Policing in WILUNA

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A desert community takes issue with over-policing, meal allowances and social justice.

Steve Leicester is a resident of Wiluna. In 1994 he was employed as a solicitor by the Aboriginal Legal Service of WA (Inc.) and was instructed to prepare a statistical survey of justice issues in Wiluna.

The *Mabo* decision and resulting native title legislation share with the Royal Commission into Aboriginal Deaths In Custody a common perspective on a history of dispossession and disempowerment of Aboriginal people. Nevertheless they derive their sense of legitimacy from a very different basis. Recognition of native title elevated historical reality to the level of common law and statutory right. In contrast the Royal Commission only had power to make recommendations. As at the beginning of 1995, only 57 of the Royal Commission recommendations have been satisfactorily implemented in Western Australia.[1] The lack of implementation indicates the legitimacy gap suffered by those who would have human rights recognised as legal rights. It is in this context that, throughout 1994, Wiluna's Mardu community sought to establish social justice as an entitlement rather than a privilege conferred by 'benevolent' government authorities. The innovative methods used by the community put considerable pressure on government agencies to seriously consider their stance on implementing the Royal Commission recommendations. The Wiluna community's approach may be a useful strategy for other communities facing a similar predicament.

Wiluna is a predominantly Aboriginal township, approximately 950 km north east of Perth. In the early 1980s the town had a population of between 800 and 1200.[2] In 1991–92 it had an estimated population of approximately 500. Currently the town's population is approximately 250, around 200 of whom are 'Mardu' people. Wiluna lies on the fringe of the Mardu's traditional lands. The town forms an important link in the central desert cultural bloc. The decline in the community's population was seen by many as the result of overzealous policing. In early 1994 the Mardu became particularly concerned with a dramatic increase in arrest rates and the removal of limitations on the availability of alcohol that the community had negotiated with the licensee of the town's only hotel. The hotel, which had previously abided by the Mardu's request that its 'Front Bar' close by 7 p.m., began to continue to trade until 10 p.m. against the wishes of the community. And despite the town's falling population, police numbers had increased over recent years and the town's police:civilian ratio of approximately 1:40 made Wiluna possibly the most overpoliced town in Australia.

In June 1994 representatives of a Women's Health meeting in Wiluna forwarded a submission outlining their concerns about policing in their community to the WA Health Minister. The somewhat unorthodox inclusion of police matters in the health forum is a reflection of the extent to which policing was perceived as impacting broadly on community living, including health. Just as the Royal Commission's recommendations covered a broad range of socio-economic factors, the Mardu refuse to divorce policing issues from other areas of lived experience. The benefits of this approach assured a more sympathetic audience for their concerns than that of the Western Australian Police Department, and identified policing reform as a prerequisite for self-

determination in relation to other areas such as health. Importantly, identification of the pervasive nature of policing in Wiluna and its effects upon self-determination galvanised various representatives of Mardu groups into forming a cohesive, independent Social Justice Committee, 'Kutkulbu Wanga Walbalangka' (Big Mardu Mob speaking to Whitefellas). This Committee commissioned the Aboriginal Legal Service of WA to assess its claims of overpolicing.

Overpolicing

The concerns forwarded in the community's submission included:

- allegations of harassment and intimidation;
- excessive police numbers;
- charging people with disorderly conduct as a means of detaining drunken persons;
- undue pressure to enter pleas of guilty and misrepresentation of facts by police;
- multiple charging, and further charges laid when people question their arrest;
- a negative attitude of police towards community members.

Each of these concerns is relevant to the concept of overpolicing which has gained recognition over the past ten years. In 1992 the NSW Anti-Discrimination Board observed that:

> [t]here are clear indications that 'over-policing of Aboriginal communities is occurring. The continual and repeated arrest of a high proportion of Aborigines for trivial offences . . . indicates that police believe, and act to implement this belief, that Aboriginal people warrant considerably more of their time and attention than do non-Aboriginal people . . . Consequently the Aboriginal community is subjected to a greater degree of supervision over their lives and lifestyles. This is wholly disproportionate to that experienced by any groups in the non-Aboriginal community and occurs in the most intimate part of their lives.[3]

Interestingly, 'Aboriginality' was an official resource criteria cited by the West Australian Police Force to the Royal Commission into Aboriginal Deaths in Custody — official testament to the existence of differential policing of Aboriginal communities.[4]

Overpolicing is an apt description of Aboriginal people's lived experience and is capable of providing empirical momentum to the implementation of relevant Royal Commission recommendations. In response to the community's request, the Aboriginal Legal Service examined all charges laid by police in Wiluna between 1 January 1994 and 31 August 1994. Over the period, 1071 charges were laid, 99% of the defendants being Aboriginal people. Of the charges, 835 were for 'street offences' (78%), and were almost exclusively charges of disorderly conduct under the *Police Act 1892* (WA) or offences under the *Liquor Licensing Act 1988* (WA). The police net was wide: 297 separate individuals were arrested — a figure exceeding the current estimates of the towns' population! Each person faced an average of 3.6 charges. Analysis by age and gender confirmed that almost all sectors of the community were affected by policing practices.

As a raw measure of police resource requirements, charge numbers of this magnitude may seem to justify the existing police resources. However, the quarterly returns from Wiluna Police Station to the Western Australian Police Department fail to specify the nature of charges for which arrests are made. Of the 1071 charges, only 92 (9%) were for serious offences (charges under the *Criminal Code*). There were no charges laid whatsoever for drug or sexual offences. In contrast, in Western Australia generally 66% of charges are laid under the *Criminal Code*. Analysing the types of charges being laid armed the community with strong empirical arguments for the existence of overpolicing.

Variable	Western Australia	Wiluna
Arrest for Minor Offence (Police Act/Liquor Licensing)	**22%**	**78%**
Arrest for Serious Offence (Criminal Code)	**66%**	**12%**
Ratio of Police:Population	**1:386**	**1:41**

The ALS report also revealed that a total of $197,471 in fines was imposed during the period of the study. Apart from impoverishing the community to a great extent, this also resulted in an average of 17 people a day being in the police lock-up for fine default. Combined with sentenced prisoners, on average 23 people (about one tenth of Wiluna's population) were detained in the police lock-up on any given day.

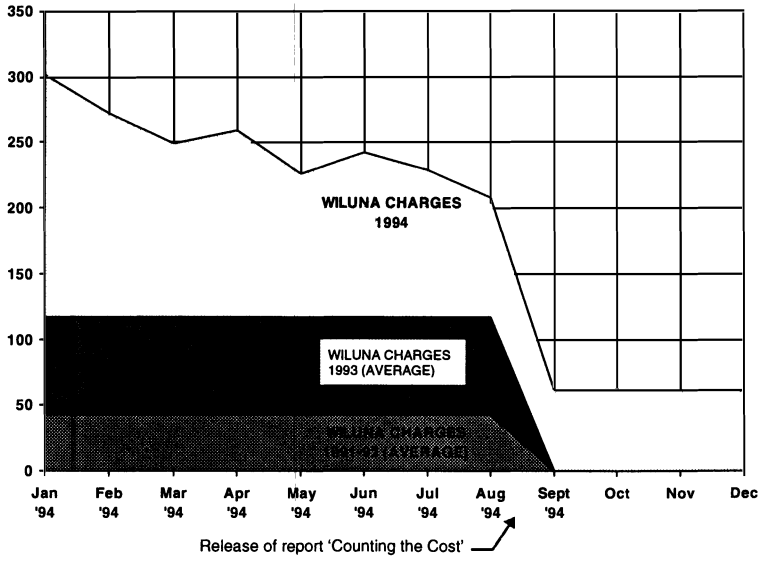
In addition to the strong empirical evidence of overpolicing, the community also identified policing practices which seemed to represent *under*policing. The two concepts, rather than being mutually exclusive, can be mutually co-existent, particularly in relation to the administration in Wiluna of the *Liquor Licensing Act*. For example, in the period studied 99 charges were brought under the *Liquor Licensing Act*. The majority involved instances of intoxicated persons refusing to leave or returning to Wiluna's Club Hotel. Under the same section (s.119) it is an offence for the licensee or his or her agent to serve an intoxicated person, yet throughout the period no action was taken against the licensee for serving intoxicated persons. Worse still, in early 1994 police acquiesced in the relaxation of previously negotiated restrictions in the supply of liquor from the hotel.

The co-existence of under and overpolicing is best explained as a continuation of the historical perception that police have had, that their role within Aboriginal communities is to contain a cultural minority. It demonstrates that the police are not accountable to the community and do not share its priorities. In this context, community disenchantment with overpolicing may actually reinforce a culture of underpolicing. For example victims of domestic violence are reluctant to use available police resources because they see that police accord a low priority to domestic violence, preferring a general policy of containment. While the statistics gathered provide a strong case for the existence of such entrenched attitudes amongst the police, the clearest evidence comes from the police response to the community's concerns.

The police response

The initial police response to the Mardu's concerns confirmed the existence of a policy of containment and sought to justify it. At an early meeting between police and community members, prior to the release of *Counting the Cost*,[5] the Commander of Country Operations said that the early arrest of Mardu on minor charges was justified to prevent the

WILUNA — MONTHLY CHARGE RATES 1994 — ALL OFFENCES



commission of more serious offences such as assaults.[6] Not only did this vindicate the community's concern that the type of policing they were experiencing constituted undue harassment of community members, but the subsequent statistical analysis demonstrated that offences against the person had in fact increased since the policy was instituted (from 70 charges in 1991–92 to 79 charges in the first 8 months of 1994).

Rather than substantively addressing community concerns about policing, the initial police response was simply to advocate the setting up of a 'detention shelter' and the institution of an Aboriginal-Police Relations Committee. The 'detention shelter' was seen as simply a *de facto* police lock-up. It was rejected by Kutkulbu Wanga Walbalangka in favour of their own planned dry-out shelter, and because it was likely to increase rather than decrease the existing level of oppressive police intervention. The Committee's plans for a dry-out shelter are currently proceeding without police intervention, but with the hope of police co-operation.

The Aboriginal-Police Relations Committee proposal, on the other hand, was welcomed by Kutkulbu Wanga Walbalangka as a means of addressing their concerns. The police first sought to establish a committee involving 'representatives from departments and agencies such as Police, Community Development, Education, Health, Alcohol and Drug Authority, Justice, Homeswest, the Local Council and others'.[7] The Mardu insisted on a committee made up only of Mardu and police representatives. Wiluna's Officer in Charge objected to this and he has failed to attend subsequent meetings. Nevertheless the rejection of the existing model for such committees was an empowering innovation which is worth consideration by similar committees. Recognising that the concerns raised by Kutkulbu Wanga Walbalangka relate uniquely to Mardu-Police interaction, and aware of the danger that prioritised matters could become obscured by the involvement of other agencies, the Mardu have ensured that the Committee remains focused on Aboriginal-police relations. Similarly, the Committee remains unfunded despite offers for funding. The lack of involvement by local police on the Committee, itself an indication of current Aboriginal-police relations in the town, has not detracted from the empowerment of Kutkulbu Wanga Walbalangka but rather has forced it to elevate its concerns beyond the local level.

It is interesting to note that although police have not to date conceded that police numbers are excessive, the monthly charge rate has more than halved since the Wiluna community released *Counting the Cost*. Where the charge rate to 31 August 1994 averaged 138 charges a month, the rate for subsequent months to December has fallen to approximately 66 charges a month. In the absence of alternatative explanation, such an outcome provides further empirical evidence of the existence of overpolicing over the first eight months of 1994. The police offered the alternative explanation that circumstances and offending behaviour over the first eight months of 1994 were far worse than recent months.[8] In response to this claim, the community has commenced further statistical analysis to evaluate this claim by examining statistics kept by the community health service. Comparison of variables such as the incidence of alcohol related trauma have so far failed to detect a trend that supports the contention that circumstances in the town have changed significantly throughout 1994.

Meal allowances

Western Australia is the only State of Australia in which a meal allowance continues to be paid to the officer in charge of a police lock up on a per prisoner per day basis. This potential conflict of interest has been removed from all other States. For every Mardu incarcerated for a day, the lock-up keeper receives $4.51 a meal or $13.53 a day. From this the lockup keeper provides the food and either prepares the meals for prisoners, or the prisoners prepare the meals themselves. Although the officer in charge is required to complete and return a standard form to claim reimbursement for meals supplied, he/she is not required to forward any receipts for foodstuffs purchased. At Wiluna, food commonly consisted of kangaroo purchased at negligible cost to the officer in charge and there are concerns that this diet is not adequately supplemented with fruit and vegetables. During the period examined the officer in charge received meal allowance at a rate of $96,000 a year.

The meal allowance system had been identified by the community as a possible contributor to high arrest rates. With meal allowance revenues increasing in direct proportion to incarceration levels, a substantial conflict of interest is inherent between the proper exercise of police discretion in relation to matters relevant to incarceration, and police officers' personal pecuniary interests. The practice of paying meal allowances had been condemned as early as 1904:

> It is no secret that the police say, if the ration allowance was cut down or taken away they would not arrest so many natives. By their own assertions, any native caught, means more money in their pocket; reliable witnesses have heard such assertions made. At present there is nothing to prevent the constable arresting as many blacks as he chooses.[9]

In its Regional Report, the Western Australian Royal Commission into Aboriginal Deaths in Custody observed that payment of meal allowance led to police being overzealous in making arrests; police proceeding by arrest where a summons would be appropriate; prisoners being held in custody longer than is necessary, for example by delaying bail until after a bail period has expired; supply of poor or

inadequate quantities of food to prisoners; and claims for meals that have not been provided. This led to the making of Recommendation 87(c)(i): *'That all possible steps should be undertaken to ensure that all allowances paid to police officers do not operate as a financial incentive to increase the number of arrests'.*

Over the period studied in Wiluna, a number of profit-maximising behaviours, in addition to high charge rates, were identified. The replacement of the policy of taking intoxicated people home with a policy of detention in the lock-up is one example. Similarly, the disparity between adult and juvenile charge rates is significant. Compared to the 1071 adult charges over the period, there were only 81 juvenile charges to 31 August 1994. Statewide charges for juveniles in 1991–92 made up 36% of total charges,[10] whereas in Wiluna such charges constitute only 7% of total charges. The incentives for abuse of the meal allowance scheme do not apply to juvenile detentions to the same extent as they do for adult detentions because police have extremely limited powers to detain juveniles in the lock-up. At a meeting of the WA Juvenile Justice Committee, Wiluna's officer in charge suggested to the Committee that the Wiluna lock-up be permitted to hold juveniles for longer periods. The community is concerned that implementation of such a proposal would result in a substantial increase in juvenile charge rates.

While appeals to the wider non-Aboriginal community phrased in social justice terms has not had a significant impact, a resonance has been struck through the wide publicity concerning the considerable expense to the taxpayer involved in the payment of meal allowances. Although the community is still awaiting a departmental response to its concerns, a significant development occurred in November 1994 when Western Australia's Police Commissioner, Bob Falconer, announced a review of the State's meal allowance system with a view to its removal across Western Australia. In the context of a Police Department which continues to complain of insufficient resources, it is hoped that community awareness of the expense involved in policing Wiluna will extend to the cost of having such large numbers of police in the town. Of course, the community's request that current police be replaced by more community-responsive officers reflects the feeling that the over and under policing problems are a function of police attitudes rather than police numbers per se.

Conclusion

After the Royal Commission into Aboriginal Deaths in Custody, one might have thought that the lived experiences of Aboriginal people had been sufficiently quantified and analysed to enable appropriate policy reform, such as that expressed in the Commission's recommendations, to occur. The Wiluna community's experience in seeking implementation of the recommendations demonstrates the continual need to substantiate lived experience with statistical analysis, and has involved a process of rebutting police responses with further analysis. It is somewhat ironic that one Royal Commission recommendation was that police departments themselves undertake this sort of quantitative analysis to ensure that overpolicing does not occur.

Throughout the process the community has remained focused on policing issues. Attempts to divert the community's concerns — for example, by the insistence by police that the Shire Clerk, school principal and other non-Aboriginal authorities sit on the Aboriginal-Police Relations Committee — have not succeeded. The unique, independent nature of the Committee is fundamental to its aspirations which are grounded in self-determination. At this stage, self-determination for the community requires unshackling the existing perceptions of policing roles in their community. Only when fundamental changes in Aboriginal-police relations are achieved will self-determination in a broader sense be achievable.

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6. Regional Commander R. Driffell, speaking at a meeting with community representatives.
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10. Australian Bureau of Statistics, 1991–92. In 1991-92 there were 30,398 juvenile charges in WA compared to 86,660 adult charges.