said, as one of his staff attempts to restrain him. "Anything else you want to look at?

"I don't have to do this. But before the intervention we had a turnover of $4.5 million a year - now it's down to $2.2 million. On a gross profit of 68 per cent, we net about 20 per cent - is that so bad?"

Figuring that the club's - his - lost revenue is spent elsewhere on sly grog, Siebert argues that if the people of Gunbalanya want to drink, then let them do so under his watchful eye and keep the money in the community. "You can bring your baby in here and you'll not get a fight - it's better than any pub in Darwin," he ventures.

He ticks off the club's work to the community - the swimming pool, a recreation centre, a charter-aircraft service, sports sponsorships and a $30,000 contribution to the basketball courts. "We used to donate $3000 for each funeral - now it's only $1500. We put up $40,000 for last year's initiation ceremonies - for the food and a truck that blew up - but there's no money for that kind of stuff now. We were doing a free, full-on barbecue for the drinkers, but because of the fall away in trade with the intervention, we have to charge $5 now.

"I'm a fairly hard man, and some people don't like how I present myself; some even think I'm an arrogant pig."

But the so-called arrogant pig is offended - "honestly, I'm sick of defending myself and the club. I get audited every year - my critics don't. I'm a JP and I've had more investigations into my criminal history than any of these people - I don't have one. I had to change accountants because they said I was in cahoots with the auditors."

Siebert makes an effort to draw breath. "Those clinic people don't like coming up here. The school was delighted when the last floods forced us to shut down - we thought it might be for months, but it was only two weeks. Three of the teachers helped us fix up the place, but the rest of them didn't give a f---."

"These blow-ins ..." - read Hugh Heggie - "who want to change the community to their way of thinking don't know how it works. And every time we get a new town clerk we go backwards two years.

"They want this place closed? Well, let them go for it. They should know that you can never control a substance - prohibition didn't work."

Over at the clinic, Heggie takes the edge off his indignation at the conduct of the intervention - slightly - with a sense of humour and a practised ability to get up the nose of Canberra bureaucrats. If the health team that spearheaded the intervention's arrival in Gunbalanya was to have a military escort, then so would the community - back in 2007, Hugh Heggie stepped forward to salute them, wearing combat fatigues and a cap.

Both Siebert and Heggie seem set to duke it out for as long as it takes. But weighing heavier in the minds of a community to which the *Herald* was directed by Federal Government officials who judged Gunbalanya to be one of the better-functioning "intervention" communities is the very viability of what has been revealed to be an unwieldy, slow-moving program.

Take the chronic housing needs of the locals. Watching Canberra's clumsy, wasteful effort to provide a place for Gunbalanya's newly appointed government business manager, the community is entitled to feel hugely insulted.

The housing shortage is so bad in Gunbalanya that up to 30 people live in a three-bedroom home. The average is 17, invariably turning homes into chaotic health hazards, in which the sick and the drunk make it impossible for the few who are employed or those of school age to have even a half-normal existence. Some families have pup-tents on their verandas to accommodate the overflow.

By some estimates Gunbalanya needs 100 new houses, a dire need that was acknowledged by Canberra when the intervention was announced - $28 million was allocated for new housing here. That was in July 2007, and in the meantime nothing has happened on the ground. Shire officials warn that as much as a third of the funds may disappear on consultancy and design charges.

In the way of government, the only housing construction in Gunbalanya so far has been an office-living complex for a new class of bush poobah - the Canberra-appointed government business manager, or pointsman for the intervention. And even this has been an ill-managed catastrophe.

At Gunbalanya local guessing is that the prefabricated buildings for the business were trucked in at a cost of perhaps

$450,000 - only to be found to be uninhabitable. They were customised shipping containers, bought by Canberra in a job-lot of 150 that was sourced in China.

They were contaminated with poisonous formaldehyde. They still stand as an abandoned complex on the community's main street - and next to them is a second, replacement complex, trucked in at an estimated cost of yet another $450,000 that also has been found to be unhabitable because it too was contaminated with formaldehyde.

If they were safe to live in they might house half-a-dozen local families who, instead, continue to live in squalor.

But amid more guffawing by the rest of the non-indigenous community, the GBM, as he is called, works from his new office but is lodging either at the local club or half-an-hour down the road in the crocodile-shaped Holiday Inn at Jabiru. "In a community where housing is at such a premium, this is outrageous," a professional posted to Gunbalanya told the *Herald*. "An expensive way to do business, don't you think?"

When the hand-wringing over this episode is done, locals - black and white - speak well of their new GBM, Peter Lawler. But they move on quickly to focus on one of the NT government's "reforms" that has paralleled the intervention - the abandonment of councils or corporations for single remote communities in favour of "super-shires" which service a dozen or more communities. "It's a great way to disempower the people," a senior non-indigenous figure in the community says.

On this issue, the lightning rod is Tony Mischefski, the West Arnhem Shire's resident services manager.

Much to his and the council's embarrassment, Mischefski's white Toyota, decorated with the shire logo, now is on full view for all who drive past the police compound, where it is locked up with a dozen or more other vehicles confiscated by the police from sly-grog runners.

Mischefski is not directly implicated - two of his employees who were authorised to use his vehicle were the alleged boot-leggers. But Mischefski and his family have been controversial characters since their arrival in Gunbalanya last year. Quite apart from his post as the local services manager, his wife, son and daughter-in-law were also on the shire staff till a few weeks ago - when the son and daughter-in-law were obliged to leave town in a hurry, after a threatened punch-up at the council offices and the vandalising of a car belonging to a member of the Siebert family at the club.

Asked about charges of nepotism, the shire's chief executive, Mark Griffioen, defended the council's recruitment policies, telling the *Herald*: "Now that two members of this family have left, I think the concerns about nepotism might subside."

But there is still the issue of Mischefski's background. Google-searching this name, some of the locals have turned up a bankruptcy case in New Zealand with the same surname. Mischefski is a Kiwi and, indeed, he and his wife ran a small-goods business in New Zealand, but he denies that either of them was declared bankrupt. And Griffioen backed him, telling the *Herald* that the business was sold as a going concern and that Mischefski was fairly appointed on the strength of his local government experience in Darwin.

The sense in Gunbalanya is that the community has been short-changed by Canberra - and by Darwin.

Take the petrol-sniffing crisis. In the months preceding the intervention, Gunbalanya was horrified by the deaths of two teenagers and the permanent brain-damaging of a third after they spent hours sniffing petrol in an enclosed shipping container.

It is plausible that such a community might stumble around on its own for more than two years as it grappled with the shock of such a tragedy and the elements of a plan to keep all sniffable substances under lock and key.

But that it took more than two years, with all of the bureaucratic and professional heft of the intervention, is a poor confidence-building exercise for a troubled community.

What a hoot, the locals say, that so many parents simply ignored the intervention's demand that they bring their children in to be examined - especially when the local clinic did a good job with its regular checks on the whole community. If this was an "emergency", why did it take 18 months to fly kids out for dental treatment? And two years for the kids with hearing difficulties?

The curb on alcohol sales at the club has coincided with a drop of about 30 per cent in clinic call-outs for domestic violence and health professionals describe the locals as being generally "more functional" in the afternoons, but there has been an increase in road accidents as the locals drive 200 kilometres or more to slake their thirst - sometimes returning drunk.

And, they say, for all Canberra's huffing and puffing, 25 per cent of the children are still listed as malnourished, and "this statistic has not improved in three years", one of the local professionals said.

By one back-of-an-envelope reckoning, if Canberra had sent the money it spent on the first, well-paid intervention health-teams, Gunbalanya could have employed two children's health nurses for a year.

Others argue there has been little change in the extent of the sly-grog runs - before and after the start of the intervention. A local explains: "It's just that it was less obvious before the intervention, because everyone was pissed all the time."

There is the same gender split in support for income management - many of the women like it - but store staff say that within families, younger members clean out the debit cards issued for quarantined purchases by old people because there is no ID photograph on the cards. The quality of food is better, but prices are higher.

Yes, they got a women's safe-house and a better-functioning night patrol; there is more and better food available and less "humbugging", but good as all that is, none of it warranted the hullabaloo of a pre-election "emergency" operation.

How, they ask, did plans for renovation of some homes in Gunbalanya, one of the sunniest corners of the Earth, become so advanced as to offer costly-to-run electrical hot-water systems, instead of solar?

A professional who has been posted to the community argued that the word "change" had no meaning in the community - because whenever it was used, nothing happened.

"What intervention?" she asked. "Apart from two new cops and the government business manager, I can't think of a single thing that has happened. Houses? Pie in the sky ..."

A senior Aboriginal woman: "It's just another bid to take control of us with stories and promises. Nothing real has been done for indigenous people since forever - just more Band-Aids. I find myself becoming more and more negative, because we just go around and around in circles - I've been here a long time, and the complacency and lethargy is the worst it's ever been."

At a time when government and other agencies see women as stronger than men in the communities, a group of women who spoke to the *Herald* issued a heartfelt warning: "The pace of change is too slow. What happens with strong women is that they give up, they turn to drink and they burn out. We thought after six months of the intervention, they're still talking; and now after two years - and they still call it an 'emergency?' "

This warning leapt to mind on meeting Gurmbaladj Nabegeyo, a Gunbalanya grandmother who, by all accounts, is one of the strongest and most influential women in the community.

In the community she is harried. In the evenings she joins the night patrol, hoiking children out of the gambling schools that gather under the street lights in Gunbalanya; or she is at a teenager's disco - watching out to "get the names of the problems"; and in the day, she is hustling people to get to a meeting on substance abuse.

But when the *Herald* joined her and a group of other old women on a drive into the wilds of Kakadu National Park, to gather pandanus grass for basket weaving, she was a study in contrasts - alive to being in the bush but, as she put it, "crying in her heart" for the young Aborigines of Gunbalanya and all the "sorry business", an Aboriginal term for crisis and funerals, grief and loss.

"For a long time I knew only my mother and my father - and I learn from them. But I don't understand what is going on with this generation - it's strange to me. We are losing them - no one tells them the stories, they are missing out because there is no culture."

There is much complaining in Gunbalanya about the challenge of getting local children to attend school.

It doesn't help that the horn in the school bus doesn't work, but the local police have come to the party and each morning they follow the school bus - obligingly tooting their horn as the bus goes from house to house.

Clearly one who did not catch the bus

Promises galore, but change slow to come (cont...)

often enough has joined the ranks of the local graffiti vandals. Recently he daubed two words on the fence opposite the compound where the police hold the vehicles confiscated from the sly-grog runners - "FACK [sic] OFF".

Sydney Morning Herald, 28 August 2009

End culture of racism, says UN inspector

Yuko Narushima
Indigenous Affairs
Correspondent

COMPULSORY land takeovers, welfare quarantining and forced alcohol and pornography bans must cease if Australia's ''broad-sweep'' intervention is to comply with international law, the United Nations says.

The UN special rapporteur on indigenous human rights, James Anaya, yesterday gave a damning assessment of entrenched racism that persisted in Australia, specifying measures in the Northern Territory intervention.

Just hours earlier, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, revealed modelling for the first representative body for indigenous people since the abolition of ATSIC in 2005.

The absence of such a body had allowed the 2007 intervention to take its one-size-fits-all form, Mr Calma said.

Both men called for the urgent reinstatement of the Racial Discrimination Act, and lashed the Government for treating indigenous people as a mass.

''The broad sweep that we see in the current configuration of the Northern Territory emergency response isn't specific enough and goes too far,'' Professor Anaya said. ''Significant concerns need to be addressed.''

After an 11-day visit, he said he was ''impressed by the strength, resilience and vision of indigenous communities determined to move towards a better future despite having endured tremendous suffering at the hands of historical forces and entrenched racism''.

He will make recommendations to the Government within six months.

Among his concerns was the Government's attempt to seize control of Alice Springs town camps. ''It's a mistake to assume that indigenous peoples, at least in the medium or longer term, are incapable of taking care of their homes.''

A similar assumption underpinning welfare quarantining was demeaning, he said.

Yesterday was a historic day for indigenous self-determination in Australia, Mr Calma said. A new representative body would convene its first meeting in October next year.

Unlike its predecessor ATSIC, the body would comprise equal numbers of men and women and would operate as a company, preferably launched with a $5 million contribution from government. This would allow both financial and structural independence and freedom from political manipulation.

Unlike its predecessor ATSIC, the body would comprise equal numbers of men and women and would operate as a company, preferably launched with a $5 million contribution from government. This would allow both financial and structural independence and freedom from political manipulation.

Any indigenous person could nominate for a position on the four-tiered body. Mr Calma hit out at critics for undermining the body before its details were known. The executive, to be co-chaired by a man and a woman, would be elected, with the congress of 128 delegates chosen on merit. Each would be refreshed every two years and give voice to the young, disabled and elderly, alongside representatives of existing indigenous organisations.

The Indigenous Affairs Minister, Jenny Macklin, welcomed details of the model and said she looked forward to Professor Anaya's report.

''We share much common ground including the legitimate entitlement of indigenous people to all human rights based on principles of equality, partnership, good faith and mutual benefit,'' she said.

However, no offer of seed funding for the representative body was forthcoming.

Sydney Morning Herald, 29 August 2009

UN finds ray of hope in 'racist' Australia

Yuko Narushima
Indigenous Affairs
Correspondent

AN ELDERLY Yuendumu woman yesterday went about her business, unaware she had moved a United Nations official to condemn as ''overtly racist'' Australia's treatment of indigenous people.

The memory of Peggy Brown's extraordinary success in stamping out petrol sniffing in her community on the edge of the Tanami Desert weighed heavy on the mind of the UN's special rapporteur, James Anaya, as he wound up his 11-day fact-finding mission of Australia, outlining the problems of the Northern Territory intervention.

Ms Brown has an Order of Australia and founded the multimillion-dollar Mount Theo Program to rehabilitate substance abusers. She also has her income quarantined.

''I found her very inspirational,'' Professor Anaya said, recalling her community-based solution to a local problem. ''She's got this Australian medal of honour for her work and she's out there on income management.''

The blanket rule covering very different cases in remote Northern Territory communities led Professor Anaya to recommend a review of the Government's indigenous policies.

The former indigenous affairs minister, Mal Brough, among other supporters of the intervention, yesterday rejected Professor Anaya's opinion.

''This coercive approach to fixing a problem can't work,'' Professor Anaya said.

He suggested the review, knowing indigenous Australians were more vulnerable to the whims of changing governments than counterparts in the US and Canada. They had survived similar dislocation but benefit from continued recognition, either in treaties or under the constitution, he said.

Professor Anaya found no evidence to show forced alcohol and pornography bans in communities worked to reduce drinking and abuse.

'I found [Peggy Brown] very inspirational.'

JAMES ANAYA, UN official

But the prominent indigenous theologian, Dr Anne Pattel-Gray, said many Aboriginal women supported income management and suggested it should apply more broadly to other welfare recipients in the country.

Government efforts to curb the teaching of indigenous languages in bilingual Northern Territory schools were also of concern to Professor Anaya.

Sydney Morning Herald, 4 July 2009

Women stretched to snapping point

Adele Horin
Position

THE Howard government's family policies left a legacy of stressed, overworked parents and set gender equity back a decade, a new study shows.

Despite their high academic achievements over the decade, women are now less likely than in 1997 to work full-time while their children are young. And when they do, they take on more of the housework and child care.

A study by Lyn Craig and Killian Mullan, of the Social Policy Research Centre at the University of NSW, shows the ascendancy of the family model promoted by the former prime minister: a father in full-time work and a mother in part-time work, depicted in his speeches as "the policeman and the part-time sales assistant".

The 1.5-earner family became the predominant form between 1997 and 2006, from 35 per cent of all couples with children under five to 46 per cent, but life for parents grew harder and less equal. By 2006, all parents were more likely to report feeling stressed.

"There was reduced gender equity and strikingly increased reported time pressure," the study found. Based on 772 families in 1997 and 652 families in 2006, and using Australian Bureau of Statistics data, the research will be presented at the Australian Social Policy Conference next week.

It shows part-time working mothers put in as many hours overall as full-time working mothers - when paid work, housework and child care were tallied - and worked longer than their 1997 counterparts.

The Howard government promoted the 1.5-earner model with family tax policies that provided most benefits to single-earner families and to couples with an 80:20 income split.

During a decade of economic growth, more mothers of preschool-aged children moved into jobs, leading to a 7 per cent fall in the proportion of "traditional" families headed by a male breadwinner, and the proportion of mothers of preschoolers working full-time fell from 14 per cent to 11.8 per cent.

The full-timers put in fewer hours at their jobs but did much more child care and housework than those in 1997. As a result, their workload grew to surpass that of their husbands. The men's workload barely shifted, so the gender division of labour became less equal.

"I thought there might have been a movement to full-time work because ... part-time work is associated with lower wages and poorer career prospects," Dr Craig said.

Unsurprisingly 93 per cent of full-time working mothers reported feeling highly stressed compared to 79 per cent in 1997. About 80 per cent of part-time working mothers were also highly stressed, up from 73 per cent. And the proportions of stressed fathers rose.

Dr Craig said paid parental leave would help solve the "stress problem".

Sian Ryan, a senior associate at a law firm and mother of two, increased her work from three to four days a week when her son turned one. Her husband works in the racing industry on race days only. "It's not a progressive model for dads to be working long full-time hours and mums to do part-time jobs and work hard at home," she said.

"It's about sharing responsibility for care of the children."

Sydney Morning Herald, 14 August 2009

Pay rises skipping female workers

Peter Martin
Economics Correspondent

WOMEN are the hidden victims of the downturn, with female earnings falling to their lowest point relative to men's in two decades, even as they outshine men in getting jobs.

Earnings figures for May put average female pay at $54,907 - just 82 per cent of the $66,581 male average and the lowest proportion in 21 years.

Big jumps in earnings in the construction and mining industries lie behind the change, along with much smaller increases or declines in pay in the retail industry, accommodation, cafes and restaurants, and the public service, finance, insurance and communications sectors.

Mining and construction earnings jumped 3.3 and 3.2 per cent in the 3 months to May. By contrast retail earnings rose 1.2 per cent, and hospitality earnings fell 0.2 per cent.

Figures on hours worked also released yesterday show that while the total number of Australians in work remained little changed over the past year, the number putting in 40 hours or more per week slid 304,200.

Figures on hours worked also released yesterday show that while the total number of Australians in work remained little changed over the past year, the number putting in 40 hours or more per week slid 304,200.

Women have gained 45,100 jobs as men have lost 44,900 jobs. Earnings remain the highest in the male-dominated mining industry where the average has hit $107,723, and the lowest in the accommodation, cafes and restaurants sector where the average fell to $33,543.

''It's the trend that deserves further study and explanation, not the actual level,'' said a CommSec economist, Craig James. ''Women's earnings have been falling relative to men's for five years.''

Total earnings climbed 3.8 per cent over the year to May, well above the 1.5 per cent inflation rate, suggesting consumers have room to increase retail spending beyond its present record highs.

Westpac-Melbourne Institute research released yesterday showed fears about unemployment receding sharply with the number of Australians expecting unemployment to climb falling 13.9 per cent in August, the biggest fall on record.

''This is why consumer confidence is soaring. We're feeling more secure about our jobs,'' said a Westpac economist, Julie Doel. ''There's now less risk that spending will ease off in the second half of the year.''

Adding weight to forecasts of further record spending are indications that about $6 billion of the Government's $21 billion bonus payments remains to be spent.

When the Melbourne Institute asked recipients how much of the payments they had spent, 62 per cent said they had spent the lot and a further 8 per cent said they had spent more than half. Some 9 per cent had spent less than half and 20 per cent none at all, leading Westpac to conclude that about one-third, or $6 billion, remains to be spent.

Sydney Morning Herald, 29 August 2009

Women pay dearly as earnings gap widens

Kirsty Needham
Workplace Reporter

THE gender pay gap is widening and the finance industry, where men earn a third more than women, is the worst offender, the Bureau of Statistics says.

Yet a survey of 1700 finance workers has found most (67 per cent) did not know what their colleagues were paid and half believed men and women were paid equally for the same job.

Rod Masson, national policy director for the Finance Sector Union, said when bank workers were told there was a significant gender pay difference they were shocked. ''This was supposed to be resolved in the 1960s and 1970s, but it's still happening. We are not narrowing the pay gap, it is spreading,'' he said.

The Equal Opportunity for Women in the Workplace Agency has named September 1 as Equal Pay Day - the date set by calculating the extra days women must work beyond the financial year to catch up to men's earnings.

The agency says companies need to be transparent about pay and performance bonuses, because ignorance of what others earn works against women.

The Finance Sector Union said one of the major causes of the pay gap in the finance industry was a push to sales-based remuneration, and its survey found 65 per cent of finance workers said meeting targets - for selling credit cards or new accounts, for example - determined if they received a pay increase.

But 69 per cent felt they did not have any real input into those sales and work targets. And three-quarters said they were not given the chance to agree with targets before they were set.

Mr Masson said pay bias towards sales performance worked against women in two ways. They were less assertive in establishing targets, he said. And more men worked in roles that were best rewarded, such as commercial lending and business banking, while women dominated service roles.

Taimi Nurm, 49, has worked in bank branches for 27 years, and said it was hard for women working part time to gain promotion to areas where the pay was better. ''My experience has been that they tend to move the men through quicker,'' she said.

She had also seen women sidelined by being told they were not flexible enough because of ''family issues''. At head office, the bosses were all male, she said.

David Bell, chief executive of the Australian Bankers Association, said 61 per cent of staff in the finance industry were women, and the gender difference in earnings was ''a product of hours worked and skills''.

"The data shows that 26 per cent of females in the finance industry work part time compared with 4 per cent for males," he said.

He conceded men dominated a ''highly specialised and higher paying component of their workforce''.

Mairi Steele, acting director of the Equal Opportunity for Women in the Workplace Agency, said the fact that women were concentrated into certain occupations and in low paying positions were key causes of the gap and ''not excuses for it".

The agency publishes an annual list of companies that qualify as an employer of choice for women. This year's list includes 22 finance and insurance companies. To qualify for the list, an employer must beat the gender pay gap for their industry, and beat the national gender pay gap - 17.5 per cent - at each staffing level.

Focus Group: Women

AM with Tony Eastley, ABC Local Radio 702 AM, 31 August 2009

Gender pay gap 'should be declared'

Samantha Hawley reported this story on Monday, August 31, 2009 08:00:00

ASHLEY HALL: The Federal Government is being pressured to force companies to reveal what they're paying men compared to what they are paying women.

The call is coming this morning in the form of an open letter to the Government from members of a new alliance of more than 130 business and community groups.

The Equal Pay Alliance wants mandatory audits of pay rates so woman have a better idea of where they stand.

Samantha Hawley reports from Canberra.

SAMANTHA HAWLEY: One-hundred-and-thirty-five businesses, community and lobby groups make up the new Equal Pay Alliance and in an open letter to be delivered to the Minister for the Status of Women Tanya Plibersek the group says pay inequality is no longer acceptable in modern Australia.

The Australian Council of Trade Unions is among the signatories.

SHARAN BURROW: Starts a concerted campaign to see that we turn around a culture of discrimination, a culture which undervalues women's work.

SAMANTHA HAWLEY: The ACTU's president Sharan Burrow says on average it takes a woman 14 months to earn what a man earns in a year and women retire with half the amount of savings.

She says employers should be forced to disclose how much they pay men compared to women.

SHARAN BURROW: We'd like to see pay equity audits mandated so that there is a transparency. People know what the pay rates for grades right up to management are.

SAMANTHA HAWLEY: The Sex Discrimination Commissioner Elizabeth Broderick is also a member of the newly formed alliance.

She says one option would be to legislate so all Australian companies would have to reveal their male and female pay rates in their annual reports. That's already happening in the United Kingdom.

ELIZABETH BRODERICK: I think the first thing about it is that we need to make this information transparent and that's what we don't have at the minute.

One of the innovate solutions that is happening in the UK is that companies are now required to report the gender pay gap in their annual report and that's legislation that has only been brought in recently. So there's different solutions which we might look to internationally.

SAMANTHA HAWLEY: Marie Coleman is from the National Foundation for Australian Women. She says the Federal Government should at least begin mandatory pay reporting in the public sector.

MARIE COLEMAN: They can certainly do that within government departments. They can certainly promote in the private sector more vigorous approaches towards equal pay and equal opportunity.

For example it would be perfectly possible for government contracts to only be available to businesses which could demonstrate that they had effective equal opportunity and equal pay strategies in place.

ASHLEY HALL: Marie Coleman from the National Foundation for Australian Women, ending Samantha Hawley's report.

Sydney Morning Herald, 2 September 2009

Women urged to sue to fix pay gap

Kirsty Needham
Workplace Reporter

Australian women need to sue if they want employers to take the widening gender pay gap seriously, international labour experts have told their Sydney sisters.

Men earn 17.5 per cent more than women, but a forum heard yesterday that a big stick - in the form of American anti-discrimination cases and payouts - could more quickly fix the problem than any awareness-raising.

''Why aren't we hearing of big cases coming up? It is only through those big cases that you are going to get this moving,'' said Jane Hodges, director of gender equality for the International Labour Organisation in Geneva.

Ms Hodges said she knew in 1980, when she was working as a lawyer in Australia, that she had to leave the country to get ahead. She is exasperated that the gender pay gap has only widened.

Canadian lawyer Mary Cornish, who chairs Canada's Equal Pay Coalition and has advised governments and the World Bank on gender equity, agreed women ''have to have a litigation strategy''. She said one case could make a difference.

''If you don't have a compliance approach, employers don't do it, and neither do governments … You have to have some kind of stick.''

The Sex Discrimination Commissioner, Elizabeth Broderick, said that for women in the Australian workplace ''it is career death to raise … anything to do with sex discrimination''.

Ms Broderick said she had the power to run a pay discrimination case under the Fair Work Act. ''But to bring a case like that requires significant resources … We are just not resourced to use that power.''

The Federal Government is reviewing the Equal Opportunity for Women in the Workplace Act, and yesterday released an issues paper which questioned whether the enforcement powers of its agency - which relies on working co-operatively with employers and promotional programs - were adequate. Mairi Steele, acting director of the Equal Opportunity for Women in the Workplace Agency, said she believed the Australian law was not working effectively enough.

Wilma Liebman, chairwoman of the US National Labor Relations Board, said women in the US continue to experience the glass ceiling. In Sydney as the keynote speaker for a labour law conference, Ms Liebman said big gender discrimination lawsuits - one involves 2 million women suing Walmart in a class action - have been levelled at companies that did not promote women in great numbers to management positions. ''We have become an extremely litigious society.''

Crime

Sydney Morning Herald, 29 March 2003

Boy on trial for railway death

Lee Glendinning

Did William Harris die because the threats of a 17-year-old boy forced him onto a train track? Or was he killed by an oncoming train because of a tragic and extraordinary act of the man himself?

These are some of the questions a NSW Supreme Court jury will have to consider during the trial of the teenage boy charged with manslaughter. He cannot be named.

The Crown says the teenager's actions were "senseless and unprovoked" and were the urban nightmare of every innocent traveller on public transport.

But the defence says the boy did not push the victim onto the tracks and did not deserve a conviction for manslaughter.

William Christopher Harris, 44, was sitting on a platform at Redfern Station on October 27 last year, having come from a surprise birthday party.

The accused, and two female friends, came out of a train carriage and the then 17-year-old approached Mr Harris and allegedly said: "What the f--- are you looking at?"

The Crown told the court that closed-circuit TV security footage would show the girls appear to be holding the accused back, but he breaks away and Mr Harris then jumps onto the train tracks in an effort to escape.

The Crown prosecutor, Brian Knox, SC, told the court yesterday that the events of the next 20 to 40 seconds led to the death of Mr Harris.

He was facing north as a train approached from the south, blaring its horn. He tried to scramble onto the platform but did not make it in time.

He was killed by the oncoming train; his body was found 25 metres from the track.

Mr Knox told the court yesterday that Mr Harris felt threatened and intimidated, with no real option to get away.

Mr Harris was, he said, a quiet man who went out of his way to avoid confrontation and was simply sitting on a railway station on a Sunday afternoon. "There is no doubt about it; it was fear that caused him to do what he did . . . to say he caused his own death would be the ultimate case of blaming the victim."

But Richard Button, counsel for the accused, told the jury it must carefully consider what his client did and did not do.

"Is it really the case that there was no real option for the deceased?" Mr Button asked.

"Is it really the case the deceased was trapped and had absolutely no choice but to go down the tracks? . . . or, really, was it tragically the extraordinary act of the deceased which caused it?"

The trial continues.

Sydney Morning Herald, 10 May 2003

Bail a fine balancing act by beaks

Unlike shockjocks, judges and magistrates do not have the benefit of 20/20 hindsight, writes **Carl Boyd.**

Any lawyer worth their practising certificate will be called upon occasionally to be a vigorous advocate for the vilified individual and the unpopular cause. Allow me to rise to the defence of the judges and magistrates of this state.

In recent days they have faced the fury of the shock-jocks and others, like the Premier, who ought to know better, on the issue of bail.

Every time a person on bail commits a serious offence there is a knee-jerk demand to toughen up on bail. "Which idiot let this mongrel out?" "The beaks have dudded us again."

The most recent instance of 20/20 hindsight involves the late Toni Bardakos who, after being charged with the sexual assault and kidnapping of his estranged wife, was granted bail. Within two weeks of his release he shot and killed his wife and then himself in the streets of Newcastle on Tuesday last week.

Given the facts as they were known at the time, I doubt whether there is a judge or magistrate in NSW who would not have refused him bail, in some form. The singling out of the magistrate and judge who did so is testament to the ignorance underlying the ill-considered reaction. Some facts:

- The vast majority of bail applicants already have criminal records. The police very often release "clean skins" on bail at the time of charging, but those with a "bit of form" or facing more serious offences are left for the magistrates to decide on the issue of bail.
- The magistrates and judges are required to apply the Bail Act which, in general terms, directs the court to have regard to the offences, and any previous "failures to appear". Magistrates and judges have the criminal record of the accused before them when determining bail.
- Bardakos had two convictions in the past 10 years, one for swearing, and the other for malicious damage. For each of these offences he was given a small fine. Some years earlier he had served a short prison sentence for a series of offences arising from one incident at Byron Bay. It appears he had never committed an offence while on bail, he had never breached a good behaviour bond and he had never been charged with any sexual offence.
- The events, which led to Bardakos being charged, had occurred at an isolated farmhouse and there were no known independent witnesses. He pleaded "not guilty" and, on the facts, any magistrate would have noted the prospects of a conviction were, at the end of the day, far from overwhelming.
- The marriage breakdown of Bardakos and his wife was recent, and in the ordinary course emotions arising from that event could be expected to subside. He had no history of psychiatric illness but was apparently disturbed at the time of his arrest.
- Upon his arrest Bardakos was co-operative with the police and was interviewed voluntarily.

While Bardakos was no angel, there was nothing objective to suggest he was a potential killer. There is no doubt his wife advised the police that she had grave fears for her own safety. What were the magistrate and judge, charged with doing justice to the accused and accuser alike, to do? The taxpayers of NSW pay millions annually to accommodate bail the charges which led to them going into custody in the first place.

Deciding who ought to be granted bail requires a fine judicial balance between competing considerations and will never lead to a perfect record of predicting compliance with bail conditions once bail has been granted. There is a perfect system, but the taxpayers are probably not ready for it: throw out the presumption of innocence and lock up every accused person until the conclusion of their trial.

Meanwhile, as Bardakos and his estranged wife had children from previous relationships, not one but two grieving families have to find a way to get on with life.

In all the reporting of the Bardakos tragedy I have not read or heard anyone asking the obvious question: "Would this double tragedy have occurred if Mr Bardakos hadn't been so readily able to get his hands on the guns which took away the mother of one family and the father of another?"

What about that question, Alan Jones?

Carl Boyd is a Newcastle solicitor who last represented the late Toni Bardakos.

Sun Herald, 28 May 2003

Police may win power to veto bail orders

Stephen Gibbs

Police would be given power to keep alleged offenders behind bars even if granted bail by a magistrate, under proposed legislation announced yesterday.

The changes, which the Law Society said could undermine judicial independence, would also result in repeat violent offenders being refused bail unless there were "exceptional circumstances".

The Premier, Bob Carr, said yesterday that all accused murderers would be refused bail, except in cases such as a battered wife killing her husband.

"The type of exceptional circumstances that might exist that would justify bail include where the prosecution case is very weak or the court is satisfied the person poses no threat to the safety of anyone," Mr Carr told Parliament.

Those previously convicted of offences including manslaughter, kidnapping, sexual assault and robbery would be subject to the same provisions.

Also, a new "domestic violence check list" would be developed to provide an offender's comprehensive history to be presented to courts during bail applications.

"This is about protecting the community, especially women, from violent offenders," Mr Carr said of the bail package.

The proposed legislation would give prosecutors power to stay proceedings when bail was granted by a magistrate to anyone charged with sexual intercourse with a child, gang rape, murder or drug offences which carry a life sentence.

Under the stay, bail would be suspended for up to "three clear business days" and the alleged offender held in custody while the Supreme Court reviewed the magistrate's decision.

The past president of the Law Society, John North, said allowing police to stay bail was "very dangerous" and warned "it could undermine the independence of the judiciary".

"Police are now going to be able to second guess judicial officers' decisions and have people locked up for at least three days," Mr North said.

"In a few words, it is turning our justice system on its head and it should not occur without much further thought."

The Opposition was more concerned that the amended bail legislation did not address property offences and that the Government had lied to the electorate by mis-stating its position on bail.

The shadow attorney-general, Andrew Tink, said the Government had gone to the March 22 election falsely proclaiming "no bail for repeat offenders".

Mr Carr's announcement was "proof positive" the electorate had been "grievously misled".

"It is still not the case that there is no bail for repeat offenders," Mr Tink said.

"The most extraordinary thing about today's announcement is there is not a word that talks about repeat property offenders.

"There's not a word about toughening up bail for repeat property offenders. "In other words, a couple of months after the election, the Premier still has not got it right."

New South Wales Council for Civil Liberties media release, 3 June 2004

New Bail laws – presumption of innocence is the victim

New bail laws rushed through the NSW Parliament today undermine the presumption of innocence and are another example of how governments are using the War on Terror to erode civil liberties in Australia.

The NSW Parliament today rushed through legislation to make it easier for the federal government to keep people charged with terrorist offences behind bars. The new law introduces a presumption against bail in terrorist offences. It is expected to come into force tomorrow.

The new bail laws mean that, rather than the Crown having to argue why a person should *not* be granted bail, anyone charged with a federal terrorist offence will have to argue before a Magistrate why they *should* be granted bail.

This goes against the presumption of innocence. In our society everyone is innocent until proven guilty in a court of law. This move introduces a presumption of guilt when it comes people accused of terrorist offences - long before they have their day in court.

The legislation has been rushed through Parliament to make it easier for the Commonwealth Director of Public Prosecutions when he appeals the release of Bilal Khazal on bail yesterday. The changes to the bail laws will be retrospective, so the DPP will not have to argue that Mr Khazal should be locked up. Instead, Mr Khazal will have to convince the court that he should remain at liberty.

If Mr Khazal loses the appeal, then he will probably be heading off to the 'Supermax' High Risk Management Unit at Goulburn Gaol. That is where most of those charged with terrorist offences are being held on remand - isolated from their families and legal teams in Sydney. This will make it difficult for Mr Khazal to prepare his defence.

The new law is bad law. Because it is retrospective it is open to Constitutional challenge. The legislation is also likely to be unconstitutional because it treats federal terrorist suspects in NSW differently from anywhere else in Australia. Though federal Attorney-General Phillip Ruddock has indicated that he will pass similar legislation in the federal Parliament.

CCL is very concerned that this legislation will be used to intimidate and terrorise the Muslim community in NSW.

This is another example of governments using the War on Terror to undermine and erode our civil liberties.

For further information contact:
Cameron Murphy, NSWCCL President: 0411 769 769

Sydney Morning Herald, 15 October 2003

Long arm of the law comes up short with blacks

Aborigines will continue to fill our jails unless the causes of their law-breaking are address, writes ***Don Weatherburn***

The Royal Commission into Aboriginal Deaths in Custody argued that the high rate of Aboriginal deaths in custody stemmed from the over-representation of Aboriginal people in prisons and police lock-ups.

Reducing the number of Aboriginal people in custody has been a priority for state and territory governments ever since. The average annual rate of Aboriginal deaths in custody, however, remains more than four times higher than the non-Aboriginal rate of death in custody.

The immediate cause of this state of affairs is simple enough. In 1991, the Aboriginal imprisonment rate was 13 times higher than the rate of non-Aboriginal imprisonment. Now it's 15 times higher. The high rate of Aboriginal imprisonment has often been blamed on systemic bias at key points in the criminal justice system, such as the decision to grant or refuse bail or the decision about what sentence to impose on an offender.

The contribution of Aboriginal offending to Aboriginal imprisonment has generally been ignored or treated as just one of many subtle influences on Aboriginal imprisonment.

This has fostered a mistaken belief that Aboriginal imprisonment rates can be reduced through policies designed to keep Aboriginal offenders out of the justice system.

It has obscured the difficulties involved in trying to limit Aboriginal contact with police and the courts, while ensuring that Aboriginal women and children
are afforded the same legal protections as their non-Aboriginal counterparts. It's also diverted attention from the factors that underpin much Aboriginal offending.

The high rates of Aboriginal involvement in crime shouldn't be ignored.
Aboriginal people in NSW are nearly four times more likely to be charged with sexual assault, about six times more likely to be charged with murder, about 12 times more likely to be charged with assault and more than 13 times more likely to be charged with break, enter and steal.

The arrest rate differences between Aborigines and non-Aborigines are mirrored in studies of self-reported offending among Aboriginal and non-Aboriginal secondary school students.

At each point in the criminal justice system, the higher offending rate of Aboriginal people increases their level of over-representation in prison.

Governments, however, have traditionally been more concerned with keeping Aboriginal offenders out of the criminal justice system than with keeping Aboriginal juveniles out of crime.

More than 40 per cent of the first tranche of Federal
Government funding after the Royal Commission went on Aboriginal legal services and policing and criminal justice reform. Nearly all states and territories have passed laws requiring imprisonment to be used as a sanction of last resort and introduced a wide range of alternatives to imprisonment. These initiatives have had no effect on rates of Aboriginal imprisonment because they simply insert new steps in the ladder of non-custodial sanctions an Aboriginal offender ascends, before eventually landing in prison.

Diversion policies present other problems as well. Eighty-five per cent of the assaults occasioning grievous bodily harm committed by Aboriginal people are committed against other Aboriginal people, often women and children. Failure to arrest the offender and refuse bail in these circumstances would only place them at further risk of serious harm.

It's time we moved the focus of our efforts away from police and the criminal justice system and towards the underlying causes of Aboriginal involvement in crime.
The limited evidence available suggests that the most important of these causes are alcohol and drug abuse, child neglect, poor school performance and unemployment.

There's now good evidence that helping Aboriginal leaders restrict the sale of alcohol within their own communities can bring about a significant reduction in alcohol-related harm.

There are few short-term remedies to the problems of neglectful parenting but a reduction in alcohol abuse, if we could produce it, would generate immediate benefits for Aboriginal children.

In the longer term it's surely possible to capitalise on the wider kinship networks which exist in Aboriginal communities to foster care and support where parents themselves are unable or unwilling to provide the support and guidance their children need.

Given the close association between Aboriginal unemployment and crime, though, the number one priority must surely be to do more to reduce the level of Aboriginal unemployment.

The Centre for Aboriginal Economic Policy at the ANU has estimated that an additional 26,000 jobs for Aboriginal people will be needed by 2006, just to prevent levels of Aboriginal unemployment rising further.

There's no doubt this would entail a very substantial increase in funding for Aboriginal employment schemes. Without this funding, though, measures designed to reduce substance abuse, violence and crime within Aboriginal communities may have little or no effect.

It's hard, after all, for anyone to see the value of fundamental change when it offers no immediate relief from frustration, anger and despair.

Sydney Morning Herald, 21 October 2003

Aborigines filling state's prisons

Debra Jopson

Nearly one in five of all the Aboriginal men in NSW appeared before a court charged with a criminal offence in just one year, a study published yesterday has found.

For indigenous men aged 20-24 years, the figures were much worse, with more than two in five of the entire population in that age group appearing on criminal charges in 2001, the NSW Bureau of Crime Statistics and Research has found.

The reason for the alarmingly high rate was not bias by police and judges, but the fact that many Aborigines were committing serious crimes, the bureau's director, Don Weatherburn, said yesterday.

"While discriminatory treatment of Aboriginal people by police and the court system is an historical fact, the leading current cause of Aboriginal over-representation in prison is not systemic bias but high rates of involvement in serious crime," he said in a paper written with bureau researchers Jackie Fitzgerald and Jiuzhao Hua. As the Cape York Aboriginal leader, Noel Pearson, has argued, priority should be given to tackling the rates of substance abuse, joblessness, child neglect and inadequate schooling attendance which cause the crime, Dr Weatherburn said.

"Every year we go back and cook up another diversion scheme while ignoring the underlying causes . . . Most of the work [now] is tinkering with the justice system," he said.

When serious crime was a dominant pattern, diversionary schemes became "another step in the ladder of non-custodial sanctions a person ascends before eventually landing in prison", his team wrote in the latest *Australian Journal of Public Administration*.

However, the director of Sydney University's Institute of Criminology, Chris Cuneen, accused Dr Weatherburn of using "a simplistic approach which doesn't deal with the complexity of the criminal justice system".

Most criminologists believed systemic bias against Aborigines still existed, and most indigenous people in prison had committed crimes that attracted short sentences.

The bureau's own research revealed that if all Aborigines sentenced to six months or less were not jailed, over 12 months the indigenous prison population would be reduced by 56 per cent, Associate Professor Cuneen said.

Diversionary schemes such as youth justice conferencing did work, and money had been spent on trying to tackle underlying causes, but without success, he said.

Brendan Thomas, executive officer of the NSW Aboriginal Justice Advisory Council, said Dr Weatherburn was right that the high offending rate was high, but big concentrations of police near some indigenous communities showed there was still a bias.

Aborigines were heavily policed in public spaces for minor offences such as using offensive language, which enmeshed them young in the criminal justice system, reducing their respect for the law and leading to tougher sentences if they committed more serious crimes.

"In one local government area Aboriginal people were arrested at 80 per cent higher than the state average for offensive language," Mr Thomas said. "Are the people likely to be 80 times more offensive than any other area?"

Dr Weatherburn's team called for new controls on alcohol supply to Aboriginal communities, "substantial government investment" in job schemes and a crackdown on those supplying illicit drugs to indigenous communities.

Rates of injecting drug use among young Aborigines in western and north-western NSW had risen greatly in recent years, but last year there was only one arrest in the north-west for dealing in narcotics, they said.

Sydney Morning Herald, 22 October 2003

Behind black crime rates

The fact that Aboriginal people are over-represented in the criminal justice system is nothing new. But a disparity previously vaguely asserted is now made more precise by the NSW Bureau of Crime Statistics. The risk is that its analysis of court records will do no more than shock, or confirm prejudices, rather than prompt deeper consideration of the reasons behind appalling crime and imprisonment rates for Aborigines.

The bureau found, for example, that almost one in five Aboriginal men in NSW appeared in court in 2001 charged with a criminal offence. For Aboriginal men between 20 and 24, it was more than 40 per cent - compared with 8.4 per cent for the corresponding male age group for NSW as a whole.

The bureau does not pretend to explore the reasons behind such statistics. It does, however, make an important point: "Given the extraordinary level of contact between Aboriginal people and the criminal justice system it is to be doubted that further contact with that system is the best means of bringing down rates of Aboriginal offending." It adds: "The point is, rather, that focusing on the factors that lie behind indigenous offending, such as alcohol abuse, poor school performance and unemployment, is likely to do more to reduce crime in indigenous communities than policies designed to apprehend and imprison an even higher proportion of indigenous offenders."

That is fine, as far it goes. Alcohol and drug abuse, school truancy and unemployment may lie behind Aboriginal crime and imprisonment statistics. But they are still only symptoms, not root causes. Even less helpful is a focus on the belief that the police and courts are biased against Aborigines. There are undoubtedly such cases, and there were more of them in the past. But as the bureau's director, Dr Don Weatherburn, says, it is not systemic bias but high rates of involvement in serious crime that results in Aboriginal people in NSW jailed at a rate 16 times that of the population as a whole.

The reasons require further exploration. They go deep into the most sensitive regions of Aboriginal family life, horribly dysfunctional in so many cases. Dispossession seems to be the key. Young Aboriginal men continue to reflect the despair of dispossession in a doomed, self-destructive reaction to white authority. Even younger Aborigines follow their example. Law-breaking and time in jail become a rite of passage. Breaking that pattern, after so long, is not easy. But ways must be found.

Sydney Morning Herald, 2 November 2003

DNA of 14,000 inmates on database

By SEAN BERRY

The DNA of more than 14,000 criminals is now on a database, following compulsory testing of certain prisoners in NSW jails.

Under the regime, which began in January 2001, police have the power to take DNA samples from prisoners deemed serious offenders.

The samples are then compared with DNA that has been collected at the scenes of unsolved crimes.

As of March, matches on the DNA database had led to 450 arrests and 186 convictions.

To be considered a "serious indictable offender", a prisoner must be convicted of an offence punishable by a jail term of five or more years.

The Department of Corrective Services estimates that about three-quarters of the prison population fits within this group.

NSW Justice Minister John Hatzistergos said the database was still growing.

"The Department of Corrective Services estimates that up to 2000 serious indictable offenders will be required to give DNA samples each year," Mr Hatzistergos said.

"More DNA samples on the database means linking more criminals to crime scenes, solving more crime, and giving some relief to families of victims of crime."

Prisoners were also able to try to clear their names through an appeal panel for a small fee.

A spokesman for Police Minister John Watkins said the panel was suspended recently to await new legislation.

"It was at the start of the minister's term in the ministry and he was concerned the panel operated on an ad hoc basis without legislation to guide it," the spokesman said.

"We have just received a review back and it will be back to Parliament in November."

Police and department of corrective services officers collect DNA samples by buccal swab (a swab from the inner lining of the cheek), hair, or by blood sample.

"To date, approximately 96 per cent of all inmates tested have co-operated in providing DNA samples by buccal swab," Mr Hatzistergos said. That means nearly 600 prisoners refused to co-operate.

The NSW Council for Civil Liberties said the enforced testing of prisoner DNA weakened the fabric of human rights in Australia.

David Bernie, the group's vice-president, said: "We think the blanket testing procedure they are trying to do in jails is in itself discriminating against the population and we are also against the process of enforced procedures, be it taking DNA or any medical procedure."

Mr Bernie conceded that DNA was a useful tool for criminal investigations. "But we do oppose the compulsory taking of DNA samples from prisoners or any citizens," he said.

"It will end up becoming a national database, a situation where everybody is expected to give their DNA."

Sydney Morning Herald, 8 January 2009

Deterrence more important than prisoner numbers: AG

Brian Robins

ANY concern over the big increase in the prison population under the Labor Government overlooks the deterrence effect of locking people up, the NSW Attorney-General, John Hatzistergos, said yesterday.

"One of the important principles and purposes of sentencing is deterrence," he told the *Herald.*

"If the view out there is that you can commit these offences and you'll be dealt with leniently, then the deterrent of the sentencing will be lost.

"Over a 15-year trend, courts have become more severe in their approach to sentencing, and it is important that the public understand that."

Mr Hatzistergos denied the Government has been locked in a law-and-order "bidding war" with the Opposition, saying the Government had refused to match the extreme schemes the Opposition had promoted.

"People also overlook the fact that the Opposition has supported mandatory sentencing and also 'grid sentencing', where courts must use a formulaic approach when sentencing, both of which the Government rejected," Mr Hatzistergos said.

Research last year by the Bureau of Crime Statistics and Research found the people who knew the least about court sentencing had less confidence in it, Mr Hatzistergos said.

And the people with less confidence in sentencing drew their information from the mass media - talkback radio and tabloid newspapers - where information had been sensationalised and focused on a few cases.

"If you ask the community what their perceptions are … they generally think the courts are too lenient.

"That's not the case."

As well as locking record numbers of criminal up, effort is also going into preventing criminals from remaining in the prison system.

"We're doing a lot of work on reduced re-offending and any balanced equation sees that. The Government is certainly not ignoring issues of rehabilitation," he said.

"A person who commits a property offence and may go to jail for a relatively short period of time may have an underlying issue which is, for example, drug addiction, which cannot be resolved in a short period of time of the sentence. That is one reason why we are moving to new models."

These include community-based sentencing, which include rehabilitation programs.

"Everyone is an expert on sentencing without understanding the issues involved," Mr Hatzistergos said. "There will always be community debate about sentencing, and you will always have some outcomes people will disagree with."

Sydney Morning Herald, 8 January 2009

Truce called on hardline sentencing

Andrew West

THE NSW Opposition has pledged to end the "law and order auction" in a dramatic break with the tradition of promising to increase punishments and fill jails that has characterised every state election campaign since 1988.

The Coalition's justice spokesman, Greg Smith, who entered Parliament in 2007 with a reputation as a tough criminal prosecutor, said hardline sentencing and prisons policies - including those of his own party - have failed.

In an exclusive interview, Mr Smith told the *Herald* he would invest more money and resources in rehabilitation to break the cycle in which almost half of all NSW criminals re-offend after their release.

"I know that for a series of elections there was one side bidding against the other in what they called a law and order auction," Mr Smith said.

"While I think there are some areas where the law could be even tougher, such as showing more concern for the families of victims of homicide, in terms of the harm done to them, there are other areas where I am concerned that prisoners are not properly being rehabilitated, not given a chance to go straight in a community that really would want them to go straight."

Mr Smith likened his move to "Nixon in China". Just as it took an anti-communist US president, Richard Nixon, to open relations with communist China in 1972, it might take a politician with Mr Smith's conservative credentials to push for a bipartisan position on criminal justice.

Before becoming the Liberal MP for Epping, Mr Smith was the state's deputy director of public prosecutions for five years. Three years ago he persuaded an appeal court to keep the notorious killer Katherine Knight, who stabbed, decapitated and skinned her partner, locked away forever. He also led a successful appeal to increase the sentence of a pedophile murderer from 30 years to the term of his natural life.

While he remains "very keen on punishment and deterrents" for crimes of cruelty, especially against children, Mr Smith said with 10,000 inmates in NSW jails and a recidivism rate of 43.5 per cent, the punitive approach was not working.

"So far as enforcement of the law and prisons are concerned, I think I am a pragmatist, based on the experience I have gathered over the years as a prosecutor. Prosecutors generally try to be as fair as possible so we're not likely to just want head-kicking decisions all the time. It seems to me that our prisons are full of people who suffered learning difficulties in their youth or had a deprived upbringing or have drug addiction or mental problems. There's a lot of those people in our jails. I am not excusing the conduct that got them into jail but I think that some of them need more of a kick along from the system.

"I think you need to be, society needs to be, conscious of the fact that unless you do something for them after they get out of jail, the more likely they are to hurt society again and commit more crime.

"That's where my pragmatic view comes in. Our recidivism rates are far too high and this harsh line that we have been taking, with the Government almost proud of the size of the prisons, and proud to build more, in my opinion, shows a lack of care for people in prisons, their families and the community generally, because it is short-sighted."

An expert on justice policy, the Emeritus Professor in Criminal Law at the University of NSW, David Brown, said that after the Unsworth government lost the 1988 election to Nick Greiner, the new ALP leader, Bob Carr, bought into the law and order auction. "Once Carr let the law-and-order genie out of the bottle, it became standard political competition to posture over who was toughest on crime, setting up a dynamic that no-one, up to now, has had the courage to end," Professor Brown said

"If Greg Smith can get the genie back in the bottle, negotiate an end to the auction and secure a bipartisan approach, so that each side gives up on scoring cheap political points ... and looks to researched policies that reduce crime, recidivism and imprisonment, then he will be making one of the greatest contributions to justice and real community safety this state has seen."

The NSW Council for Civil Liberties also hoped Mr Smith's stand signals an end to the "auction".

"Greg Smith is not a softie," said the council president, Cameron Murphy. "He's a tough-minded conservative. But the fact that someone like him is questioning the line shows just how absurd it's become."

As attorney-general in a Coalition government, Mr Smith would increase funding for drug and alcohol rehabilitation schemes, the Custody-Based Intensive Treatment program for sex offenders; education programs that teach inmates trades and skills; and post-release accommodation, such as halfway houses.

Last month, Mr Smith quietly released a critique of the Rees Government's law and order policies, headed: "More jails not the best answer: money better spent on rehabilitation."

He argued then: "While the NSW Liberals/Nationals adhere to the view that punishment must fit the crime, there needs to be far more emphasis by the State Labor Government on rehabilitation programs, which give the prisoner a better chance of going straight, once released. Rehabilitation is cheaper than the cost of building more prisons and far more effective in helping our community to become a more peaceful place."

Mr Smith, a traditional Catholic who was president of the anti-abortion NSW Right to Life, described himself as "a conservative on moral issues". But he strongly opposed the death penalty "because you might make a mistake, and I still don't believe in an eye for an eye and a tooth for a tooth".

He conceded his attempt to emphasise rehabilitation over retribution was politically risky. "I am

Truce called on hardline sentencing (cont...)

conscious of the importance of the media, especially the talkback programs as they affect politics in this state, " he said.

After becoming deputy DPP, Mr Smith grew increasingly angry at the way political debate was compromising criminal justice, especially appeals. The repeated calls to ratchet up sentences did not strengthen the law, he said. "Certainly they [Labor and Coalition] have annoyed me because they have made the law more complex, particularly sentencing," he said. "That leads to more error, which leads to more waste of time and more expense."

He has also jettisoned the Coalition's policy of grid-sentencing, which used a strict matrix to prescribe sentences that judges had to impose. "I don't go along with any of that. It was something [the Coalition] looked at but they lost. Let's face it, these things did not win them elections."

For Mr Smith, there is also a personal dimension to the debate. He has five children and some of their friends have committed offences, such as "pinching cars, things like that". He has even been a character witness for some of the offenders. "The kids generally have been able to recover and they've haven't turned into criminals," he said. "If you can get them young and they realise the seriousness of the situation they're in, you often will turn them back to leading a decent life."

Sydney Morning Herald, 8 January 2009

Breaking law and order's gravel

OPINION

NSW politics has differentiated itself from other Australian political arenas on many fronts but perhaps none so remorselessly predictable as the law and order auction. For the past 20 years, come election time, our politicians have fallen over themselves promising to spend millions on more police, more weapons, more jails, longer sentences - anything, in fact, that assuages voters' fears about law and order being out of control. So the undertaking by the Opposition's shadow attorney-general, Greg Smith, to end such an unseemly and wasteful buying of votes is certainly a welcome and desired development.

Mr Smith gave an indication that the Opposition was shifting position last month when, amid reports of record prisoner numbers, he suggested rehabilitation might be a better way to spend money than jails. He wanted funding to concentrate on post-release programs and keeping young offenders out of prison. Now he has also criticised his own side of politics for its part in hyping punitive policies on law and order. Further, he considered that some Opposition policies, such as grid sentencing, should be dumped, not least because they were ultimately election losers.

Mr Smith has generally resisted the lure of populist positions since becoming the shadow attorney-general. A former deputy director of public prosecutions himself, for years he sat at the right hand of Nicholas Cowdery, the NSW Director of Public Prosecutions. Mr Cowdery distinguished himself and his office by infuriating both sides of Parliament with his continuing and public critique of the use of community fears, courts, police and prisons for political ends. While the Coalition has never been a friend to Mr Cowdery, last year when the State Government moved to nobble him by reducing the DPP budget, Mr Smith said the cuts were a retaliation for his old boss's willingness to criticise the Government.

Mr Smith has shown an admirable ability to move on from past positions and his reformist attitude to the problem of law and order auctions is commonsense. He is the first MP from a major party who dared to cut free of the "tough on crime" and "lock 'em up" sloganeering that has been the usual political response to a crime wave mostly caused by drug and alcohol abuse. Whatever the Labor position on the law and order auction, the biggest challenge now facing Mr Smith is to resist pressure from within Coalition ranks from those who would retain their time-honoured toughness on the issue.

Sydney Morning Herald, 8 August 2009

Victims ignored in plea bargains

Ruth Pollard
Investigations Editor

A LONG-SERVING solicitor from the Office of Public Prosecutions has condemned the widespread abuse of the plea bargaining system, warning that defendants accused of violent crimes are negotiating their way out of more serious charges without appropriate consultation with victims.

His claims are backed by the NSW Attorney-General, John Hatzistergos, whose spokesman said: ''Concerns about communication between the Office of the Director of Public Prosecutions and victims is an issue which has been raised with the Attorney-General on a number of occasions''.

A case before the NSW District Court graphically illustrates the weakness in the system. A plea deal meant the full extent of a horrific attack on a Sydney woman, Nanette May, by her former partner, was not revealed to the court.

It was only through Ms May's determined lobbying efforts that the evidence was presented to the judge yesterday to consider in sentencing. Despite that, her attacker might receive as little as seven years in jail.

Mr Hatzistergos recently wrote to the Director of Public Prosecutions, Nicholas Cowdery, QC, to raise concerns about the complaints his department had received. Mr Cowdery dismissed those concerns.

''I reject the assertions that consultation [with victims about charge negotiation decisions] is not genuine,'' Mr Cowdery replied. He declined to answer detailed questions put to him by the Herald.

The pressure on governments to protect the rights of victims of crime prompted a high-level review of plea bargaining in 2002 by the former NSW governor and Supreme Court judge, Gordon Samuels, QC.

He recommended that the DPP's policies and guidelines ensure ''adequate consultation with victims ... and that the charges and agreed facts reflect the criminality of relevant offences''.

Yet the solicitor, who has instructed on countless criminal trials, said the recommendations were being ignored.

The solicitor, who asked to remain anonymous, said that in seven years since the release of the Samuels review, he had participated in only three trials where the guidelines had been followed. ''That would be a conservative estimate,'' he said. He said there was great pressure on the Crown prosecutor and the judge to ensure cases were resolved quickly yet this expediency was often at the expense of those affected by the crime.

It is a view shared by the NSW Police Association, which has long been horrified by the sentence discounts given to violent offenders.

When those responsible for the death of the police officer Glenn McEnallay and the violent attacks on several others in 2002 were able to accept pleas to significantly lesser offences without proper consultation with the family or the surviving victims, the union went public with its concerns.

''The problem is that the DPP is simply not following its own guidelines. We believe the system is breaking down, and victims and police are not being kept informed of the way decisions are made,'' said the union's director of research, Greg Chilvers.

The number of guilty pleas negotiated has steadily increasing in the past decade, occurring in 62 per cent of charges in higher courts, up from 50 per cent in 1998, figures from the NSW Bureau of Crime Statistics and Research show.

Mr Hatzistergos is so concerned about the issue that in January last year he commissioned another review by the Sentencing Council. Its report is due this month.

''For the public and police to have confidence in the justice system it is important to see offenders being held accountable for their crimes and that any discounts have a legitimate public purpose'' he said.

Sun Herald, 27 September 2009

Prevention, not detention, in drug fight

By JULIE ROBOTHAM
MEDIA EDITOR

AUSTRALIA'S emphasis on law enforcement as the principal element of its illicit drug strategy is out of kilter with community attitudes, a survey reveals.

Most people believe the biggest investment should be in education programs to prevent people beginning to use drugs, with the remainder split equally among treatment programs, harm-reduction schemes and law enforcement, according to results from a representative survey of more than 500 adults in June by the drug policy group Anex.

But according to separate analysis from the Melbourne-based Turning Point Alcohol and Drug Centre, about 56 per cent of the money the nation spends on tackling drugs goes to police and courts. Health initiatives such as overdose prevention and needle exchanges receive only 2 per cent of total funding.

More than half think the justice system will never solve drug problems, according to the Anex survey, which comes as the the National Drug Strategy's four-year cycle is about to expire at the end of this year. One-third of people believe those who use illegal drugs should not go to jail, although 45 per cent believe they should be charged with a crime.

Just 39 per cent believe drug use would never affect their family, and three-quarters agree that drug use is connected to other problems in people's lives.

The economic crisis and its effect on personal finances put more people at risk, said John Ryan, chief executive of Anex, which is funded by federal and state governments and philanthropic grants. "People are vulnerable, and that vulnerability often leads to problematic drug use," he said.

National statistics from 2008 show more than 2 million people had used an illicit drug in the previous year, with cannabis top of the list, followed by the misuse of prescription pharmaceuticals, ecstasy and methamphetamine.

Those who used drugs had much higher levels of mental illness, with 20 per cent of those who had taken drugs in the past month reporting high levels of psychological distress, compared with 9 per cent of people who had not.

The results - to be presented this week at the Australian Drugs Conference - showed public concern about the issue was as high as ever. "It is not receding," Mr Ryan said.

About 300 people died from a drug overdose in 2007.

The director of the Alcohol and Drug Service at St Vincent's Hospital, Alex Wodak, said there had been a gradual shift in community attitudes to illicit drug use over the years. ''People are increasingly recognising that health and social interventions are a much more effective, less expensive approach,'' Dr Wodak said.

''Law enforcement used to be a brilliant political strategy to get people re-elected, but times are changing and the fear-based approach no longer works.''

Sydney Morning Herald, 21 October 2009

Frustration as Brimble jurors agree to disagree

Geesche Jacobsen
CRIME EDITOR

SEVEN years on and the wait continues for Dianne Brimble's family and the man accused of killing her.

It was hard to tell whether it was relief or disappointment on Mark Wilhelm's face when the jury reported yesterday morning it had been unable to reach a verdict, not even with an 11 to 1 majority, on one of the charges it had to consider.

Relief they had not found him guilty, or disappointment they had not acquitted him, and at having to face more uncertainty.

The case surrounding the Queensland mother's death aboard a cruise ship in September 2002 has now occupied about 90 days of court time - a four-week trial and one week of jury deliberations, following a near-record inquest spanning 17 months from March 2006.

The costs to the justice system and the participants, financial and emotional, are immense; and there is still no result.

Mrs Brimble's family were not in court to hear yesterday's development, which had become increasingly inevitable after the jury of seven women and five men said on Friday they could not agree.

Her former partner David Mitchell said he, too, was unsure whether to feel relieved or disappointed. At least having a decision, either way, would be a resolution, he said.

Mrs Brimble's children, Sebastian and Aaron Brimble, 26 and 23, and Tahlia Mitchell, 19, were struggling to cope, said her former husband Mark Brimble.

''We want to see that some good comes out of this ... rather than this continual, protracted, complicated, complex matter. We're frustrated but we're not beaten. We're tired, but we're not finished. We're getting closer to [the truth], but we're not there yet,'' he said.

Mr Wilhelm, 37, is accused of supplying Mrs Brimble with the drug GHB. The court heard she had died on board the Pacific Sky from a combination of the drug, also known as fantasy, and alcohol. It was not in dispute that she took the drug willingly.

Mr Wilhelm is also accused of killing the 42-year-old. The prosecution argues he committed a ''dangerous and unlawful act'' by supplying the drug or urging her to take it. This had ''substantially contributed'' to her death.

This was a difficult question, Justice Roderick Howie told the Supreme Court jury, which had been asking questions about how to decide the cause of death.

There was a ''sense of frustration'', he told the jury, in failing to see the case through to its conclusion. But, he praised their efforts, stressing that to return a verdict they did not believe in, just to agree with the majority, would have been a miscarriage of justice.

The jury was not asked for its verdict on the other charge.

The case was stood over to November 6 when the Director of Public Prosecutions is expected to announce if it will prosecute the case again, possibly next year.

with Cosima Marriner

Sun Herald, 1 November 2009

Cutting edge of violence

By Lisa Curty
NSW POLITICAL EDITOR

CRIME figures show Sydney CBD is still the city's worst knife crime hot spot, with 254 attacks reported last year.

But the Bureau of Crime Statistics data released by Police Minister Michael Daley show a huge rise in knife crimes in the Bankstown local government area, where offences rose from 100 in 2007-08 to 151 in 2008-09.

While the figures point to a statewide drop of 8.2 per cent in knife crimes, Mr Daley has vowed police will continue to crack down on the use of knives and other sharp weapons such as scissors and screwdrivers.

Liverpool, Blacktown, Campbelltown, Newcastle and Canterbury all recorded slight increases in knife crimes, while decreases were recorded in Marrickville, Strathfield, Penrith, Warringah, Rockdale, Wagga Wagga and Holroyd council areas.

Despite recording a decrease of 105, Sydney City recorded the highest number of knife crimes in the state.

Mr Daley praised the police commitment to reducing knife crime. "Police across the state are continually making our streets safer, confiscating knives off people out to cause trouble and - in some cases - serious harm," he said. "Across the state, the number of offences involving a knife or sharp implement is down.''

"High-visibility police operations such as Operation Vikings and Operation Vision 5 on our public transport network continue to send a strong message to criminals who carry knives that they will be caught by police.

"In many of these hot spots, police have achieved excellent results in keeping the number of knife-related incidents low. For example, in the Sydney local government area, there has been a drop of 29 per cent.''

The Police Minister said the state had Australia's toughest knife laws and police officers would continue to focus their activities on trouble spots in Sydney's CBD and the western suburbs.

A bill before Parliament will have first-time knife carriers liable for a jail sentence of up to two years, rather than being let off with a $550 fine, unless they can show good reason for having a knife, such as for a fishing expedition.

The bill, drafted by the Reverend Fred Nile, will also introduce a $5500 fine for anyone who refuses to be searched for a knife.

"The Government makes no apologies for this tough stance and I've asked NSW Police Commissioner [Andrew] Scipione to keep me updated about the efforts of police in catching these gutless criminals,'' Mr Daley said.

In 2007-08, knives and other sharp implements were used in 4086 crimes; in 2008-09, that figure had fallen to 3736.

Sydney Morning Herald, 12 November 2009

Betters results with suspended sentences

Louise Hall

CRIMINALs who have previously served time in prison are about 25 per cent less likely to commit future offences if they are given a suspended sentence rather than a jail term, new research has found.

Despite the public perception that suspended sentences are a ''let-off'' or a ''a slap on the wrist'', non-custodial penalties are just as effective a deterrent as a stint in prison, especially for offenders with a long criminal history.

The number of suspended sentences imposed by NSW local courts rose by 300 per cent between 2000 and 2007, to make up 4.6 per cent of all penalties from magistrates.

Figures released by the NSW Bureau of Crime Statistics and Research yesterday show that after one year, an offender who spent time in jail and then received another custodial sentence had a 52 per cent chance of being reconvicted. The same offender had a 42 per cent chance if given a suspended sentence.

The difference at two years was 18 per cent.

The bureau's director, Don Weatherburn, said the findings added to a growing body of evidence that spending time behind bars does not reduce the likelihood of that person committing more crime.

''This does not mean we should abandon prison as a sanction for offending,'' Dr Weatherburn said.

''Prison might still be justified on the grounds of general deterrence, punishment or incapacitation … however it would be wrong to impose a prison sentence on an offender in the belief that it will deter them from further offending.''

In cases where the offender had no previous jail time, the bureau found no significant difference in the likelihood of reconviction between those who received a full-time sentence and those whose sentence was suspended.

The study compared 1661 matched pairs of offenders with a prior prison sentence and 2650 matched pairs without a prior jail history, adjusted for a large range of factors such as gender, age, offence type, plea and juvenile record.

A spokesman for the Victims of Crime Assistance League, Howard Brown, said suspended sentences can prevent recidivism because offenders are not in jail acquiring new criminal skills in the so-called ''universities of crime''.

But he said suspended sentences can cause angst for some victims because the offender is still at large.

A spokesman for the Attorney-General, John Hatzistergos, said custodial sentences are needed to ''protect the community and punish the offender to deter others''.

Sydney Morning Herald, 12 November 2009

Push to wipe out card scammers

Louise Hall

NEW laws that target ATM skimming scams and the trafficking of credit cards and PINs on the black market will be a ''powerful new weapon'' against the $1 billion-a-year identity fraud industry, the State Government says.

The Premier, Nathan Rees, said the three new personal identity offences would help bring the Crimes Act into the internet era, while antiquated laws dealing with outdated methods of fraud and forgery would be repealed.

Selling or using personal data, such as trading credit card details on so-called ''carder forums'' or obtaining and selling bank details through fake emails, would attract a jail term of up to 10 years.

Possessing everyday devices such as scanners and laminators to produce fake IDs could result in three years' jail.

About $3.5 million was stolen from superannuation accounts via 112 bank accounts set up in false names.

''We are responding to the growth in cyber criminals using stolen identities to engage in money laundering, drug trafficking and illegal immigration,'' Mr Rees said.

A Bureau of Statistics report last year found 450,000 Australians lost a combined $997 million to personal fraud in 2007.

It said the crime wave was a result of the rapid expansion of electronic data-sharing and storage and online transactions, with scammers using lotteries, pyramid schemes, chain letters and phishing to illicit personal information.

In July, NSW Police Strike Force Gamut arrested two people allegedly involved in a multimillion-dollar identity fraud racket in which personal details were stolen from letterboxes and used to create identity documents.

The laws will also double the maximum penalty for serious fraud from five to 10 years' jail.

‘We are responding to the growth in cyber criminals.’
Nathan Rees

''These laws send an important message to this new breed of criminal: we will find you and send you to jail,'' Mr Rees said.

While 16 of 17 major categories of crime have had stable or declining rates in the 24 months to June, fraud has continued to rise.

The measures are designed to protect vulnerable people, such as the elderly who are at risk of being defrauded by a carer, as well as business situations, such as a company director defrauding shareholders.

Sydney Morning Herald, 12 November 2009

Women and men show differences in crimes and drugs

Kate Benson
HEALTH

WOMEN detained by police were more likely than men to be suffering mental illness, using hard drugs and to have experienced sexual abuse as children, a study has found, prompting calls for offenders to be given psychological help to reduce crime.

The five-year study, released yesterday by the Australian Institute of Criminology, surveyed more than 18,000 people in four states and found that men and women had distinctly different patterns of drug use and criminal behaviour.

The relationship between mental illness, drug use and arrest was much stronger for women, with more than half of those in custody admitting to using cannabis in the past month.

About 43 per cent had used amphetamines, 18 per cent heroin and 12 per cent benzodiazepines.

The study's authors, Lubica Forsythe and Kerryn Adams, also found that women were more likely to be involved in shoplifting, fraud and receiving stolen goods to support drug habits, while men were engaging in more violent crimes, car theft, burglary and drug dealing.

The men were more likely to be using cannabis (59 per cent), but less likely to be using amphetamines (34 per cent) and heroin (13 per cent).

One in five women and one in six men reported having spent at least one night in a psychiatric unit in their lifetime, while 13 per cent of women were on antidepressants, against 7 per cent of men. Four per cent of both groups were taking anti-psychotic medications.

Almost 40 per cent of women and 27 per cent of men reported having a mental illness, but researchers were not able to include those who may have had psychological problems but had not been diagnosed.

The study also found that more than a third of women and a quarter of men reported experiencing high levels of distress in the month before their arrests, which could indicate a mental illness.

The authors said the study's results could be used to design different treatment programs for men and women, and plan mental health care programs to prevent recidivism.

Sydney Morning Herald, 27 November 2009

Plea bargain changes aim to give victims a greater say

Joel Gibson
LEGAL AFFAIRS

PROSECUTORS who plea bargain with accused criminals will be forced to provide judges with a signed certificate justifying the outcome under changes proposed by the NSW Sentencing Council.

The council also wants the law to ensure that sentences discounted due to guilty pleas or assisting police are not ''unreasonably disproportionate to the nature and circumstances of the offence''.

If adopted by the NSW Government next year, the new requirements would help allay concerns of victims groups, police and politicians that victims are being neglected as violent criminals negotiate their way out of more serious charges.

In August, a solicitor with the Office of the Director of Public Prosecutions told the *Herald* that plea-bargaining guidelines were being ignored because of pressure on Crown prosecutors and judges to resolve cases quickly.

In seven years of participating in criminal trials, he said he had seen the guidelines from a 2002 review followed only three times.

The Attorney-General, John Hatzistergos, has written to the DPP, Nicholas Cowdery, QC, about the issue, but Mr Cowdery rejected assertions about a lack of consultation with victims.

But the Sentencing Council - which includes Mr Cowdery, the retired Supreme Court judge James Wood, QC, and victims' advocate Ken Marslew, among others - said more needed to be done ''to encourage uniform compliance with the guidelines and to promote transparency in the sentencing process''.

Under the changes proposed, a ''responsible officer'' would have to attest that any negotiated statement of facts tendered to a sentencing judge was the result of consultation with the victim and the police in charge of the case and that the statement was ''a fair and accurate account of the objective criminality of the offender''. Where consultation had not occurred, they would have to explain why.

The council also proposed a range of other changes to toughen sentencing. In a report to be released today, it recommends that:

- Discounts be abolished for people who have already suffered other forms of punishment, such as having assets seized or being banned from working with children;
- Sentencing judges be told why people pleaded guilty so they can separate remorseful criminals from those who help because of a strong case against them; and
- Offenders who win leniency by assisting authorities do not get better prison conditions unless they can prove they will be in danger otherwise.

The number of guilty pleas negotiated has increased in the past decade to 62 per cent of charges in higher courts, up from 50 per cent in 1998, according to figures from the NSW Bureau of Crime Statistics and Research.

Mr Hatzistergos, who commissioned the report to gauge whether offenders were receiving excessive sentence reductions, said the Government would make any necessary changes next year after consulting with the state's chief judges.

The proposals would guarantee that victims of crime get a fair say in the charge negotiations process, he said.

"For the public and police to have confidence in the justice system then it is important to see offenders being held accountable for their crimes and that any discounts have a legitimate public purpose.''

Sydney Morning Herald, 4 December 2009

Rights and wrongs of separation of powers

RICHARD ACKLAND
OPINION

Woof . . . woof. The watchdog has barked again. Sort of. I'll explain. On May 5, 1990, a gentleman called Gregory Wayne Kable stabbed his wife to death in their house. This followed a bitter custody dispute over their two young children. He was charged with murder, but later the Director of Public Prosecutions accepted a plea of guilty to manslaughter on the basis of Kable's diminished responsibility. He got a minimum of four years in pokey.

Once he was locked up Kable started writing threatening letters to the relatives of his dead wife, who were caring for the children. A psychologist said the letters were a form of ''psychological violence'', a step removed from extreme physical violence. The authorities feared, once he was released, Kable would reoffend and the politicians went on red alert that this was something that could inflame the voters.

In response the Community Protection Act was passed. The government could apply to the Supreme Court for a preventive detention order to keep someone locked up after they had served their term.

Initially the act applied to one person: Gregory Wayne Kable. Even though the legislation was hedged with words that seemed to give the judges lots of discretion, such as ''may'' and ''satisfied on reasonable grounds'', the High Court found it unconstitutional because it smacked too much of the government seeking to tell the judges what to do.

The High Court had to go through all sorts of elaborate contortions to arrive at that conclusion but, if a contortion or two is required for the judiciary to protect its patch, so be it.

Justice Mary Gaudron said the powers were ''the antithesis of judicial process, one of the central purposes of which is . . . to protect the individual from arbitrary punishment and arbitrary abrogation of rights''. That sounds a bit like a bill of rights lurking in there somewhere. Heaven forbid.

Thereafter, in other cases dealing with preventive detention laws, the High Court lost enthusiasm for rights. Queensland's Dangerous Prisoners (Sexual Offenders) Act was waved through by the High Court, with Chief Justice Murray Gleeson saying: ''Substantial questions of civil liberties arise. This case is not concerned with those wider issues.''

As Justice Michael Kirby observed of Kable, it was a constitutional watchdog that ''would bark but once''.

The constitution says judges are to exercise the judicial power of the Commonwealth but it doesn't tell them which is the correct way to do that. Consequently, they can swing and switch about in any way they like.

So the Kable principle didn't apply to other bits of legislation providing for things such as control orders, indefinite detention without charge and gang laws - all of which to varying degrees seemed to heavy judges to come down on the side of the state.

Now the watchdog has snuck out of the kennel. In last month's decision dealing with NSW's Criminal Assets Recovery Act, the High Court, by a four-to-three majority, said the legislation was ''repugnant to the judicial process in a fundamental degree".

The act set up a regime whereby the Crime Commission could apply for an order to freeze assets of someone suspected of having engaged in serious crime-related activity. This could be done without notice to the affected party - an ex parte order, which is lawyer-speak for ''not telling the other side in advance''.

The court had to make the order if it thought there were reasonable grounds for suspicion. The High Court declared the relevant section invalid.

With Kable on the prowl and woofing again, what might be tested next? When a suitable occasion arises NSW's bikies and gangs legislation could be a customer. Already the Full Court in South Australia has applied the Kable principle to its anti-gangs law. Although the NSW counterpart tries to skip around some of the more unsubtle elements of the South Australian act, it may not be trying hard enough.

The High Court majority objected to the Criminal Assets Recovery Act because it didn't specifically enable to court to direct that the other side be told their assets stood a good chance of being frozen. We'll hold our breath that this might herald a faint dawn of rights.

One bit of the act that was not unconstitutional said judges could unfreeze some of the loot and give it to the suspect to pay his lawyers.

All is not lost.