

Judicial visit to Indigenous communities in the Hunter Valley

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The Judicial Commission's Ngara Yura committee, chaired by his Honour Judge Stephen Norrish QC, organised a successful and informative visit for judicial officers to Indigenous communities in the Hunter Valley over the weekend of 8–9 November 2008.

“Look out for the eaglehawk, there’s always an eaglehawk when I bring a mob to pay respect to Baiame”. The eaglehawk is the totem of the Awabakal people of the Hunter Valley; Baiame their creator. His image, part human, part wallaby, painted in ochre on a cave wall more than 5,000 years ago, looks out on a tranquil valley in the foothills of the Wollombi mountains. On cue, an eaglehawk soars high above.

Tammy Wright, Aboriginal Project Officer at the Judicial Commission, explains the symbolism to the mob of judicial officers visiting this significant cultural site. Seven lines drawn beneath Baiame’s elongated arms represent the seven tribes of the region: the Worimi, Awabakal, Wanaruah, Gamilaroi, Darkinjung and Wiradjuri. The tribes once traded together in the valley, moving along the songline represented by the Wollombi. With his outstretched arms, Baiame embraces the tribes and tribal territory.

Perhaps Baiame’s spirit of reconciliation is present at the Barkuma Neighbourhood Centre in Kurri Kurri when visiting judicial officers are questioned by local Indigenous people about sentencing principles and policy.

“What determines if someone is sent to prison rather than given a community service order?” Discussing the complex task of sentencing with Aboriginal people who are disproportionately represented in the State’s gaols is a potentially confronting experience, but the Q&A forum becomes an opportunity to share information. The judicial officers explain that sentencing Indigenous offenders to prison is an option of last resort¹ and that each sentence requires consideration of the individual circumstances of the offender and the offence.² A judicial officer shares that on a personal level, determining whether a custodial sentence is warranted is a most stressful experience. The elders observe that their main challenge is to keep their young people out of the criminal justice system.

“Why isn’t customary law taken into account in sentencing Indigenous people?” asks Jake, a 16-year-old who has appeared before the Local Court (“a really scary experience”) for unlicensed driving. Jake reflects on when he was painfully punished with a whack on the head with a bundi, a traditional club, for stealing money from his Aunty’s purse. The Kurri Kurri elders speak about

the abiding nature of their customary law. His Honour Magistrate Doug Dick, presiding magistrate over the Nowra circle sentencing programme, agrees that when the white system fails, it's not unusual for the traditional system to take effect. While "payback" is difficult for the courts to deal with, it may be given some weight in the sentencing process as extra-curial punishment.³

Kurri Kurri, close to Cessnock in the Hunter Valley, has a population of 1,200 Indigenous people. Aunty Sandra Griffen, a respected Awabakal elder, speaks about some of the issues facing her community. Endemic in Kurri Kurri, and throughout the Indigenous population in Australia, is hearing loss, caused by untreated middle-ear infections. Hearing loss leads to learning difficulties, anti-social behaviour, low self-esteem, social isolation and, often, contact with the criminal justice system.⁴ Poor school retention rates, unemployment, drug and alcohol addictions, domestic violence, and lack of respect for elders, are other problems. The Barkuma Centre, now in its tenth year of operation, offers some grassroots solutions with cultural education and employment programmes, crisis support, and referral and advocacy services.

Another self-funded local enterprise is the Yula-Punaal ("rainbow sun") Education and Healing Centre at Mandalong where Aboriginal spirituality and culture are nurtured. Chair of Yula-Punaal, Louise Campbell, shows us around the scenic 50-acre property which offers



A smoking ceremony at the Yula-Punaal centre.



Baiame is the ancestral creator of the Indigenous people of the Hunter Valley. Baiame created the earth and sent other spirits to create the natural features of the valley.



Aunty Sandra Griffen, Awabakal elder, with his Honour Magistrate Jim Coombs (left) and his Honour Magistrate Peter Miszalski.

post-release accommodation for incarcerated Aboriginal women. Yula-Punaal also plans to conduct trade training programmes for TAFE certificates in horticulture and hospitality.

The Barkuma and Yula-Punaal centres, and the other programmes we hear about — Wandiyali youth services and the Yulawirri Nurai Corporation's women's post-release programme — show that local Indigenous people are deeply committed to supporting their communities and do so in their own time and out of their own pockets. Funding the support programmes is a perennial concern, as is racism. A local elder describes how her family, highly respected members of the local Indigenous community, was racially vilified to the point of having to obtain an AVO against their neighbours.

What emerges from the weekend is the need for information for judicial officers about non-custodial programmes for offenders.⁵ The Ngarra Yura Committee is now planning a website accessible through JIRS to provide information about local services and intervention programmes and a checklist for magistrates sentencing Indigenous people.

Endnotes

- 1 *Crimes Sentencing Procedure Act* 1999 s 5.
- 2 *R v Lattouf* (unrep, 12/12/96, NSWCCA); *Kable v Deputy Director of Public Prosecutions* (1995) 36 NSWLR 374 at 394 per Mahoney JA; *R v Whyte* (2002) 55 NSWLR 252 at [147] per Spigelman CJ.
- 3 *R v Daetz* (2003) 139 A Crim R 398 at [57].
- 4 *R v Russell* (1995) 84 A Crim R 386 at 392–394 per Kirby P; see also *Royal Commission into Aboriginal Deaths in Custody*, above n 1, Vol 2, p 351.
- 5 To make orders under ss 8, 9, 10, 11 of the *Crimes (Sentencing Procedure) Act* 1999.