to achieve outcomes is to be understood as the failure of the model rather than the participant. This is similar to the evidence on the education system supplied by an Aboriginal woman from Queensland:

> We have a system and tell these people 'you have to fit into this system'; but it is not a system they feel comfortable in at all. And we expect that they won't do well because they are Aboriginal and when they don't do well we blame them and say 'well there you are see'. And nobody looks at the system and says; 'Well maybe we have to change the system'. [p.12]

Despite the symmetry in human rights arguments about educational access, the greater level of disadvantage faced by Indigenous communities in all areas, led the report to conclude: 'Racial intolerance and ignorance about Aboriginal cultures and needs are the most serious human rights issues facing Australia ...' (p.28, emphasis added).

The need for 'positive' discrimination

Often when documenting disadvantage, in this case the disadvantage of the bush, there is a tendency to report the bleaker aspects of a community. For example the introduction to *Bush Talks* states

> In almost every aspect of our work, the Human Rights and Equal Opportunity Commission has noticed that people in rural and remote Australia generally come off second best. Distance, isolation, lower incomes and minority status all exacerbate the experience of discrimination, harassment, and lack of services and participation. [p.1]

Although this finding is accurate, there are also positive aspects to life in the bush and it is important to document these to balance the one-dimensional impression of rural communities in despair. The report implicitly acknowledges this by documenting successful case studies at the end of each section and recommending that health initiatives undertaken in communities be recorded and disseminated. This contributes to an understanding by urban Australia that despite considerable disadvantages, rural communities are also vibrant both culturally and socially and are special places in their own right.

The most significant aspect of *Bush Talks* is that it gives a human rights framework to the concerns and disadvantages suffered by rural and remote communities. This will hopefully empower these communities to believe that their existence, with all the opportunities of urban Australia, is a right not a privilege.

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References

1. Human Rights and Equal Opportunity Commission (HREOC), *Bush Talks*, March ,1999.
2. HREOC, *The Human Rights of Rural Australians*, May 1996. This was a discussion paper that preceded *Bush Talks*.
3. HREOC, *Bush Talks*, March 1999, p.20. Note that the telecommunications review will occur within an ongoing inquiry into access to education in rural and remote Australia being conducted throughout 1999 by HREOC.

SCHOOLS

Sticks and stones may break my bones, but words will get me suspended

LEANNE McPHEE discusses a zero tolerance attitude towards swearing.

Following last year's zero tolerance policy on violence, John Pirie Secondary College in country South Australia has once again adopted the rhetoric of 'zero tolerance', this time targeting swearing.

The reasoning behind the implementation of a policy of '"zero tolerance to swearing" where it involves an intent of being abusive, violent and intimidatory'[1] is due to the perceived increase in schoolyard harassment and violence. Incidents of swearing are thought to precede and generally lead to violent behaviour. In light of the focus on violence in schools, particularly highly publicised incidents overseas, it is not surprising that approaches of a more punitive nature are targeting student behaviour.

In order to show the student body acceptable codes of behaviour, 'tough' penalties to deal with swearing, including suspension from school, are measures being implemented. The student reaction to this initiative has, by reports, been mixed. Some agree with the swearing policy because of the perception that bullying and fights at times start with abusive language. Others argue that swearing generally will not be stopped. The parental response has been supportive. But the nature of this support can, of course, take various forms as shown with one example of a parent suggesting to their child the use of alternative words when encountering the desire to swear, such as 'fruitcup'.[2]

But it is not the 'general' use of expletive words, such as those used in passing, which are considered the problem. It is the use of words that are expressed with the intent to intimidate people or to cause harm which are the focus of the anti-swearing policy. The policy, however, bans all swearing and will deal with all such instances. For example, expressing one's view of a class text by use of an expletive may result in removal from the classroom. In a more extreme context, where 'bad' language is used towards another person with an intent to be abusive, the result can be suspension from school.

Under the current regulations relating to student suspension, students can be suspended if they have threatened or perpetrated violence or if a student acts in a manner to threaten the safety or wellbeing of another in school. This may take the form of sexual harassment, racial vilification, bullying or verbal abuse.[3] If forms of swearing are to constitute verbal violence then the anti-swearing policy exists as another mechanism which targets student behaviour through interpretations of 'right' or 'wrong'. In effect seeing swearing as a verbal form of violence under the

education regulations increases the right of teachers to interpret this behaviour as justification for suspension from school.

The rights of suspended school students need to be given equal consideration by the anti-swearing policy. Mechanisms that ensure students suspended for exhibiting such behaviour are able to recognise and manage the reasons for their actions need to be included as an effective part of a policy that targets violent verbal abuse. If not, such a policy will target inappropriate behaviour in order to get rid of the 'troublemakers' and will not consider the causes of or reasoning behind the verbal abuse. Trouble makers too have the right to be educated.

Addressing issues with an attitude of zero tolerance makes use of 'trendy' terminology and may even present to the public eye a stronger commitment to dealing with these issues. However such a policy needs to be handled with care in order to ensure that the rights of all parties involved are seen to be included and balanced and not ignored as a slogan like 'zero tolerance' can suggest.

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1. *A Current Affair*, 1 July 1999.
2. *A Current Affair*, 1 July 1999.
3. South Australian Consolidated Regulations, Education Regulations 1997 — Regulation 40, Suspension of Students.

ADMINISTRATIVE LAW

By the by!

MARY-LYNN GRIFFITH asks: is the punishment of sleeping by the Darwin City Council legitimate?

By-law 103 of the *Darwin City Council By-laws* (by-law 103) provides among other things:

> 103: CAMPING OR SLEEPING IN PUBLIC PLACE
>
> (1) A person who ... sleeps at anytime between sunset and sunrise, in a public place otherwise than in a Caravan Park ... or in accordance with a permit, commits an offence.
>
> (2) An offence under clause (1) is a regulatory offence.[1]

The front page of the *Northern Territory News* (21 June 1999) reported that 62 homeless people were gaoled between January and June of this year for sleeping on public beaches and in public areas within the Darwin municipality, and failing to pay their $50-a-pop fines issued under by-law 103.

George Brown, the Lord Mayor of Darwin, said in that article: 'The by-law regarding sleeping in public places is about public safety. We have to protect the community and that's why we have these by-laws.'

By-law 103, while potentially jeopardising the freedom of a number of public-area-dwelling groups such as backpackers, is largely enforced against Aboriginal groups, a fact acknowledged by the Lord Mayor, who said in the same article:

> I believe that most of the people gaoled for sleeping in public are Aboriginal people who come from places like Groote Eylandt. A lot of people think they don't have to pay the fines but they do have the facility to pay. It's just that when they come into town they spend all their money on grog.

Background of by-law 103

In the last few years campaigns against itinerants (also referred to as the 'homeless', 'longrassers' and 'campers') have been mounted by politicians, the business community, and pursued and supported by some sections of the media. In 1996 such a public campaign was mounted, said to have been 'to some extent orchestrated by the demands of Lord Mayor, George Brown, to "harass" itinerants (most of whom are Aboriginal people) back to their communities'.[2]

Criminalising poverty

There is something reminiscent of by-law103 in the old offence of vagrancy. In the Northern Territory, under s.56(1) of the *Police and Police Offences Ordinance* (NT) 1923 (repealed in 1973), a person could be deemed idle and disorderly and found guilty of an offence and serve up to two months in gaol for 'having no visible (or insufficient upon inquiry by the Justice) means of support ...' Other offences in the nature of 'public order' offences remain in archaic forms in the *Summary Offences Act* (NT). The current by-law 103, if not penned in the same terms, seems certainly to be enforced similarly against the poor and homeless.

At a beach meeting held in June 1999 between Aboriginal campers and a variety of community agencies and local lawyers, campers confirmed that the City Council patrolling of the beaches around Darwin and other public places had increased dramatically in the last year. According to one senior officer at the Council, the Public Places patrol officers are rostered on five days a week over a 13-hour day.

The increase in patrolling is also reflected in the number of infringement notices issued. In the same *Northern Territory News* article, reference is made to a Report to the Community Services Committee that showed that the number of infringements issued from June 1997 to May 1999 (for offences in public places including sleeping in a public place) was just over 1800. The 62 imprisonments were reported to have resulted from the issue of 108 infringement notices under by-law 103.

TINES enforcement — the greater evil

The jeopardy of imprisonment of the homeless is inevitable given the choice of the council to enforce by-law 103 by way of infringement notice under the *Justices (Territory Infringement Notices Enforcement Scheme) Regulations* (TINES), a scheme created under Regulations to the *Justices Act* (NT).

The notice does not immediately convert to a warrant for imprisonment. If payment (currently $50 for sleeping out) is not received within 14 days of the issue of the notice, the Council must issue a 'courtesy letter'. The 'courtesy letter' adds on costs and gives the recipient 28 days to pay the increased amount or to notify the Council that they wish the matter to be referred to the court.

Very few itinerant people even receive the courtesy letter. The courtesy letters go to the recipient's stated address, which may be a remote community, or care of a Post Office. As personal service is not required, much of the correspondence is never received. North Australian