

The ALRC and customary law:

# Women's views

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Watching the ABC programme 'A Big Country' reporting on making a film of 'We of the Never Never' recently made me realise how little in some ways things have changed. White men still see the outback as 'the last frontier' or as 'men's country'.

My experience is as an Aboriginal Legal Aid lawyer based in Central Australia. I have seen police, doctors, ministers of religion, magistrates, lawyers, politicians, anthropologists, community workers, government officials from a multitude of departments, asking questions about housing, education, alcohol, stores, juvenile delinquency and a host of other issues, all — with a few exceptions — men. These men go into Aboriginal communities, and their actions, backed with all the authority of the dominant white system, have, for better or worse, had a great effect on the lives of the whole Aboriginal community. Not surprisingly the Aboriginal communities ensured that as far as possible it was their menfolk that dealt with these white male officials. Except for nurses and junior teachers, the only common role model filled by white women in these remote areas was as wives of these various officials.

I believe it is the inevitable consequence of this contact history that there is a widely held belief in white society that Aboriginal women do not play a significant role in the operation of customary law. It is worth remembering that until very recently, almost all anthropological works on Aboriginal society were written by men, with a few exceptions such as Phyllis Kaberry and Catherine Berndt. I admit to being a feminist and as a white woman what I am trying to achieve in my society is a reduction in the difference between male and female roles and responsibilities in order to achieve equality. What I believe Aboriginal women from Central Australia wish to achieve is different. They are seeking recognition of their distinctively female role. It is a role of independence, responsibility and authority wherein they are enhanced as women.

The Committee for the Central Australian Aboriginal Legal Aid Service asked Diane Bell, an anthropologist, and myself to write a submission to the Law Reform Commission on Customary Law on the views of Aboriginal women about the issues raised in the reference.<sup>1</sup> The main conclusion will, I believe, be seen by Aboriginal women in the Centre as so self-evident that it is ridiculous to spell it out. That is, that they have a role in the maintenance of customary law that is not subordinate but com-



plementary to that of men. Their sphere is not limited to women's issues such as birth, but extends to religious rituals ensuring the harmonious relationship of people to land. Men and women each perform ceremonies based on a common set of beliefs and values which each sex then elaborates in a manner appropriate to that sex.

## The need for parallel structures

Our recommendation was that there needs to be parallel structures to enable women to play their full role in society which includes the maintenance of law and order. Aboriginal organisations in the Centre employ women as well as men to work as field officers. Government departments need to send out many more women to talk to women about, for example, social security benefits. Some women believe the child endowment — the 'kids' money' — is meant to support them and the kids, whereas the unemployment benefit cheque — the 'sit down money' — is meant to support their husbands. This argument is not contradicting the need for more Aboriginals to be employed, especially in these liaison roles, but adding to it. I am not straying away from the topic customary law. It is pointless to talk about some paper recognition of customary law unless at the same time one works at changing the practices that put such pressure on traditions, the lack of recognition of women's independent role being one of many such practices.

The Law Reform Commission has followed the usual pattern: its researchers have been male. Thus inevitably, I believe, Aboriginal women have had even less chance than men to consider the vital issues raised in the reference. That they should be heard on these issues has been amply demonstrated in recent Land Claim hearings in the Northern Territory where women as well as men have given evidence of their ownership of, and attachment to, land. Women's evidence only started to be heard at Land Claim hearings after the Central Land Council employed a woman anthropologist and field officer to prepare evidence by working with the women in the communities.

## More consultation essential

At the end of last year the Law Reform Commission published a Discussion Paper on the Customary Law Reference. During January and February this year I visited many Aboriginal communities in Central Australia and played tape-recordings prepared by the Central Australian Aboriginal Legal Aid Service and the Central Australian Aboriginal Media Association. The tapes concerned the Discussion Paper and were in English, Warlpiri, Pitjatjantjara and Aranda. Each tape was half an hour long and I thought that it was so long it might not hold people's interest. I was wrong. Everywhere groups of Aboriginal men and women concentrated throughout. They were pleased that white people wanted to talk to them about balancing up the two laws. The issues were seen as very important, especially topics such as recognition of sacred sites. However, they saw it as the beginning, not the end of a lengthy process of consultation. Except in places where Diane and I had talked with the women earlier, there was a total ignorance of the issues involved in the Reference. The one day's meeting in Alice Springs in April for public consultation with members of the Commission was utterly inadequate. My assessment of the feeling afterwards was of anger and despair at yet another white body that had raised important issues, but did not appear to have any intention of staying long enough to discuss the answers.

I was disappointed when I read the Discussion Paper. It failed to get to grips with its admittedly difficult topic. I realise there has been a turnover of researchers working on the Reference and a new Commissioner will soon be taking charge. The Commission should not be restricting its recommendations to what it believes will be acceptable to the present government, or for that matter, any other government. There needs to be a second Discussion Paper, following further public consultations, which attempts to answer some of the issues merely posed as questions needing further research in the first Discussion Paper. The final report should be delayed beyond the end of 1982. However even if the Commission produces a report recommending the recognition of customary law, that does not mean to say it will be implemented. Matters of customary law are fragile. To date, it is regrettable that women have been considered peripheral to the key issues.

1. Diane Bell and Pam Ditton, *Law: The Old and the New — Aboriginal Women in Central Australia Speak Out* (Aboriginal History, Canberra, 1980).

(This is a revised version of a paper given at the 'Human Rights for Aboriginal People in the 1980s' Conference, 31 Oct. and 1 Nov. 1981 at the University of NSW).