Tackling Alcohol Issues in Indigenous Communities – The Indigenous Communities Liquor Licences Bill 2002 (Qld) and The Community Services Legislation Amendment Bill 2002 (Qld)

The Indigenous Communities Liquor Licences Bill 2002 (Qld) and the Community Services Legislation Amendment Bill 2002 (Qld) are complementary pieces of legislation introduced into the Queensland Parliament on 6 August 2002. The Bills are part of the Government’s response to the interrelated problems of alcohol and violence in some Aboriginal communities identified by Justice Tony Fitzgerald in the Cape York Justice Study presented to Parliament in November 2001.

Nicolee Dixon
Research Brief No 2002/26
CONTENTS

1 INTRODUCTION .................................................................................................................... 1

2 CAPE YORK JUSTICE STUDY - ALCOHOL PROBLEM .............................................. 2
   2.1 APPROACHES AND VIEWS .................................................................................... 4
   2.2 STRATEGIES TO TACKLE ALCOHOL PROBLEMS ............................................. 5

3 CURRENT LEGISLATIVE FRAMEWORK ........................................................................... 6

4 COMMUNITY SERVICES LEGISLATION AMENDMENT BILL .......................... 7
   4.1 COMMUNITY JUSTICE GROUPS (CJGS) ........................................................ 7
      4.1.1 Legislative Underpinning for CJGs ...................................................... 8
   4.2 CONTROLLING POSSESSION AND CONSUMPTION OF ALCOHOL – ‘DRY’ PLACES ................................................................. 9
      4.2.1 Proposed New Provisions for Controlling Alcohol .............................. 9

5 INDIGENOUS COMMUNITIES LIQUOR LICENCES BILL ............................. 11
   5.1 GENERAL LICENCES FOR CANTEENS ....................................................... 11
      5.1.1 Proposed New Provisions for Canteen Licences ............................... 12
      5.1.2 Community Canteen Management Boards ....................................... 12
   5.2 RESTRICTIONS AND CONTROLS – ‘SLY GROG’ .............................................. 13
      5.2.1 Restricted Areas ................................................................................. 14
      5.2.2 Restrictions on Licensed Premises ...................................................... 15
   5.3 PROPOSED PROVISIONS ABOUT MAKING BY-LAWS FOR COMMUNITIES ...... 15
   5.4 ENFORCEMENT ......................................................................................... 16

APPENDIX A - ARTICLES .............................................................................................. 19

APPENDIX B– NEWSPAPER ARTICLES ........................................................................ 23

RECENT QPL RESEARCH PUBLICATIONS 2002 ...................................................... 40
1 INTRODUCTION

The Indigenous Communities Liquor Licences Bill 2002 (Qld) and the Community Services Legislation Amendment Bill 2002 (Qld) are complementary pieces of legislation introduced into the Queensland Parliament on 6 August 2002 by the Hon Judy Spence MP, Minister for Aboriginal and Torres Strait Islander Policy. The Bills are part of the Government’s response to the interrelated problems of alcohol and violence in some Aboriginal communities.

In July 2001, the Queensland Government requested Justice Tony Fitzgerald to examine the extent of social problems in Cape York and to recommend strategies to support the ongoing development of partnerships between the Queensland Government and Indigenous communities. The Cape York Justice Study was presented to Parliament in November 2001.

A whole of government response to the recommendations was seen as necessary and consultation with Cape York communities was undertaken over 3 months to obtain input at the ‘grass roots’ level. The Government adopted most of the Justice Study recommendations, as modified in accordance with community responses. A document, Meeting Challenges, Making Choices, outlines reform measures to address the alcohol and violence issues in the short and long term. The Bills attempt to facilitate a partnership approach with Indigenous communities to tackle those problems. The reforms include –

• transferring liquor licences from councils to community based Community Canteen Management Boards;
• providing for the declaration of restricted areas for the purpose of minimising harm caused by alcohol and minimising alcohol related disturbances;
• imposing strict conditions on hotels and roadhouses near Indigenous communities;
• strengthening and expanding Community Justice Groups (CJGs) and providing, for the first time, legislative backing and protection; and
• providing legislative power for CJGs to declare ‘dry’ places within the community areas to control the possession and consumption of alcohol.

Other measures concerning Indigenous communities are also outlined in Meeting Challenges, Making Choices but are not addressed in this Brief. Those include

1 The Hon Judy Spence MP is also Minister for Families and Minister for Disability Services, and Minister for Seniors.
steps to protect children, women and Elders from sickness and abuse; programs to improve the health and well-being of young people; strategies to improve safety; governance improvement mechanisms; support for economic development; and health initiatives.

2 CAPE YORK JUSTICE STUDY - ALCOHOL PROBLEM

Indigenous people at Cape York have very pronounced health problems. The mortality rate is 2-3 times higher than the overall Queensland population and alcohol related deaths are more than 21 times the general Queensland rate.\(^2\)

The Cape York Justice Study noted that while a smaller proportion of Indigenous people consume alcohol than the overall population (62% compared with 72%), those who do drink do so to a harmful or hazardous extent. Thus, around half of the adult Indigenous population are drinking in ways that jeopardise their health.\(^3\) It has been estimated that the per capita consumption levels in Cape York communities in 1996-97 (between 35-43 litres of absolute alcohol per annum) was around 4 times the national average (9.03 litres).\(^4\) While the focus of the Study was Cape York, the issues range beyond this area.

The outcome of excessive alcohol consumption is a society in which violence, injury and poor health flourish. Dealing with the consequences of alcohol consumption in some communities, even for those persons who do not drink, demands a large investment in time and in emotional and physical energy – eg stopping family members who drink from self-harm or from fighting, supplying food and caring for their children. The result is to place stress on the community.\(^5\)

Many submissions to the Cape York Justice Study indicated that alcohol abuse was the most pressing concern of Indigenous people and that if the issue could be addressed, violence would decrease.

The Justice Study noted that the availability of alcohol within communities from the early 1970s aggravated the already depressed conditions in which people lived. It also provided a diversion in a society otherwise devoid of entertainment from

---


television or radios. Alcohol began to take around 20% of income, thus setting in train a vicious cycle of greater poverty. Criminal activity that was virtually absent in those communities began to take hold. Paydays were often highlighted by heavy drinking followed by brawls and self-harm. Canteens selling alcohol were sometimes closed to allow ‘cooling off’, a period marked by better nutrition (more income spent on food than alcohol), a drop in injuries, and better health.\(^6\)

The Justice Study (at pp 58ff) sets out a catalogue of harms in such communities –

- violence and injury – although the relationship with alcohol consumption is complex, it appears well documented (eg high rates of injuries around payday but a marked decline on Sundays when the canteen was closed).\(^7\) Levels of violence appear to be increasing in Cape York communities. Hospital separation rates due to injury and poisoning are 3-4 times higher than for Queensland as a whole;

- poor health is prevalent and death rates attributed to alcohol are extremely high, with a significant increase since the 1970s and 1980s when canteens became established and Aboriginal people obtained direct payment of welfare benefits;

- foetal alcohol syndrome in infants due to maternal alcohol consumption;

- violence, abuse and neglect of children which can predispose children to fears for their safety and to health and behavioural problems later in life. The Commission for Children and Young People submission to the Justice Study noted that children, who represent around 47% of the Aboriginal population in Cape York, are the most significant and the most vulnerable client group and that high levels of abuse require resources to provide security for children at risk;

- many persons have a dual psychiatric problem and alcohol abuse problem for which there are few services available;

- income and workforce participation levels of Cape York Aboriginal people are comparatively low and many people’s income is derived from government benefits. Such factors are presumed to make those people vulnerable to substance abuse.

---

\(^{6}\) Justice Study, p 46, citing a Department of Aboriginal and Islander Affairs source, January 1980.

2.1 APPROACHES AND VIEWS

The Cape York Justice Study noted that there was no broad consensus amongst Cape York Aboriginal people (just as there is none within the broader community) regarding how to deal with the issue of alcohol abuse and misuse.

The Justice Study observed that at least one submission noted a pervasive view among Aboriginal people that the right to drink was an issue of right both for the individual and for the Aboriginal collective as an assertion of their basic entitlements as citizens (p 67).

The view that limitations on that right would amount to racism and breaches of human rights was, however, countered by a 1995 Report of the Race Discrimination Commissioner who pointed out that no individual has absolute rights to live as they choose and limitations on freedom for the common good, or for the prevention of harm to others or to the individual, or for protecting society are accepted and justifiable. Indeed, a number of submissions to the Study, including those from community members, clearly indicated that denying individual and community responsibility for alcohol abuse would not be tolerated when everyone is a victim of the consequences.

The need to contend with the ‘epidemic’ of alcohol and drug abuse by tackling the addiction problem head-on through a strategy of absolute intolerance, absolute enforcement of social order, and mandatory treatment finds a strong advocate in Noel Pearson, former executive director of the Cape York Land Council. He notes that the social and cultural pressure to drink in Cape York is very strong. He believes that addiction is a problem in itself and while not denying underlying issues and social problems of Aboriginal people, such as dispossession and marginalisation, considers that there must first be a real plan for curing the addiction before solving any deeper issues. He states –

_We must understand that while trauma, dispossession et cetera make our communities susceptible to grog and drug epidemics, they do not automatically cause abusive behaviour. … Addiction is a condition in its own right and it is just as difficult to do anything about an addiction if you are a socially and economically strong white professional that became addicted through careless drinking of exquisite wines, as if you are an unemployed member of a decimated and dispossessed Aboriginal tribe._

Mr Pearson suggests that Government policies and programs aimed at improving matters such as unemployment have had no real impact on the abuse epidemic because it is the latter that needs to be tackled immediately. He favours strategies

---


9 Justice Study, p 41.
relying on concepts of prohibition or limitation of supply. Other literature indicates that there are few mechanisms that enable a system of self regulation to work in Cape York.10

The counter argument is that there is a nexus between escalating contemporary problems in remote communities and historical factors such as government attempts to ‘protect and assimilate’ Aboriginal people; collapsing employment in the cattle industry; the introduction of the welfare based cash economy; and other pressures, particularly from the alcohol industry.11

The Justice Study stated an integrated and coordinated approach between communities and governments is required to tackle the problem. It concludes –

*The extent of alcohol consumption in Indigenous communities and the relationship to violence, injury and the criminal justice system is well documented.*

... 
*Alcohol consumption and its consequences have severely compromised the capacity of Cape York Aboriginal communities and their organisations (particularly the community council) to exercise self-management and self-determination....* 

*While extremely high alcohol consumption levels continue, there is little realistic possibility that the many other areas requiring change can be addressed. … ‘Band-aid’ solutions …can no longer be justified. (p 76).*

### 2.2 Strategies to Tackle Alcohol Problems

The Cape York Justice Study said that the strategies required to tackle alcohol problems in Cape York communities were similar to those to dealing with such problems in the broader community, albeit on a more epidemic scale. Those, briefly, include –

*• controlling supply and availability of alcohol, particularly of ‘sly grog’, mainly via government legislation and community council by-laws;*

*• controlling demand through measures such as education, advertising, support programs and advice, and the development of a community culture of intolerance of excessive consumption;*

*• harm reduction measures (eg responsible serving practices; women’s safe houses);*

10 For example, submission by Peter d’Abbs to the Justice Study.

11 Justice Study, p 43.
• screening and early intervention where health care workers in communities have the skills to identify individuals in danger of developing an abuse problem and to intervene appropriately; and/or develop skills and confidence of family and community members to support and encourage those identified individuals to seek help;

• treatment including detoxification; medications; evidence-based rehabilitation and relapse prevention matched to individual need.

Overall, a coordinated, regional public health approach was needed with an overriding aim of more effectively controlling the supply of alcohol in Cape York communities. Measures adopted would respect the rights of drinkers as citizens but would essentially have a focus on the right to safety, security and full realisation of potential life opportunities, especially for children (Justice Study, pp 76-77).

The strategies adopted must allow individuals and families greater control over drinking practices in their own homes and on traditional lands. Any mechanisms to address alcohol issues must involve community members and councils in their development and implementation and Government must take a lead role and not be stymied by a desire to achieve ‘community consensus’ when such may never be achieved (Justice Study, pp 77-79).

3 CURRENT LEGISLATIVE FRAMEWORK

It is only since 1965 that legislation allowed Aboriginal people in Queensland to legally access alcohol. Before then, however, illegal consumption in secluded places was not unusual and that, combined with binge drinking to avoid being caught with alcohol, made for problem drinking and paved the way for the current patterns of harmful and hazardous levels of alcohol consumption found in many communities. The Aboriginal and Torres Strait Islanders Affairs Act 1965 removed the prohibition on consumption and possession of liquor, but only off reserves.

Under Regulations to the Aborigines Act 1971, the Department head, in conjunction with Aboriginal councils, could establish a canteen on each community. The canteen was a business conducted by the Department who owned all of the facilities and held the liquor licences and could be closed down even without the council’s agreement. Initially, they were run on a very restricted basis, usually opening for only two hours each night and offering quite Spartan amenities. The profits tended to go to the Welfare Fund for a range of administrative functions (Justice Study, p 45).

12 Justice Study, p 45.
Currently Part 8 of the *Liquor Act 1992* (Qld) enables Aboriginal councils to apply for and exercise liquor licences and also, to consider applications for licences made by other persons. Part 4 of the *Liquor Regulation 1992* deals with making an application and states that the council must also forward particulars of any consultation with residents in the community area.

Pursuant to the *Community Services (Aborigines) Act 1984*, community councils may make by-laws for the purpose of regulating and controlling the possession or consumption of alcohol in its area. The *Liquor Act* provides that a licence term or condition can be overridden by such a by-law. Many councils have adopted model Law and Order by-laws developed by the Department of Aboriginal and Torres Strait Islander Policy (DATSIP) in consultation with councils. Those by-laws make it unlawful to consume alcohol in community council areas other than: in licensed premises, in a person’s home (with owner’s consent), or in a ‘wet area’. There are also provisions outlawing the sale of ‘sly grog’ in a similar manner to such provisions contained in the *Liquor Act*.

The process for adopting model by-laws and making council by-laws to provide enhanced powers for the control over alcohol will be encompassed by the new Community Services Legislation Amendment Bill (discussed below).

## 4 COMMUNITY SERVICES LEGISLATION AMENDMENT BILL

The Community Services Legislation Amendment Bill (CSLA Bill) will amend the *Community Services (Aborigines) Act 1984* (Qld) and the *Community Services (Torres Strait) Act 1984* (Qld) to recognise existing CJGs and enable the establishment of others, and confer power on them to make ‘dry’ place declarations.

### 4.1 COMMUNITY JUSTICE GROUPS (CJGs)

CJGs provide a means for members of Indigenous communities to plan and implement effective strategies to address local law and order issues, including making recommendations to government on justice matters, and also assist community councils to put appropriate by-laws in place. The CJGs are made up of Elders and/or persons with traditional authority to command the respect of the community.13 They have been operating in a number of Aboriginal and Torres Strait Islander communities since 1993 and are funded through the Queensland Government’s Local Justice Initiatives Program. Until the reforms under the CSLA Bill, however, they have operated without legislative protection and support.

---

13 *Meeting Challenges, Making Choices.*
The legislative framework for giving powers and recognition to CJGs reflects similar measures currently existing under Part 6 of the *Local Government (Aboriginal Lands) Act 1978*. As a result of amendments in 1995, Part 6 of the Act establishes the ‘Aurukun Alcohol Law Council’ as an advisory and decision making body recognised under Aboriginal tradition and allows it to operate following such tradition. The changes to the legislation to establish the Council had broad support, being the result of consultation and negotiation with the community in response to its concerns about alcohol related issues (Justice Study p 70).

The Law Council has a range of powers under the Act to control alcohol brought into the Aurukun Shire. This aspect is discussed below.

### 4.1.1 Legislative Underpinning for CJGs

The CSLA Bill will provide legislative support for the establishment by Regulation of a CJG for a community area – which includes Aboriginal and Torres Strait council areas and the Shires of Aurukun and Mornington. Note that Part 6 of the *Local Government (Aboriginal Lands) Act* will be repealed so that the existing Aurukun Law Council will be covered by the same laws for CJGs in other communities and be re-established as a CJG for Aurukun.

A Regulation will prescribe the number of CJG members, which may vary widely, as will eligibility requirements, nomination process, terms and duration of membership. The composition of any CJG will be an outcome of consultation to tailor the CJG to the particular circumstances and culture of each community. However, at least one member must be a representative of the main Indigenous social groupings in the area – generally traditional landowners or language groups but could include broader affiliations. That proposal is similar to currently existing provisions in the *Local Government (Aboriginal Lands) Act* for the Aurukun Law Council. The Justice Study said those provisions observed Aboriginal tradition and custom and its highly complex social structure (p 71). Also, CJG members must have good standing in the community, assisted by provisions for criminal history checks (with safeguards incorporated).

The CJGs have a range of functions that will now be recognised by law. Those include the power to declare ‘dry places’, and implement strategies to address justice issues affecting communities. To back up the new laws governing the operation of community canteens (see ICLL Bill below), the CJGs will now be able to make recommendations about matters such as opening hours etc. but not about staffing type matters. CJGs will also make recommendations to the Minister about

---

14 CJGs also have functions under other Acts (eg providing sentencing advice under the *Juvenile Justice Act 1994*).
declarations of restricted areas and prescribed amounts of alcohol permitted in them (see ICLL Bill, below). An additional $1m has been allocated to strengthen and expand CJGs.

### 4.2 Controlling Possession and Consumption of Alcohol – ‘Dry’ Places

The Aurukun Alcohol Law Council currently has powers under the *Local Government (Aboriginal Lands) Act* to control alcohol brought into the Shire, including declaring ‘controlled’ or ‘dry’ places, the latter being totally ‘no alcohol’ areas. A consultative process is set out for doing that which is essentially reflected in the new CSLA Bill, and will be explored in that context.

The Cape York Justice Study noted that the Act attempted to link the operations of Aboriginal custom and tradition with those of the mainstream legal system and regarded the meeting and consultation process for declaring a dry or controlled area as one which acknowledges the political life of Indigenous people (p 71). The Justice Study states –

> [The Act] allows for more appropriate dealing with the illicit alcohol trade into the community, since access roads, the barge landing, and the airport have been declared controlled areas with limits placed on alcohol carried by any particular vehicle … This potentially allows for more effective policing of the types and quantities of alcohol being brought in. The Act also allows individuals to have a degree of control over what happens in their own houses or outstations or on their own traditional lands, while preserving the rights of drinkers to have access to alcohol (p 72).

The Justice Study commented that there seemed no reason why similar schemes could not be introduced into other communities, possibly through amendments to the *Community Services (Aborigines) Act 1984*. As noted earlier, that legislation gives community councils power to make by-laws for the purpose of regulating and controlling the possession or consumption of alcohol in its area etc.

The Justice Study noted that use of the ‘dry’ areas approach in the Northern Territory had met with success in helping communities achieve better control over alcohol problems but that similar measures in Western Australia were less adequate due to lack of statutory support and enforcement (p 48).

#### 4.2.1 Proposed New Provisions for Controlling Alcohol

A CJG will have power to declare ‘dry places’ in a community area or amend or revoke such declaration. It will be an offence for a person in a ‘dry place’ to possess or drink alcohol (maximum fine of $18,750) or to be drunk in it (maximum
The declaration can be for a limited time (eg for a trial period of 6 months or for an event such as a football match). Once the declaration is made, the dry place must be marked by prominent notice for as long as it is in force.

The process for making a declaration in relation to public and private places will follow a similar pattern to the Aurukun model.

**Private places** are places occupied by people or by entities other than government bodies (eg homes in a township) or places to which people have the authority to control access under Aboriginal tradition (eg outstations). A **public place** is defined as a place other than a private place and would include roads, local government parks, schools, airports etc.

A CJG can make, amend or revoke declarations about **public places** on its own initiative. A community council or chief executive of a department could also apply for one. Declarations for public places can be suspended for 7 days, for example, to permit a function at which drinking may take place, provided it is in the best interests of the residents of the area.

However, if the declaration concerns a **private place**, it can only be made if the occupier or persons with authority to control access (traditional owners) have made written or personal application. Such application can be invited by the CJG – particularly useful if the occupier or traditional owners are reluctant to take the initiative. The new provisions are adapted from the Aurukun model. The Justice Study noted that the legislation behind that model recognised the Indigenous mechanisms under which various groups are related to certain areas and have authority over them. In addition, the requirement for initiation of the declaration to come from the owners of the private place recognised fundamental notions about personal autonomy and right to speak for traditional lands (p 71). Thus, occupiers and traditional owners are able to prevent people from bringing alcohol into their homes or coming there while drunk.

The declaration over a private place might be revoked in certain circumstances where the occupier or traditional owner is acting in a way that hinders its enforcement (eg an occupier allows drinking in their home in a selective manner).

Before a place can be declared to be ‘dry’, the CJG must undertake a process of notification (by way of a prominent notice setting out relevant details and inviting objections and submissions), consultation (with resident community members) and considering objections/submissions (by persons whose interests will be affected, or if a private place, by the occupier or traditional owner or a neighbour). Objections and submissions can be made in writing or personally, the latter recognising the importance of meetings and personal applications to Indigenous communities. The aforementioned procedure will apply also to amendments and revocations. Persons whose interests are affected by declaration decisions have rights of appeal to the Magistrates Court.
The Government will be helping CJGs to develop alcohol management plans to decide how to use their powers relating to dry places, licensed premises, and bringing alcohol into the community.\textsuperscript{15}

5  INDIGENOUS COMMUNITIES LIQUOR LICENCES BILL

The Indigenous Communities Liquor Licences Bill 2002 (Qld) (ICLL Bill) establishes the Community Canteen Management Boards to manage canteens and hold the canteen licences rather than the councils. It will also provide for controls on the quantity of alcohol brought into communities and for the imposition of conditions on licensed premises in surrounding areas.

5.1  GENERAL LICENCES FOR CANTEENS

Aboriginal and Torres Strait Islander community councils currently hold general liquor licences for canteens in Indigenous communities on the mainland. General licences allow the sale of alcohol for drinking on the premises and for takeaway purposes. Canteens are the standard outlets where communities can legally obtain alcohol. Profits were historically intended to be used to run council business undertakings but recent legislative changes have given councils greater discretion over their direction, enabling their use for any purpose that accords with the functions of the council. The councils appear to have grown increasingly dependent on those profits due to lack of an effective rate base or funding independent of Government controls (Justice Study, p 50).

The Cape York Justice Study concluded –

\begin{quote}
The dependence of councils on profits from canteens as the largest source of untied funds needs to be reduced or eliminated, to remove a critical area of pressure from drinkers and other interest groups. …
\end{quote}

\begin{quote}
An obvious way in which the conflict between the various current roles of councils in the sale and control of alcohol ... could be minimised, would be to separate the responsibility for developing and implementing the local policies and by-laws which control the supply and consumption of alcohol, from that for its actual sale (p 78).
\end{quote}

Some communities have already acted to modify and improve the ways in which their canteens operate. Some, for instance, have reduced operating hours or have made light beer cheap and full strength beer dearer. The Palm Island council has recently limited the sale of alcohol to beer only and has found that, among other positive outcomes, people are beginning to spend more time with their families.

Some communities have restricted alcohol trading, such as closing on Fridays.¹⁶ The Justice Study supported such initiatives and their use in other communities (p 51).

5.1.1 Proposed New Provisions for Canteen Licences

The Bill will enable a Regulation to be made to effect the transfer of general liquor licences currently held by the councils in 11 communities in northern and central Queensland to new Community Canteen Management Boards (the Boards). In addition, nobody other than a Board or prescribed entity can apply for a licence. However, a Regulation to bring about a transfer will be made only if the Minister has consulted with local residents and is satisfied that the transfer is necessary to prevent harm caused by alcohol abuse, misuse and associated violence in community areas. Thus, where alcohol problems and associated violence exist, a Board may be appointed to take over the licence and the operation of the canteen.

Management of the canteen will continue to be based in the community and the input of the CJG will ensure that it is run properly and to take account of the views of the community.¹⁷

The Bill states that the Government is not liable to compensate any entity as a consequence of the transfer. The Explanatory Notes state that this is because councils will still get the profits (p 4).

An amount of 75% of net quarterly profits from liquor sales at the canteen are to be returned to the council to ensure that councils are able to meet cashflow requirements. Also, after the Board has been audited, it then pays to the council, its net profits, less the quarterly amounts already paid. The CSLA Bill will mandate that profits must be used by the council to fund programs and services for the benefit of the community.

5.1.2 Community Canteen Management Boards

Community Canteen Management Boards will be established progressively by way of Regulation in communities with canteens. The Boards are intended to be small and comprised mainly of community members. The Justice Study considered that bodies running the canteens would need to be removed from internal community


pressures and commercial demands as well as internal political problems. It suggested that such bodies have representation from each community (p 51). The ICLL Bill will prevent members of a council being a Board member.

A Regulation will also prescribe matters such as eligibility and term of appointment and for criminal history checks. The canteen manager and a government officer will be ex officio members. The Government has allocated $0.13 to assist in start-up costs of the Boards with a view to their becoming self-sufficient.

As the licence holder, the Board’s function is to manage the canteen in a manner that prevents harm in community areas caused by alcohol abuse and misuse and violence.

The Boards must implement recommendations about the operation of the canteen made by the CJG for the community area. Those CJGs will make alcohol management plans to contain recommendations including opening times of canteens, types of alcohol sold, restrictions on takeaway liquor, and matters such as food service. If there is a disagreement about a recommendation, the issue can be referred to the chief executive for liquor\(^{18}\) for a final decision. Such impasse might arise because the Board might not consider that the recommendation is in the best interests of the particular community or the Board.

If the Minister is satisfied that certain circumstances have occurred (eg a Board has acted corruptly or unlawfully; there is official misconduct; there is serious financial mismanagement), the Governor in Council will be able to appoint an administrator to take over the Board’s functions and powers and report to the Minister.

### 5.2 Restrictions and Controls – ‘Sly Grog’

The Cape York Justice Study noted that ‘sly grog’ brought illegally into communities by persons in their bags, vehicles or other means contributed to violence and other problems in communities. The sly grog was often consumed off-site and drunk people came back. It usually involved more potent spirits or wine than the canteen supplied beer. Indeed, getting in the sly grog appeared to present a challenge and diversion from boredom for some individuals (Justice Study, pp 46-47). The Study considered that the issue was one requiring immediate attention through legal enforcement of existing laws that restrict alcohol, and through further legislation.

The *Liquor Act* will be amended by the ICLL Bill to facilitate the alcohol control measures being taken in a number of Aboriginal communities and will regulate the

---

\(^{18}\) Currently the chief executive of the Department of Tourism, Racing and Fair Trading.
amount of alcohol brought into the community. The aim is to stop the infiltration of sly grog into communities by restricting quantities in prescribed areas. To prove a breach of those prescribed limits should be easier than to prove ‘sly grogging’.

5.2.1 Restricted Areas

A community area or part of an area can be declared under Regulation to be a ‘restricted area’ if required for minimising harm caused by alcohol and associated violence, alcohol related disturbances, or public disorder in a locality. Thus, it may cover a community area or a larger area.

The consequence is that a further Regulation may then declare that a person must not, in a public place in a restricted area, have in their possession more than a prescribed quantity of alcohol, unless they have a restricted area permit (explained below). Note that the Minister must consult the CJG for the community area if either of the foregoing declarations is to be made and consider its recommendation – usually emanating from the alcohol management plan developed by the CJG.

If a regulation is made controlling the amount of liquor in a restricted area, the chief executive must signpost the places where roads enter the area (the sign containing all relevant details about the restrictions), put a notice in the newspaper and advise the local government and other specified persons.

A new ‘restricted area permit’ will be created. Such a permit authorises the permittee to have in their possession in a public place in a restricted area more than the prescribed quantity of liquor for the area at particular specified times for specified purposes. Conditions may be imposed on the permit. A restricted area permit will generally be for the purpose of holding an event or function at which alcohol might be consumed in greater quantities than would normally be allowed under the declaration. In determining whether to grant the permit, the chief executive has to be satisfied that the amount to be brought in is reasonable in the circumstances.

Contravention of the restrictions will be an offence. A first offence will expose a person to a $37,500 fine and the penalty will increase for repeat offences, the maximum for a third offence being 18 months gaol or a $75,000 fine. The penalties mirror existing penalties in the Liquor Act and, in this instance, recognise the trouble caused by sly grog offences where wrongdoers profit from susceptible individuals.

---

19 A carrier or delivery person is excluded when making business deliveries to licensed premises (but not to a member of the public).

20 Hon J C Spence MP, Indigenous Communities Liquor Licences Bill 2002 (Qld), Second Reading Speech, p 2633.
5.2.2 Restrictions on Licensed Premises

The *Liquor Act* will also be amended to enable the imposition of strict conditions on hotels and roadhouses near Indigenous communities. While the provisions are general in application, it appears to be envisaged that the focus of restrictions will be on places near communities.\(^{21}\)

The chief executive will be able to impose conditions on licences and permits at the time of grant or at a later time to minimise harm or to respond to any alcohol related disturbances or public disorder.

In addition, the chief executive will be given extended powers regarding variation of licences to allow all licences in a restricted area to be varied in the same way for harm minimisation purposes. The variation may be in relation to matters such as hours of operation, the type, amount and availability of the liquor sold (eg no cask wine) and responsible practices in relation to service (eg prohibiting takeaway sales of alcohol to taxi drivers; forbidding the licensee from holding a person’s banking account details). Variations will not give rise to compensation.

Where an application for a licence in a restricted area is received, comments can be invited from bodies such as the local government for the area, or the CJG. A conference of concerned persons, at which the CJG can be invited to participate, may also be called to attempt to reach agreement on issues of concern.

Currently the *Liquor Act* allows councils to complain to the chief executive to consider cancellation or suspension of a licence in a community area on a number of grounds, including if the sale of liquor is the cause of regularly occurring disorder or breaches of the peace in a community area, or is a detriment to the health and well-being of the community, or is a source of danger to the life or safety of members of the community. The Bill will now permit *any person* to make a complaint as well as councils.

5.3 Proposed Provisions About Making By-Laws for Communities

The *Explanatory Notes* for the CSLA Bill state that the existing process under the *Community Services (Aborigines) Act* is not well defined and has resulted in delays because of requiring the approval of the Governor in Council (p 2). The Bill will adapt some of the mainstream local government processes of the *Local Government Act 1993* to allow councils to respond quickly to the need for by-laws dealing with law and order issues etc.

\(^{21}\) Hon J C Spence MP, Second Reading Speech, p 2633.
Accordingly, the CSLA Bill sets out a new procedure about making by-laws and subordinate by-laws, enabling the Minister to publish a model by-law in the Gazette as suitable for speedy adoption by an Aboriginal council. Suitability depends on matters such as compliance with State interests and being within the realm of Aboriginal council functions. The Bill then sets out steps for consultation on proposed by-laws and subordinate laws if such is considered necessary. If the council wants to make a by-law or subordinate law, it must fulfil the State interest requirements and follow the procedural steps set out in the Bill.

5.4 ENFORCEMENT

As the Cape York Justice Study noted, the usefulness of the laws as a response to the issues identified in the Study depends on the adequacy of enforcement (pp 72-73). It recommended that the State police support the efforts of Cape York communities by facilitating effective enforcement regimes.

Enforcement is generally carried out by the Liquor Licensing Division (LLD) of the Department in relation to offences committed by licensees. State police and LLD officers can issue infringement notices for offences (eg unlawful possession or consumption), or if more serious, recommend prosecution in the Magistrates Court. The Justice Study recommended that Indigenous community police, who enforce by-laws, could be trained to issue enforcement notices.

The new CSLA Bill will provide power for State police officers to authorise Indigenous police officers to take enforcement action (inside the community area) in relation to offences relating to restricted areas (sale without a licence and sale/exposure of liquor in licensed premises without a licence) under the Liquor Act and to dry places (possession or consumption or being drunk) under the Community Services (Aborigines) Act. Some additional funding is being provided.

The Aboriginal police officers may be authorised to exercise the powers of an Investigator under Part 7 of the Liquor Act or a police officer under relevant provisions of the Police Powers and Responsibilities Act 2000. Such appointment is made only, for example, after appropriate training.

A new provision of the Liquor Act will provide powers for Aboriginal or Island police officers to act as Investigators to enforce the above liquor offence provisions in the community area for which the officer holds appointment. The new Investigator powers will include –

- stopping and searching vehicles, boats etc if it is suspected on reasonable grounds that they are being used in committing an offence;

- entering and searching places to monitor compliance, including places declared to be dry places;
• entering and searching a place if there is reasonable suspicion it contains evidence of an offence. They can also measure or test and take a sample to determine if something is liquor;

• seizing property to prevent concealment etc or the repetition of the offence of possessing more than a prescribed quantity of liquor in a restricted area or possessing or consuming it in a dry place. Small amounts of alcohol worth less than $50 can be forfeited on the spot to prevent further offences and no compensation is payable. Forfeiture of seized property of greater value other than liquor (eg vehicles used to commit the offence) has more safeguards attached. Compensation is payable if loss results from an unreasonable exercise of power;

• moving the property and restricting access to it. An offence is also created for tampering with seized property to which access is restricted.

New powers will be provided to State police officers under the *Police Powers and Responsibilities Act 2000* to stop vehicles and search them and to seize sly grog or vehicles used to transport it. This is an extension of current powers to stop vehicles to enforce transport legislation and conduct random breath testing and is designed to overcome the fruitless endeavours of roadblock attempts in detecting sly grog activities. Police can also seize and dispose of liquor in certain circumstances. The new powers will apply to monitoring and enforcing offence provisions regarding having more than the prescribed quantity of liquor for a restricted area, possessing liquor in a ‘dry’ place, public drunkenness, and drinking in a public place.
APPENDIX A - ARTICLES

Title  Dispute over indigenous communities report

Date Issue  AM - Thursday, March 21, 2002 8:27

LINDA MOTTRAM: A report by Queensland police corruption reformer, Justice Tony Fitzgerald, promised new hope for indigenous communities drowning in violence and alcoholism but Aboriginal leaders are now threatening to withdraw any support for the Cape York Justice Study claiming that the report is being foisted on their people by a paternalistic state government.

The Queensland government has hit back suggesting that vested interests are holding back reform.

Annie Guest reports.

ANNIE GUEST: Justice Tony Fitzgerald visited communities on Cape York Peninsula rife with domestic violence, alcohol addiction and poor health, before preparing his report last year. He made several recommendations, including removing control of alcohol sales from community councils.

This angered their peak body, the Aboriginal Coordinating Council, which says the move is part of a wider paternalistic approach.

Fifteen angry community chairmen met yesterday in far north Queensland. Council Chairman, Thomas Hudson, says the last straw has been inadequate consultation over the study's recommendations.

THOMAS HUDSON: And it hasn't been on to the ground consultation so that's where the focus is lost but the content of the document basically telling us something that we know years ago.

ANNIE GUEST: There was a frosty reception for Queensland's Aboriginal and Torres Strait Islander Policy Minister, Judy Spence, including posters declaring "self-empowerment out the window" and "partnership not dictatorship" but the atmosphere grew frostier after the Minister suggested to the media the council may have other reasons for its concerns.

JUDY SPENCE: Justice Fitzgerald has clearly said that vested interests will oppose many of these recommendations and I put it to you that the people that you've been talking to today are those vested interests and they are very concerned about some of these recommendations.

ANNIE GUEST: The Chief Executive of Kowanyama Community, Bob Sands, says the Minister is implying councils have a vested interest in alcohol sales. He says councils across Australia use canteen profits for community projects.

BOB SANDS: You can take the pubs away from our community but it's not going to stop the problem. We need you to show leadership and get with the council not making statements about us having vested interests.

ANNIE GUEST: The council claims governments have reacted with disinterest to two similar studies by indigenous people but the Minister says the reports have been taken seriously because the government is very concerned about the poor state of many Aboriginal communities.
The government says recommendations made by the Cape York Justice Study could provide hope for all of Australia's indigenous communities but it remains to be seen whether Justice Fitzgerald's plan can be implemented without the co-operation of Aboriginal community leaders.

BOB SANDS: Aboriginal people have a very, very good passive resisters. You can talk to us today and say do you understand and all at a time we're saying yeah, yeah, yeah but we don't give a stuff about what you're trying to solve, you know, we can resist it because it's not ours. We've got to solve the problem. I mean this been proven in indigenous people right throughout the world.

LINDA MOTTRAM: Bob Sands, the Chief Executive of Kowanyama Aboriginal Community on Cape York. That report from Annie Guest.
MARK COLVIN: In another attempt to end what it says is a cycle of poverty, tragedy and despair in Aboriginal communities in Cape York, the Queensland Government this afternoon released another report.

It's not the first report to try to tackle problems such as alcohol abuse in isolated communities, but this time the Queensland Government says it won't flinch from pursuing the recommendations of the Cape York Justice Study - written by former corruption inquiry head Tony Fitzgerald.

IAN TOWNSEND: There have been earlier reports, much earlier attempts to repair what Justice Tony Fitzgerald describes as a breakdown in social cohesion and an acceptance of alcohol abuse as normal in the small Aboriginal communities that dot Cape York Peninsular.

TONY FITZGERALD: Alcohol abuse and violent misconduct have become socially normalised in these communities, instead of being regarded as aberrant behaviour, they're regarded as usual behaviour.

One of the consequences of that is that the role models available to children - and I don't mean that there aren't good people there, or that there aren't good role models - but common role models are people who have problems with alcohol and who are all too readily, all too often involved in violence.

IAN TOWNSEND: Tony Fitzgerald spent four months visiting the Cape and writing the interim report, which will spend the next three months being read by the communities before the recommendations are acted on.

But some of the recommendations will be controversial. They include the possibility of banning the sale of alcohol, again in some circumstances, and the possibility of the Government taking over the community-run canteens.

Premier Peter Beattie expects criticism.

PETER BEATTIE: We expect this report to have its share of critics. This issue has been one that's been, I guess, badly handled for a long period of time. Government took the view that if Tony Fitzgerald recommended ways that we could do things better, then clearly we were going to act on that, and to consider how to do that.

We're not running away from the fact that we're not perfect, of course we're not perfect. If Government was handling this perfect, and then handled it well over the last almost 200 years, then we wouldn't have the crisis situation we have in Cape York at the moment.

IAN TOWNSEND: It's all been said before, the problem's been pointed out many times - most recently in a report by the Aboriginal and Torres Strait Islander Women's Task Force on Violence, back in March 2000.

This time, Queensland Premier Peter Beattie, says this action plan will be pursued. He is calling the heads of Queensland Government Departments
together tomorrow to address one of the recommendations - the need for a single government unit, representing all departments, to deal with Aboriginal communities.

PETER BEATTIE: We needed a whole of government approach for that, for this whole community, and I think this gives us a direction, a recommended specific direction, that’s come out of this report. I think, and that’s just not to in any way belittle what Bonny [phonetic] or anyone else has done. This gives us, I think, the impetus and the, I guess, the purpose to go ahead and make the changes that need to be done.

IAN TOWNSEND: And Tony Fitzgerald summarised the two most crucial, but controversial, issues in dealing with alcohol abuse in Cape York communities.

TONY FITZGERALD: One is about the canteens, and to my mind it’s just totally unsatisfactory to expect the leadership at the one time to help the people forward, and at the other time to try to sell them alcohol to make profits to do the routine work in the community.

And the other issue, if I could just briefly deal with it, is this question of rights. There is a right in indigenous individuals, the same as there is in every other Australian over the age of 18 as I understand it is in this state, to drink alcohol. And no-one suggests otherwise. There is also a right to be, to be safe. There’s no right to drink alcohol to excess and to hurt other people and in particular, to hurt women and children.

Now the purpose underlying this report is an attempt to help the communities to take responsibility themselves for ensuring that individuals in the communities stop abusing alcohol and stop hurting other people.

If the communities can’t do it, then in my view - the Government may not endorse this - but in my view if the communities can’t do it, the Government owes a responsibility to the women in those communities and to the children in those communities, no different from that which it owes to every other citizen of this state, and that’s to keep them safe.

IAN TOWNSEND: The report’s being released to the public and there’ll be three months for people to respond.

MARK COLVIN: Ian Townsend reporting.
APPENDIX B– NEWSPAPER ARTICLES

Title  Laws curb Cape grog smuggling
Author  Stefanie Balogh
Source  The Australian
Date Issue  06/08/02
Page  3

Police will have the power to search and seize cars involved in smuggling sly grog into Cape York communities under long-awaited reforms to curb drunken violence in Queensland’s north.

The new laws, to go before state Parliament this week, also give police and liquor licensing authorities the power to seize and destroy small amounts of banned alcohol.

Larger amounts of alcohol, and cars involved in importing sly grog into communities, can be confiscated.

The changes form part of the Beattie Government’s response to last year’s Cape York justice study into alcohol and violence, which was prepared by retired judge and crime-fighter Tony Fitzgerald.

Under the reforms, Cape York’s 19 indigenous communities also will be given the power to declare parts of their townships dry and dictate what type of alcohol is consumed in their townships.

Detailing the laws yesterday, Aboriginal Affairs Minister Judy Spence said “sly groggers make enormous profits by exploiting individuals and families, and the exorbitant prices many people pay for sly grog lock them into a cycle of poverty that compounds their alcohol dependency”.


Police will be given tough new powers to seize alcohol and property and search cars in Queensland’s 19 Aboriginal communities under laws to go to State Parliament this week.

State Cabinet yesterday approved the laws which emerged out of last year’s landmark Cape York justice study by former corruption buster Justice Tony Fitzgerald.

Queensland’s Minister for Aboriginal and Torres Strait Islander Policy Judy Spence said the improved police powers would help stamp out illegal alcohol sales, or sly-grogging.

"Sly-groggers make enormous profits by exploiting individuals and families and the exorbitant prices many people pay for sly grog lock them into a cycle of poverty that compounds their alcohol dependency," Ms Spence said.

Also under the laws, each community will have a justice group which will have the power to declare dry areas. Licences for canteens will be transferred from indigenous community councils to community liquor licensing boards appointed by the minister.

Ms Spence said this would end conflicts of interest between councils’ civic responsibilities and the drive to profit from alcohol sales.

However, Palm Island Aboriginal community council has sought to be exempted from the laws.

Palm Island deputy chairman Alfred Lacey said the council already had instituted alcohol restrictions on the island and questioned if the Government would supplement the community for income lost from alcohol sales.

"They need to fund (Aboriginal) councils to the normal limit of any other local government shire," he said.

ATSIC commissioner Jenny Pryor said the Government was attacking the symptoms rather than the real issue which was lack of economic opportunities.

"This type of (legislation) is going to create binge drinking," she said.

However, Ms Spence said communities were already starting to see results from local approaches to the alcohol problem.

A move by the remote Lockhart River community to close its canteen had seen a fall in the number of people reporting to the local medical clinic and a 13 per cent rise in grocery sales, she said.
Indigenous communities will be given the power to crack down on alcohol abuse.

Community councils will also lose control of alcohol canteens, removing their vested interest in maximising sales to fund council activities.

Premier Peter Beattie said yesterday that the changes would be accompanied by extra police powers to crack down on sly-grogging in a co-ordinated response to a report produced last year by former Appeal Court judge Tony Fitzgerald.

"The bottom line is that we are either serious about tackling this problem or we're not," Mr Beattie said.

"Alcohol is killing a whole generation of young indigenous people and it's leading to domestic violence ... where women are being bashed and raped on their communities.

"We will not settle for half-measures in tackling these problems because the wellbeing of children is at stake."

Mr Fitzgerald’s report, released in November, linked alcohol abuse with widespread community violence.

It called for significant reform in liquor laws and big increases in spending on health.

It also called for the possible establishment of an alcohol detoxification centre on Cape York to deal with the results of a crackdown on alcoholism - a recommendation the Government said yesterday was also being addressed.

Mr Beattie said changes adopted by Cabinet meant community justice groups on 19 mainland communities would formulate alcohol management plans enabling them to declare dry areas.

The groups would also be able to direct types and amounts of alcohol for sale at canteens or hotels on or near communities, particularly with regard to takeaway sales.

The Government would also appoint three-person community liquor licensing boards to run community canteens, breaking the nexus between alcohol sales and community incomes, given that under current arrangements, canteens are run by community councils.

"These laws give us a new armoury for overcoming alcoholism and violence in these communities," Mr Beattie said.
The changes also provide extra powers for police, meaning they will have greater powers to stop and search vehicles and will be able to seize sly grog or vehicles used to transport it.

Indigenous community police will have new power to enforce the liquor laws.

Liquor licensing authorities would also have new powers to ban sales of cask wine and the hiring of taxi drivers to buy takeaway alcohol or the practice of licensees holding the keycards of their customers.

Aboriginal Co-ordinating Council deputy chairman Alfred Lacey yesterday said the State Government had acted too late to address the issue.

"The Government is behind the eight ball, they should have done this 12 months ago," he said.

"It's a little too late because a lot of the communities including my own at Palm Island are already implementing strategies to restrict alcohol."

Mr Lacey also called on the Government to hand control of local supermarkets to the communities.

KEY RECOMMENDATIONS

ON ALCOHOL

* Ban community-run canteens.
* Premier's Department to license outsiders to run canteens subject to strict and proper enforcement.
* All indigenous communities to develop action plans to slash alcohol abuse.
* Proper policing of sly grogging.

ON VIOLENCE

* Safe houses and haven areas for women and children.
* Possible youth curfews.

ON GOVERNMENT

* Proper co-ordination of indigenous policy through Premier's Department.
Aboriginal men are taking the first step in the battle to stop grog ruining their communities, reports Ashleigh Wilson.

With a fishing line resting lightly on his finger, Freddie Shortjoe looks out across the Wenlock River, a crocodile and shark-inhabited expanse near the tip of Cape York, and recalls, with envy and remorse, the time before alcohol had taken its place in the lives of his people.

"Back then, we weren't allowed to go into pubs," he says.
"Then we got our freedom."

In his home town of Porpuraaw in Cape York, Shortjoe, 54, has seen the destruction caused by alcohol and drugs: the young fellas who bash the women and abuse the elders, stumbling drunk around the streets at night, smashing bottles and "getting into mischief".

"That's how a lot of young people are in jail, see," he says as he sits on the sand and waits for the fish to bite.
"Terrible."

Last month, Porpuraaw extended the opening hours of its canteen to reduce the amount of alcohol in the streets and homes. Shortjoe hopes this will help, but like the other men who came together this week to talk about how to improve the health of their communities in Cape York, he admits it will take a long time before they can make any difference.

About 80 men - community leaders and representatives from Aboriginal communities around Cape York, and a handful of health workers and government agencies - met at Mapoon, a dry community near Weipa in the cape's northwest, to discuss the problems and what they could do.

As Shortjoe's brother Jackson says: "The men get together, then the women, and then we all can talk."

The Cape York Men's Forum was the second of its kind after a similar event last year, but this time they were there to talk about alcohol abuse and domestic violence - the two vices that retired Queensland judge Tony Fitzgerald found in his Cape York Justice study last year had reached unprecedented levels.

"Fitzgerald said something we've known about for a long time," says Bernie Singleton, chairman of the Apunipima Cape York Health Council.

"We want to get a better lifestyle, but it's going to take a lot more meetings before we actually see things on the ground."
But by taking the first step, we will go from there.

On the agenda were general men's health issues - personal healthcare, sexual health, the need for regular check-ups - but the twin problems of alcohol and violence took centre stage.

Indeed, as activist Noel Pearson argued in a 90-minute speech to the group, once the problem of substance abuse is solved, the rest will follow.

It does no good to focus on crowded living conditions, poverty, poor health or displacement without dealing first with the grog, he said.

"It's not just a matter of just wanting to be hard, we have to be honest about the nature of the problem," Pearson told the forum on Wednesday.

While saying he was not advocating prohibition, Pearson admitted his views had hardened over time.

Now, he says, it is important to support the people who are trying to fix the problems, including women's groups such as the one that patrols Wujal Wujal at night. Pearson, originally from Hope Vale - "a largely lawless place today" - put forward several solutions, including compulsory rehabilitation, a ban on grog outside canteens and a return to an uncompromising, zero-tolerance Aboriginal law to bring offenders into line.

Create an alcohol-free environment, learn how to drink moderately like the French and Italians, stop looking for excuses, and understand the nature of addiction and what it can do.

"Grog is the quickest destroyer of our culture," he said.

"If we don't get on top of it, we're going to be like black and brown-skinned whitefellas: no culture, no language, and we will wonder why we lost all of it."

As Pearson spoke, the men sat in silence under the white tent on the sand beside the mouth of the Wenlock River, keen to improve the lives of their communities but unsure how to make it happen.

Some reflected on the turn-out at the forum as a sign that much work still had to be done.

Ten leaders from each of the 17 Cape York communities had been invited to the three-day forum, but many did not turn up.

No one came from the community of Aurukun, the place that several other community leaders pointed to as one of the worst-affected towns.

Important groups such as the Aboriginal Co-ordinating Council and the Cape York Land Council were also absent.

Paddy Liddy, who had travelled to the forum from Cooktown, says only three of the eight people invited had come with his group.

The others had been "bailed up by their wives" at home.

His outlook is positive, but he knows only small steps can be taken at this stage. "We're here to listen to some of the problems, then go back and try [to] get the other people together," he says.

After Pearson's speech, the two local members of parliament present, Warren Entsch (federal) and Steve Bredhauer (state), claimed support for the reforms.
Bredhauer says legislation will soon be introduced into the Queensland parliament to give power to the independent boards who run canteens - to be set up as part of the state government response to the Fitzgerald report - so they can enforce restrictions in consultation with local justice groups.

"Those groups will have the power to make decisions about how and where alcohol is available in the community, and the decisions of those boards will be enforceable at law," he says.

Entsch suggests financial incentives for any communities that want to remove canteens but are reluctant because of the income that will be lost.

"If we can invest a few million dollars to deal with the alcohol, it will be a hell of a lot less than the tens of millions of dollars of cleaning up the mess," he says.

Victor Lawrence has his own ideas about dealing with the mess.

As chairman of the elders' justice group in Coen, the 56-year-old says advising magistrates to sentence offenders to local station houses rather than jails helps retain community harmony.

As for a ban on alcohol, Lawrence says he would prefer to get rid of the "hot stuff".

"Beer don't make them fight," he says.

"But the hot stuff, like whisky and rum, that's the stuff going to make them fight."

There is also a concern among some of the elders that the young people are no longer giving them the respect they believe is due.

But for the nine-member delegation aged 16 to 27 who travelled to the forum from Mossman Gorge, the old men need to earn their respect without a bottle in one hand.

Still, they want to find solutions and Matthew Gibson, 19, says he feels a responsibility to modify his behaviour as an example to the younger people.

"Being a good role model, that's what they need," he says.

"It would be a good thing that I can't drink because all those little fellas are watching and it would probably make you stronger as a person."

For all the despair about the violence and substance abuse, and the urgency of a significantly reduced life expectancy, most of the community leaders are hopeful.

Stretched between two trees beside his campsite is a painting by Wujal Wujal man Cedric Friday, 44.

It depicts a group of people sitting around a fire next to a waterfall and above it is written, in Kukuyalanji: "Old man and young man talking together." This, says Friday, is the point, the first step that needs to be taken.
The 2002-03 Budget will start the process of implementing reforms arising from last year’s Cape York Justice Study aimed at reducing alcohol abuse and violence in indigenous communities.

Reforms include the transfer of liquor licences from community councils to community-based boards, expanding and legislatively backing community justice groups and creating employment opportunities in remote areas.

Of the department’s $108 million budget, $3.13 million was earmarked for Justice Study initiatives, including $1 million for the strengthening of existing community justice groups and the establishment of groups on communities currently lacking them, $1 million for a Cape York Partnership Unit in Cairns and secretariat in Brisbane, $500,000 to employ environmental health workers in remote communities and $500,000 boost to community councils to fund municipal services.

A further $9 million will be spent improving water, sewerage and other health-related infrastructure on remote communities.

Other funds allocated outside the departmental budget included the $55.4 million stolen wages reparations offer by the Queensland Government.

Spending in other portfolios included $71.6 million for housing and $1.7 million for Palm Island police station.
An Aboriginal child born in a Cape York indigenous community can expect to die 20 years earlier than any other Queensland boy or girl.

The mother of that child is also much more likely to be bashed or raped than women living elsewhere in the state.

Should the rights of Cape York women and children to a life free from violence and sexual assault continue to be ignored in order to protect the unfettered right to drink alcohol?

It has taken up until now for a government to answer with an emphatic "no", and introduce measures to stop alcohol addiction wiping out generations of people on the Cape.

The Beattie Government's response to Justice Tony Fitzgerald's Cape York Justice Study, detailed yesterday in Parliament, was described by Aboriginal lawyer Noel Pearson as a "giant step forward" in breaking the deadly grip alcohol has on the economic and social potential of these communities.

We agree with Mr Pearson's assessment.

The Government has moved to break the self-defeating arrangement whereby elected councils charged with properly administering communities also have a monetary interest in selling as much alcohol as they can in those communities.

That this has continued, with one hand of the council constantly trying to stay the other, is the major reason why past efforts to reduce alcohol abuse on the Cape have failed.

Community-based boards, made up of residents and government representatives, will now manage wet canteens.

Commercial centres offering "takeaway" near remote communities will have new restrictions on how much alcohol they sell and to whom they sell it.

The Government will make another attempt - more concerted and informed than before - to end sly grogging.

The opposition to Justice Fitzgerald's report was based on its perceived threat to those who treasure the right to drink alcohol and believe restricting or regulating the sale of alcohol in communities infringed that right.

Doubtless the Government would have encountered that opposition during its consultations with more than 700 people involved in the Cape York communities since Justice Fitzgerald's report was tabled last November.

Thankfully it has not allowed political expediency to influence its approach to the problem.
Striving for consensus in this area only serves to detract from the central cause of the problem: alcohol.

Minister Steve Bredhauer's tears in Parliament yesterday demonstrated how anyone with more than a passing interest in the future of the Cape's indigenous population has long despaired at how alcohol addiction is destroying these communities.

Mr Bredhauer is 44.

If he was an Aborigine living in a Cape York community, he probably would not have long to live.

Instead, he is watching his friends on the Cape dying because of alcohol.

Yesterday, this staunch member of the Left of the Labor Party had a message for those who would accuse the Government of paternalism in its approach to the problems of Cape York indigenous communities - no more excuses.

For the sake of the children of Cape York, it is a message that ought to be heeded.
A crackdown on sly grog and an end to councils running canteens are part of a package announced by the Queensland Government yesterday to help indigenous communities.

Premier Peter Beattie released the Government’s response to a major study by former corruption-buster Justice Tony Fitzgerald into the state of indigenous communities in Cape York and other recent studies.

Under the reforms, the Government will transfer the liquor licences from indigenous councils in 11 communities in northern and central Queensland to new community canteen management boards.

Mr Beattie said the move would end a potential conflict of interest between councils' reliance on alcohol sales and their health and social responsibilities.

Strict conditions would be placed on hotels and roadhouses near indigenous communities.

Police and liquor licensing officers would get more resources to crack down on illegal alcohol sales, or "sly grogging", and local community justice groups would be given powers enshrined in law to determine where and how much alcohol could be consumed and carried.

Mr Beattie told State Parliament that governments, including his own, in the past had failed adequately to address the link between alcohol and violence in indigenous communities.

He said the Government’s response was written largely with indigenous young people in mind.

"We simply could not afford to continue to go down the established policy road knowing these children would probably experience violence and addiction, risk imprisonment and die 20 years younger than non-indigenous children," Mr Beattie said.

The $5.6 million plan also includes support for innovative business projects including a sponge farm on Palm Island, an organic tea farm in central Queensland and a bakery at Hope Vale.

Aboriginal and Torres Strait Islander Affairs Minister Judy Spence said the Government had received more than 700 submissions and consulted widely over the plan, but she expected putting the plan in place would not be easy.

Opposition indigenous affairs spokesman Vaughan Johnson said he supported the broad thrust of the plan, but was critical of the consultation process.
Aboriginal and Torres Strait Islander Commissioner for North Queensland Jenny Pryor said the Government should not be focusing on alcohol.

"Here we homing in on alcohol, drugs and domestic violence - these are symptoms of major problems that are causing these social issues in the community," Ms Pryor said.

"We need to address the poor housing conditions, employment opportunities and education.

"If you talk about giving people real jobs and building up their self-esteem, then they change their lifestyle, so there is a reconditioning of lifestyle and lifting the level of advantage."

Ms Pryor said the State Government's plan to set up a drug and alcohol "rehabilitation service hub" on Cape York would not be effective.
Title  Building a new order  
Author  Noel Pearson  
Source  The Courier-Mail  
Date Issue  08/04/02  
Page  9

It is a long-repeated observation that the social breakdown in Aboriginal communities is related to the breakdown or diminution of traditional authority structures among Aboriginal people.

If not only traditional authority, then the removal of what anthropologist Peter Sutton calls the disciplinarian regimes that prevailed when the missions and the state government held authority over our people, which provided a kind of social order.

My own view of the history of Hope Vale was that social order was provided by a combination of traditional indigenous, Christian religious and mission/state institutional authority - it wasn’t just a matter of mission/state institutional authority alone.

Our people were not passive in the rebuilding of families and the mission community.

The elders of the community carried authority which was consistent with their traditional relationships with community members (and the relationships that they formed with the children that they adopted, who had been removed from their families from far-flung places).

There are two ways in which the rebuilding of Aboriginal authority – embodying the values which our people understand are ours and which we take responsibility for upholding - can be approached.

First, to create space for Aboriginal law and authority to operate.

This is the approach underpinning Michael Limerick’s recommendation in the Cape York Justice Study against the legislative recognition of community justice groups.

Second, to provide formal recognition of, and support for, Aboriginal authority structures from the wider legal system without necessarily codifying everything.

This is the general approach taken in the submission of John Adams and the Yalga Binbi Institute for Community Development.

I would argue that it is far too late in the day to simply allow the space for Aboriginal law and authority to operate.

This authority and their values have broken down or been damaged and need to be rebuilt and bolstered.

This authority has deteriorated for a range of reasons, including the rise of new governance structures and leaders who are elected to perform functions
established by legislation, particularly elected community councils and other community organisations, and the overshadowing of the role of informal family and church leaders.

The decline of church-based authority and participation of traditional authority was very much syncretised with religious and church authorities during the mission era.

The generational change that has occurred with the passing of the old mission system (and its association with authoritarianism, paternalism, old-fashionedness, discrimination, conservatism etc) and the rise of a critique of the old system among younger Aboriginal people and a desire not to return to the olden days.

(The right to drink, the right to be free from discrimination, the right to be free from government or church authoritarianism grew to be as strong as the right to land and cultural identity).

This has been a difficult process of social and cultural adjustment for our people, where we have often chucked the baby out with the bathwater.:

* Changes in extended families and the apparently (at Hope Vale at least) increasing nuclear family orientation and a decline of the authority of the Mugaay (eldest uncle/aunt) over families.

(That the Mugaay system is dead is often stated but it is not correct - it is still very valid for many families at Hope Vale).

* The onslaught of the substance abuse epidemics (grog and now other drugs) which defied and quickly defeated the traditional/mission authority which had no way of dealing with them.

* The rise of the consequent social problems and the cycles of grief, abuse, trauma, disputation and violence which grog caused or exacerbated and the resultant erosion of social capital.

* The rise of the passive welfare mentality.

* The increasing tendency of the external justice system to claim predominant and exclusive authority over people and to discredit indigenous authority (through Legal Aid defences being conducted completely within the white legal system, rejection of local kangaroo courts as not properly legalistic and inherently discriminatory).

There seems to be no sign in the response to Fitzgerald's Cape York Justice Study of the need to rebuild and bolster Aboriginal authority and law.

We need to restore Aboriginal authority and law because at the end of the day the values and standards that our people live under needs to be understood as being our own.

If the standards that are enforced against the abuse of alcohol, violence against women and children etc, are seen as externally imposed standards then we will not get very far.

The values and standards that are protective of our people and provide a social order that is beneficial to the stabilisation of family life and our future development as a people, need to be seen as our own.

They need to be seen as Aboriginal laws, not in the sense that they assume the exact form of traditional laws that prevailed in classical times, but in the sense
that they give expression to contemporary Aboriginal values and standards which have their roots in tradition.

Otherwise a perpetuation of state, whitefella authority and law will compound the passivity and lack of responsibility and ownership that characterises the current absence of social order in our communities.

We need the state, whitefella law and authority to support and bolster the restoration of Aboriginal law and authority.

These are some of the ways in which Aboriginal authority could be recognised and restored in the response to Fitzgerald’s study:

* Community justice groups should be recognised and empowered under state legislation - roughly consistent with the proposals put forward by the Yalga Binbi Institute for Community Development, including powers in the following areas: recommending sentencing and diversionary options; convening or ordering mediation and compulsory confidential counselling in relation to domestic violence; convening or ordering mediation and counselling in relation to disputes and juvenile offending; ordering compulsory treatment or rehabilitation.

* The community justice group's general function and exercise of directive powers should be supported by a contempt power exercisable by a magistrate.

Where a direction of the community justice group is ignored by a person, then that person has committed a contempt which is an offence that must be brought before the magistrate, so too if members of the justice group are threatened or abused in their role.

The magistrate, through a contempt power, should therefore uphold the authority of the community justice group.

* There should be an active role by someone with high status in the state judicial system (magistrate or legislatively appointed community justice commissioner) working on the ground with community justice groups therefore lending the authority of the Crown to the work and the role of the groups at the ground level.

* Community justice groups (and other relevant community groups, councils, men's groups, women's groups, welfare groups) should not just have a reference function in relation to the terms and conditions of liquor licences, they should have the ability to direct or recommend changes to liquor licence terms and conditions set out in legislation.

* The ability of the councils and community justice groups to promulgate bylaws needs to be improved.

At present there is nothing concrete being considered that will directly help to restore and rebuild Aboriginal authority and law in the Cape communities.

It is vitally important that we convene a workshop to discuss these issues and proposals.
Title: Civil right anger on alcohol sale bans
Author: Margaret Wenham
Source: The Courier-Mail
Date Issue: 03/04/02
Page: 8

Some remote Aboriginal communities have threatened legal action against the State Government if attempts are made to control alcohol sales or curtail indigenous councils’ powers.

In a submission to the Government, obtained by The Courier-Mail, the Hopevale Aboriginal Council said “any infringement on civil rights” would be acted on “in the appropriate forum”.

Noting the Hopevale community did not operate a beer canteen, the submission said any measure to reduce the supply of alcohol to Cape York would “infringe on civil rights of both indigenous and non-indigenous people living and visiting in (Hopevale)”.

The council also expressed concern about a mooted “co-ordinating unit” to be set up within the Premier’s Department to oversee governance in communities. The Hopevale Council submission was made in response to Cape York Justice Study recommendations, after former Supreme Court Justice Tony Fitzgerald’s inquiry into alcohol abuse and violence in Cape communities last year.

Justice Fitzgerald recommended that, unless the levels of alcohol abuse and violence were reduced within three years on Cape communities, “consideration should be given to a prohibition on the supply and consumption of alcohol”.

In the interim, he recommended a “co-ordination unit" should take over the supply and sale of alcohol in communities, with power to "cancel those arrangements”.

The Hopevale Council said the Liquor Act provided for licensing breaches, but was not adequately enforced.

"Attempted amendments of any such legislation shall be racial and discriminatory and shall not gain approval ...it will most certainly be challenged in court," the council said.

Umagico Aboriginal Community Council also has warned it would seek legal relief from any imposed changes to the operation of its canteen or prohibition.

The council said: "If any particular measures (for example, in relation to the transfer of liquor licences or compensation for their transfer) are considered by communities to be objectionable, they may seek to have part or all of the strategy overturned under the Racial Discrimination Act...”

Aboriginal Co-ordinating Council executive member Lloyd Fourmile said he believed communities were "very committed" to upholding their rights to self-governance and would issue legal challenges to the State Government.
"The concern raised at the last full council meeting was that the co-ordination unit would become some sort of super-bureaucracy that will take away governance rights of councils," Mr Fourmile said.

Justice Fitzgerald said there was "an obvious need for rights issues to be handled with extreme sensitivity".

However, at the same time, he said, there needed to be a recognition that different rights would compete.

"It seems to me that a right to drink to excess is less important than a child’s right to safety," Justice Fitzgerald said.
<table>
<thead>
<tr>
<th>Research Briefs</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>RBR2002/03 The Public Records Bill 2001</td>
<td>Jan 2002</td>
</tr>
<tr>
<td>RBR2002/04 The Education (Queensland Studies Authority) Bill 2001: Recognising the Importance of Education, Vocational Education and Training on Student Retention Rates</td>
<td>Feb 2002</td>
</tr>
<tr>
<td>RBR2002/05 Land Protection (Pest and Stock Route Management) Bill 2001</td>
<td>Feb 2002</td>
</tr>
<tr>
<td>RBR2002/06 Minimising the Harm of Illicit Drug Use: Drug Policies in Australia</td>
<td>Feb 2002</td>
</tr>
<tr>
<td>RBR2002/07 Public Liability Insurance</td>
<td>Mar 2002</td>
</tr>
<tr>
<td>RBR2002/11 Consumer Credit (Queensland) Amendment Bill 2002: Clarifying the Rights of Consumers in Matters of Credit</td>
<td>Apr 2002</td>
</tr>
<tr>
<td>RBR2002/12 The Criminal Law Amendment Bill 2002: Restricting the disclosure of information provided about, and sought by, jurors</td>
<td>Apr 2002</td>
</tr>
<tr>
<td>RBR2002/16 Legal Profession Reform in Queensland: changing the divide between barristers and solicitors?</td>
<td>May 2002</td>
</tr>
<tr>
<td>RBR2002/17 National Uniform Admission and the Legal Profession</td>
<td>May 2002</td>
</tr>
<tr>
<td>RBR2002/19 Time for Tort Law Reform?</td>
<td>June 2002</td>
</tr>
<tr>
<td>RBR2002/20 Drugs Misuse Amendment Bill 2002</td>
<td>June 2002</td>
</tr>
<tr>
<td>RBR2002/24 The Electrical Safety Bill 2002 (Qld)</td>
<td>Aug 2002</td>
</tr>
</tbody>
</table>

*Research Papers are available as PDF files:*
- to members of the general public the full text of Research briefs is now available on the parliamentary web site, URL, [http://www.parliament.qld.gov.au/Parlib/Publications/publications.htm](http://www.parliament.qld.gov.au/Parlib/Publications/publications.htm)
A Subject Index to Research Publications is available at the following site: http://www.parliament.qld.gov.au/Parlib/Publications/bysubject.htm
Parliamentary Library - Research Publications & Resources Telephone (07) 3406 7108
Orders may be sent to Carissa Griggs, cgrigg@parliament.qld.gov.au
This Publication:

RBR 2002/26  *Tackling Alcohol Issues in Indigenous Communities – The Indigenous Communities Liquor Licences Bill 2002 (Qld) and The Community Services Legislation Amendment Bill 2002 (Qld) (QPL August 2002)*