ROYAL COMMISSION INTO
ABORIGINAL DEATHS IN CUSTODY

NATIONAL REPORT VOLUME 2

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Canberra

ACRONYMS

AAPA	Aboriginal Affairs Planning Authority
AATA	Aboriginal Advancement Trust Account
ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ABSEC	Aboriginal Secondary Assistance Scheme (now ABSTUDY Schooling)
ABSEG	Aboriginal Secondary Education Grant (now ABSTUDY Schooling)
ACAP	Aboriginal Community Affairs Panel
ABSTUDY	Aboriginal Study Assistance Scheme
ABTA	Aboriginals Benefit Trust Account
ACAP	Aboriginal Community Affairs Panel
ACC	Aboriginal Co-ordinating Council
ADC	Aboriginal Development Commission (Now)
ADFA	Alcohol and Drug Foundation Australia (now known as Australian Council of Alcohol and Other Drug Associations)
AEA	Aboriginal Education Assistant
AECG	Aboriginal Education Consultative Groups
AEDP	Aboriginal Employment Development Policy
AEEDO	Aboriginal Economic and Employment Development Officer
AEIS	Aboriginal Enterprise Incentive Scheme
AESIP	Aboriginal Education Strategic Initiatives Program
AEW	Aboriginal Education Worker
AGPS	Australian Government Publishing Service
AHL	Aboriginal Hostels Ltd
AHO	Aboriginal Health Organisation
AHS	Aboriginal Health Service
AIC	Australian Institute of Criminology
AICHS	Aboriginal and Islander Community Health Service
AIH	Australian Institute of Health
ALIA	Australian Institute of Judicial Administration
AIM	Australian Institute of Management
AITEP	Aboriginal and Islander Teacher Education Program
AIU	Aboriginal Issues Unit (of Royal Commission)
AJA	Australian Journalists Association
ALC	Aboriginal Loans Commission
ALFC	Aboriginal Land Fund Commission
ALO	Aboriginal Liaison Officer

ALRC	Australian Law Reform Commission
ALRM	Aboriginal Legal Rights Movement
ALS	Aboriginal Legal Service
ALT	Aboriginal Lands Trust
AMA	Australian Medical Association
AMHN	Aboriginal Mental Health Network
AMS	Aboriginal Medical Service
ANAO	Australian National Audit Office
ANOP	Australian National Opinion Polls
ANPWS	Australian National Parks and Wildlife
ANTEP	Anangu Teacher Education Programme
AOT	Aboriginal Organisation Training Program
APH	Anangu Pitjantjatjara Homelands
API	Aboriginal Participation Initiative
APS	Australian Public Service
ASAP	Aboriginal Services Action Plan
AS SPA	Aboriginal Student Support and Parent Awareness
ATAS	Aboriginal Tutorial Assistance Scheme
ATSI	Aboriginal and Tortes Strait Islander
ATSIC	Aboriginal & Tortes Strait Islander Commission (Formerly DAA -Department of Aboriginal Affairs)
ATSICDC	Aboriginal and Torres Strait Islander Commercial Development Corporation
AVS	Aboriginal Visitors Scheme
BRAMS	Broome Aboriginal Medical Service
BTEC	Brucellocis and Tuberculosis Eradication Campaign
CAAC	Central Australian Aboriginal Congress Inc
CAALAS	Central Australian Aboriginal Legal Aid Scheme
CAAMA	Central Australian Aboriginal Media Association
CAE	College of Advanced Education
CAEPR	Centre for Aboriginal Economic Policy Research
CALM	Conservation & Land Management
CAMS	Carnarvon Aboriginal Medical Service
CATARAC	Central Area Training Aboriginal Resource Accounting Corporation
CCNT	Conservation Commission of the Northern Territory
CDBR	Committee to Defend Black Rights
CDC	(Aboriginal and Torres Strait Islander) Commercial Development Corporation
CDEP	Community Development & Employment Projects
CEAAC	Catholic Education Aboriginal Advisory Committee
CEC	Catholic Education Commission
CEP	Commonwealth Employment Project
CERD	United Nations Committee on the Elimination of Racial Discrimination
CES	Commonwealth Employment Service
CJP	Community Justice Panel
CLC	Central Land Council
CRP	Community Release Program
CRU	Criminology Research Unit
CSIRO	Commonwealth Science and Industrial Research Organisation
CSO	Community Service Order
CT	Computerised Tomography
DAA	Department of Aboriginal Affairs (Now ATSIC)
DAS	Department of Aboriginal Sites

DCH	Department of Community Health
DCS (1)	Department of Community Services
DCS (2)	Department of Corrective Services
DEET	Department of Employment, Education & Training
DETAFE	Department of Employment, Technical and Further Education
DFSAIA	Department of Family Services and Aboriginal and Islander Affairs
DOF	Department of Finance
DOGIT	Deeds Of Grant In Trust
DOPIE	Department of Primary Industry and Energy
DPP	Director of Public Prosecutions
DPUD	Department for Planning & Urban Development
DSR	Department of Sport & Recreation
DSS	Department of Social Security
EEA	Enterprise Employment Assistance
EEO	Equal Employment Opportunity
ESL	English as a Second Language
ESU	Enterprise Support Units
FACS	Family and Community Services
FCAATSI	Federal Council for the Advancement of Aboriginal and Tortes Strait
FORWAARD	Foundation of Rehabilitation with Aboriginal Alcohol Related Difficulties
GNP	Good Neighbour Program
HACC	Home And Community Care
HALT	Healthy Aboriginal Life Team
HDWA	Health Department of Western Australia
HOAL	Homes on Aboriginal Land
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
ICD	International Classification of Diseases
ICESCR	International Covenant on Economic Social and Cultural Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
IPCHAC	Incarcerated Peoples Cultural Heritage Aboriginal Corporation
JP	Justice of the Peace
JPA	Justices of Peace Association
KALCC	Kimberley Aboriginal Law & Culture Centre
KAMSC	Kimberley Aboriginal Medical Services Council
KLC	Kimberley Land Council
KRALAS	Katherine Regional Aboriginal Legal Aid Service
LAC	Legal Aid Commission
LAECG	Local Aboriginal Education Consultative Groups
LGC	Local Government Council
NAANH	Northern Area Aboriginal Neighbourhood House
NAC	National Aboriginal Congress
NACC	National Aboriginal Consultative Committee
NADU	North Australia Development Unit
NAEC	National Aboriginal Education Committee
NAEP	National Aboriginal Education Policy
NAHSWP	National Aboriginal Health Strategy Working Paper
NAIDOC	National Aboriginal and Islander Day Organising Committee
NAIHO	National Aboriginal Islander Health Organisation
NAILSS	National Aboriginal and Islander Legal Services Secretariat
NARU	North Australia Research Unit

NCADA	National Campaign Against Drug Abuse
NCC	Nulungu Catholic College
NESA	National Employment Strategy for Aboriginals
NFLC	National Federation of Land Councils
NH&MRC	National Health and Medical Research Council
NHC	Nganampa Health Council
NTAMS	Northern Territory Aerial Medical School
OAA	Office of Aboriginal Affairs
OIC	Officer in Charge
PFANZ	Police Federation of Australia and New Zealand
PIA	Public Intoxication Act
PIAC	Public Interest Advocacy Centre
PMS	Prison Medical Service
PNLRM	Preferred National Land Rights Model
PSC	Public Service Commission
QCSC	Queensland Corrective Service's Commission
RALC	Regional Aboriginal Land Council
RATE	Remote Area Teacher Education
RATEP	Remote Area Teacher Education Program
RCAGA	Royal Commission on Australian Government Administration
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RFDS	Royal Flying Doctor Service
SBS	Special Broadcasting Service
SCAM	Self Contained Accommodation Modules
SJAA	St John Ambulance Association
SMR (1)	Standardised Mortality Ratio
SMR (2)	Standard Minimum Rules for the Treatment of Prisoners
SNAICC	Secretariat National Aboriginal Islander Child Care
SPG	Special Purpose Grant
SWOS	Special Weapons and Operations Section
SWRC	Social Welfare Research Centre (now Social Policy Research Centre)
TAFE	Technical & Further Education
TAFE	Technical and Further Education
TAP	Training for Aboriginals Program
TCHIP	Town Campers Housing and Infrastructure Program
TE	Tertiary Entrance
TEPA	Tertiary Education Program for Aboriginals
TRG	Tactical Response Group
UAM	United Aboriginal Mission
UB	Unemployment Benefit
UN	United Nations
UPK	Uwankara Palyanyku Kanyintjaku
VACSAI	Victorian Aboriginal Community Services Association Incorporated
VAEAI	Victorian Aboriginal Education Association Inc
VAHS	Victorian Aboriginal Health Service
VALS	Victorian Aboriginal Legal Service
VAMHN	Victorian Aboriginal Mental Health Network
WAADA	Western Australia Alcohol & Drug Authority
WAAECG	Western Australian Aboriginal Education Consultative Group
WACAE	Western Australian College of Advanced Education
WATC	Western Australian Tourism Commission

Names of Deceased Persons whose Deaths were within the Jurisdiction of the Royal Commission Showing the Last Place of Custody

NEW SOUTH WALES

Shane ATKINSON	Griffith Watch-house
Lloyd BONEY	Brewarrina Watch-house
Peter CAMPBELL	Long Bay Gaol
Thomas CARR	Minda Remand Centre
David GUNDY	Private Residence
Paul KEARNEY	Darlinghurst Watch-house
Bruce LESLIE	Tamworth Watch-house
Eddie MURRAY	Wee Waa Watch-house
Tim MURRAY	Berrima Training Centre
Clarrie NEAN	Walgett Watch-house
Mark QUAYLE	Wilcannia Watch-house
Mark REVELL	Grafton Watch-house
Max SAUNDERS	Goulburn Training Centre
Malcolm SMITH	Long Bay Gaol
Peter WILLIAMS	Grafton Gaol

VICTORIA

Harrison DAY	Echuca Watch-house
Arthur MOFFATT	Warragul Watch-house
James MOORE	Swan Hill Watch-house

QUEENSLAND

Aurukun*	Aurukun Watch-house
Walter BARNEY	Townsville Prison
Muriel BINKS	Innisfail Watch-house
Patrick BOOTH	Rockhampton Prison
Gregory DUNROBIN	Cherbourg Watch-house
Charlie HYDE	Yarrabah Watch-house
Bernard JOHNSON	Townsville Prison
David KOOWOOTHA	Yarrabah Watch-house
Charlie KULLA KULLA	Coen Watch-house
Daniel LACEY	Brisbane Prison
Daniel LORRAWAY	Townsville Prison
Nikira MAU	Brisbane City Watch-house
Patrine MISI	Townsville Watch-house
Perry NOBLE	Yarrabah Watch-house
Karen O'ROURKE	Birralee Children's Home
John PILOT	Brisbane City Watch-house
Alistair RIVERSLEIGH	Doomadgee Watch-house
Vincent RYAN	Townsville Prison
Monty SALT	Police vehicle, Kings Plains
Deidre SHORT	Lockhart River Watch-house
Barbara TIERS	Rockhampton Watch-house
Eddie WEST	Cherbourg Watch-house
Darren WOUTERS	Brisbane City Watch-house
Wujal Wujal *	Wujal Wujal Watch-house
Barbara YARRIE	Brisbane City Watch-house
Fay YARRIE	Brisbane City Watch-house

WESTERN AUSTRALIA

Robert ANDERSON	Wiluna Lockup
Faith BARNES	Kalgoorlie Lockup
Bobby BATES	Eastern Goldfields Regional Prison
Nita BLANKETT	Brandyup Women's Prison
Stanley BROWN	Broome Lockup
Edward CAMERON	Geraldton Lockup
Sir Charles Gairdner Hospital*	Fremantle Prison
Donald CHATUNALGI	Halls Creek Lockup
Wayne DOOLER	Carnarvon Lockup
Albert DOUGAL	Broome Lockup
Paul FARMER	Albany Regional Prison
Darryl GARLETT	Wooroloo Prison Farm
Geraldton*	Geraldton Lockup
Dixon GREEN	Broome Regional Prison
Donald HARRIS	Canning Vale Remand Centre and Prison
Christine JONES	Midland Lockup
Bernard McGRATH	Kalgoorlie Lockup
Charles MICHAEL	Barton's Mill Prison
Steven MICHAEL	Canning Vale Remand Centre and Prison
Benjamin MORRISON	Fremantle Lockup
Jimmy NJANJI	Port Hedland Lockup
John PAT	Roebourne Lockup
Kim POLAK	Kalgoorlie Lockup
Ginger SAMSON	Roebourne Lockup
Ronald UGLE	Broome Regional Prison
Ricci VICENTI	Canning Vale Remand Centre and Prison
Misel WAIGANA	East Perth Lockup
Robert WALKER	Fremantle Prison
Roy WALKER	Kalgoorlie Lockup
Graham WALLEY	Greenough Regional Prison
Milton WELLS	Kalgoorlie Lockup
Hugh WODULAN	Broome Lockup

SOUTH AUSTRALIA

Eddie BETTS	Port Lincoln Watch-house
Malcolm BUZZACOTT	Port Augustal Gaol
Ceduna*	Ceduna Watch-house
Kingsley DIXON	Adelaide Gaol
Joyce EGAN	Mount Gambier Watch-house
Michael GOLLAN	South Australian Youth Training Centre
Stanley GOLLAN	Mount Gambier Watch-house
John HIGHFOLD	Adelaide Gaol
Craig KARPANY	Darlington Watch-house
Keith KARPANY	Adelaide City Watch-house
Oodnadatta*	Oodnadatta Watch-house
Gordon SEMMENS	Port Augusta Gaol

TASMANIA

Glenn CLARK	Glenorchy Watch-house

NORTHERN TERRITORY

Beatrice Hill Prison Farm*	Beatrice Hill Prison Farm
Burralangi*	Darwin Prison
Darwin Prison*	Darwin Prison
Elliott*	Elliott Watch-house
Jabanardi*	Aileron Rd, Ti Tree
Jambajimba*	Alice Springs Prison
Katherine*	Katherine Watch-house
Kwementyaye Price	Alice Springs Watch-house
Royal Darwin Hospital*	Berrimah Watch-house

* Name of the deceased suppressed by order of Commissioner.

PART C THE UNDERLYING ISSUES WHICH EXPLAIN THE

DISPROPORTIONATE DETENTION RATES OF ABORIGINAL PEOPLE

Part C contains eleven chapters produced in response to the provisions of the Royal Commission' s terms of reference that authorise me to investigate not only the deaths in custody themselves but also the social legal and cultural factors which have a bearing on the deaths. It is wide-ranging, as one of the central findings of the Commission is that a multitude of factors, both historical and contemporary, interact to cause Aboriginal people to be seriously over-represented in custody and, tragically, to die there.

I start with the legacy of history, because so much of the Aboriginal people' s current circumstances, and the patterns of interactions between Aboriginal and non-Aboriginal society, are a direct consequence of their experience of colonialism and, indeed, of the recent past. The following chapter reviews Aboriginal society today, covering demographic indicators and issues concerning Aboriginal identity and social patterns. Two chapters then look at the relationships between Aboriginal people and the broader society, first in general terms and then with particular regard to Aboriginal people' s interactions with police. This is because the police form what may be called 'the front line' in the non-Aboriginal society' s set of controls over how Aboriginal people live. This leads to a discussion on Aboriginal young people - their patterns of offending and their over-representation in custody. Aboriginal patterns of use of alcohol and other drugs are described next, along with the damaging effects of these substances on individuals, families and communities. The topic of schooling is then discussed, important since it is in schools that many Aboriginal children first meet individual and institutional racism and first experience unwarranted failure. Two other aspects of contemporary Aboriginal life are then canvassed, namely, the patterns of welfare dependency and poverty which our society makes the daily experience of Aboriginal people, and the housing and infrastructure (e.g. water, electricity, waste disposal)facilities available to them, both issues that contribute to the over-representation of Aboriginal people in custody. The topic of land needs is then addressed, a matter seen by many to provide, in its various forms, a fundamental explanation for the position of Aboriginal people in Australia today and a context for overcoming the serious problems which Australian society has in its dealings with Aboriginal people. Such an analysis leads directly to my consideration of Aboriginal self-determination and self-management, in the final chapter in this part, a topic which has at its heart questions of social control.

By and large, this Part does not seek to provide answers or solutions. Rather, it seeks to aid understanding of the deep, underlying issues that help to explain why so many Aboriginal people find themselves in conflict with the law, and why they are so heavily over-represented in police, prison and juvenile institution custody. Part F, later in this report, addresses the social, legal and cultural issues raised in this Part, providing conclusions and recommendations for action to resolve the problems identified.

CHAPTER 10 The Legacy Of History

It is important that we understand the legacy of Australia' s history, us it helps to explain the deep sense of injustice felt by Aboriginal people, their disadvantaged status today and their current attitudes towards non-Aboriginal people and society. In this way, it is one of the important underlying issues that assists us to understand the disproportionate detention rates of Aboriginal people.

While it is difficult to do justice to the breadth and complexity of the subject, I

canvas here some key historical themes. Aboriginal society prior to the arrival of the British is described, along with the early establishment of the policy that Aboriginal people had no rights to their land: the terra nullius doctrine. The chapter discusses the frontier period of colonial settlement, during which Aboriginal people were dispossessed of their lands through colonial policies, violence and disease. The central roles of the police as, firstly, the instrument of the State through which Aboriginal resistance to colonial expansion was overcome, and later as 'protectors', are discussed. The Aboriginal experience of policing undoubtedly influences their attitudes today. In the latter part of the chapter I point to the oppressive and discriminatory systems of law established in this country, the increasing levels of imprisonment of Aboriginal people since the 1950s, and the role of labour and employment policies as instruments for the domination and suppression of Aboriginal people by the colonial and post-colonial societies.

This chapter draws heavily on the work of Dr Ann McGrath who was consulted by the Commission and whose contribution is substantially reflected in this chapter, although I have drawn on other sources also. Different aspects of the historical experience are dealt with in other chapters throughout this report.

10.1 WHY IS HISTORY RELEVANT?

10.1.1 Australia's history since the arrival of British settlers helps explain the great sense of injustice and the strong sense of common historical experience which Aboriginal people share today. It helps explain their economic, social, residential status and their attitudes to non-Aboriginal Australians and the nation whose foundation was premised on their dispossession. Following the takeover of their land by the British, the personal liberty of Aboriginal people was jeopardised. They no longer had the freedom to live as they pleased and their life choices were dictated much more by government and government-approved missions than was the case for non-Aboriginal people. Their children were taken away to dormitories or distant towns, as parents and kin were thought to be a degrading influence. The various colonial and later State, Commonwealth and Territory Governments introduced policies which led to intrusions into most aspects of their everyday lives. These included inspections of camp sites and other residences, and limitations upon their mode of living, work, financial and leisure activities. Institutionalisation was to be a dominant theme in Aboriginal lives. The general population discriminated against Aboriginal people in many ways, which affected their education, housing, employment, income and self-esteem.

10.1.2 Of crucial relevance to the situation of Aboriginal people who died in custody and their families is the history of colonial and State authority over Aboriginal people throughout Australia's history. The history of institutionalisation, law enforcement, detention, imprisonment, and the role of police are therefore especially significant. This history must be analysed in the widest possible social context. None of these processes could have occurred without the collusion and encouragement of the general non-Aboriginal community. Aboriginal individuals and communities also interacted with these systems of policing and control. They cooperated with and resisted them according to their respective goals. While the laws which affected Aboriginal rights must be noted, it is more important to attempt to measure the impact on people's lives. A history of conflict must be understood, but there was also negotiation, cooperation, compromise and exchange between Aboriginal people and others.

10.1.3 It seems to me that the over-representation of Aboriginal people in custody (and the deaths of some of them) are part of the ongoing conflict between 'coloniser' and 'colonised'. When Australia became a nation in 1901, its colonial

past could not be hidden away, although Australian historians participated in what Professor W. E. H. Stanner was to call a conspiracy of silence.[1] In fact the structures of our most fundamental social institutions had already evolved. The *Immigration Restriction Act,* one of the first Bills to be passed in the new nation and soon known as the 'White Australia policy', reflected present and future aspirations. One of the earliest Royal Commissions after federation was into the birth rate, again confirming insecurity regarding the new nation's hold over the country. Racial exclusion was central to the very takeover of the land and the self-image of the new nation. This was further exaggerated by Australia's geographic position in Asia--so far from the British 'home'. The well-being of Aboriginal people, who were considered a dying race anyway, was thus better forgotten or at least kept low on the national agenda. The governments of the States, rather than the national government, would have responsibility for Aboriginal policy, and Aboriginal people would be excluded from the national census.

10.1.4 For the first three decades after federation, the conflict over land, and the actual dispossession of the Aboriginal people by frontier settlers, was still proceeding. Forced relocations and dispossession's continued during the decades which followed. So it is deceptive indeed to assume that 'colonial Australia' ended with the coming of the twentieth century, or that successful British settlement meant the end of 'colonialistic' relations between Aboriginal people and non-Aboriginal people. These relations were entrenched not only by acts of dispossession but also by a wide variety of ideas, beliefs, and economic, legal, political and social structures which institutionalised and perpetuated them.

10.1.5 Until the 1970s the history that was taught in our schools portrayed Aboriginal people if it portrayed them at all--as passive and backward onlookers to the achievements of non-Aboriginal people in developing the land. Aboriginal resistance and the reasons for it were not noted, except for characterising them as being, for no apparent reason, occasionally 'hostile'. Aboriginal people were portrayed as a doomed and primitive race who were not part of Australian society except as recipients of non-Aboriginal benevolence.

10.1.6 Yet Aboriginal people did resist the efforts of the colonisers. The slogan, 'we have survived', which echoed throughout the bicentenary demonstrations in 1988, captured the pride of resistance and the survival of the unique Aboriginal culture and society of today.

10.1.7 In Chapter 20 and in other chapters of this report I deal more closely with some particular aspects of Australia's history and of the processes of government against which Aboriginal people struggled for survival. The particular importance of the assimilation and integration policies is emphasised in Chapter 20, but reference to those policies will also be made here. The important political struggles of the 1960s and 1970s and the cultural renaissance which accompanied those struggles focused attention on the inadequacies of the understanding of history which so many non-Aboriginal people held.

10.1.8 This report, in each of its chapters, reflects the reality of the Aboriginal and non-Aboriginal interaction since 1788. The ignorance of history and of the reason for present Aboriginal disadvantage which non-Aboriginal people have held for so long helps to explain why it is that so many Aboriginal people are angry and bitter in their relations with non-Aboriginal society.

10.2ABORIGINAL SOCIETY PRIOR TO BRITISH ARRIVAL

10.2.1 The fact of prior Aboriginal occupation cannot be omitted from any

understanding of Aboriginal history or of contemporary Aboriginal claims. Aboriginal history dates back somewhere between 50,000 and 100,000 years, and archaeological investigations and improved dating techniques promise further breakthroughs in our knowledge of this history. Regional variations here may not be particularly significant, because they reflect the state of archaeological research--relatively limited in Australia--as much as indicating length of Aboriginal occupation. Aboriginal art of an extremely sophisticated kind and of an extreme age has been found. Aboriginal people had to adapt to dramatic climatic changes which affected not only food resources but the very boundaries of the land itself. Little is known about the Aboriginal past, though some dreaming stories or clan sagas offer clues to their ancient history, as do earlier art galleries.

10.2.2 Our existing knowledge of Aboriginal occupation thus shows that it is extremely misleading to imply that Aboriginal people can be categorised as another minority ethnic group. Any immigration which hypothetically occurred so long ago that the time scope is almost impossible to conceive is in vast contrast to one which commenced only 202 years ago. While migration is undeniably a central part of non-Aboriginal experience, it is not a significant part of Aboriginal history or consciousness. In fact, Aboriginal people may have occupied the same area for longer than any other people in world history. Aboriginal people therefore have an ancient history of having occupied the land we now call Australia.

10.2.3 Many non-Aboriginal Australians imagine Aboriginal people only lived in the middle of the desert, and have no idea that they once lived in areas which are now cities. Population figures in 1788 are estimated at 750,000, with dense populations in New South Wales and Victoria along the coast and rich water courses.[2] The richness of this heritage is still largely ignored. The diversity of Aboriginal land-use patterns, food sources, technology, clothing, and shelter is little known. For example, Aboriginal people in western Victoria wore fur cloaks and lived in more permanent villages with stone houses. In warmer resource-rich areas, Aboriginal people stayed for months at a time, though lighter shelters have weathered away, denying us much ancient evidence. Careful land-management techniques were applied to harvest food resources, and sensitive and skilful methods were used to hunt game. Great physical agility, dexterity and knowledge of animals and land were required to hunt wily game and gather inaccessible foods. Fishing from the rivers was widely practised. Aboriginal people had a balanced diet, and they had also been quarantined from many of the diseases which affected Europeans.

10.2.4 The social and economic organisation of Aboriginal groups varied greatly throughout Australia, but some general observations can be made. Aboriginal society had a relatively egalitarian social structure where age, gender, totemic and land affiliations were important demarcations. Women usually provided the staple food supply, and they owned and had special responsibilities towards sites in the landscape, associated song cycles and Dreaming stories. They had exclusive control of the secret ceremonies of reproduction, and their maternal function as child rearers was highly valued. Men hunted and also played an important role in nurturing and teaching children, and there were special responsibilities for a wide network of kin in relation to each child. When a baby was born, she or he immediately had a niche in a complex cosmology defined by Dreaming stories. Identity was secure, and the child had a variety of land relationships via its conception Dreaming, as well as inheritance through its father and mother. The child would gradually be introduced to responsibilities towards land and kin and the strict marriage rules. Values which were taught in traditional Aboriginal society included sharing, respecting the wisdom of age, looking out for the young, gentle treatment and close observation of plants and animals, and the fulfilment of kinship

obligations. Families and clans travelled the land throughout the year. They harvested the land's resources when the opportunity was available, and looked after special sites to which they had responsibility. Men and women separately facilitated the reproduction of resources through ritual nurturing. They also spent much time working or negotiating business in the company of their own gender. Decision making and law enforcement were divided between men and women, and ultimate power was often accorded on the basis of custodial obligations towards relevant land or kinship obligations. The tablet of the law which was ensconced in the landscape itself was explained through Dreaming stories as people travelled. While women were in charge of their own business--sacred and secular-men' s power often appears to have been more highly valued in regard to law and punishment matters concerning the larger group. In some areas, women's law was more powerful than others and older women held high status.[3] Gatherings of many clans took place from time to time to conduct social, marriage and religious business. Ritual confrontations were also staged to avenge wrongdoing, and other transgressions could be punished physically or through potentially fatal sorcery. Dancing and singing, story telling, drawing, painting and sculpture took place all year round, and through such entertaining means everyone learnt the law of their group.

10.2.5 Aboriginal groups often met other outsiders before the British arrived. In the Northern Territory and pans of northern Queensland, Macassan trepang gatherers had been interacting with Aboriginal people off the coast since at least 1700. Relatively harmonious relations existed, and they traded with and employed local Aboriginal people. Such items as glass thus filtered into Aboriginal tool-making. Macassan words have been incorporated into some Aboriginal languages. Some intermixing occurred, and the all-male crews had sexual associations with the local women.

10.3 THE DISPOSSESSION OF ABORIGINAL PEOPLE

10.3.1 The history of Aboriginal dispossession is central to understanding contemporary Aboriginal and non-Aboriginal relations. Colonial takeover was premised on the assumption that European culture was superior to all others, and that Europeans could define the world in their terms. A colony could be established

> *by persuading the indigenous inhabitants to submit themselves to its overlordship; by purchasing from those inhabitants the right to settle part or parts of it; by unilateral possession, on the basis of first discovery and effective occupation.*[4]

10.3.2 Possession of Australia was declared on the basis of unilateral possession. The land was defined as *terra nullius,* or wasteland, because Cook and Banks considered there were few 'natives' along the coast. They apparently deduced that there would be fewer or none inland. Their observations were soon proven incorrect. The governors of the first settlements soon found that Aboriginal people lived inland, and had special territories and associations with land on a spiritual and inheritance basis. Nonetheless, they did not amend the terms of British sovereignty.

10.3.3 In the first hundred years there was no consensus about the basis of British sovereignty. In 1971 Justice Blackburn ruled that all rights to the land were extinguished after 1788, and that because native title had not been legislated by the British it was therefore not part of Australian law. The correctness of this ruling in the Gore Case *(Milirrpum v. Nabalco)* may be tested this year (1991) in the High Court of Australia. Governor King commented in 1807 that he considered

Aboriginal people the 'real Proprietors of the Soil', and lively debate over the issue continued from the 1820s to the 1850s.5 The justice of the British takeover was far from clear cut, and what happened in the Australian colonies was in many ways out of step with international trends. Henry Reynolds has vigorously challenged the legal and moral assumptions of European occupation in *Frontier* (1987) and *The Law of the Land* (1987).

10.3.4 In the debate about British sovereignty commentators, lawyers and others have relied on the writings of Sir William Blackstone: *Commentaries on the Laws of England.* There is no doubting the importance of Blackstone's work which played a unique role in the development of what was then the fledgling American legal system. The lectures which constitute the commentaries were delivered from 1765 to 1769 and, accordingly, have no direct relationship to the situation in Australia. Phrases and individual sentences are often quoted from Blackstone, and as a matter of interest and information, I quote the whole of the relevant paragraph:

> *Besides these adjacent islands [Blackstone had just dealt with the islands of Jersey, Guernsey, etc] our more distant plantations in America, and elsewhere, are also in some respects subject to the English laws. Plantations, or colonies in distant countries are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest, or ceded to us by treaties. And both these rights are founded upon the law of nature, or at least upon that of nations. But there is a difference between the two species of colonies with the respect to the laws by which they are bound. For it is held, that if an uninhabited country be discovered and planted by English subjects, all the English laws are immediately there enforced. For as the law is the birthright of every subject, so wherever they go they carry their laws with them. But in conquered or ceded countries that have already laws of their own, the King may indeed alter and change those laws; but, till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country.*[6]

It will be noted that, on the face of it, the passage equates 'desert and uncultivated' with 'uninhabited'.

10.3.5 Captain Cook and Sir Joseph Banks had reported those parts of the coastal strip which they had observed to be 'thinly' populated. The decision to establish the penal colony there was taken on that basis. Instructions to the first governor, part of which I later quote, make it quite clear that it was understood that there was a presently existing population in the area proposed for the penal settlement.

10.3.6 Governor Arthur's experience in Van Dieman's Land (later Tasmania) convinced him of the value of a treaty, as he explained in a letter to the Select Committee on Aborigines which reported to the British House of Commons:

> *On the first occupation of the colony it was a great oversight that a treaty was not, at that time, made with the natives, and such compensation given to the chiefs as would have deemed a fair equivalent for what they surrendered.*

10.3.7 Had this happened, he considered 'that feeling of injustice which I am persuaded they have always entertained, would have no existence'. His advice

may have contributed to the signing of the Treaty of Waitangi in New Zealand.[7]

10.3.8 In the early years of Port Jackson, when Aboriginal people still possessed a land base and their resistance was impeding colonial enterprises, the British attempted to negotiate trade-offs. Although Governors Phillip and later Macquarie attracted large meetings of Aboriginal people who were willing to talk, satisfactory resolutions were not reached; the British were primarily trying to impress them militarily and materially to make them see things their way. At annual meetings, Governor Macquarie imposed a hierarchical and patriarchal seating order, and through conferring rituals he attempted to elevate powerful men as 'chiefs' or 'kings'. British officials did not properly enquire into what suited Aboriginal people, nor what they most valued, and became disillusioned when the Aboriginal people refused to meet their expectations.

10.3.9 The first official instructions regarding 'natives' in the south land were given to Captain James Cook by the Naval commissioners. They told Cook to observe the native's 'disposition' and attempt to cultivate friendship by presenting them with gifts;

> *You are also with the Consent of the Natives to take possession of Convenient Situations in the Country in the Name of the King of Great Britain...8*

or, if the land was uninhabited, to take possession of it by right of discovery. The President of the Royal Society, co-sponsor of Cook's journey, warned that

> *shedding the blood of these people is a crime of the highest nature. They are the natural, and in the strictest sense of the word, the legal possessors of the several Regions they inhabit. No European nation has a right to occupy any part of their country, or settle among them without their voluntary consent. Conquest over such people can give no just title: because they can never be Aggressors. 9*

10.3.10 Some historians have argued that according to contemporary thinking, Cook was justified in describing Australia as unoccupied or *terra nullius* because the British thought Aboriginal people did not work the land, and therefore lacked property rights. 10 Cook and Banks also thought that Aboriginal people only lived on the coast, but in not venturing inland they were hardly the ones to judge. In their journals, both commented favourably on the indigenous people's life style, in the 'noble savage' tradition, but they also commented frequently on their colour and made derogatory comments about their houses and canoes. They wrote that the country was in 'the pure state of Nature, the Industry of Man has had nothing to do with any part of it', and they likened Aboriginal food gathering to the wandering of 'wild Beasts in search of food' .11

10.3.11 Cook refused to negotiate with Aboriginal people at all. He claimed Australia on the basis of 'first discovery and possession' by such symbolic acts as hoisting a flag in several places along the east coast and, finally, at the place he called Possession Island in Torres Strait.[12] The validity of his actions remains debatable, as dramatised by Burnum Burnum in 1988 when he hoisted the Aboriginal flag at Dover and 'took possession' of Great Britain.

10.3.12 The next policy was given in Instructions to the first Governor of New South Wales, Captain Arthur Phillip, in 1787.

> *You are to endeavour by every possible means to open an intercourse with the natives, and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them.[13]*

10.3.13 The Colonial Office thus recognised an Aboriginal presence. It also recognised that convicts could potentially cause bitter conflict, making settlement untenable. Phillip's Instructions follow:

> *And if any of our subjects shall wantonly destroy them [Aboriginal people], or give them any unnecessary interruption in the exercise of their several occupations, it is our will and pleasure that you do cause such offenders to be brought to punishment according to the degree of the offence. You will endeavour to procure an account of the numbers inhabiting the neighbourhood of the intended settlement, and to report your opinion to our secretaries of State in what manner our intercourse with the people may be turned to the advantage of the colony.*[14]

10.3.14 This rhetoric appealed to some influential humanitarians such as the Anti-Slavery Society. But it was British authority and law which was to be imposed; no exchanges or mergence of Aboriginal and European laws were envisaged. Phillip followed the instruction to 'use every possible means' to develop relations with Aboriginal people. After initial friendliness on their own territories, Aboriginal people kept a wary distance from the settlement. Phillip consequently resorted to kidnap and prolonged detention. The first captive, Aranaboo, became resigned to his position, and his gentleness and kindness to children was noted, though after a few months in custody he died of smallpox. The next captives were Colebee and Bennelong. Colebee, a powerful man of his group, soon escaped, while Bennelong was held in the governor's custody with chains and handcuffs, with a convict as prison guard.

10.3.15 Instructions regarding 'unnecessary interruption' of Aboriginal occupations were interpreted conditionally, for anything 'advancing' the colony could be classed as necessary. While Aboriginal people were to be made useful for the colony, no consideration was paid to what they had to sacrifice. The attraction of British culture was thought to be universal, while the 'unchivalrous' aspects of Aboriginal gender relations and other customs were exaggerated. While early British rhetoric may have evoked concern for Aboriginal people, the *defacto* policy was to expropriate their land to establish a viable British settlement. That was the very purpose for being there. Native welfare--women's or men's--was hardly a priority. Additionally, New South Wales was to be a penal settlement: a place of unwilling exile for many, it was a place of punishment.

10.3.16 From first British occupation, the status of Aboriginal people within the colony and empire was ambiguous; were they to be classed as subjects of the Crown? In Phillip's instructions they had been distinguished from 'our subjects'. Although Britain had taken over the land on the basis of 'first discovery and settlement', violent Aboriginal resistance ensued, and settlers assumed a conquest mentality. Phillip's gamekeeper had a reputation as a murderer of Aboriginal people, yet his own murder by Aboriginal people signified a change of direction for the governor. Phillip ordered a party of fifty soldiers to capture twelve natives, put ten to death, and cut off and bring back their heads. 15 The party was unsuccessful. While such group punishment was not in keeping with principles of English law, differential treatment towards Aboriginal people was common.[16]

10.3.17 In 1797, Governor Hunter declared Aboriginal people a danger and sent out armed parties to 'pacify' them. By 1816 Macquarie had made a martial law-style proclamation. He banned Aboriginal meetings, the carrying of weapons (including those used for hunting), abolished their own system of punishments and reconciliation, and entitled settlers and the military troops to use 'Force of Arms' on

armed Aboriginal people or unarmed groups of six or more. Aboriginal people who wanted the protection of the British Government had to guarantee 'peaceful, inoffensive and honest conduct' and obtain a certificate signed by the governor. Unless they carded this certificate they would not be protected from molestation. In exchange, Macquarie promised blocks of fanning land in areas chosen by Aboriginal people, and to provide rations and all the supplies they needed. But the compact was conditional on Aboriginal people relinquishing their 'habits of life', and agreeing to become 'industrious and useful members of a community where they will find protection and Encouragement'. For those who did not want to farm, they could gain land by agreeing to employment by non-Aboriginal people. Another condition introduced by Macquarie was that Aboriginal people had to agree to place their children in a home at Parramatta to be indoctrinated in British culture. 17 The various Aboriginal groups were to meet together and discuss Macquarie's plans for 'a civilising institution', 'as well as for Consulting with them on the best Means of improving their present Condition'. Aboriginal people must have been baffled by the terms upon which they were supposed to regain rights to land they had not agreed to relinquish, and which they probably still viewed as their own.

10.3.18 Violent frontier conflicts continued, and, in 1825, the British Colonial Secretary, Earl Bathurst, advised that aggressions by Aboriginal people should be handled 'in the same manner, as if they proceeded from subjects of any accredited State'. Indeed, Aboriginal people who resisted settlement were frequently killed like 'enemy aliens'.[18] After 1836, however, the British Colonial Office instructed that Aboriginal people were subjects of the Queen, within her Allegiance. Only British law was to apply in the colony. Thus, while they were theoretically under the Queen's protection they were not entitled to carry out their own system of laws.[19] The British Parliament's Report of the Select Committee on Aborigines recommended a Protector be appointed in each colony who would learn their language, distribute gifts (other than liquor), introduce a simple set of laws, collect statistical information regarding population, act as a magistrate and provide legal representation. The use of native police was not recommended because of the decimation which they allegedly caused in Van Dieman's Land.[20]

10.3.19 Despite such policies emanating from distant centres of Empire, frontier conflict spread with land settlement. The actual policy on the ground was *laissez-faire.* Frontier Aboriginal policy, as carried out by settlers and police, was primarily 'pacification' by the use of weapons: a quiet, half-hidden and sporadic war. No colonial government could openly endorse murder; it was illegal. But they could turn a blind eye to what became permissible frontier activities. Native and general police parties were granted the authority to 'quieten' Aboriginal people who resisted non-Aboriginal role.

10.3.20 The ramifications of earlier misinterpretations of Aboriginal population, land fights, use and style of occupation continue today in widely held assumptions and in Australian law. Past Aboriginal negotiations have been largely omitted from our history, with Aboriginal people portrayed as powerless. We still make little effort to understand how Aboriginal people negotiate, let alone attempt to confer with them on their terms. Even where diplomacy occurred, it is dismissed in derogatory fashion. Some pastoralists say Aboriginal people 'gave away' their land in return for flour and sugar, or they 'gave away' their children, although camping on their own land was sometimes conditional on Aboriginal people agreeing to loan their children for labour. Successful adaptations by Aboriginal people to European life styles have been interpreted as confirming the attractions of civilisation, rather than as concerted efforts by Aboriginal people to ensure diplomatic relations.

10.3.21 The Batman-Kulin treaty of 1835 is significant as it was perhaps the only

formal treaty negotiated with a group of Australian Aboriginal people. The Kulin were active agents who negotiated and permitted temporary access to their land in exchange for reciprocal rights to European resources. Batman's treaty was declared invalid by Governor Bourke, but this did not demonstrate that Aboriginal people had no rights to land or compensation. The treaty was void because it was carried out by a private citizen rather than the Crown. Nonetheless, as a result of this treaty, relations at Port Phillip were characterised by relative tolerance and goodwill.

10.3.22 George Augustus Robinson was employed to conduct a conciliatory process with Tasmanian Aboriginal people. It seems he negotiated an unwritten treaty in the 1830s which resulted in their move to Flinders Island. Aboriginal people demanded special conditions including the right to pursue their own culture and regular trips back to their traditional land--though these promises were broken. Throughout Australia Aboriginal people attempted to negotiate with various people who first occupied their land, and although mutual compromises were sometimes reached, they had no legal standing.

10.3.23 The Colony of South Australia was established in 1836 at the peak of the humanitarian movement in Britain. By this time it was clearly understood that Banks' opinion that the hinterland of the eastern coastal strip would be uninhabited or virtually so was quite wrong. Furthermore, Stun's voyage down the river, which he named the Murray, into what was to become South Australia had shown that the area was much populated.

10.3.24 The idea of the settlement was privately promoted but the parties secured the passage (August 1834) of an act 'to empower His Majesty to erect South Australia into a British Province..-. '. The preamble defined the area to be colonised and described it as 'waste and unoccupied Lands which are supposed to be fit for the Purposes of Colonisation'. Provision was made for the making of laws and the setting up of a commission to carry the Act into execution. Commissioners were empowered 'to declare all the Lands of the Province... (excepting only Portions which may be reserved for Roads and Footpaths) to be Public Lands open to purchase by British subjects' (the proceeds of sale were to be paid into an emigration fund).

10.3.25 The proposal and the Act were attacked by the humanists and their efforts bore fruit with government. By Letters Patent (19 February 1836), William IV, with the advice of the Privy Council, established the colony and fixed its boundaries, but 'Provided Always that nothing in these our Letters Patent contained shall effect or be construed to affect the rights of any Aboriginal Natives of the said province to the actual occupation or enjoyment in their own Persons or in the persons of their Descendants of any Lands therein actually occupied or enjoyed by such natives '.

10.3.26 By order in Council of 23 February 1836, the Governor and certain named officers were empowered to make laws for the colony (subject to approval in London) but the order cited the terms of the proviso in the Letters Patent just quoted.

10.3.27 It is interesting to note that there is not here a breath of 'terra nullius'. The first colonists having arrived, on 28 December 1836 the Governor announced to his fellow new arrivals the establishment of Government. It was a simple statement, more than half of which reads as follows:

> *It is also, at this time especially, my duty to aprise the Colonists of my resolution to take every lawful means for extending the same protection to the Native Population as to the rest of His Majesty' s*

subjects, and of my firm determination to punish with exemplary severity, all acts of violence or injustice which may in any manner be practised or attempted against the natives, who are to be considered as much under the Safeguard of the law as the Colonists themselves and equally entitled to the privileges of British Subjects. I trust, therefore, with confidence to the exercise of moderation and forebearance by all Classes in their intercourse with the Native Inhabitants, and that they will omit no opportunity of assisting me to fulfil His Majesty' s most gracious and benevolent intention towards them, by promoting their advancement in civilisation and ultimately, under the blessing of divine providence, their conversion to the christian faith.

10.3.28 There was considerable activity in the direction of converting the people to Christian religion but not to the protection of their fights to occupation or enjoyment of lands 'now occupied or enjoyed by them'.

10.3.29 The administration, as determined by the Act and the Letters Patent, contained a fatal division. The Governor had certain executive functions and the Council made the laws; but the Colonisation Commissioners sold the land without any reference to the position of Aboriginal occupiers or to the terms of the Letters Patent. The people of the Adelaide Plains and surrounding areas and those of the Murray River were decimated by dispossession, disease, violence and lack of food due to the stocking of the land to the detriment of native wildlife and interference with fishing. The first mission was established at Poonindie, near Port Lincoln, in 1850. More missions and reserves were set up from then on.

10.3.30 The dispossession proceeded more slowly in the more distant parts of the colony, although the spreading out was quite rapid. The European population was small and the records are full of the recognition of the work that was done by Aboriginal workers, not only on the pastoral runs but farming, transport and in many other ways. The pastoral leases that were granted reserved certain rights to Aboriginal people for living and hunting. The pastoralists drove them away from areas that were the most special to the needs of the pastoral industry and particularly from the better watering places. In South Australia, as in other places, Aboriginal people were able to find a place as workers on the pastoral runs and in this way were frequently able to retain contact with their traditional lands and to engage in ceremonial life but difficulties were constantly put in the way of doing so.

10.3.32 The conflict between Aboriginal people and non-Aboriginal people in Australia is not premised only on 'race' but on a colonial past. Racial ideas went hand in hand with British imperialism, and hence its anthropologists, who turned such ideas into a sustaining 'science' which was later applied in both Africa and Australia, have been branded the 'handmaidens' of colonialism. Theories like social Darwinism, popularised in the 1870s, predicted that the extinction of' inferior races' in the wake of 'colonial progress' was inevitable. The disease and ill-health which Australian Aboriginal people faced in the late nineteenth and early twentieth century only reinforced this notion of their inevitable disappearance. Despite the efforts of missionaries like J. B. Gribble in Western Australia and humanitarians in other colonies, the general public was relatively complacent about Aboriginal suffering, and subsequent government policies took on a short-term palliative nature.

10.4FRONTIER PERIOD: DISEASE AND VIOLENCE

10.4.1 This Royal Commission was in part prompted by a belief by Aboriginal people, the families of those who died in custody, and many supporters that foul

play or murder was responsible for deaths and that the culprits must be caught. The thrust of the Commission has since also turned to the Underlying Issues, in which social, mental and physical health and an Aboriginal sense of injustice feature prominently. The expectation that there would be individuals to blame (such as particular police officers) for Aboriginal deaths in custody is understandable given the perspective of history which Aboriginal people have experienced, as well as reflecting the present state of Aboriginal-police relations.

10.4.2 Past experiences, as passed down through the generations, create what is termed 'popular memory' or historical consciousness. A certain patterning, a logic of events, emerges which explains the predicament of the individual and the group. Past lessons create a basis upon which to assess the present, and contemporary events reinforce them. That Aboriginal people and others often believe that police or gaolers have killed those who died is a serious indictment of Australia's colonial past, as well as proof that the present society has yet to provide reassurance that that past is over.

10.4.3 Aboriginal perceptions of threat by various forces in non-Aboriginal society have been perpetuated by a long heritage of control, with often harsh means of enforcement.

10.4.4 In order to make way for British rule and its law to take effect, flagrant disregard of this same law was popularly accepted. There were also implicit contradictions in imposing such rule in a 'new' land, for British justice had not been designed to cater equally for people of other cultures, let alone those in the relationship of the colonised. Edicts on paper which required humane treatment of Aboriginal people were not carried out by frontiersmen. British statements that Aboriginal people came under the 'protection of the Crown' were inappropriate when they had not chosen to be invaded and taken over as 'subjects'.

10.4.5 The frontier period indicates the type of 'law and order' first imposed on Aboriginal people, which set the tone. In most parts of Australia during its various frontier eras, force or its threat became the key means of establishing British 'law and order'. Australia has many unrecorded battlefields, and the number of Aboriginal people killed by the newcomers during the frontier era probably exceeds 20,000.[21] Aboriginal people were thus dispossessed of their land and traditional livelihood, making retreat, starvation and migrations to the fringes of non-Aboriginal settlements or reserves inevitable. Through its legacy of fear, violence thus had a lasting impact on Aboriginal people, as was intended. As elsewhere, it was often the most effective strategy in establishing control over indigenous peoples. Once they had come within its influence they would be more likely to obey not just British laws but any instructions given to them by any British person.

10.4.6 Many individuals literally took the law into their own hands. As colonisers they felt empowered to 'do their job' by participating in conquest. The legal authorities seldom intervened, and provided tacit approval of such actions.

> *As far as the whites were concerned the general view by the end of the century was that there was a direct relationship between colonial progress--the fulfilment of their mission and the destruction of Aboriginal society. It was in itself a proof of progress.*[22]

10.4.7 Different styles of violence and techniques of subduing Aboriginal people were employed. This applied even in the earliest, more conciliatory contacts. In 1788, the Eora people who met the first British arrivals at Botany Bay were given displays of musket fire in order to instil a sense of fear of British weaponry. While

Governor Phillip may have justified this show of military power in the hope of avoiding violence, it was aimed at making Aboriginal people submit to the authority of the newcomers. They wanted to be respected and to dominate, to leave no doubt as to who was in charge.

10.4.8 A series of kidnapping's was another strategy used to command authority, the most famous being of Bennelong who was, as I have already noted, forcibly kept in British custody with chains, bolts and guards. Hostage taking was practised to acquire intelligence of the original occupants, and to force the establishment of diplomatic ties. After Bennelong was returned his freedom, some promising cooperation and coexistence occurred at Port Jackson and areas north. Conflict intensified as pastoral settlement expanded on the Hawkesbury River in the 1790s, then later on the Bathurst plains and along the Hunter River in the 1820s. It grew worse during the 1830s and early 1840s along the Macintyre, Gwydir and Namir, with the famous Myall Creek massacre of twenty-eight men, women and children in 1838. Aboriginal spokespersons repeatedly appealed to have their best hunting areas protected from intruders, but to no avail.[23]

10.4.9 Western Australia was occupied by the British in 1829, and was claimed without any negotiation of a treaty. Competition for land and resources led to violent struggles. In 1835 Governor Stirling led a punitive raid in Pinjarra where an estimated eleven Aboriginal people were killed. In 1833 an Aboriginal man from the south-west, Yagan, was shot and killed, and his smoked head removed and placed on public exhibition in Britain.[24]

10.4.10 In nineteenth century Queensland, frontier violence was often used to ruthlessly dispossess Aboriginal people. Its later date of occupation brought advanced rifle and revolver technology, plus the accumulated experience of past conflict in the southern colonies. Additionally, the strong humanitarian lobby of Sydney and Melbourne was absent. The effectiveness of the Native Police force was another factor. Queensland's vastness and the isolation of many pastoral and mining outposts meant it had a more protracted frontier struggle than in south-eastern Australia. By the 1880s and 1890s, the era of frontier violence in eastern Australia was largely over and colonial 'order' had been imposed.

10.4.11 One way in which authority was established in Queensland was by frontiersmen who consistently carried guns in case they encountered 'hostile' Aboriginal people; they considered they were in 'enemy territory'. The graziers' parliamentary power enabled them to clear and 'settle' the land unimpeded, which meant quelling Aboriginal opposition. Deaths of Europeans met calls for vengeance---'the deadly bullet must do the work of the more legitimate executioner--justice must triumph over law'. Given the 'punitive expeditions' which followed, it was indeed doubtful that Aboriginal people were being 'protected as subjects of British law'.[25] In Queensland possibly 10,000 Aboriginal people and at least 1,000 Europeans died as a result of frontier conflict. The chronic anxiety caused by this situation affected both sides. As the Chief Protector of North Queensland, Archibald Meston wrote, Aboriginal people met him 'like hunted wild beasts, having lived for years in a state of absolute terror' .26 Such a fearful people could be forced more easily onto reserves away from their own land.

10.4.12 The Northern Territory was the last area to be continuously occupied by the British. Soon-abandoned settlements such as Fort Dundas (1826), Raffles Bay (1828) and Port Essington (1838) had left their legacy of violence and introduced animals.[27] Little British presence existed then until the building of the overland telegraph line in the 1870s. The first encounter with outsiders for many inland Aboriginal people was with the Chinese goldminers, and for decades afterwards

the British population remained low. Violence between Aboriginal people and newcomers was an integral part of pastoral expansion throughout Australia, and' fatal conflicts were widespread. They continued up to the 1920s and 1930s in Central, North and Western Australia.

10.4.13 Although some regions of Australia were less violent than others, such incidents were often hidden from the public records and so we lack much-of the evidence. A literate culture knew well the implications of committing deeds to paper which, although publicly condoned, did not conform to the 'letter of the law'. Frontier behavioural codes evaded prosecution by prescribed euphemisms: words like 'dispersing', 'breaking up', 'shaking up', 'giving a fright', 'teaching them a lesson' meant shooting, murdering any number of Aboriginal people.

10.4.14 The violence was certainly not one way; Aboriginal people often used force against the strangers, and posed a serious danger. At least 3,000 Europeans were killed and another 3,000 wounded by Aboriginal people attempting to defend themselves and their land.[28] Their opposition to the newcomers has often been portrayed as a pan-Aboriginal desire to rid the country of non-Aboriginal people, but this is to misinterpret Aboriginal culture. Individual Aboriginal people fought for a variety of reasons. They were generally carrying out their own law, and defending their country from intruders. This might have been owned by individuals, clans or bands. The British had come uninvited; they had not followed the required protocol of introductions by elders to the land's spirits and contemporary custodians.

10.4.15 The late Phillip Pepper, a Kurnai man of Victoria, wrote of the struggles of past generations:

> *The white come here and took it by force with a lotta blood bein' shed by the Aborigines, they really died for their own country and got nothin' in return.*[29]

10.4.16 Amy Laurie, a Gurinji woman, spoke of how her grandchildren could not understand why the past generations had not fought back harder when they were attacked. The elders explained:

> *You know why we bin let 'em shoot we. Why? We frightened? No, we never gotim rifle. And we didn't care, they reckon, 'We can die in our own country' 30*

10.4.17 Introduced diseases such as smallpox in New South Wales and Victoria, and malaria and smallpox in the north, had devastating effects on most Aboriginal groups before they came into physical contact with Europeans. Populations were halved or virtually wiped out; the severe depopulation caused personal suffering and crises in community organisation, and put them in a weakened position by which to meet powerful outsiders.[31] The title of Noel Butlin's book labelled disease as *Our Original Aggression,* and, although there is no strong evidence that it was intentionally used in Australia as a means of subduing Aboriginal people, closing off access to land and food resources and poor medical assistance constituted neglect if not malice. By the late nineteenth century--and in fact until the 1950s. those who expressed concern about Aboriginal health were largely motivated by the perceived threat of contagious diseases to the 'public health', that is, to non-Aboriginal people.

10.4.18 While in many areas, disease proved to be the main factor responsible for Aboriginal deaths, susceptibility was enhanced by the trauma of dispossession, unavailability of traditional food and water supplies, bans on traditional weapons, the unhygienic results of being required to wear European-style clothing, and the

lack of immunity to introduced diseases. Alcohol and tobacco also played a role.

10.4.19 Colonies differed. The south-eastern peoples were badly hit by smallpox, whilst northerners probably had greater immunity because of earlier Macassan visitors. The Eora of New South Wales, the Port Phillip peoples and the Tasmanian Aboriginal people suffered speedy decimation. Predominantly convict populations stole their food, weapons, and raped their women. The desperation of the hungry newcomers to establish self-supporting agriculture and pastoralism led to a push for land and disregard for the original inhabitants. Van Dieman's land settlers were involved in sheep gazing, and the ex-convict population was little interested in humanitarian concerns. The death toll from violence and disease on their lands was shocking, but possibly even worse after they were detained on islands.[32] Only a small population survived the 1830s, though the island people of Bass Strait who had formed a community with men of the sealing industry were to continue as a distinct and defiant people. Aboriginal people had more chance to pursue their traditional economy where there was less competition for resources and land. The hotter, northern and desert regions and areas without ports or reliable water supplies were less desirable to the newcomers, which gave local Aboriginal people more time to develop survival strategies. There were fewer intruders, and often they relied upon Aboriginal labour. The less successful the enterprises, and the less land-intensive the industries, the greater the chances for Aboriginal survival and relative independence.

10.5 POLICE

10.5.1 Historically the police have acted as the most consistent point of Aboriginal contact with colonial power. This is pertinent to the present situation, for past history relating to police action is very much alive in the minds of Aboriginal people. Similarly, police share a certain heritage relating to the treatment of Aboriginal people.

10.5.2 The formative experiences of Australia's colonial police were often in conflicts involving control of Aboriginal people. The police were also empowered to control convicts and ex-convicts, including escapees who took up bushranging. Convicts were a group whose punishment was the earliest rationale for Australian settlement and whose discipline and an array of punishments were enforced by a military administration.

10.5.3 Interventions in the lives of Aboriginal people were condoned for different reasons. With the exception of the early convict colonies, it was the police who mediated conflict between Aboriginal people and Europeans in Australia. This was in contrast to North America where the military played this role. Rather than evolving out of the need for community policing, Australian policing soon took on a centralised militaristic and coercive character akin to the Irish constabulary of the early nineteenth century. Also indicative of its paramilitary style is its descriptive terminology: 'troopers', 'corps' and even police 'forces'. In New South Wales the term 'Force' was only replaced by police 'Service' in 1990.

10.5.4 Aboriginal resistance actions were often the catalyst which led to the establishment of Australian rural police forces. The New South Wales border police were set up after the Myall Creek massacre of 1838. Their role was to curb Aboriginal/non-Aboriginal conflict, yet they were involved in 'punitive expeditions' which amounted to massacres of Aboriginal people. The Western Australian mounted police were set up in the 1830s in response to settler demands for 'protection'. These police were not supposed to manage existing relationships, but to play a 'civilising' role; that is they were not only trying to impose authority and

perhaps prepare for the rule of law but also to change Aboriginal people culturally. This meant they were to encourage them to become malleable employees and settle in one place, rather than travel freely over country which Europeans now wanted to exploit. This 'civilising' mission was also in line with new trends in western policing where the values of respectable behaviour were to be instilled as a form of control over the 'masses'. 33

10.5.5 Aboriginal styles of resistance, such as attacking isolated shepherds or killing livestock, were usually classed by non-Aboriginal authority as breaches of the law rather than acts of war. This reflected the failure of colonial authorities to recognise Aboriginal people as original owners with anything to defend, and it also reinforced stereotypes of their savage treachery or barbarity. In fact, many attacks by Aboriginal people were of a judicial nature, intended to punish individual transgressions on their territory. From the Aboriginal perspective, the 'hostile blacks' occasionally portrayed in the school texts were in fact the 'policemen' of their communities. Their policing role was dictated not by a specialist classification but by particular land associations. Mudbura people in the Northern Territory-see similarities between non-Aboriginal policing and their own; they refer to different types of traditional Aboriginal land owners or custodians as 'managers', 'owners' and 'policemen'.[34] Although non-Aboriginal police were supposed to represent impersonal authority, Aboriginal people saw the 'policemen' as individuals, and judged them as' good' or 'bad' police officers according to how well they fulfilled the kin-based principles of their own systems of law.

10.5.6 Aboriginal people who attempted to defend their land or communities, however, were classed by non-Aboriginal society as criminals, and if they were not dealt with arbitrarily by settlers, the local non-Aboriginal or native police were called in. Police, therefore, became *the de facto* arbiters of two sets of laws in conflict. 'Ordinary' Aboriginal behaviour was also classed by police as 'criminal'. 'Right' lay on the side of the most powerful group, who continually judged Aboriginality as deviant in body, mind and action.

10.5.7 Although officially they were required to curb vigilante actions against Aboriginal people, policing on the frontier favoured the protection of the non-Aboriginal population. The police had thus become the State instrument by which frontier pacification was to be established. Once Aboriginal people were 'subdued', police began to serve a role of 'protecting' Aboriginal people. This coincided with the turn of the century belief that Aboriginal people were a doomed race heading for extinction, so protective policies were considered to be only temporary measures to 'smooth the dying pillow'.[35] Administrators in Western Australia and Queensland saw the inherent conflicts in appointing police to carry out policies of Aboriginal 'protection', and hoped their appointment was a short-term measure, but its economy meant that this police role became institutionalised. Police who were acting as protectors were still answerable to police department superiors, who had to listen first to continuing European demands for control of Aboriginal people. Individual police were also part of the non-Aboriginal community, and risked ostracism if they sided too closely with Aboriginal people. Police and 'settlers' held common interests, especially in remote areas where they were only a small minority amidst a larger Aboriginal population. To many settlers, a 'good officer' was a practical and experienced man who knew when to shut his eyes.[36]

10.5.8 Policing and Aboriginal affairs were both centralised in each colonial (and after 1901, State and Commonwealth) government. The police had to implement the various 'protective' legislation which governed the lives of many Aboriginal people. Tensions must have often occurred not only between economic and

industrial demands and humanitarian interests but also between local community objectives and the latest State policies regarding Aboriginal people. The police were required to work in closely with the more politically powerful groups like employers. On the Queensland frontier in the 1900s, police assisted the pastoralists in various ways. They were called in to relocate Aboriginal communities when their labour was not needed, or to force them off waterholes and other land which was required for stock. Police therefore participated in restricting their hunting grounds, which led to hunger and ill-health, and made imperative Aboriginal dependence on non-Aboriginal employers and township resources for survival.

10.5.9 Police frequently ordered Aboriginal people around at the request of non-Aboriginal residents. In the Northern Territory and South Australia, they moved people's camps because their noise might disturb bullocks or their presence might deter animals drinking there. Their actions contravened covenants in pastoral leases or legislation which allowed Aboriginal people access to pastoral lands to hunt and camp, but this was overlooked. This was the case in Queensland, South Australia and the Northern Territory.[37] Towns or other places used by non-Aboriginal people often became prohibited areas to Aboriginal people. They were subject to many restrictions, and in most States were prohibited from drinking and possessing firearms practices which were widely and publicly observed by the rest of the rural community.

10.5.10 In the Northern Territory in the 1910s, 1920s and 1930s, police visited cattle stations about once every three months. As 'protectors' of Aboriginal people, their duties included checking to see if station conditions were satisfactory, taking a census, rounding up the ill, treating minor ailments and detaining and arranging transport for the diseased to be taken away and quarantined. They also had to remove children of mixed descent from their families. It is not surprising that many Aboriginal people avoided and attempted to withhold information from them. Many residents of cattle stations left when they heard that the police were about to make their quarterly visits. They wanted to protect a diseased relation who would be taken away forever, and not allowed to die in his/her country, or hide a little light-skinned daughter, son or grandchild whom they would probably never see again. In addition to their role as 'protector' the police also 'hunted' Aboriginal people for other reasons. They arranged Aboriginal people as labour for the police station, for tracking, and for other Europeans. They sought out and detained cattle spearers, those involved in tribal murders, and those in possession of opium or alcohol. In towns, they detained those who went into areas prohibited to Aboriginal people, those 'loitering' in a township, found drunk, using obscene language, or carrying a nulla nulla.

10.5.11 In New South Wales towns during the same period, police were required by the Aboriginal Protection Board to issue rations to 'deserving' Aboriginal people. The Board was able to withhold rations in order to force relocations, or to force children to attend school. The Board could decide whether an Aboriginal person required medical treatment. It had the right to patrol and maintain order on unsupervised reserves, to expel 'trouble makers' from such places, to recommend on disposal of reserve land, to remove children from parents to 'Training Homes', to charge parents who attempted to prevent their children's removal, and stop the children returning to Aboriginal camps. The powers conferred by the Board were wide indeed, and this did not include their usual duties of administering justice in the towns, often at the request of local municipal councils or powerful individuals.[38]

10.5.12 Police also interacted with mission and government reserve authorities,

and were requested to take away 'recalcitrants' to more distant reserves and sometimes gaols. Police were the intermediaries of non-Aboriginal authority reflecting wider social and structural relations of power. As the main points of contact with non-Aboriginal society, they were logically the most accessible points from which Aboriginal people might gain knowledge of non-Aboriginal 'law', yet Aboriginal people often decided it was best to avoid them at all costs.

10.5.13 Police surveillance of Aboriginal communities in turn shaped their perceptions, and they came to think their duties towards Aboriginal people a 'nuisance'. They most often came into contact with those who no longer had the dignity of supporting themselves, or who regularly got into trouble with the law. Contemporary thinking defined Aboriginal people living alongside Europeans as degenerate remnants. Non-Aboriginal police were supported by this thinking and found it easy to stereotype Aboriginal people accordingly. The character of racial thinking changed over time, but structural factors locating Aboriginal people at the bottom of the social hierarchy remained.

10.5.14 In the 1920s and in the post- 1940s era, the continuing police role in rationing the 'indigent', handing out other forms of welfare, managing trust funds (containing a large proportion of all money earned by Aboriginal people according to State policies), and general surveillance of Aboriginal activities often necessitated regular association with police and forced many Aboriginal people into dependence upon them. The paternalistic nature of the policing role requires further analysis. Many sincerely wanted to help Aboriginal people, though their role could be restricted or overruled by more powerful interest groups such as employers and government, as well as their own department, who did not consider Aboriginal-related work a high priority. Loyalty to their employers or fear of the consequences often stopped Aboriginal people complaining to police.

10.5.15 To sum up, relations between Aboriginal people and police were complex, and changed according to differing government policies, but in most States throughout both centuries, police played an important role not only in arresting and charging Aboriginal people for 'criminal' offences but for carrying out 'protective' roles. These roles intervened in Aboriginal control and management of their own lives and impinged on realms usually defined by Australian society as 'private': residence, diet, self-sufficiency, illness, work, education and child rearing. From the late 1940s on, welfare officers took over much of the surveillance, but police still had to enforce removal, detention and other orders.

10.5.16 The gender implications of Australian policing also require consideration. Police were virtually always non-Aboriginal males, and the interaction which followed was generally one between a non-Aboriginal male and an Aboriginal male, and sometimes a female. Aboriginal women would consequently view 'police work' as 'men's business'. In rural areas, police were often single and their position empowered some of them to select females from the Aboriginal communities for whom they worked. Aboriginal women also saw the possibilities which might flow from having an intimate relationship with a man in such a powerful position over their family's lives. Many police officers had sexual relationships with Aboriginal women, and some even had 'harems'. In the Northern Territory, at least, various welfare officers also had promiscuous reputations. The fact that some of these men biologically fathered the children they later seized for State institutions adds a cruel twist to the story. In terms of Aboriginal gender relations, the nature of policing potentially reinforced male authority, while the desire of some to exploit the women would have caused concern mainly if the women stayed too long with the non-Aboriginal police officer or if he did not fulfil his reciprocal obligations by distributing goods to her family.

10.5.17 The short-term stays of many non-Aboriginal police officers (especially in remote areas) disrupted Aboriginal attempts to incorporate them within their own network of reciprocal obligations. In Western Australia and the Northern Territory, many Aboriginal people never claimed their trust moneys because a different police officer had taken charge of their area, and they thought it improper to ask for anything from the stranger.

THE ROLE OF NATIVE POLICE

10.5.18 Aboriginal police and police trackers played important roles during the nineteenth and twentieth centuries. Some Aboriginal and non-Aboriginal people assume that they must have been traitors. It was true that a divide and rule strategy was often effectively used by imperial powers, and clan rivalries were exploited by colonial police. However, frontier struggles were not polarised solely according to one's place as coloniser or colonised. Aboriginal Australia was not one 'nation'; it was many. And like all societies, it was not static. Aboriginal contributions to policing can be seen as adaptation and cooperation to changed historical circumstances.

10.5.19 The first experiments with 'native police' forces commenced in Victoria in 1837, with subsequent forces set up in 1839 and 1842. Paramilitary in character, the prestigious Port Phillip Native Police Corps were proudly uniformed and mounted on good horses. As well as providing a deterrent to Aboriginal attacks on pastoral properties, they played a wider policing role, capturing non-Aboriginal offenders, and later policing the diggings and escorting gold into Melbourne. Their story was one of cooperation with Europeans; leading Aboriginal men applied for recruitment and then actively pursued their position to their own advantage. They refused to capture kinsmen by claiming inability to track them, while eagerly pursuing someone from an 'enemy' group. It seems they were also involved in some murders of other Aboriginal people.

10.5.20 New South Wales and Queensland native police had a well-deserved reputation for violence. The Queensland force was called in specifically to dispense 'justice' towards Aboriginal people. They were ordered to 'disperse' any large numbers of Aboriginal people and, in the words of a contemporary senior police office, the term meant 'nothing but firing at them'.[39] This made Aboriginal meetings and ceremonies impossible. In the Northern Territory, Aboriginal people were often employed as police trackers, though frequently on a casual basis. They were sometimes engaged by police after spending a time in gaol. They were offered shorter sentences for agreeing to work. Sometimes they took the opportunity of being armed (firearms were otherwise prohibited for Aboriginal people) to carry out attacks against enemies. In some cases where they took the blame for shootings, it seems they served as scapegoats for over-zealous non-Aboriginal police.

10.5.21 Members of the native police forces were all male. Many Aboriginal men and some women worked as police trackers. Their bush expertise was used to assist in police hunts on a casual basis, while others worked for longer stints, with duties such as doing the rounds, grooming horses, and offering general assistance. Often they were only paid a few shillings a week, with rations supplied to their families. Aboriginal trackers were immortalised in Aboriginal oral histories and in fictional works such a Ion Idriess' *Mantracks* and in the detective series of Arthur Upfield's *Boney.* Henry Reynolds' *With the White People* depicts their important role in Australian history.[40]

10.5.22 Aboriginal communities gradually came to use the police, Aboriginal or

non-Aboriginal, as an outside authority structure which could be employed for internal policing purposes. Trouble-makers could be sent away, sympathetic kin could protect someone due for a tribal punishment or likely to do something 'dangerous' to others. Sometimes gaol was used to discipline or calm someone down. Aboriginal law enforcement structures were not as strong as they once were owing to forced migration, illness, alcohol, unemployment, and the intrusive power of Western culture. Western control mechanisms could thus be easily used by Aboriginal people to meet their own agendas--though this strategy proved problematic, for they often encountered people who did not understand their language, actions or intentions.

10.6 ABORIGINAL PEOPLE AND THE LAW

10.6.1 Aboriginal people have experienced an anomalous position in relation to British and Australian law. Prior to and after contact, Aboriginal communities had their own system of law, with its logic and rationale tied in with the holistic philosophy of the Dreaming. Rather than abstract principles of 'justice ', their laws were evoked more directly and on a more personal basis to maintain or regain community harmony.[41] Theoretically, Australian courts have held that their laws applied to Aboriginal people and non-Aboriginals alike 'except to the extent that the legislature had seen fit to make differences or to allow exceptions'.[42] Some attempts have been made to accommodate tribal law, such as the native courts established in Western Australia which operated between 1936 and 1954. 'Tribal custom' could be taken into account in mitigation of a sentence, though not as a complete defence.

10.6.2 Usually Aboriginal people have been subject to general Australian laws, and additionally to a range of special laws which prohibited and restricted their movements and associations. While theoretically Aboriginal people were to be treated as British subjects, they 'suffered severe disabilities in the courts'.[43] They were not given equality of legal status, yet were perceived as law-breakers. Because they were not Christians, they often could not testify in court (amended in Western Australia in 1841, New South Wales in 1876). In many colonies, legislation entitled police and justices of the peace to exercise extraordinary powers over Aboriginal people. Pastoralists, miners and other employers of Aboriginal labour were often appointed as justices of the peace and magistrates. They tried cases relating to their own or their neighbours' employees, and sent out their station 's employees to assist in police efforts to quell Aboriginal actions. In Western Australia, for example, Aboriginal protectors, who were often police, had special duties to 'minimise the annoyance caused by the aborigines' by nudity, begging, etc. In 1849, Aboriginal people could be tried summarily for criminal offences (excluding murder, arson, rape) by two or more justices of the peace and sentenced with up to six months imprisonment plus corporal punishment for male offenders.

10.6.3 Many legal impediments existed to Aboriginal people giving evidence and exercising their rights as individuals. In some colonies they could not press charges, were held corporately guilty for the crimes of others, and were not permitted to give evidence because they were pagans. But even the lifting of restrictions on giving evidence meant little. The justice system was especially alienating for people who were not familiar with this facet of Western culture. Aboriginal people often understood little English, and thought they were to provide required answers rather than an objective 'truth'. Juries were mainly non-Aboriginal, and rarely sympathised with the Aboriginal defendant or believed Aboriginal witnesses. There was a certain protocol to be observed. Even if a

non-Aboriginal man had provoked the attack, the lesson had to be taught that Aboriginal retaliation was not acceptable. In the 1920s and 1930s, numerous cases which Charles Rowley described as 'spectacular injustice' occurred through the courts. These highlighted the conflicts between traditional Aboriginal and British style law. But even more, they drew attention to the fact that Aboriginal people were not receiving justice under the Australian system. In a survey of the North Queensland circuit court between 1882 and 1894, a quarter of Europeans charged with violent offences against Aboriginal people were found guilty, and none were sentenced to be executed, despite the high proportion of murder cases. 44

10.6.4 Race was a crucial factor in administering justice, as shown by studies of the 1888 rape case of a Victorian Aboriginal woman and of rape cases concerning Aboriginal men.[45] In Northern Territory murder trials from 1884 to 1911 all nine Aboriginal people charged with the murder of non-Aboriginal people were found guilty, and three were executed. In the cases where non-Aboriginal people were charged, they were very rarely found guilty, and the murderer was released after a short term. In 1913 Judge Bevan wrote to the Administrator:

> *Juries will not convict a white man for an offence against a black, certainly if the evidence is that of blacks, whereas on black evidence there is no difficulty in the way of securing a conviction against a black. The jury system may have worked well where the population is all one colour, but the introduction of racial antipathies goes far to undermine the principles of trial by Jury.*[46]

10.6.5 Some of the scandals which occurred in the 1920s and 1930s in the far north related to police involvement in actions against Aboriginal people (for example, the Coniston and Forrest River massacres). Others involved cases of suspicious deaths in police custody and a police officer was charged with assault in the Borrooloola district. He was acquitted of a charge of assault on an Aboriginal male prisoner, and of assault on an Aboriginal woman, 'Dolly', who died in his custody. The Supreme Court judge found him innocent, stating that all the Aboriginal witnesses were 'liars'. Witnesses were certainly treated contemptuously and it was common for Aboriginal witnesses to be chained and imprisoned until the hearing.

10.6.6 In the case of *R v. Tuckiar* (1934) in the Northern Territory an Aboriginal man was charged with the murder of Constable McColl, and was found guilty, despite corroborated evidence of provocation. McColl was alleged to have engaged in sexual intercourse with Tuckiar's wife but of having refused to compensate the husband. The High Court overruled the decision, unanimously ruling that Tuckiar should be released into the custody of the chief protector. Tuckiar disappeared the next day without trace.

10.6.7 As can be seen from this brief review, Aboriginal experience of the court system was one of discrimination and repression. The courts were seen to be acting on behalf of other interests and to be imposing a foreign culture. That historical experience remains very much the perception of the courts today held by many Aboriginal people.

10.7 DETENTION PATTERNS

10.7.1 Aboriginal detention rates have not always been as high as they are today; indeed their escalation is a relatively recent phenomenon. In the nineteenth century, Aboriginal 'crime' was more likely to be 'punished' by frontiersmen than police. For most of the twentieth century, missionaries, government reserve

superintendents and employee exercised discipline over Aboriginal people. The greatest increase in official Aboriginal detention has occurred since the 1950s, when increasing numbers of Aboriginal people moved into towns, and the government was encouraging their incorporation into the wider community. Similarly, in the 1890s, the arrest rates of Melanesians in North Queensland had dramatically increased during the transition from tight control on plantations to being workers in towns. 47 As they had greater freedoms, and were visible near the general town community, past forms of segregated control were therefore replaced with arrest and imprisonment.

10.7.2 Prior to the assimilation policy, a separate system of justice operated for Aboriginal people living on reserves. In Queensland and Western Australia, reserves had their own courts, prisons and punishments. Aboriginal people who were charged and held in such places, or otherwise punished through banishment and other controls, do not appear in State or Territory police or prison records. Segregation policies therefore meant not only separate living places but special sets of regulations and an insular judicial system which was anything but 'objective'. In a survey of courts presided over by Queensland reserve superintendents from 1959 to 1962, Colin Tatz found that almost every defendant pleaded guilty, and virtually all were found guilty. He pointed out how all sorts of trivial behaviours such as 'untidiness' or 'immoral conduct' were punishable with incarceration, and he argued that the judicial system contravened key principles of natural justice. The superintendent or missionary knew the personalities involved, there was no court of appeal, no legal assistance offered, and the accused could be banished for an unlimited time. 48

10.7.3 Special Acts placed Aboriginal people under a set of discriminatory prohibitions, especially between 1900 and 1960. This coincided with a decreasing police role in the wider community because of the establishment of other government departments. Aboriginal people had little choice but to come into much more regular contact with police because of their role as 'protectors'. This closer association led non-Aboriginal Australians to perceive them as law breakers and undesirables.

10.7.4 Aboriginal people's loss of land and also life style factors made them especially susceptible to charges of loitering, vagrancy and petty theft. The charge of 'vagrancy' assumes 'respectability' is linked with a fixed residence, and the carrying of a certain amount of cash or savings. These notions were inconsistent with an Aboriginal travelling life style with reciprocal sharing principles.

10.7.5 During the nineteenth century and until the 1930s in remote areas, cattle spearing was one of the most common crimes in pastoral districts. Aboriginal people reportedly considered they were justified in taking animals for food purposes, but this was in conflict with Western property principles. The hypocrisy must have seemed so evident to the Aboriginal people affected, for such principles had not stopped Europeans freely taking Aboriginal foodstuffs, killing their game foods, or even abducting women and children. Many other examples of cultural clashes related to Aboriginal use of open space, as their lack of land rights made them 'trespassers'. Cultural factors relating to Aboriginal use of 'public space' and perceptions of their residential areas as 'public' continue to lead to high arrest rates today.[49] (See Chapters 13 and 21.)

10.7.6 It is often assumed that the legalisation of alcohol consumption for Aboriginal people is the cause of increased detention rates. Statistics suggest, however, that alcohol-related offences were the main cause of Aboriginal detention and incarceration prior to the lifting of restrictions in most areas during the 1960s. This partly reflected discriminatory legislation banning alcohol to people classed as

Aboriginal. Aboriginal society was also perceived as a threat to the order which the colonisers sought to establish.

10.7.7 Available figures show that the trend towards higher rates of incarceration of Aboriginal people had probably commenced some years before the legalisation of alcohol consumption. It seems likely that incarceration in police cells and prisons has increased as other types of Aboriginal institutionalisation was phased out The assimilation policy of the 1950s led more Aboriginal people to move into towns, which resulted in greater visibility than when 'locked' away on reserves and missions. Greater unemployment could also be relevant. Rural recession, greater mechanisation, and to a lesser extent, the introduction of equal wages for Aboriginal people in the pastoral industry, have led to greater unemployment rates. This also resulted in less employer control and the disbandment (sometimes enforced by employers) of supervised work-related camps.

10.7.8 Only scattered historical statistics exist on Aboriginal detention rates and incarceration, as separate records for Aboriginal people were rarely kept. In South Australia during much of the twentieth century, Aboriginal people were 'managed' on missions and government institutions. The rates of Aboriginal people in the prison population during the nineteenth century are fairly low--varying between 2% and 7%. From 1905-30 'black and coloured' represented 2.4% admissions, or less than 1% of the Aboriginal population of South Australia. David Biles' study from 1956-69 shows a steady increase over this period to approximately 25% of admissions. Although gaol population figures are often lower than numbers of admissions, the increase is still significant, and can certainly not be explained by wider population changes.

10.7.9 Until the late 1940s, Queensland's Aboriginal people represented only a small though not insignificant percentage of their prison population. From 1901 numbers held in prisons decreased, with 6.7% of the prison population in 1902 and 1.4% in 1931. The figures reflect government policy, which kept a tight reign on reserve dwellers, rather than changing patterns of criminality. In Western Australia during the 1950-58 period, the rates of convictions for Aboriginal people were climbing steadily, with a more rapid jump between 1955 and 1960. By 1965, Aboriginal people in Western Australia represented 30% of the prison population, compared with an estimated 2-3% of the overall population.

10.7.10 Of Aboriginal people who were charged, most offences were against 'good order'. In a South Australian sample from 1911, 80% of charges were for drunkenness, and a few years later it was still over 50% of charges. Western Australian records from 1923-25 show that 57% of detentions were for drunkenness, with obscene language and other offences trailing behind. In a study of Aboriginal people charged in Western Australia, Eggleston found that Aboriginal people were much more likely to be charged for public order offences, that sentences discriminated against Aboriginal people, with prison sentences more likely for Aboriginal offenders, even when compared with others charged with similar offences. Conviction patterns soon led to long criminal records. 50 A survey conducted in 1965 in Victoria, New South Wales and South Australia by C. D. Rowley found that Aboriginal people were subjected to high charge rates, especially on the basis of being 'drunk and disorderly'. This compared with the rates of non-Aboriginal people for traffic offences, where Aboriginal people were under-represented. Rates of offences against the person varied amongst States, but Aboriginal offences against property, including car theft, were then relatively low.

10.7.11 Very few Aboriginal women were charged; the above statistics are almost

exclusively male, reflecting wider incarceration patterns, greater male interest in alcohol, and probably a perception that men required more discipline. More intensive studies might reveal further explanations and closer correlations between increased arrest rates and the phasing out of protective policies.

10.7.12 The wide array of non-police measures to control Aboriginal people involved high degrees of confinement and isolation, and could be virtually classed as 'total institutions'. Comparisons with prisons can easily be made. Haebich's study of Western Australia shows that even children's institutions were not only rigidly disciplined but punitive. At Carrolup settlement, young children were confined in a lockup known as the 'Boob'. One girl was punished for over sixty days because she tried to return to her family.[51] Reserve managers in Western Australia exerted control over marriage, diet, child rearing, employment, and greatly restricted ability to move off reserves. Queensland reserves had similar .policies: Aboriginal people who rocked the boat by actions as apparently innocuous as requesting withdrawal of their own earnings from trust funds could be sent to Palm Island, which Aboriginal people regarded as a prison. Banishment there or to another reserve far from kin and community was a way of deterring opposition and keeping Aboriginal people subservient to the wishes of the board--even up to the 1970s. The same thing happened in New South Wales, and those who complained against unfair withholding of rations were punished by their own or their children's banishment. Aboriginal people had virtually no recourse to appeal such decisions.

10.7.13 With the introduction of assimilation (discussed in Chapter 20), movement away from often distant reserves into centres of non-Aboriginal settlement made Aboriginal behaviour more visible and likely to clash with the dominant cultural expectations. As implied above, other differentials worth testing would be employment, residence and degree of liberty allowed by law. Rising tensions between Aboriginal people and local communities were fuelled by many factors, and during the 1970s and 1980s the creation and enforcement of laws at a local government level meant that arrest rates rose rapidly, and media reports of 'race riots' further exaggerated the tensions. These issues are discussed in Chapters 12 and 13.

10.7.14 The rhetoric and rationales for protectionist policies in most States were premised on paternalistic notions which defined Aboriginal people as a 'child race' requiring the sort of 'supervision' (the word 'surveillance' was thus not used), the 'gentle hand to guide' that children required. They were therefore to be controlled and punished in a different way to other adults. Assumed too mentally immature for responsibility for their actions, the prison system was not necessarily seen as the logical place for them, or at least not the first point of recourse. But after the 1950s, when international opinion pushed Australia closer towards granting equal rights to Aboriginal people, they were not to be subject to such profound exclusion from wider communities. If they did not conform to the cultural strictures of the non-Aboriginal society or fulfil their expectations as amenable workers, they were categorised as 'bad types' who needed policing. Incarceration through the gaol system was the latest method of control.

10.8 LABOUR, LAND AND LAW

10.8.1 The great majority of Aboriginal people whose deaths were investigated by this Royal Commission were unemployed at the time of their detention. Unemployment rates are disproportionately high in the Aboriginal community. (See Chapters 17 and 34.) While some Aboriginal people were attracted to working for Europeans by the lure of tobacco, tea and rations, many were forced into

exploitative labour arrangements because they had lost control over their traditional subsistence economy. A large proportion of Aboriginal people continued to support themselves independently in the late nineteenth and early twentieth century. Government policies often curbed Aboriginal entrepreneurism (such as bartering, selling fish, skins, etc.), so they became reliant on Europeans for survival.

10.8.2 In Victoria, Queensland and later in Western Australia, Aboriginal people were forced to move onto reserves, and to work for government authorities. Some missions tried to prevent outside employment. Residences near towns, where work was available, were considered untidy so greater controls applied to these people. Aboriginal people were usually confined on reserves far enough to be out of sight, but close enough to serve as labour for the townships or local industries.

10.8.3 From the earliest decades of Port Jackson, Aboriginal people were encouraged to become farmers. Foraging was considered an inferior pursuit, and it also clashed with British land-use requirements. The desire of the British to establish their own economic security led to the dismantling of Aboriginal self-sufficiency. British law was closely allied with economic imperatives in this regard, as were attempts to have Aboriginal people conform to western cultural expectations.

10.8.4 Although Governor Macquarie, like Phillip, respected Aboriginal people as individuals, and wanted to negotiate some sort of diplomatic truce, good intentions were outweighed by other colonial requirements. Macquarie was aware of the many protests by Aboriginal people from the Hawkesbury and Parramatta regions regarding the take over of too much of their choice river-bank land. Although his promises of no further expansion were soon broken, Aboriginal protests in the form of sporadic violence and crop destruction were classed as merely unruly behaviour. Any truce, therefore, was always one way--to be conditional on Aboriginal acceptance of the British rules. This included adoption of British cultural mores, and the rejection of Aboriginal political, legal, work and family structures. Macquarie's desire to change the Eora and other groups became especially pronounced after continuing violence between Aboriginal people and settlers on the Hawkesbury and interior settlements. In 1816, he issued a proclamation prohibiting Aboriginal people from practising their hunting and customary law: they could not carry traditional weapons near town or conduct ritual fights. Any gatherings of more than six people near a farm would result in 'Enemy' status.[52] Macquarie introduced a 'passport system' whereby those who agreed to act in a 'peaceful, inoffensive and honest Manner' would be protected by the British Government.[53] In reward for 'disarming' and presumably giving up hunting with spears, they would be given blocks of Crown land to 'obtain an honest and Comfortable Subsistence by their own Labour and industry'. Six months food would be supplied, along with a hut, tools, wheat, maize, potatoes, clothes and 'one Colonial Blanket'. They were thus exhorted to 'relinquish their wandering idle predatory Habits of Life'.

10.8.5 Some Eora later took up land at Elizabeth Bay and Blacktown, with male elders selecting areas near traditional estates. Aboriginal people probably thought this would empower them to prevent destruction by outsiders, but their land was to be further disturbed. A convict was appointed to get the market garden in order, and British aesthetics were also imposed, with convicts even building a 'romantic road'.[54] Before long the farms were deserted. As a means of placating Aboriginal people, early attempts to impose fanning had failed.

10.8.6 By the turn of the century, Aboriginal attitudes had changed, and their

farming efforts in New South Wales and Western Australia were often highly successful, revealing a desire to create family independence in the changed circumstances. Nevertheless, the government remained insensitive to the need to encourage self-motivation, and instead succumbed to the more influential lobby group of non-Aboriginal 'settlers' demanding that good land be handed over to them. The Government Station at Moola Bulla was sold and Aboriginal residents were forced to relocate to other areas of the Kimberley. Aboriginal people rarely had security of tenure, and the land allowed for their use was frequently resumed. This also reflected the colonial ethos, a basic tenet of which was that Europeans were to take over the land from Aboriginal people. There were therefore not one, but a repeated series of dispossessions.

10.8.7 The story of the Cumeragunga people is told in the film Lousy *Little Sixpence. The Lake* Tyers people also mounted a protracted snuggle to retain their own land. South Australian Aboriginal people were adamant that they wanted their own land to farm, and they were supported by F. Garnet, superintendent of the Aboriginal mission at Point Pearce. He argued that the granting of land for farms was a means of keeping Aboriginal people out of gaols:

> *I look at it as a business proposition. We must help them to keep their heads above water. They will become outcasts of society if turned adrift, and I think gaols and prisons would cost us more than some such legitimate scheme.*[55]

10.8.8 An interest in employing Aboriginal labour may have led to greater willingness on the part of some pastoralists and other employers to compromise with Aboriginal cultural priorities. This is probably true of inland New South Wales, Queensland, Western Australia, the Northern Territory and parts of South Australia. In the more remote areas where non-Aboriginal labour was impossible to recruit, Aboriginal people became indispensable. Where convict and other cheap labour, including Melanesian and Asian indentured labour, was readily available, Aboriginal people were not in such strong demand. The degree to which Aboriginal labour was relied upon by the rural sector in the frontier period has been under-researched, and it is likely that the employment of Aboriginal people by convicts, ex-convicts and other employers was more widespread than we know. They certainly played an important role in agricultural and pastoral enterprises.

10.8.9 Aboriginal labour was greatly underpaid, and only in the 1940s and 1960s did the struggles for equal wages receive support from the wider community. From the 1970s more fencing, mechanisation and the rural recession left many Aboriginal people out of work. The introduction of equal pay was another factor as employers were reluctant to change existing status relations, or to accommodate different Aboriginal work styles. Prior to the 1960s, Aboriginal people had often been paid only in rations and some work clothing, and proper housing was not provided.

10.8.10 In some places a cash wage was made obligatory. But the whole or various proportions had to be paid to the Protector in trust. The Aboriginal employee got pocket money and had to go to the Protector for permission to buy, and the money with which to make any further purchase. This is but another example of the control which was exercised. The Protectors acted in a dictatorial way, at times ruling out the most reasonable requests and in the most patronising and paternalistic terms: 'Dear Lucy,' [wrote the Protector at Cardwell, in Queensland], 'Your letter gave me quite a shock, fancy you wanting to draw £4 to buy [some personal and household items]. I am sure that Mrs Henry [the employer] would spend the money carefully for you but I must tell you that no aborigine can draw four fifths of their wages unless they are sick and in hospital... '. Out of

fairness, I record that, being Christmas, he said she could draw a much smaller mount from her bank account 'to buy lollies with'.

10.8.11 In the 1930s the Northern Territory (excluding Central Australia) account was balanced at 3,000 pounds, but this was not spent on Aboriginal people and little attempt was made to distribute it to its rightful owners. Others were denied the right to buy cars or other luxury items as these were considered too good or too frivolous for an Aboriginal person. In 1934 the Western Australian department held 2,400 pounds in trust.[56] Queensland money held in trust for Aboriginal people totalled a startling 293,549 pounds. 57 The Northern Territory chief protector had set up the Aboriginal Medical Benefits Fund to urge employers to take responsibility for work accidents and their employees' health was meant to be diverted into building a suitable hospital. The Federal Government confiscated much of this money for consolidated revenue and would not even permit its expenditure on 'Christmas cheer' for the children in the 'half-caste home' .58 Aboriginal people were thus deprived of fair wages, of the right to determine expenditure of their money, of workers' compensation and medical treatment.

10.8.12 There were in places no bars to the employment of children as shown by the fixing in 1904 of suggested rates for permanent employees: up to twelve years one shilling and threepence; twelve to fourteen years two shillings etc.

10.8.13 Aboriginal people were economically deprived in many ways. Discrimination in wages meant they were not able to secure 'the family wage' available to other Australians, and bank loans would have been impossible to obtain. In many States they were prohibited from buying land. Even the money earned by Aboriginal people was not at their own disposal, for they were classed as 'wards' and under the care of the State. They were not entitled to the maternity bonus introduced in 1912, to the dole, to various forms of welfare, including old age pensions, to the same health or educational facilities as Europeans. Their camps rarely had the basic facilities of running water, power or sewerage.

10.8.14 Little money was spent on providing facilities for Aboriginal education, and in most States a trivial complaint by non-Aboriginal parents about 'Aboriginal hygiene' was enough to have children removed from their school. The whole system was designed for non-Aboriginal children who spoke English as their first language. Aboriginal knowledge and learning styles were ignored, and the children were expected to adopt non-Aboriginal Australian values. Mission teachers were often untrained, and inferior facilities meant State teachers also provided sub-standard education. Pastoralists were often opposed to schooling for resident Aboriginal people, and no doubt this was connected with their desire to maintain a cheap labour force with no knowledge of award wages or unionism. During the 1930s some unionists attempted to educate Aboriginal people about their rights, though most unions saw Aboriginal people as a cheap labour threat and wanted them to vacate their jobs. A boycott on hotels was thus implemented in the Northern Territory in the late 1920s and the North Australian Workers Union at the same time was pushing for ratios and extra loadings for Aboriginal supervision. Nonetheless, Aboriginal people mobilised for better conditions, as shown in the 1946 Pilbara strike and the Wave Hill 'walkoffs' in 1966 and in the Victoria River district 1972-73.

10.8.15 Though Aboriginal people showed outstanding ability at prestigious occupations such as exploration, detection work in the form of tracking, stockwork, and army work during the wars, State training schemes invariably placed them at the bottom rung of the labour hierarchy. Aboriginal girls were to be trained as 'domestic servants' a job disliked in a society with egalitarian aspirations, and the boys were to be 'rural apprentices'. Aboriginal girls and boys were taken from their

parents throughout Australia and placed with non-Aboriginal families to perform such duties. No doubt one justification given for this was that, consistent with the theory of assimilation, such work would enable young Aboriginal people to enter into and adopt the values of non-Aboriginal society. There is no doubt, however, that the provision of such employees was also seen to be an appropriate response to meet market demands. They were required to perform the most menial and poorly paid occupations for employers not of their own choosing. If they left employment, they were punished, sometimes in juvenile detention centres, while their exploitation as cheap labour was justified as 'uplift' and 'civilisation', even though it often meant a lonely life as virtual orphans who often never saw their real families again. During their service in other people's homes, girls frequently became pregnant and were sent to unmarried mothers' homes where they were given little choice but to consent to their babies' adoption by non-Aboriginal families.

10.8.16 Aboriginal people were expected to fit in with a labour system based exclusively on European principles of labour relations, though they were not entitled to its privileges. In fact, they were excluded from many forms of employment. Aboriginal people often preferred and excelled at rural work such as horse breaking, mustering, fruit planting and picking. These were often of an outdoor and seasonal nature and allowed travel to visit distant kin. In many cases they allowed people to stay near or on their traditional land and range area. Aboriginal people had a sharing ethic, and often demanded more flexible work arrangements where they could leave jobs to visit people or places, or conduct ceremonies. In many places this included continuing their traditional bush economy. Yet, despite the evidence of Aboriginal involvement in the labour system Aboriginal people are still often stereotyped as 'bludgers'. That work may not be available owing to a history of racism and poor education, or that Aboriginal people are committed to raising and educating their families are ignored.

10.8.17 As noted above, by far the majority of the people whose deaths were inquired into by the Commission were unemployed at the time of detention**.** Where the usual occupation was known it was mostly as stockmen, station workers, farm labourers or other labouring work. That picture is consistent with the numbers of Aboriginal people today who have experience in rural work, but also the great difficulties in getting continuing employment in these fields. In rural towns, where so many Aboriginal people live, employment networks are family-based and often totally exclude Aboriginal people. Each looks after his own, and the same applied to urban centres. As Mum Shirl who grew up in Sydney's inner suburbs, wrote in her biography, she had little to do with non-Aboriginal people 'except that we shopped at their shops, and always had to go to them for jobs and work, but mostly we seemed to be with each other'.[59]

10.9 SOCIAL CONTROL, PROTECTION, CUSTODY

10.9.1 Our use of the term 'deaths in custody' refers to the recent history of police and prison custody. But what does this mean in relation to Aboriginal history in Australia? Aboriginal people as a group have been the target of various forms of social control--starting often through the barrel of a gun during the 'frontier' eras of different colonies, then changing into the restrictions affecting mobility and personal liberty policed by mission and reserve authorities.

10.9.2 Physical punishment continued to be used by the British against Aboriginal people, despite its being long out of favour and considered brutal in nineteenth century Europe.[60] This was especially so in less 'settled' regions where Aboriginal life could continue less impeded by Western institutions. In Western

Australia, justices of the peace could mete out up to twenty-four lashes to male offenders.[61] Flogging was used on native police troopers and missionaries and employers also thought this was an acceptable means of punishing Aboriginal people. New South Wales Aboriginal people also suffered at the hands of reserve managers, as publicised by Aboriginal activists such as William Ferguson. He pointed out that one manager carried around a rifle, firing occasionally for effect, while another belted people with a baton.[62] Reverend James Watson of Milingimbi admitted in 1925 to using the stockwhip on Aboriginal men. This time it was to punish them for assaulting their wives.[63] Judge Wells of the Supreme Court of the Northern Territory stated in 1938 that 'the only punishment Aboriginals appreciate, is a flogging'. This has been suggested as the proper punishment for Aboriginals by many who know them'. For more serious offences, he recommended execution, and was angered when death sentences were commuted to life imprisonment by the government.[64]

10.9.3 Aboriginal people were sometimes charged and/or punished for using violence in tribal punishments--such as spearing in the leg or carrying out executions. In most colonies, such acts were ignored unless they concerned a non-Aboriginal person or were carried out in the eyes of the law. An 1887 report on Queensland prisons lamented the injustice of Aboriginal people being punished twice 'by the law of the race which has dispossessed him of his hunting grounds and taught him the vices of civilisation '.

10.9.4 The civilisers such as missionaries and government officials wanted to curb the Aboriginal use of physical torture or punishment, yet often did so by using violence themselves. It was hoped that this would make Aboriginal people less of a threat to non-Aboriginal people. For good colonising motives other contemporary values could be suspended. It may seem a strange paradox that brutal punishment, then considered uncivilised in Western societies, was so often condoned as a means of 'civilising' the Aboriginal people.

CUSTODY

10.9.5 Many Aboriginal people were kept in a form of custody on segregated reserves. Andrew Markus's *Governing Savages* shows the attitudes of missionaries, humanitarians, superintendents and policy makers who attempted to govern Aboriginal lives in the north from 1911 to 1940. His descriptions of the nature and aims of the 'half-caste' and other children's institutions could hardly be distinguished from substandard gaols. Northern Territory missions were highly regimented:

> *The first chores of the day were completed between 6.00 and 7.00 am, and were followed by the morning church service and then breakfast, typically eaten separately by the mission Aborigines and white staff. After breakfast the Aborigines lined up to be allotted their work for the day. The children were given light work and attended school for three to four hours. A break was taken in the middle of the day for lunch, followed by a period of rest in the evening, after dinner, classes might be held for those wishing to become baptised and there was a church service. 65[5]*

10.9.6 The Northern Territory case was seen as an experiment in Commonwealth administration of Aboriginal affairs and had a more *laissez-faire* approach than most of the States. Only a couple of government reserves operated, and these were largely unsuccessful, so the imposition of order was left up to missionaries and pastoralists. From the 1930s, however, systematic records were

maintained which consisted of identification data relating to names, tribe, spouse, offspring, medical history, employment record and police convictions. In 1932, the Chief Protector of Aborigines ordered each Aboriginal person in the Darwin district to be issued with a bronze numbered disk after a medical inspection and finger prints being taken. They were supposed to wear the disks around their necks on red tape provided, but Aboriginal people refused to do so. They labelled them 'dog tags' after another recently introduced government initiative. Aboriginal people of mixed descent were subject to .greater scrutiny, taken from their parents at a young age and forced to live m sub-standard accommodation which was both overcrowded and a fire hazard. As one critic of the regime explained:

> *Half-castes must live where the Protector orders them, must work only at places approved of by the Protector, and have no say in their own lives. As long as a half-caste female lives, she is absolutely under the control of the Protector who can order her life for her, and she has no opportunity of protest. While a certain amount of supervision may be necessary, in many cases, this absolute autocratic control gives the girls no opportunity to cultivate self-control, nor to develop their own self-reliance nor their brains. It makes them mere chattels.*[66]

10.9.7 The New South Wales managers were ill-trained and unpredictable. Backgrounds in management or experience with Aboriginal people were not required, but rather 'firmness' and a head for paperwork and figures. Former police officers, colonial administrators, regimental sergeant-majors and prison wardens were welcome. A manager's duties included teaching children and maintaining school records, writing dally, weekly, monthly and annual reports, inspecting and repairing the houses and equipment, entertaining official visitors, collecting rent, supervising work gangs, distributing rations, and enforcing an array of mostly petty regulations. Some managers were decent, but there were no real curbs on managerial conduct, and combined with cooperative police and magistrates, the prison could become a 'concentration camp'. Aboriginal people recall tyrannical managers constantly calling in the police to get people off the mission--as Les Coe explained, they 'treated you like bloody mongrel dogs'.[67]

10.10 RESISTANCE TO COLONIALISM

10.10.1 Some of the case reports show how policies of protection and welfare attempted to confine, institutionalise, discipline and regiment people' s lives on the basis of their Aboriginality. Surveillance of personal lives, sexual relations, hygiene, child-rearing and general housekeeping became very intrusive in the 'welfare' era. As an easily identifiable and disadvantaged social group, they are now greatly over-represented in charge and detention rates. And like the earlier convicts, they were often incarcerated for relatively minor offences. The most common charges against Aboriginal people since the late nineteenth century have related to 'public order', including drunkenness or obscene language. While this may not be out of step with broader social patterns, the charge rates for Aboriginal people have been gradually increasing since the 1950s, and more rapidly during the 1960s and 1970s. In New South Wales arrest rates for drunkenness were relatively low in the 1930s, and increased significantly in the 1960s, though numbers jumped dramatically in the 1970s. The figures reflect the urbanisation of Aboriginal people, both voluntary and forced, and the breakdown of institutional means of control via reserves and missions.

10.10.2 General Aboriginal resistance against non-Aboriginal authority is often specifically directed against the police. Repeatedly Aboriginal people have suffered

segregation,-and, even when permitted to live in towns, have not been defined as part of the public proper. Until the late 1960s and early 1970s they could be officially excluded from main streets, parks, public swimming pools, public bars, the census and the vote. Exclusions now continue surreptitiously, and police are sometimes used to implement them. Other means which Aboriginal people have used to express their sense of injustice, such as public statements, letters, petitions and pleas have often been ignored, as the activist William Cooper found to his despair. 68

10.10.3 The history of Aboriginal groups has varied a great deal regionally. Some areas suffered worse depopulation earlier. In the Northern Territory, a later frontier, a history of economic failures and a small non-Aboriginal population enabled Aboriginal people to maintain a certain autonomy over their lives, and, to a relatively large extent, maintain traditional land associations and spiritual lives. The *Aboriginal Land Rights (Northern Territory) Act 1976* has helped lead to cultural revitalization and provided a power base as well as many side benefits such as negotiation, legal and employment experience. The deaths in the Territory occurred in the strip of urban towns, not in the Aboriginal settlements. In North Queensland, Western Australia and the Northern Territory Aboriginal people were in demand as workers for the cattle industry, though since the 1960s, employment has decreased. In rural New South Wales, South Australia and Western Australia, there was also work in pastoral industries and agriculture. Reserves in South Australia failed in the pastoral areas, and were considered more a necessity in the agricultural regions. In areas with reserves, such as Lake Tyers in Victoria, Aboriginal people have been able to use these as a base for

10.10.4 In Queensland and Western Australia, reserves operated as a way to segregate and control the large Aboriginal population. These schemes also subsidised the employers who used them as labour pools. In addition to a relatively independent employment history, the geographic separation and cultural differences of the Torres Strait Islanders also set them apart. While a strong sense of shared identity also emerged from such institutionalisation, 'inmates' as they were often called, 69 were deprived of decision-making powers over their lives or their family's. They were denied management of many aspects of their own affairs, including their bank accounts, their children's schooling and whether they exercised their democratic rights. State Aboriginal education on the Queensland reserves has had spin-offs for Aboriginal people who are better educated than those in many other regions, but the repressive regimes of reserves have also encouraged people to rebel and angrily assert their Aboriginality.

10.10.5 Men's and women's experiences also differed. In the colonial context, women were expected to centre their lives on the family, which in the twentieth century came to mean the nuclear family in a suburban house, while the male was expected to be the breadwinner. Nineteenth and twentieth century missions and government institutions taught girls sewing, crochet, cooking and housework while boys were taught labouring, gardening, wood chopping and sometimes trained through apprenticeships. The gender-power relations of colonialism meant that Aboriginal women were in demand by colonial men, but relationships between Aboriginal men and non-Aboriginal women were taboo.

10.10.6 Both men and women suffered conflicting pressures from their own communities, preferring extended family arrangements which might break housing rules, and more flexible working arrangements which enabled travel and visiting kin. They often resisted European pressures, but the loss of independent means of production and confined lives on reserves limited their choices. Whenever the job market shrank, Aboriginal men found work very hard to obtain, and few

alternatives were offered. They were often excluded from non-Aboriginal male focal points, not being permitted into public bars in many States until the 1960s. Alcohol, obtained illegally, offered an escape from humiliation, and, as in many countries, it continues to be more popular amongst men than women.

10.10.7 Earlier Aboriginal heroes like Pemulwuy (New South Wales) Nemarluk (Northern Territory) and Pigeon or Jandamarra (Western Australia) made amazing escapes from police and prison confinement. Similarly, Aboriginal bushrangers or warriors such as Rebel, Mosquito and Murdering Tommy who long managed to evade custody also received respect from their people because of their defiance of the non-Aboriginal military and police.

10.10.8 It has not been possible in this brief general overview to include stories of individual Aboriginal people. Nevertheless, the case reports of deaths in custody are themselves revealing examples of how the history of colonialism and especially State intrusion has affected Aboriginal families and individuals. The biographies and autobiographies of people like Margaret Tucker, Charles Perkins, Grant Ngabidj, Jack Sullivan, Ruby Langford, Ida West tell stories of struggle and survival with more positive outcomes. It is important that all Australians take urgent heed of both the tragedies and the stories with happier endings. As the acclaimed writer and artist Sally Morgan recently wrote:

> *In the telling we assert the validity of our own experiences and we call the silence of two hundred years a lie. And it is important for you, the listener, because like it or not, we are part of you. We have to find a way of living together in this country, and that will only come when our hearts, minds and wills are set towards reconciliation. It will only come when thousands of stories have been spoken and listened to with understanding 70*

CHAPTER 11 SOME ASPECTS OF ABORIGINAL SOCIETY TODAY

Having discussed the legacy of history, I turn now to the topic of the status of Aboriginal people in Australia today. In this chapter, I briefly discuss the use of social indicators, emphasising the fact that, while they can be very useful, they have certain limitations. That caution will be followed by a presentation of demographic information on the Aboriginal population of Australia.

The third section of the chapter is a discussion of Aboriginal society today. It reviews the diversity of the Aboriginal experience, placing some emphasis on the tragic experience of Aboriginal children being separated from their families. The concept of Aboriginality and the nature of Aboriginal identity, as well as indigenous methods of social control, are discussed. Having available information on both the diversity and the commonalities of Aboriginal society today, and on the various features of Aboriginal identity, facilitates understanding of the interactions between Aboriginal and non-Aboriginal people, interactions which so often result in the former being placed in custody and being exposed there to life-threatening circumstances. Self-destructive behaviour is one serious result of the legacy of history. Self-destructive behaviour is also the result of the struggle for identity and respect which has been the experience of some Aboriginal people in the interaction between Aboriginal and non-Aboriginal cultures. The danger of people dying whilst in custody due to destructive behaviour is discussed, and the cases of the Commission analysed. self

11.1THE STATUS OF ABORIGINAL PEOPLE TODAY

11.1.1 It has sometimes been argued that it is discriminatory to collect and

promulgate statistical data in a manner which differentiates between Aboriginal and non-Aboriginal people. For example, it was not until 1987 that the Queensland Government would permit aggregate statistics on the Aboriginality or non-Aboriginality of prisoners in that State to be made public; prior to that year the Government argued that it would have been a form of racial discrimination to do so. I do not accept this argument in its entirety. In my opinion, it ought not to be regarded as discriminatory to identify Aboriginal people in data collections; indeed it is desirable to identify them, provided that the information so derived may be used for the purpose of advancing the rights of Aboriginal people.

11.1.2 At many points in this report I use social indicators, demographic data and other quantitative and qualitative information about Aboriginal society. It needs to be said, however, that certain reservations about the use of this information exists. I will now discuss these reservations, with particular reference to social indicators.

11.2 THE LIMITATIONS OF SOCIAL INDICATORS

11.2.1 As the term implies, social indicators are pieces of factual information, often presented in the form of statistics, that may be used to point (or 'indicate') the way ahead. This happens effectively only if the indicators are accurate, comprehensive and appropriate to the tasks for which they are being used. They cannot provide solutions, nor enable us to predict the future; their availability is no substitute for effective policy making. They can, however, help us to understand the current situation, to observe trends and to make projections into the future, based on current indicators. In this way, they may contribute to effective policy making.

11.2.2 Governments, Aboriginal organisations and others often use statistical information to describe what is 'wrong' with Aboriginal society and to develop policy and program responses. Care needs to be taken to evaluate the usefulness of such data. Inevitably it needs to be interpreted--statistics do not speak for themselves--and people using this kind of information should seek to ensure that it is (a) providing an *accurate* picture, and (b) providing a reasonably *complete* picture. Users of social indicators should be aware of their real limitations, as well as the valuable role that they can play.

11.2.3 A preoccupation with statistical methodologies and measures may distort the development of appropriate responses to the needs of the Aboriginal population in a number of ways. I will briefly describe some of them here.

MISSING INFORMATION

11.2.4 While a wide range of useful social indicators of the status of the Aboriginal population is currently available, they naturally vary considerably in their breadth, depth and level of accuracy. Frequently we find that the most information, and the best quality information, are available not in the areas where the need for information is most pressing but, rather, in the areas in which it is easiest to gather data. The challenge is to identify the highest priority data needs and to develop methods for filling those needs, even though it may be methodologically difficult, or expensive, to do so.

CULTURAL ORIENTATION

11.2.5 The very act of deciding to collect and promulgate social indicators in a particular area is an activity influenced by the values, goals and life experiences of the researchers involved. Accordingly, it should be no surprise that the social

indicators available to us frequently reflect the priorities of Western society and of bureaucracies, rather than the priorities of the Aboriginal people themselves. Indeed, the priorities in social indicator data collection which official agencies have may even be contradictory to those of Aboriginal people. For example, the Australian Bureau of Statistics (ABS) Census of Population and Housing includes questions on household size, a topic which many Aboriginal people may consider to be unimportant.

11.2.6 Alternatively, the interpretation of social indicators by Aboriginal people may well differ from the interpretation placed upon them by people of other cultural backgrounds. The household size example is apposite: in some sections of society, housing requirements may reflect the perspectives of the nuclear family, whereas, in some circumstances, Aboriginal people may apply the perspective of a wider family.

IMPROVING THE INDICATOR RATHER THAN IMPROVING THE QUALITY OF LIFE

11.2.7 An ever-present problem, particularly within bureaucratic organisations, is that organisations may focus their programs narrowly, aiming to improve the indicator, rather than improving the quality of life of the people, as measured by the indicator. Frequently, the indicators are not direct measures of 'the problem'; they measure phenomena that stand as surrogates for the matters under consideration. Too often an over-emphasis on the indicator rather than the real world that it purports to portray means that targets are missed. This is particularly the case when complex interactions of factors determine people's life circumstances, but programs focus narrowly on one or two of those factors, especially the easily measured ones. What may appear on the basis of a particular indicator to be a real achievement may, in fact, reflect simply an improvement in one narrow area rather any substantial improvement in the quality of life. For example, the pleasing reduction in Aboriginal infant mortality that has occurred in recent decades is considered to reflect, in the main, expanded and improved ante-natal and immediate post-natal services for Aboriginal women, with many of the main problems of Aboriginal health having improved very little. This is despite the fact that the infant mortality rate is frequently used as an indicator of a community's health status in general.

11.2.8 This emphasises the importance of the involvement of Aboriginal people in the development and use of indicators and, in particular, the importance of feedback. If Aboriginal organisations and individuals are made familiar with and are given meaningful opportunities to comment upon the results of data collection activities, the interpretation of the data is likely to be better informed.

OBSCURING THE POLICY AGENDA

11.2.9 The policy agendas can easily be obscured by the misuse of social indicators. Sometimes we see programs established aiming to achieve quite worthwhile goals that are measured by social indicators. In doing so, however, alternative approaches not measurable this way, are simply lost sight of. Housing policies provide an example: it would be easy to establish a policy focusing on increasing the number of houses used by Aboriginal people, and in so doing to lose sight of the need to develop policies and programs focusing on the appropriateness of the housing, rather than simply on its quantity.

EMPHASIS ON EQUITY AND EQUALITY, RATHER THAN ON THE PROCESSES INVOLVED

11.2.10 The generally laudable emphasis on 'equity' or 'equality' in current policy objectives implies that once the statistical indicators of the Aboriginal population are the same as those of the whole community, as measured through aggregate social indicators, the 'problem' will have been solved. One might question, however, the degree to which outcomes of statistical equity are consistent with the achievement of self-determination, self-management and empowerment. In other words, the *process* of achieving desired change, as well as the *outcomes* of programs, is important.

11.2.11 The apparent conflict in advocating a policy of Aboriginal self-determination and empowerment, but measuring its outcomes in terms of how much like other Australians Aboriginal people have become, is too often not recognised.

LOSING THE LOCAL PICTURE

11.2.12 Emphasising policy outcomes of equity highlights a further difficulty: much available statistical information provides a national picture only. The Aboriginal population is highly heterogeneous, however, in many respects, and is geographically dispersed. Data aggregated up to the national (or even State) level are frequently of limited assistance in targeting government programs accurately, and may actually obscure major differences between different groups in the Aboriginal population.

11.2.13 Broad national figures also fall to take into account how the characteristics of sub-groups will often differ from the national averages for reasons which are not related to their membership of that sub-group. For example, the proportionately high distribution of Aboriginal people in rural areas will affect their chances of gaining employment if unemployment rates are generally higher in the rural areas. This will still be reflected as a national disproportion, even if Aboriginal people achieve equitable employment rates with non-Aboriginal people *in the area in which they live.*

SUMMARY

11.2.14 My emphasis so far in this chapter has been the identifying of some of the limitations of social indicators, with particular reference to their use in monitoring the status of Aboriginal people and contributing to policy development and program implementation in the broad Aboriginal affairs field. In doing so, my aim has not been to suggest that social indicators are of no value, or even of little value. On the contrary: they have proven invaluable in many circumstances and I rely on them in a number of places in this report. I remind readers, however, of their limitations and urge those who develop and those who use social indicators to do so with caution, recognising both their strengths and weaknesses.

Recommendation 48:

That when social indicators are to be used to monitor and/or evaluate policies and programs concerning Aboriginal people, the informed views of Aboriginal people should be incorporated into the development, interpretation and use of the indicators, to ensure that they adequately reflect Aboriginal perceptions and aspirations. In particular, it is recommended that authorities considering information gathering activities concerning Aboriginal people should consult with ATSIC and other Aboriginal organisations, such as NAIHO or NAILSS, as to the

project.

11.3 DEMOGRAPHIC AND SOCIAL INDICATORS

11.3.1 In the course of our enquiry, it came to our notice from various sources that significant changes have taken place, and are continuing to do so, in the composition of the Aboriginal population of Australia---changes that could have important consequences in the coming years. I therefore decided to commission a paper on this topic from Dr Alan Gray of the National Centre for Epidemiology and Population Health at The Australian National University (ANU) and Dr Habtemariam Tesfaghiorghis of the Aboriginal Economic Policy centre also located at the ANU. Since I discuss Aboriginal mortality and life expectancy in some detail in Chapter 23, I will not pursue the matter at this point. I refer largely in this section to the paper prepared by Gray and Tesfaghiorghis.[1]

11.3.2 It should be noted that much of the demographic and other data in this chapter are drawn from the national Census of Population and Housing, conducted every five years by the ABS. Although no census can provide perfectly accurate data, I understand that the authorities consider that the most recent census, conducted in 1986, provides a reasonably accurate estimate of the size and composition of the Aboriginal population.

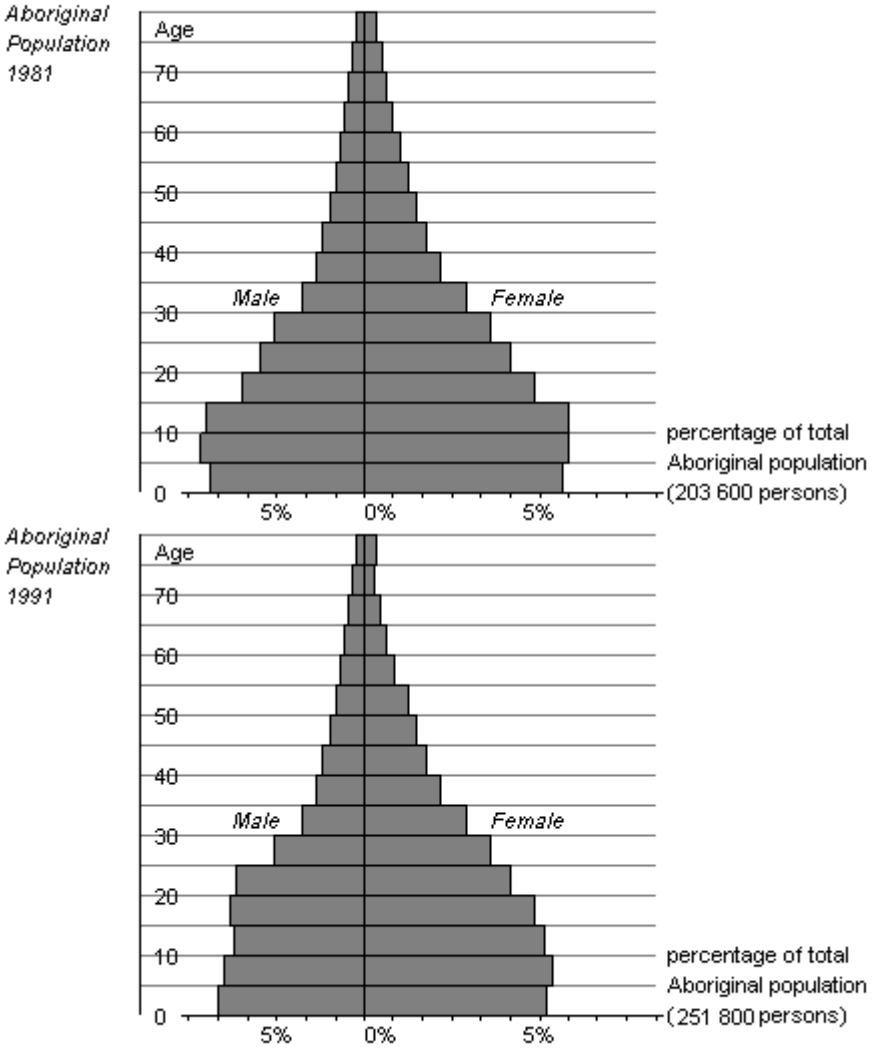
COMPOSITION AND TRENDS IN THE ABORIGINAL POPULATION

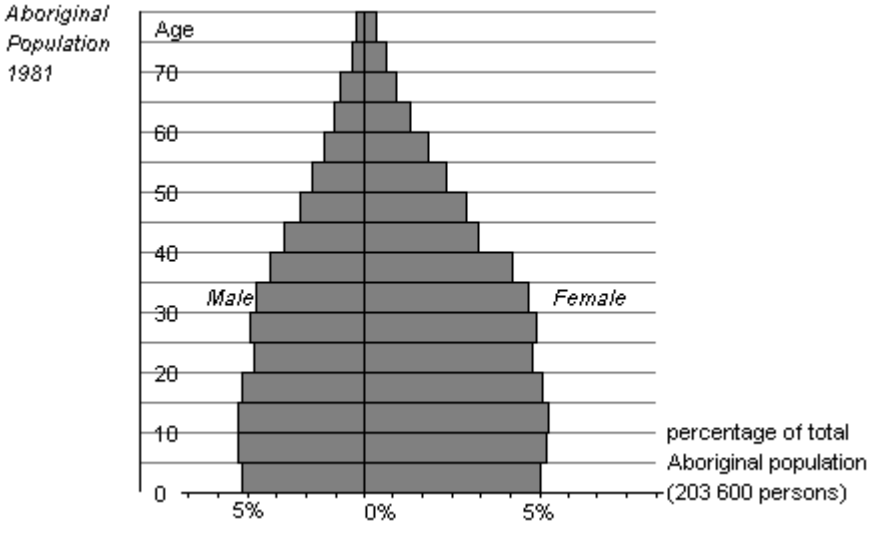
11.3.3 A central feature of the demographic analysis of the Aboriginal population that I have received is one that provides a twenty-year perspective, from the year 1981 to the year 2001. It is based upon an estimate of the total Aboriginal population in 1981 of 203,600, a 1991 population of 251,800 and a 2001 population of 297,100. (The 1981 figure differs from the census count, as it was derived by Gray and Tesfaghiorghis as one compatible with the 1986 census count and with identified mortality and fertility levels.)

11.3.4 The Aboriginal population at the present time is very young, compared with the total Australian population, so much so that 40% of the Aboriginal people were aged less than 15 years at the time of the 1986 census, compared With only 23% of the total Australian population.

11.3.5 Changes are occurring, however, in the composition of the Aboriginal population. This is demonstrated clearly in the three Aboriginal population pyramids. These show, separately, the proportion of males and females in each five-year age group, first during 1981, secondly during 1991 and thirdly projected to the beginning of the next century, a twenty year time span.

FIGURE 11.1: AGE-GENDER STRUCTURE OF THE ABORIGINAL POPULATION





11.3.6 Gray and Tesfaghiorghis discuss these age/gender composition changes in the following terms:

> *[S]ome age groups are changing very little in size over the 1981-2001 period: for example, the 0-4 age group remains at a little above or a little below 30,000 in size throughout the period, the 5-19 age group (which constituted 41% of the population in 1981) will have grown by only 15% by 2001 (when it will be reduced to 33% of the total) and the aged population over 65 years will have increased by less than three thousand people over the entire period. The other age groups will have increased much more rapidly: the 20-34 age group by 75%, the 35-49 age group by 120%, and the 50-64 age group by 78%.*

11.3.7 The median ages of the Aboriginal population are increasing along these lines. (The median age is the age above and below which half the population is located.) During the 1981-2001 time period, the median age of Aboriginal males is increasing from 17 to 23 years. Among Aboriginal females, however, it is increasing from 18 to 25 years. It will be noted that the gap between the male and female median ages is widening.

11.3.8 What is the significance of these quite substantial changes in the composition of the Aboriginal population? Gray and Tesfaghiorghis provide a summary of their consequences, one with which I concur, as follows:

> *Clearly, the concerns of programs and policy initiatives which addressed the previous structure of the Aboriginal population will become increasingly less relevant to a population which is evolving with a very different structure than it had previously. Attention to maternal and child health issues, on the basis of perceptions which recognised the very high fertility of the past and the very large proportions of infants and children in Aboriginal and Torres Strait Islander families, was very strong in past Aboriginal health programs and remains strong in current programs. While attention continues to be deserved as long as disadvantage exists, the priority of programs aimed at maternal and child health should necessarily be tempered with recognition of the fact that infants and young children form an increasingly small component of the population of Aboriginal and*

Torres Strait Islander people. Similarly, education programs are aimed mainly at age groups which are growing rather slowly, and for the next decade or so at least there will continue to be few aged Aboriginal people, with the consequence that special policies and programs for these age groups are not high priority.

It is in the years of young and middle adulthood that Aboriginal population growth is now concentrated, with the consequence that it is issues which affect these age groups which become of increasing policy importance. In these age groups, there are issues of employment, housing and health, and of particular importance to the Royal Commission into Aboriginal Deaths in Custody, disproportionate representation of Aboriginals among people in custody of police and prisons. Suppose for example that young Aboriginal adults continue to be imprisoned at rates similar to those prevailing now---because the Aboriginal population is growing much more quickly than the general population at young adult ages, there is a prospect that Aboriginal people will constitute even larger proportions of people in custody in the immediate future.

11.3.9 Not only is the age distribution of the Aboriginal population changing, but so is the total number of Aboriginal people. As detailed above, it is estimated that the Aboriginal population is increasing in absolute size from approximately 200,000 in 1981 to 300,000 twenty years later. This implies that the total level of services for Aboriginal people will have to continue to be increased if we are simply to maintain the current level of services, on a per capita basis.

11.3.10 Before concluding this discussion of the important changes in the Aboriginal population structure, I wish to refer to the balance between the number of Aboriginal males and females. Gray and Tesfaghiorghis have pointed out to me that the Aboriginal population is becoming increasingly female as the years pass. They advise that:

The earliest counts of the Aboriginal population always revealed large excesses of males over females, and by 1947 there were still 110 males per 100 females in census counts... The ratio continued to fall and appears to have crossed below 100 males per 100 females between 1976 and 1981, since males were still in a majority according to the 1976 Census.

11.3.11 Continuing this trend, over the twenty year time window that we are using (1981-2001), the number of males per 100 females is falling from a little below 99 to something between 96 and 97. The authors explain that there are two sources for these changes:

One is the effect of older age structure: in human populations, males outnumber females at birth (by about 105:100) but the gender ratio decreases progressively with age, and an older population generally has a lower gender ratio. The other cause is the extremely high level of Aboriginal adult mortality and its very heavy toll on men in particular, which on current indications will actually see a slight widening in the gap, already wide, between male and female life expectancy.

FERTILITY

11.3.12 Turning now to the topic of fertility, I note from the Gray and Tesfaghiorghis paper that the fertility of Aboriginal women fell markedly in the

decade of the 1970s, but is falling only gently at present, reflecting, in the view of the authors, the past gains in educational attainment.

11.3.13 Overall, Aboriginal women have fertility rates that are higher than those of the total Australian population, but the differential is especially marked in the younger age groups. Gray and Tesfaghiorghis explain that

> *above age 25 there is little difference between Aboriginal rates and rates for the total Australian population in the recent past, but birth rates for young Aboriginal women are very much higher than for Australian women in general, particularly in the case of teenage women.*

11.3.14 Although the decline in Aboriginal fertility levels over the last few decades has been observed in all age groups, the decline has been proportionately smaller among young Aboriginal women.

ABORIGINAL FAMILIES

11.3.15 The census provides informative data on the nature of Aboriginal families. Perhaps of the most striking aspects is the extent to which Aboriginal and non-Aboriginal people live together in families, the most basic unit of Australian society. As Gray and Tesfaghiorghis explain:

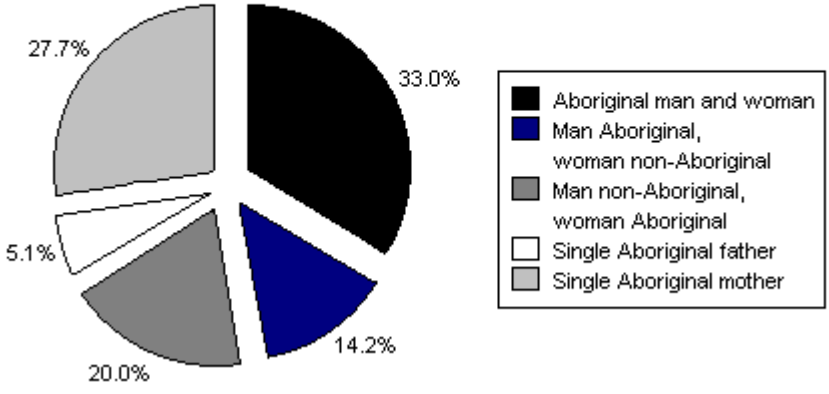
> *The Australian Bureau of Statistics identified 62,481 families living in households containing at least one Aboriginal or Torres Strait Islander person in the 1986 Census, and of these families the so-called reference person (household head) or the husband or wife of the reference person was Aboriginal or Torres Strait Islander in 54.134 families. These 'Aboriginal' families could be split into three almost equal categories: approximately one in three where both the man and woman were Aboriginal; one in three where only one member of the couple was Aboriginal; and one in three where the family had a single Aboriginal parent.*

Figure 11.2 (overleaf) presents this breakdown graphically, showing a little more detail on Aboriginal families types.

11.3.16 This highlights the fact that Aboriginal people do not form a totally distinct segment of Australian society, in terms of family composition, since approximately one-third of Aboriginal families include an Aboriginal woman and her non-Aboriginal spouse, or vice versa.

11.3.17 I conclude this discussion of demographic indicators of the Aboriginal population, and their changes, with some general comments. As Dr Gray and Dr Tesfaghiorghis have explained, one of the important implications is the increasing proportion of the Aboriginal population, and the absolute number of Aboriginal people, soon to be found in the young adult age groups, rather than in infancy and childhood as has been the case in the recent past. Being of that age which is most likely to be found in custody (see Chapter 6, Figure 6.1) the large number of young adults, if incarcerated at their current rates, will result in an increase in Aboriginal over-representation in custody. Given the statistical probability of there continuing to be some deaths in custody from natural causes, we can expect to see an increase in the number of these custody deaths. This highlights the importance of policies aimed at minimising the number of Aboriginal people in custody.

FIGURE 11.2 ABORIGINAL FAMILIES - PARENTS AND COUPLES. 1986 CENSUS.



11.3.18 Secondly, the increasing proportion of the Aboriginal population being young adults, along with the increasing proportion of females in the Aboriginal population, have implications for community services. In particular, it underlies the crucial importance of reducing educational and employment disadvantage as well as tackling the problems of juvenile involvement in the criminal justice system. I turn now to discuss briefly aspects of this relative disadvantage.

ABORIGINAL DISADVANTAGE

11.3.19 As has been frequently said and demonstrated in different fields, no matter what social indicators are taken, the figures indicate that Aboriginal people are in a highly disadvantaged position. I have presented above demographic indicators of the Aboriginal population. However, it is very common for governments and others to prepare statistics on other social indicators, such as education, health, housing, etc. Broadly speaking, experts consider that we have in Australia reasonably high quality statistics on the Aboriginal population in some fields, including those covered by the national censuses, such as educational attainment or type of housing. Data in other fields, including births and deaths, or community infrastructure, are less useful, often varying in availability and quality between the States. In a number of important areas, including community morbidity or unemployment, up-to-date, reliable data are virtually unavailable. Furthermore, even in some of the fields for which reasonable quality data are available at the national or State level, relevant data are not available at the local level, thus inhibiting understanding of regional variations.

11.3.20 One of the interesting components of the Gray and Tesfaghiorghis paper uses an index of economic resources which was developed by the ABS from 1986 census data. It is constructed from a number of economic indicators of well-being. For each of the nation's census collection districts the level on the index is compared with the percentage of Aboriginal people found in the collection district. That analysis shows very convincingly that the higher the proportion of Aboriginal people in the population of a particular census collection district, the lower the index of economic resources. In point of fact, the lowest 10% of collection districts, when ranked on the index of economic resources, have more than 30% of their population being Aboriginal people.

11.3.21 A similar index of education and occupation shows a corresponding pattern. The higher the proportion of Aboriginal people is found in a locality, the lower is the general level of education and type of occupation.

11.3.22 As Gray and Tesfaghiorghis point out, 'There could be no clearer summary of the comparative disadvantage suffered by many Aboriginal communities and substantially-Aboriginal communities than these two summary indexes'.

SUMMARY

11.3.23 In addition to material discussed above, the paper prepared by Dr Gray and Dr Tesfaghiorghis also presents useful material under the heading of 'social and economic indicators'. Much of the available statistics in these and other areas are found elsewhere in this report. Those on alcohol and other drug use are summarised in Chapter 15; those on education are used in Chapter 16; housing and infrastructure are covered in Chapter 18; health in Chapter 23; and economic development in Chapter 17.

11.3.24 The discussion in this chapter has had two distinct themes. The first is that the Aboriginal population is not static in its composition: it has recently passed through a phase of rapid transition; it is still changing; and the changes have profound implications for the development and delivery of programs relating to Aboriginal advancement and for the delivery of individual and community support services.

11.3.25 Secondly, I wish to emphasise the fact that, on almost every statistical indicator of the status, or well-being, of the Aboriginal population, we find its members to be in a highly disadvantaged position. This is the case in both absolute terms and in comparison with the position of the non-Aboriginal society. While the aggregate statistics conceal a wide variety of circumstances in which Aboriginal people live, ranging from comparative affluence in a few cases to poverty, the conclusion we must draw is that the level of Aboriginal disadvantage is very great, and that it underlies the phenomena of Aboriginal over-representation in custody and Aboriginal deaths in custody.

11.3.26 Much of that part of our knowledge of Aboriginal society that is derived from social indicators comes as a by-product of data collected for administrative purposes. A special national survey covering a range of social, demographic, health and economic characteristics of the Aboriginal population would be extremely valuable and is long overdue. The ABS has, I understand, raised with a small number of official agencies the possibility of its conducting such a survey. I lend my support to this proposal. If the proposed census of the Aboriginal people should be undertaken it should be conducted with full Aboriginal participation at all levels.

Recommendation 49:

That proposals for a special national survey covering a range of social, demographic, health and economic characteristics of the Aboriginal population with full Aboriginal participation at all levels be supported. The proposed census should take as its boundaries the ATSIC boundaries. The Aboriginal respondents to the census should be encouraged to nominate their traditional/contemporary language affiliation. I further recommend that the ATSIC Regional Councils be encouraged to use the special census to obtain an inventory of community

infrastructure, assets and outstanding needs which can be used as data for the development of their regional plans.

Recommendation 50:

That in the development of future national censuses and other data collection activity covering Aboriginal people, the Australian Bureau of Statistics and other agencies consult, at an early stage, with ATSIC. to ensure that full account is taken of the Aboriginal perspective.

Recommendation 51:

That research funding bodies reviewing proposals for further research on programs and policies affecting Aboriginal people adopt as principal criteria for the funding of those programs:

a. The extent to which the problem or process being investigated has been defined by Aboriginal people of the relevant community or group;

b. The extent to which Aboriginal people from the relevant community or group have substantial control over the conduct of the research;

c. The requirement that Aboriginal people from the relevant community or group receive the results of the research delivered in a form which can be understood by them; and

d. The requirement that the research include the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations.

11.4ABORIGINALITY IN THE CONTEXT OF THE COMMISSION'S INQUIRIES

11.4.1 This chapter discusses some aspects of Aboriginal society, which have importance for the extent of the over-representation of Aboriginal people in custody. Of particular significance in the work of the Commission is the question of Aboriginal identity. This question was raised on a number of occasions in the course of the inquiries into those who died in custody. The central question addressed being 'Was this person an Aboriginal person within the Letters Patent'. The chapter makes the point that Aboriginal society is neither static or homogeneous. The matters which are raised do not have the same force in all parts of Australia nor in all parts of each State or Territory. They have, however, some significance for all Aboriginal people.

11.4.2 In Chapter 10 I examined the history of relations between Aboriginal and non-Aboriginal people since the colonisation of Australia. The legacy of that history repeatedly emerges throughout this report, especially when considering the underlying issues behind the deaths in custody. In Sections 1 and 2 of this chapter I have examined some of the measurable indicators of that destructive legacy. The impact of non-Aboriginal people, their organisations and their governments, in controlling and dominating the indigenous people of this country is plain to see.

11.4.3 To a significant degree Aboriginal history, society and culture have always determined the extent of the impact of non-Aboriginal policies upon Aboriginal people. The quite deliberate and calculated efforts to stamp out Aboriginal adherence to cultural traditions made (in many cases out of noble motives) on reserves and missions around the country over a long period of time might have had quite different results if Aboriginal culture had been weakly based, of short duration or a culture imposed from without. It was not and the efforts failed; but they failed because of the nature of the society to which they were

directed. Today the aim is different; to frame policies which will allow serf-determination to enhance Aboriginal society, not to destroy it. But the lesson is there that if one wishes to frame policies which succeed one needs to understand the Aboriginal people today and what is their culture. This chapter does not seek to address this whole question but to address matters of particular significance for the Commission's Terms of Reference. -

11.4.4 As I have mentioned above, Aboriginal society is neither static nor homogeneous. The experience of colonisation has been different throughout Australia. Life styles and aspirations of Aboriginal people today differ very greatly.

11.4.5 Non-Aboriginal constructions of Aboriginal society and attempts to define 'Aboriginality' have often been, of themselves, part of the problem which Aboriginal people have had to confront in dealing with the non-Aboriginal society. In this section, although I draw heavily on the writing of social scientists and others who have studied Aboriginal society, I have relied much more on the advice I have received in the many consultations which my fellow Commissioners and I have conducted with Aboriginal people. I record my particular indebtedness to the Aboriginal staff who worked with the Commission, to the Aboriginal Issues Units (AIUs) and to Commissioner Patrick Dodson. The conclusions and analysis I offer here are my own, but hopefully those Aboriginal people who have offered their advice will see it reflected in this section.

11.4.6 The need to explore what it means to be an Aboriginal person is compelled by the cases investigated by the Commission. In so many instances the individual case reports demonstrate that it was non-Aboriginal peoples' lack of understanding of, and prejudices about, Aboriginal people which influenced their treatment and conduct towards Aboriginal people, both in and out of custody.

11.4.7 And there is another dimension which compels examination of this issue. In many of the cases, and not only in some of those where the deaths were self-inflicted, the question of the Aboriginality of the person concerned was challenged, or else the question of self-identity emerged as a factor of significance in the life of persons who later died in police or prison custody.

11.5THE DIVERSITY OF ABORIGINAL EXPERIENCE

11.5.1 The ninety-nine cases examined and reported on by Commissioners reflect the extraordinary diversity of contemporary Aboriginal life styles and cultural experience. The people shared much in common, notwithstanding that diversity of experience. I will illustrate this by reference to two cases, Jimmy Njanji, age unknown, who died in Port Hedland Regional Hospital in Western Australia in 1985, and Darren Wouters, who died in 1987 at Brisbane City Watch-house, aged Eighteen.

11.5.2 The first man died from oedema and asphyxiation as the result of injuries from an assault apparently committed by another Aboriginal person. He was the son of traditional Aboriginal people and was born in the Gibson Desert. In or about 1963 he and his wife and their children, all of whom were members of the one linguistic group, were brought into the Jigalong Mission from Lake Disappointment. Until that time he had had little and possibly no contact with non-Aboriginal people. He spoke a Western Desert language and knew little English. At Jigalong Mission, he and his family were under the 'care and direction' of the mission authorities who were subsidised by the Native Welfare Department. He was not enthusiastic about this new life style. He moved with his family in 1967 to the Wiluna Mission and worked on stations in the area for short periods of time. He first came before the courts on a charge of unlawful wounding arising from a dispute with another

Aboriginal man whom he had speared. Under Aboriginal law this assault was deemed to be excessive, and he was unable to return to the Wiluna area for fear of reprisal. He lived alone thereafter and retreated into excessive consumption of alcohol. He spent the remainder of his life in the Pilbara, at Port Hedland and sometimes at Warralong where consumption or possession of alcohol was banned. He was convicted of twenty-five offences relating to alcohol. In less than one generation his world had altered beyond comprehension.

11.5.3 Darren Wouters' mother was Aboriginal, his father white. Both of his maternal grandparents were Aboriginal people. When he was four months old Darren was made a ward of the state and placed in a home from which his mother 'illegally' removed him. But, subsequently, being unable to cope alone (Darren's father had died), she took him to a children's home and a Protection Order was issued giving custody of Darren to the Director of Children's Services. Darren was then five years old. For the next nine years Darren was placed with different sets of foster parents, but his behavioural problems led the last family to return him to the care of the Director. Darren was then placed in Boys Town where he remained until two years before his death. At this time he moved to a residential lodge in Brisbane earning a living with casual labouring work.

11.5.4 It was not until he was nearly sixteen that Darren first learnt that his mother was an Aboriginal person. He was then still at Boy's Town. Darren himself had very pale coloured skin and fair hair and had, until that time, apparently never thought of himself as other than a non-Aboriginal person. In the two years before his death Darren began, hesitantly, to explore his ancestry, meeting his maternal grandparents and in the period before he left Boy's Town seeking out Aboriginal residents with whom he had not previously associated. On one occasion he was observed in front of a mirror adopting the one legged stance of a cinematic portrayal of an Aboriginal person. He also made a boomerang.

11.5.5 In the two years before his death Darren, who had for some years been regarded as an emotionally disturbed and insecure lad, grappled with the notion of his Aboriginality. He was found hanged, by his own hand, in a police cell in Brisbane after having been arrested on a drink driving charge.

11.5.6 The lives of these two people and the manner of their deaths were very different. Whether being Aboriginal shaped Darren Wouters experience with other non-Aboriginal people in the community is difficult to say. One thing can be said, Darren's history of separation from his Aboriginal parent was an experience shared by tens of thousands of Aboriginal people, victims of poverty and of oppressive 'policies of assimilation. Of the 99 deaths in custody, 43 had experienced childhood separation from their natural families through intervention of the State or by mission organisations or other institutions. Both Darren and Jimmy Njanji were Aboriginal but their legacy of colonisation had been different.

11.5.7 Of the 99 deaths more than half had been born or spent at least their early years on what were then known as settlements or reserves, or else in mission communities.

11.6 THE LEGACY OF HISTORY

11.6.1 An essential backdrop for understanding contemporary experiences of being Aboriginal and of the difficulties and uncertainties which can flow from that, both personally and in interaction with the broader society, is the history of protection, integration and assimilation policies.

11.6.2 I have dealt extensively with that history in CHAPTERs 10 and 20, and I will only briefly refer to the history again in this chapter. But, as with so many, if not

all, of the underlying issues addressed in this report, the historical experience shapes, and to a significant extent determines, the parameters of every issue.

11.6.3 Writing about the history of Aboriginal children being separated from their families and placed in various State institutions Commissioner Wootten said in his report on the inquiry into the death of Clarrie Nean:

> *The misery, dependence and powerlessness to which they were reduced was then taken as proof of their inferiority. What little remained of their traditional culture, including the use of their language, was condemned and discouraged. They were allowed pride neither in their Aboriginal heritage, nor in their partial white ancestry, which was commonly but erroneously attributed to the so-called worst elements of the white community, In the face of their rejection and denigration by the white community, which exercised all power, they drew closer together in warm extended families and communities to make fun of white pretensions and pride themselves on their greater warmth and kindliness, their sense of humour and their loyalty and sharing. Some were trapped into dependence on alcohol and became a stereotype for the white community.*[2]

11.6.4 In the 1950s and 1960s in New South Wales and elsewhere there was a shift away from institutionalising Aboriginal children and a great stress on fostering them out to white families. The result of this was the removal of the sense of group identity which would have been experienced in the government-run homes, whatever other attempts there may have been by the staff of the homes to deny or denigrate the Aboriginal heritage of those placed there.

11.6.5 Commissioner Wootten addressed the theme of the impact of such institutions in his report on the death of Malcolm Smith who had been placed in Kinchela Aboriginal Boys Home for wagging school and taking another child's push-bike to ride on. As Commissioner Wootten explained, some Aboriginal people had the opportunity, and seized it, to maintain their community and family links and to reinforce their identity.

> *Malcolm's experience under the control of the Aborigines Welfare Board was totally destructive, but it had not destroyed his spirit or his Aboriginal identity. Although he had been cut off from his family and from any community, Aboriginal or non-Aboriginal, other than the institutional community of Kinchela, he was to return to his family at every opportunity after he rediscovered them, and to be a leader of Aboriginal prisoners in gaol.*[3]

11.6.6 For many young Aboriginal people taken away from their families enculturation into the non-Aboriginal society meant that assimilation had apparently succeeded. The reality was often very different. For other Aboriginal people, however, a 'choice' existed; they could choose to leave the reserves or missions and move into mainstream society. That choice, exercised by many, created its own special problems, and had a profound affect on the extent to which some of those people and their children would continue to identify as being Aboriginal.

11.6.7 In rural areas such as Wilcannia in New South Wales the decision to assimilate meant moving into the town area rather than remain in the Aboriginal fringe camp or reserve. Dr Jeremy Beckett described what this entailed.

> *It is possible for an Aborigine to escape from the community and become a citizen of a white neighbourhood; but to do so he must*

become economically self-reliant, adopt a higher standard of living on a level with his new neighbours, and conform to a stricter code of sexual morality. Further, he must in some degree disassociate himself from his ....[kinsmen] who come borrowing and seeking his hospitality and whose presence in the district is displeasing to Europeans... Deprived of the traditional support of the community, he must face alone the new world, which has customs and mores he knows imperfectly and which may prove to be ill-disposed to Aborigines as such. The costs of such a change are high in terms of personal readaption and economic effort; understandably, few are disposed to attempt it.[4]

11.6.8 This process of assimilation required a diminution of the values of kinship and a substitution of the material establishment and maintenance of a house. Those relatives regarded by Europeans as distant kin outside the immediate nuclear family had to be turned away, and thus alienated, and economic independence gained together with the acquisition of a 'proper' house in town displaying the various amenities and elegances to be found in other white houses.

11.6.9 Several of the families of deceased persons in Queensland, namely the Binks, Tiers and Yarrie families, adopted the approach of seeking exemption from residence on the Aboriginal settlements in that State. As the individual case reports show, choice and the problems which followed it were significant factors in each of the deaths of the children.

11.6.10 For success in maintaining one's exemption in Queensland, it seemed, from the Tiers and Yarrie life histories, that it was necessary for a couple to (a) abstain from drinking, (b) maintain constant employment, (c) ensure their children did not get into trouble, (d) limit the size of their family in accordance with their income (presumably requiring access to contraception), (e) ensure their children did not fall seriously ill, (0 reside in a conventional house (either rented or purchased), and (g) maintain and equip the house according to the norms of non-Aboriginal society (housekeeping, furniture, decoration, etc.). To fall short of several of these criteria was likely to precipitate adverse evaluations of one's exemption status, with the possible result of the loss of such status. In short, upon departure from the Aboriginal Reserve, the couple had to be able to almost immediately obtain a life style and standard of living, equal to or better than a working class, employed non-Aboriginal person; that is, to instantly 'assimilate' or to give that appearance. Exemption was seen as an earned privilege, not as a right. The experience was like that of being on parole, out of custody but on a good behaviour bond.

11.6.11 Many found they were not equipped with these skills, nor were there the necessary employment and housing opportunities even if they did wish to assimilate, which may have been not the case in any event because of racial tensions and pride in Aboriginal self-identity. To remain exempt and reside within the Aboriginal community of rural towns where one could find social pleasure and support was also likely to be unworkable. The Aboriginal value of sharing with kin prevented the type of materialist attitude required to maintain a house and life style in the manner expected by the Protectors.

11.6.12 The imposition by the Department of Native Affairs of two choices of action, either to seek or not to seek exemption, and the concomitant behaviours and identity processes involved resulted in a generation whose family structures and social identities were further fractured and diversified. Individuals who genuinely attempted to assimilate to some degree found themselves in some social tension with relatives who did not. The gradual abandonment of the State

assimilation policy through the 1970s and, indeed, its reversal by the Commonwealth Government to one of cultural retention and revitalization, left many such individuals in an awkward social position *vis-a-vis* their own kin in reserve communities. Problems of self-identity arising from such will be re-examined later.

11.6.13 The ramifications of the choice about seeking exemption status are well described by Jack McPhee, who speaks of the period in Western Australia between 1939 and 1941. The doctrine at the time was 'integration' rather than 'assimilation', but the principles as they applied to the seeking of exemption were to remain very much the same until the 1970s. Jack spoke of his experience as follows:

> *I went into Nullagine town to see if I could hunt up a different kind of work (from prospecting) and while I was there I got into trouble with the Aborigines Department again. The policeman said to me, 'You' re Jack McPhee, aren't you?'*
>
> *'Yes'*
>
> *'I' ve had a report that you own land and stock.'*
>
> *'Yes.'*
>
> *'Do you have any rights?'*
>
> *What ?'*
>
> *'Are you exempt from the Native Affairs Act?'*
>
> *'I don't think so, I don't think so'*
>
> *'Have you ever been given an Exemption Certificate ?'*
>
> *'Well Jack, that means you've got no rights according to the laws of this country. Because you're a native it' s illegal for you to own land or stock. You can only own those things if you're made exempt by the government. You see, if you' re granted an exemption certificate, it puts you on the same level as a whiteman. It means you can do these things and not get into trouble. I think you'd better put in for it, you strike me as the kind of bloke who wants to get on in the world, and you won't without it.'*
>
> *The policeman then went on to explain to me that having an exemption might also make a difference to the wages I was paid ill ended up working for someone. You see in those days people could pay blackmen whatever they liked and get away with it. Some were never paid at all. It was either cheap labour or free labour in those days. I told the policeman I would have to think about it as I couldn't see why it was necessary. Why did I need an Exemption Certificate just because I was a different colour? It made no sense to me at all. You could tell it was the government' s idea, they were always thinking of things that didn't make any sense.*
>
> *While I was in Nullagine I heard a rumour about a thing*
>
> *you could apply for called Maternity Allowance. I thought I might be able to apply for it for Susie for our last child. I made some enquiries and was told that I would have a much better chance of getting it if I had an Exemption Certificate.*
>
> *It seemed I couldn't get away from that bloody certificate, so in the*

end I decided to write away to Mr Neville (the Protector of Aborigines) and offered to buy one from him.

Neville then wrote to me ... and said before he could grant me an Exemption I had to meet certain requirements. He advised me to go to Nullagine and see the policeman there...

I went and saw Mick Liddlelow, who was the policeman in Nullagine, and he was very helpful. He told me that if my Exemption was granted I had to promise not to do certain things. I wasn't allowed to associate with the ngayarda banjutha Aborigines, I wasn't allowed to live in a native camp, I wasn't even allowed to take part in a corroboree, I wasn't even allowed to associate with any Aboriginal people who didn't have an exemption. In return, the government would allow me to have drinking rights, as long as I showed my exemption if I was asked for it. I would be allowed to sell stock and land, and I would be on the same standard as a whiteman ... if I broke any of my promises I could easily lose my Exemption, in which case I would become a native again.

Out of all those things what really got me was the bit about corroborees. I had such fond memories of dancing with no clothes on, of being decorated, of hearing the women and men singing. I couldn't see anything wrong with that at all. It meant I had to give away all that my mother belonged to. I felt upset about that. I didn't think I should have to make the choice, but I agreed to it all because I wanted something better for my family, and at the time that seemed the only way to get it...

While we were at Cooke' s Creek a policeman was sent out to check on our living conditions. Somehow Neville had got word that I was associating with Aborigines. To tell you the truth, I had been. I often had other Mulbas around my camp. They'd call in, stay a few days and leave. Some of them were my friends and relations and I was just being friendly like anyone would. Luckily they'd all gone when the policeman came out...[the policeman reported that the living conditions were all right but he mentioned that Jack and an Aboriginal man (whose exemption certificate turned out to have been cancelled) were in a business partnership]... This got me into more trouble because Neville sent me a letter saying that I shouldn't associate with Clancy ... [or] share a business with him. Clancy was like a brother to me, I found that very hard to take. Neville said that unless Clancy and I split up he would cancel my Exemption...

When war was declared I tried to join up but they wouldn't take me because I only had one good eye, so I tried to support the fund raising as much as I could... there were some very good people in Nullagine at the time and they didn't draw a distinction with us being Aboriginal or anything like that. They classed us like them, they didn't class us as bush blackfellas.

It was a good time for me and I enjoyed it, but I still felt torn between the white people and the Mulbas. I knew that if I let on to the white people that my heart was really with the Mulbas, I'd be falling out with them. It was very hard to be a blackman and a whiteman. It seemed you had to choose one way or the other, no-one would let you be both. The problem was, if you chose to be a Mulba you and your

family never had any rights at all and you could kiss any hopes of getting on goodbye. Yet if you chose to be a whiteman, you had rights, but you couldn't mix with everyone. It was very, very hard.[5]

11.6.14 For those who did not gain exemption and who remained on the settlements, missions and reserves the pressures and impact of white society were different but no less immense as I will shortly describe. Whichever was the experience, confinement on a reserve or exemption, similar social impacts followed, and one of the consequences was behaviour which brought people under notice of the authorities, especially the police, and led directly to the rapidly developing incidence of arrests and detentions which now sees Aboriginal people being the group most disproportionately placed in custody throughout Australia.

11.7 THE CHILD WELFARE LEGACY

11.7.1 The contemporary experience of Aboriginality--and the extent to which, for some Aboriginal people, the issue of identity is closely related to the sense of self-esteem--is very much a product of non-Aboriginal institutional and individual efforts to deny Aboriginal culture and heritage to Aboriginal children. This is reflected in poor self-esteem which is, in turn, reflected in emotional and behavioural factors that are linked to excessive drinking and offending. Throughout Australia the Child Welfare system was the most pervasive force in this regard,

11.7.2 The assumptions the welfare system makes about the correlation between poverty and an inability to care for the 'welfare' of children is also mirrored in welfare perceptions of what constitutes appropriate family responses. The submission from the Western Aboriginal Legal Service in New South Wales, for instance, examines the assumptions of the Aboriginal Welfare Board and Child Welfare officials in the cases of Malcolm Smith. These officials assumed that Malcolm's family was not in contact with Malcolm either because they were not interested in him or for some reason did not wish him to return. The submission proposes an alternative reason where 'constraints of poverty, distance, illiteracy, and reluctance to approach police or Child Welfare officials' for fear of further intervention in the family' was a more likely scenario given the history of Aboriginals experience with the welfare system. It is also apparent that, at a local level, contact between the family and the separated child was discouraged.[6]

11.7.3 European perceptions of what constitutes a stable living environment underlie welfare assumptions. As Ian O'Connor writes, the perception that the 'shifting household' is indicative of parental neglect is a peculiarly western perception. For Aboriginal communities this modality can serve a positive function in communities which stress the significance of kin ties and the fundamental relationship of child raising.[7] The Human Rights and Equal Opportunity Commission Inquiry into Homeless Children described the Aboriginal home to be 'wherever a family member extends sustenance, whether emotional or physical'.[8]

11.7.4 The overall picture is one in which Aboriginal ways of operating as a family unit and child rearing practices (for instance, the encouragement of self-direction and independent action) have been undermined by the assumptions of a European welfare model. The emerging situation for Aboriginal children in many communities is therefore an experience of loss of role, of place and of family in their community. As Commissioner Wootten wrote in his report on Malcolm Smith:

The horror of a regime that took young Aboriginal children, sought to cut them off suddenly from all contact with their families and

communities, instil in them a repugnance of all things Aboriginal, and prepare them harshly for a life as the lowest level of worker in a prejudiced white community, is still a living legacy amongst many Aboriginals today 9

11.7.5 The removal of Aboriginal children from their parents was a practice which began almost with European invasion in 1788; it was first formally enacted in Victoria in 1886 and quickly became part of a wider policy of assimilation.

11.7.6 The Interim Report flagged 'The impact of earlier programs of separation of families, forced relocation and institutionalisation' as a significant underlying issue.[10] It is clear from the number of cases examined by the Royal Commission, in which child separation was a feature, that the legacy of child removal has had a distinct role to play in institutionalisation and consequent juvenile offending. Many of these cases provide examples of a generation of loss in which Australia's welfare polices were particularly punitive.

11.7.7 Many in the Aboriginal community consider that child separation has had a profound impact on their culture. The Secretariat for National Aboriginal and Islander Child Care (SNAICC) comments, in response to this issue, that:

There is no Aboriginal family that is untouched by this policy. Many Aboriginal organisations today attempt to help Aboriginal adults who were 'removed' children to patch up their lives. Yet even today no official recognition is given to what happened. One problem of this blinkered approach by officialdom is that much needed support services are not provided to many people who literally live 'on the edge' .11

11.7.8 The author of a joint study on Aboriginal Child Poverty for the SNAICC and the Brotherhood of St Laurence, Christine Choo, sums up clearly the experience of this loss.

The poverty of Aboriginal Children is seen to be inextricably linked with the loss of the children to the community through their removal from their families and communities. This has, over the last 200 years, resulted in an inestimable loss to the communities of their most valuable resource in economic as well as personal, cultural and social terms.[12]

11.7.9 Aboriginal people themselves see childhood separation as a direct cause of major social problems in Aboriginal communities today.

Many generations of Aboriginal people have been denied normal childhood development, bonding to families, and any form of positive relationship (love). As a result parenting skills are lost for generations.[13]

11.7.10 This is the experience of a generation in Australia 'caught in the fabric of Queensland policy towards Aboriginal and Torres Strait Islander Children'.[14] The National Aboriginal and Islander Legal Services Secretariat (NAILSS) submission on juvenile justice in Western Australia describes this experience of generational loss in the life of Graham Walley.

Firstly, Vera Slater loses her children to institutions, and a generation later the situation is compounded, with the institutionalisation of Graham who also loses his children... Both generations faced the same kind of obstruction and lack of care, but in Graham' s case the

situation was made more hopeless by his inability to overcome his institutionalisation. In the second generation, the problems become insurmountable. 15

11.7.11 The exact effect of the institutionalisation, as a result of childhood separation, on Aboriginal youth offending is hard to determine as very little specific research has taken place in this area until recently. In South Australia for instance, the extent of the removal of children has never been accurately documented even though, for many years, the State Government actively pursued a policy of removing children from their parents and placing them in non-Aboriginal institutions or with non-Aboriginal families. The Western Aboriginal Legal Service Submission states that the legacies of removals 'were massive'. 16 The work of Link-Up in New South Wales has brought the issue of Aboriginal child separation to particular prominence, but there are still many more answers to questions in this area to be unearthed; for instance the effect of institutionalisation on parenting practices and why Aboriginal girls' response to their institutionalisation appears to be different to that of Aboriginal boys. 17 The work of Coral Edwards and Peter Read in New South Wales and their establishment of Link-Up has begun to re-dress this imbalance. Dr Mary Edmunds makes the point that the consequences of institutionalisation are complex, and causal theories of explanation may be insufficient here. Dr Edmunds goes on to say that:

It is certainly arguable that it constituted a major disruption to the transmission of culture and that it also removed responsibility from parents and placed it with an external agency, the mission or the State. In either case, it would appear to have at least reshaped the processes of social control in the same way that it reshaped the relationships between persons and between generations and genders. 18

11.7.12 The cases heard by this Commission would seem to indicate that child separation had a profound impact on certain individuals lives, for instance Malcolm Smith, Glenn Clark and Vincent Ryan. In the case of Malcolm Smith, the submission on behalf of the Western Aboriginal Legal Service by Dr Heather Goodall contextualises how the welfare system created institutional dependence.

The differences which arose from Malcolm's Aboriginality in his treatment in the Child Welfare system (i.e. his stereotyping as mentally defective, the failure to facilitate family contact, the failure to see his responses to the Homes as historically and socially conditioned, and his labelling as 'unreliable') heightened his exposure to precisely those risks (length of confinement and degree of authoritarian control) which are known to exacerbate institutional dependence, and the breakdown of personal autonomy and self-esteem. 19

11.7.13 Dr Peter Read describes also how institutionalisation had more sinister undertones of assimilation.

The most profound effect of institutionalisation, which overrides other well-documented effects of institutionalisation generally, was the persistent attempt by authorities to force the boys to identify as European... One was a positive reinforcement of the European model, the other was a negative portrayal of Aboriginality combined with a with holding from the boys of any particular knowledge of their immediate family or of Aborigines generally.20

11.7.14 Although Glenn Clark was not removed under the auspices of a specific

Aboriginal welfare Act, his childhood separation from his mother at four years of age by authorities, who perceived poverty **as** sufficient for removal, constitutes a similar occurrence. Commissioner Wootten describes how this action indelibly shaped Clark's life.

> *From that point on, Glenn' s life follows the tragic and well worn path of many Aborigines brutally separated from their families and thrown into an alien environment, cut off from family warmth, maternal care and any sense of identity. Torn from his mother at the age of four, his behaviour became so disturbed that the staff of a receiving home threatened to resign if this small child was not removed. 21*

11.7.15 I wrote about a similar case of welfare insensitivity in the case of Stanley Gollan.

> *One of the most important underlying issues in this case seems to me to relate to the institutionalisation of Stanley during his early adolescence. It seems to me that there was little, if any, valid reason for Stanley being made a ward of the State... There was no reason to suppose that, had Stanley been returned to Point McLeay, his misbehaviour would have continued... By being institutionalised, he was removed from his family and friends and away from this influence of his own people.22*

11.7.16 Although the lives of Malcolm Smith, Glenn Clark and Michael Gollan exemplify individuals who particularly suffered in the welfare system, in a more general sense child separation can be seen to have had an impact on all Aboriginal people who were touched by the experience of child separation either personally or through family connections.

11.7.17 Dr Goodall describes the tactics of resistance to institutional assimilation. She writes, 'These were the tactics appropriate to powerless groups: passive resistance, non-cooperation, absconding'.[23] For leaving the Child Welfare Network there was the additional legacy of heightened Child Welfare and police surveillance. The NAILSS submission on juvenile justice asserts a definite link between 'recidivism and separating children from their family and culture' .24

11.7.18 A picture emerges of lives permanently institutionalised. The NAILS Secretariat views the legacy of Kinchela Boys Home and Cootamundra Girls Home in New South Wales for those Aboriginal people who grew up in this system as

> *struggling against the odds to live normal lives in a world that is permanently disordered from the inside out. An indeterminate number find themselves in a revolving door relationship with police, hospitals, prisons and various debilitating dependencies. Malcolm Smith was one of many.[25]*

11.7.19 The legacy of child separation is still a significant issue in the lives of many Aboriginal people. It is an issue that still needs investigation and there is still a 'lost generation' that needs support and reunion with their families. Hence, there is a need for more expanded services such as those provided by Link-Up which would deal with the emotional and psychological legacy of what are now recognised as misguided child placement policies. There is need for a process of reclamation by Aboriginal people of their own immediate history here. Commissioner Dodson in Western Australia has noted that access to government archival records concerning family histories is important, and its significance cannot be underestimated:

> *Access to knowledge can assist: to reinstate pride in family experiences; enhance a stronger sense of identity; re-establish contacts with family members; reaffirm interaction within broad family networks; revive and maintain Aboriginal traditions...; understand the historical background of contemporary personal issues...; re-claim ownership of material pertaining to family life; develop resources... and enhance research skills.*[26]

11.7.20 However, I must warn that caution is required in opening up files to Aboriginal people, as with other persons who have undergone institutionalisation or adoption. The effect of seeing information which has been kept confidential, because it is private information, or because it was the practice in some States to document every governmental action and ungenerous remark of an administrator, can be devastating. Sympathetic counselling, especially by other Aboriginal people who have themselves been adopted or institutionalised, such as the Link Up staff, ought to be available to Aboriginal people who gain access to records of their family. We should be mindful of the emotional hurt which can be caused, as explained by one Aboriginal person.

> *Every Aboriginal person was documented on file. I came across Dad's file in 1969 by accident whilst working in the Department of Aboriginal and Islander Affairs. Dad had applied for permission to be married to my mother three times. Twice he was knocked back and permission refuse, but on the third request the Director relented. He relented because the Manager at the time was sick and tired of Dad's begging. The manager had written to support Dad' s request by stating that Nellie (my mother) may in fact have a settling influence on Dad' s larrikin ways. I stood there in that filing system stunned, frozen to the floor in shock. This was unbelievable at the age of sixteen to find out the truth in this way. My mind screamed out--what about love and freedom of choice? We remained prisoners in an unjust system that treated us like merchandise. My thoughts raced back in time, to when I was a child of nine, crying and begging with the police not to be locked up for the weekend. I was a half hour over the stipulated time granted on my permit. It was then I again realised the differences of laws that existed for non-Aborigines and my heart and soul screamed to be set free.27*

11.7.21 It is important that Aboriginal people who desire to do so should be assisted in re-establishing their community and family links to those from whom they were separated as a result of past government policies.

Recommendation 52:

That funding should be made available to organisations such as Link-Up which have the support of Aboriginal people for the purpose of re-establishing links to family and community which had been severed or attenuated by past government policies. Where this service is being provided to Aboriginal people by organisations or bodies which, not being primarily established to pursue this purpose, provide the service in conjunction with other functions which they perform, the role of such organisations in assisting Aboriginal people to reestablish their links to family and community should be recognised and funded, where appropriate.

Recommendation 53:

That Commonwealth, State and Territory Governments provide access to all government archival records pertaining to the family and community histories of Aboriginal people so as to assist the process of enabling Aboriginal people to reestablish community and family links with those people from whom they were separated as a result of past policies of government. The Commission recognises that questions of the rights to privacy and questions of confidentiality may arise and recommends that the principles and processes for access to such records should be negotiated between government and appropriate Aboriginal organisations, but such negotiations should proceed on the basis that as a general principle access to such documents should be permitted.

11.8CURRENT ADOPTION AND FOSTERING POLICIES

11.8.1 In the last decade the reasons and basis for welfare intervention, notably in the policy of child separation of Aboriginal children either to welfare homes or non-Aboriginal families has begun to be seriously examined. The result has been the establishment of Aboriginal Child Care Agencies established in the 1970s. Concomitant with this has been the enactment of specific legislation or policies in some states to deal directly with this issue. In most States, and where possible, Aboriginal children are no longer placed with non-Aboriginal families. The principle of Aboriginal child placement has been accepted by all welfare Ministers in the States, although there is only legislative embodiment of this principle in New South Wales, Victoria and the Northern Territory.28

11.8.2 In 1976 the Report of the Workshop on Aboriginal Community and Adoption arising out of the First Australian Conference on Adoption articulated critical viewpoints and made recommendations on the practice of adoption and fostering of Aboriginal children in Australia. Specifically, the workshop called 'for an end to the placement of Aboriginal children with white families by white adoption officers'.[29] The Aboriginal Child Care Agencies established during this period were based on this basic principle, along with other stated aims. The underlying principle of these agencies is that the Aboriginal community was itself the best source of support for Aboriginal children and young people. In particular these agencies stated aims are:

- the preservation of Aboriginal families and the prevention of institutionalisation;
- the collocation of siblings in institutions and the re-uniting of families; the development of self-help programs and the provision of resources which are supportive of Aboriginal families; the development of culturally relevant policies for Aboriginal child and family welfare services.[30]

11.8.3 The Australian Law Reform Commission foreshadowed the need for a review of Aboriginal child placement policies with the issue, in 1982, of a discussion paper on 'Aboriginal Customary Law--Marriage, Children and distribution of Property' which recommended the enacting at a Commonwealth level of the *Aboriginal Child Placement Act. The* Aboriginal Law Reform Commission in its final report (on the recognition of Aboriginal Customary Law) 'recommended that the child placement principle and the necessity for consultation with relevant Aboriginal persons and organisations should be given a legislative base'. The States, however, rejected the notion of a Commonwealth Act. Instead, a Standing Committee of Social Welfare Administrators Working Party was

established to consider the issue. In 1984, the Working Party concluded that 'each State in consultation with appropriate Aboriginal communities and organisations determine its procedures in order to implement the Aboriginal Child Placement Principle'. The Social Welfare Ministers Conference endorsed this proposal in 1984 but did not in fact endorse the call for Commonwealth or State legislation. This would seem to be a particular sticking point. As the Australian Law Reform Commission succinctly puts the issue:

> *[I]t is not sufficient to rely on the sensitivity of particular welfare officers, authorities or magistrates in ensuring that appropriate principles are applied and that concealed ethnocentric judgements are not applied in deciding on the future of Aboriginal children.*[31]

11.8.4 Queensland would seem to provide a particular case in point of the truth of this statement. Dr O'Connor has pointed out how policy has failed to be properly implemented and hence 'large scale institutionalisation and removal of Aboriginal and Torres Strait Islander children from their communities' still occurs in Queensland.32

11.8.5 In a submission made to the Commission on 1 March 1991 the Director General of the Department of Family Services and Aboriginal and Islander Affairs, Ms R. L. Matchett, said of the apparent failures in this regard:

> *There was inadequate funding to adequately implement all aspects of the Policy. A further difficulty has been the lack of co-ordinated training in relation to the placement principle. A training program is being developed for Child Care Officers that will ensure all Child Care Officers are trained in the child placement principle.*[33]

11.8.6 While States no longer have a formal policy of separation, it would be remiss to assume that welfare intervention does not currently significantly effect Aboriginal children. The over-representation of Aboriginal children in 'care' attests to continuing and significant welfare intervention. The Western Australian Substitute Care Review Committee has 'highlighted the dilemma for Aboriginal people in perpetuating the historical removal of Aboriginal children by providing foster and residential care'.[34] As Richard Chisholm in a study on Aboriginal Child Welfare Law in New South Wales succinctly sums up:

> *Wardship has been a potent weapon in the fight to assimilate Aboriginal children, and, at least from a legal point of view, represents the ultimate defeat for Aboriginal parents or communities who wish to retain responsibility for their children. It is an area of child welfare in which the Department' s policies and practices are all-important, for there are effectively no legal constraints.*[35]

11.8.7 While it is apparent that the Aboriginal child placement scheme has had positive aims and effects insofar as it has reduced the number of Aboriginal children in department subsidised foster care, and hence has empowered Aboriginal people to deal with issues within their family network, there are a number of improvements that could be made here. In Western Australia, for instance, Commissioner Dodson has pointed out that the Aboriginal Child Care Agency has been limited in its effort though a funding dilemma. Commissioner Wyvill has stressed how structures of placing Aboriginal children in 'care' 'must receive adequate support so as not to become over-stressed and that in the alternative the development of well resourced, Aboriginal administered and community based extended homes must be pursued'. The Commissioner comments that in contrast to the non-Aboriginal child care agencies that have

'featured prominently in responses to the juvenile justice problem' Aboriginal community initiatives have been 'constructive, meaningful and culturally sensitive' in response. He goes on to say:

> *Community-based programs organised, designed and administered by Aboriginal people in the community clearly provide the most promising long -term solutions. Those programs and initiatives must be respected and supported by government.* [36]

11.8.8 Commissioner Dodson has stated that in the event that a child must be institutionalised 'every effort should be taken by the Department for Community Services to reduce the impact of social dislocation'. The Western Australian Substitute Care Review has further pointed out the need to reduce the over-representation of Aboriginal children in care and the importance of research 37 into the reasons Aboriginal children are referred to residential care in the first place. The authors of this review go on to point out that 'The use of residential and foster care, even with Aboriginal caregivers, is an anathema to many Aboriginal people'. In this respect Commissioner Wyvill has stressed the 'virtue in placing a child who, for whatever reason, cannot remain with his/her natural parents, within the extended kinship structure of the community'. However, currently there are no clear directions as to what culturally appropriate alternatives should be developed. The Western Australian Substitute Care Review pointed out that currently the Aboriginal Child Placement Policy was too simplistic in that it assumed a homogeneity of Aboriginal culture, when in fact the diversity of culture, for instance urban/rural contrasts, should be addressed in the policy. 38

11.8.9 In order to address this crucial question of Aboriginal culture, I now turn to an examination of Aboriginal cultural principles which, from the available evidence, appear to be common throughout Aboriginal Australia. These principles engender and shape the social meaning in Aboriginal actions, and for my purposes, those actions which place them in the spotlight of police attention and inexorably in a police cell. I am indebted to Dr Mary Edmunds for her contribution in this area.

Recommendation 54:

That in States or Territories which have not already so provided there should be legislative recognition of:

a. The Aboriginal Child Placement Principle; and

b. The essential role of Aboriginal Child Care Agencies.

11.9 ASPECTS OF ABORIGINAL CULTURE TODAY

THE ABORIGINAL COMMONALITY

11.9.1 In the social world of Aboriginal people, based as it is on small kin groups, factionalism should not be considered to be either a failure by Aboriginal people to take their civic responsibilities seriously, or as merely another manifestation of cultural disintegration. Factionalism may well be, on the contrary, a sign that Aboriginal cultural processes are alive and well, and that what is missing, in the context of incorporation into a European system, is an appropriate internal system of checks and balances to the assertion of legitimate self-interest. The constant accusation of 'nepotism' levelled against Aboriginal people working in Aboriginal organisations or government is better seen in this light. It is the social responsibility of a member of the 'family' or clan to further the interests of other members of that particular group. Such a view poses a significant challenge to the

common view of Aboriginal people being part of an absolute group called 'community' and, indeed, to the concept of community itself. It does provide an approach, however, that allows us to examine, for example, the acknowledged existence of factionalism within 'communities'.

11.9.2 A common thread which runs between Aboriginal communities throughout Australia is connection of people and place. Another feature of Aboriginal commonality is a combination of relation to place but at the same time associated with mobility which might be referred to as centred *patterns* of mobility. Beckett, in relation to western New South Wales, talks about the 'beat'--the set of frequented places joined by a track that each person consolidates and then comes to regard as an individual stamping ground. In Western Australia, similar understandings of region by Nyungars are labelled 'the line' or 'runs', which is the pattern of movement up and down the bitumen strip that connects Perth to Broome. In and around Darwin, the phrase is 'all that place bla Countrymen'. Sansom suggests these terms are 'exact synonyms' for the places they describe; each stands for the set of places that constitute a social ambit for a person of no necessarily fixed residence but of a delimited countryside.[39]

11.9.3 The connection of people and place, then, is fundamental. Within the beat, or on the line or run, the processes of social interaction are strongly influenced by kinship.

11.9.4 The specificity and regionalism of each place means that local issues and ways of doing things predominate. The tension between these kinds of commonality on the one hand and, on the other, a fiercely defined particularity in terms of place is but one of many tensions that underlie Aboriginal life. In the following sections, some of these other tensions surrounding social dynamics are examined; for instance the tension between personal autonomy and relatedness.

11.9.5 I refer to what I said earlier, that Aboriginal society is neither static nor homogeneous. The influence of these factors may be declining or being felt in different ways in some parts of the country and, particularly, amongst people residing in major cities. Although, a recent survey of eighty-eight Aboriginal heads of household in the Adelaide metropolitan area showed that association with the people, and culture of those living in rural and remote areas remained significant. In this study entitled *Taking Control: A Joint Study of Aboriginal Social Health in Adelaide* by A. J. Radford and others, the survey revealed that 41% of respondents considered their ties to 'outside' communities to be 'strong and meaningful' and a further 20% thought the ties were 'real but not strong'. The balance considered that they had no ties at all (16%), very weak or nearly no ties (13%) or ties which were not strong and were getting weaker (10%). Seventy per cent of respondents had made at least one visit to an 'outside' community within the previous twelve months. Only 16% said that there was never any use of or discussion about traditional culture, language or customs in the household. Six per cent said such cultural usage was occasional (28%), often (33%), a constant (17%). The authors of the study concluded that these responses

> *reveal great diversity of Aboriginal cultural identification and expression amongst the households in the study. h is clear that traditional cultural values/ways/language and so on, mean a great deal to between one-third and one-half of households, with another sizeable group who express their culture less strongly, and between 20 and 30% who would seem to claim it is of little importance, at least as gauged in this manner.*[40]

AUTONOMY AND THE CONCEPT OF SELF

11.9.6 As I will show, the high regard for autonomy has been considered by many researchers as a particular feature of Aboriginal society. I commence this discussion with a reservation which I have about this. organisation have a single identifiable opinion on any issue. Whilst autonomy may be, and I believe is, identifiably important to Aboriginal people this does not mean that it is a characteristic unique to Aboriginal society. Of course, it is matched by other considerations which constrain autonomy in the interests of social intercourse and for the purpose of protecting personal interests by recognition of the necessity to do so through group and/or democratic involvement. The importance of identifying this trait with respect to Aboriginal people, however, is to dispel some myths, one of which is that Aboriginal people, as a race, share everything, including opinions, and as part of their processes of social organization have a single identifiable opinion on any issue.

11.9.7 The development of personal autonomy among the Pintupi of Central Australia as a central theme of social life is explored by Dr Fred Myers in his ethnography *Pintupi Country, Pintupi Self.*[41] Brady, in her case in Yalata in South Australia, is only one among very many writers who also identify the value placed on personal autonomy by Aboriginal people. She also identifies the emphasis placed on personal autonomy as one of the fundamental factors in shaping people's attitudes to drinking:

> *Despite the oft-quoted assumption that Aboriginal life is marked by communalism and commensality, individuals may act autonomously and without the interference of others. Drinking, like many other activities of everyday life, is someone' s 'own business', even if that business may adversely affect that individual and others: the 'community. 42*

11.9.8 Eckermann, in her studies of southern Queensland and New South Wales communities, describes the effects of this emphasis on personal autonomy in similar terms to those used by Sansom.

> *There are few truly reciprocal relationships although this does not preclude expectations and obligations within... other relationships.*
>
> *'Sharing' then does not include a very large network. Further, within this framework and certainly beyond it, much depends on the elements of power and affection. By 'giving', individuals not only show how much they care, they also establish a power relationship where the giver may influence, pressure, 'boss', the receiver. If exchanges are perceived as fairly equitable, the power relationship remains stable. Should the exchange be perceived as inequitable, individuals attempt to manipulate, to exert control.*[43]

11.9.9 Martin, in his submission to the Royal Commission in relation to the death in Aurukun, talks about 'the high stress placed on individual autonomy'. 44 Sansom talks about the principle of autarchy in a Darwin camp-which translates to mean 'self rule' or, according to the Oxford English Dictionary, absolute sovereignty--that is, the radical right of every individual to act in relation to his or her business as he or she chooses.[45]

11.9.10 A significant tension, as we shall see for young men changing from pubescent to adult states of manhood as it is socially defined in their home environments, is how personal autonomy as a highly valued attribute in Aboriginal society is balanced in relation to other important values, particularly the strong

pressures to conformity. The pressure to conform is both a corrective to the emphasis on personal autonomy and a means of social control. The role of the peer group is fundamental in this process of securing conformity. The tension between these two values of autonomy and conformity--is probably one of the most central in Aboriginal life.

11.9.11 Hamilton has carried out one of the few studies of child-rearing practices that show how certain patterns of relationship and behaviour, and the ways in which these are valued, are established and developed from infancy. She describes those patterns of adult-child interaction amongst the Anbarra of Arnhem Land which involve almost absolute indulgence of small children, and the relaxed way in which children are made responsible for themselves and for each other in the peer group:

> *Adults make no systematic attempts to train children, either in social behaviour or in any other area. Instead, they expect the children naturally to learn what they need to know and they expect that the child will be normally co-operative and friendly and reasonable, not naughty and self-willed and anti-scocial.46*

11.9.12 Embedded in this process are very strong cultural values that promote and encourage the early and continuing independence of children. Harrison also identifies the importance of children's early assertion of independence in relation to their access to food. [47] The response of adults to children's demands therefore constantly reinforces assertive and independent behaviour over other kinds.

11.9.13 These features of socialisation's are common to many other Aboriginal groups,-including those in settled Australia, and constitute another indication of the persistence of cultural principles and forms underlying the Aboriginal commonality. Carter, for example, sees a similar development in a southern New South Wales community, where the context is different and a central concern is the affirmation of identity in opposition to the surrounding non-Aboriginal community. Again, however, the development of a cheeky assertiveness is rewarded by adults who promote the identification of a child as 'a cheeky black kid'.[48]

11.9.14 Disciplinary action is not altogether absent, as Burbank points out in relation to Numbulwar, but the same principles, this time exercised by adults, are involved:

> *Only some people, generally the boss of a child, have a right to punish a child, regardless of the child's behaviour. The severe punishment of children is neither expected nor tolerated. This changes when children reach physical maturity.49*

11.9.15 Smith, writing of western Cape York, indicates how the assertion of individuality remains an essential part of Kugu-Nganychara dally discourse.

> Ngaya ngaya (ngaya—*first person singular pronoun, subject). Repetition of ngaya ... is a phrase heard frequently in individual conversation. Essentially it has the connotation of emphasising personal autonomy and style: 'me myself' .50*

11.9.16 Eckermann identifies one of the long-term consequences, in urban and rural areas, of these processes of socialisation one that often confounds those outsiders who assume that representative democracy will work in the same way in Aboriginal communities as it tends to work in the broader European Australian community: 'Individuals rarely give up their fight of veto even though a person from the community may have been elected to represent individual views'. 51

11.9.17 Autonomy then emerges as a highly valued characteristic among Aboriginal societies in all areas of Australia, and as seminal to the person's concept of self. It does not, however, develop in the kind of isolation that allows it unbridled expression. The Aboriginal self, as Myers explores with the Pintupi, is essentially constructed through relatedness. Identity with others, he argues, constitutes the primary condition and expectation of life, deeply embedded in personal experience.[52] Smith, examining nurturing practices in western Cape York Peninsula, demonstrates how fundamental this development of relatedness is for all aspects of social life:

> *Consistent involvement in nurturing interaction progressively established an extensive system of reciprocal responsibilities and rights that are crucial to an individual's social identity... These relationships and the involvement in nurture are open to negotiation and management which introduce considerable flexibility into the social transmission of rights.*[53]

11.9.18 Hamilton looks at the tension in daily life between autonomy and relatedness, a tension that underlies much of the violence in communities, and that will be discussed later in greater detail:

> *A variety of mechanisms exist in Anbarra society to mediate between the claims of individuality and the requirements of the group. Symbolic acts as well as material obligations place people in networks of exchanges determined by the kinship system and are instigated early in life... [S]ociability and self-assertion, individuality and aggression are mediated by customary behaviours--the giving and receiving of food and women, the control of aggression through ridicule and interference, and the control of excessive individuality by pressures to conform to traditional role expectations formed early in life.*[54]

11.9.19 Morris notes one of the other important mechanisms for restraining any excessive assertion of individuality. In his discussion of the Dhan-gadi of New South Wales he indicates the importance of shaming in everyday life as a way of keeping people in their place. Shaming or levelling is of particular significance in relation to the place of the peer group, one of the other aspects of this socialisation process that is relevant to the present inquiry.[55] Another closely related one is the process of becoming adult.

11.9.20 This section has examined the nature of the tension in Aboriginal societies between two strongly held values: that of personal autonomy and that of social responsibility and affiliation--what has been called relatedness. It also refers to the particular Aboriginal answer to the broad human question of the relation between the individual and society. In Aboriginal terms, the stress on both these values is embedded in the processes of the socialisation of children so that they become an unquestioned part of behaviours. Other fundamental characteristics of Aboriginal societies are also developed in individuals from the time that they are children. The two that are of particular concern to the Royal Commission are the focus of the following section. These are the aspects that relate to gender and age.

OTHER ASPECTS OF SOCIALISATION AND THE PROCESS OF BECOMING ADULT

11.9.21 Hamilton makes very clear that the Anbarra peer group comes to have central importance for both boys and girls from around two years of age. This is the group that is not only the most important source of daily companionship for the

child but also the one that provides the setting for wholly unsupervised play. Most importantly, the main agent for conformity in childhood is the peer group, and, within this group, children work out the appropriate behaviour patterns for the role they have been cast in. It is through the peer group, too, that gender differentiation is established:

> *Between 18 months and 5 years of age the pattern of future sex-based social interaction is founded. Males stay together, often in large groups, usually with specified other males (father's, mother's brothers); females stay in small groups founded on the matrilineal tie between grandmothers, mothers and their female siblings, and daughters.*[56]

11.9.22 The peer group then, while very important for Anbarra girls as an ongoing and central support group, tends to become, for Anbarra boys, more critical for much longer as it tends to constitute, not just one of several, but their principal reference group.

11.9.23 The culmination of this socialisation into different gender roles is reached when children become adults, as Hamilton describes:

> *Children of both sexes are allowed the freest expansion of their physical capabilities while the intellectual qualities that give depth and structure to Aboriginal life are kept from them. In the short pre-adolescent period they learn to give up the physical pleasures of their childhood and must adjust to the sudden cessation of indulgence. The real beginning of life comes for the boy with his circumcision and for the girl with her marriage. Only then does the kind of training occur... - subjection without question to adult authority, training in beliefs and values underlying behaviour, the imposition of self-control and self-denial often under extremely trying circumstances. 57*

11.9.24 Similarly, for a young woman in western Cape York, as Smith points out, marrying and having one's own children--that is, full entry into the domestic sphere--is recognised as a means of establishing her own autonomy and independence from parental demands. Marriage represents a re-direction of an individual's economic and social activities, as it does in Anbarra society. A young woman is gradually incorporated into women's groups and is involved in domestic tasks from quite an early age (around five to nine years). This entry into the domestic sphere--the arena which focuses on the hearth group and its routine mundane requirements--is therefore not a conspicuous transformation.[58]

11.9.25 For Anbarra boys, largely sheltered from responsibility, the entry to manhood is much more radical, and is often preceded by an increase in wilfulness and rebelliousness as they approach the appropriate age and have to let go the rewarding pleasures of childhood. Moreover, although initiation or other equivalent rite of passage is one part of this entry into adulthood for boys and formally marks a significant stage in their access to public life, it does not, of itself, guarantee the boy's or the man's--place or status in the group. This is something that has to be won and is, as discussed earlier, subject to constant renegotiation. It is fundamental to Aboriginal societies that there does not exist the kind of position or office separate from the individual that is such an essential part of European social organisation. Status for Aboriginal people across Australia is essentially individual and constantly earned although, also involved, in some areas such as Arnhem Land, are both age and gender constraints.

11.9.26 For men, from the beginning of social adulthood, this process of achieving status was and is increasingly focused within the sphere of public life that is, the arena which invokes the whole society and the institutions and practices regarded as necessary to its social health and continuity. This is true in relation to the maintenance of traditional law and culture as it is for the continuation of cultural heritage, beliefs and practices. It has a parallel significance in relation to the era of work in the pastoral industry, of seasonal employment in rural industries in the southeast, or of involvement earlier this century in these same areas in developing rural enterprises. Men's responsibility is to 'worry for their mobs'.[59] The existence of suitable grounds for negotiating position is therefore fundamental, and it is precisely the sphere of public life that has been most radically altered by colonisation. The grounds for negotiation are, therefore, largely absent for young men in the contemporary situation.

11.9.27 For women, on the other hand, although not even motherhood is an absolute or unquestioned position, the bearing or raising of children does provide a stable basis from which entry into adulthood and the negotiation of status may be undertaken. Moreover, the division of labour defined in relation to the domestic and public spheres is also related to gender roles. Precisely because of this, the impact of colonisation has been different for men and for women. Despite the enormous changes effected, women 's role in the domestic sphere' and their tasks--nurturing, providing food, 'worrying for the 'lations'--have not substantially altered. The public sphere, and hence the context of men's role and status, is precisely the area that has been most under attack in the transformation to a new order. The group most socially vulnerable in these processes are young men.[60]

11.9.28 Young men did not negotiate entry into adult manhood or status. It was for older and senior men to do that. The very foundation of manhood was affirmed and nurtured in this manner. Many young Aboriginal men find there is not a ready-made social and cultural transitional mechanism based upon cultural norms to enable them to pass effectively from juvenile to adult man with respected status and responsibilities that are acceptable to all. The mechanism that may have been available for their senior uncles or fathers has by and large become modified or, in some cases, has died out. At times where it is maintained it can itself be the subject of alcohol misuse, and would bring into dispute, disrespect and rejection the very systems and dynamics that ensured continuity of traditions and the passage of values, knowledge and rules from one generation to the next. Where this socialisation process is no longer culturally based (on traditional norms) it is into a different and dislocated world that young men are initiated, one in which Aboriginal men are additionally disadvantaged. Often it is into the social ways developed, under duress, in response to the forces of the non-Aboriginal society. This perpetuates the alienation of young Aboriginal men from the source of Aboriginal being: country, kinship and ceremony.

11.9.29 It is clear that if there are no clearly identifiable cultural mechanisms under the control of the Aboriginal community for the transition of young men into the status and responsibilities of men then the young men develop and have developed alternative bases for the achievement of status. Those alternative means of achieving status may, however, involve conduct which is at odds with the laws created by non-Aboriginal society. These circumstances are in many ways the key to understanding behaviours, including drinking and violence, that bring many Aboriginal people, particularly young men, to the notice of the police and the courts. Without this understanding, the kinds of appropriate solutions that are so desperately sought by Aboriginal people themselves cannot be found. Aboriginal people blame this situation upon the ongoing process of colonisation and the

various government policies that have rendered them powerless to maintain their own social order and cultural norms for the continuity of their people.

YOUNG MEN IN ABORIGINAL SOCIETY--AN INTRODUCTORY NOTE

11.9.30 This National Report, focused as it is on the deaths of so many people, mostly young men in custody, inevitably explores the impact of the underlying issues which affected their lives, and the lives of the other Aboriginal people who are so disproportionately imprisoned, in a way which can give a quite misleading impression about Aboriginal people.

11.9.31 As the National Report demonstrates, those who died in custody, and the thousands of other Aboriginal people who have been imprisoned, came into contact with the criminal justice system not simply because they offended against the laws of the State. Another feature of their lives was their marginalised position. The life choices of these Aboriginal people, and their conduct, were significantly influenced by the processes of historical development, racism and disadvantage that make it so probable that they would find their way into that system.

11.9.32 However, thousands of young Aboriginal men and women have not had such contact with the criminal justice system, or if they have, they have escaped its embrace early and absolutely. These people are part of Aboriginal society today also. Whilst retaining strongly their pride in their Aboriginal heritage, they are working (often in important Aboriginal organisations), studying, living on their lands, supporting families and making a major contribution to the Aboriginal communities to which they belong.

11.9.33 Whilst there is unfortunate evidence that the pressures of living in a hostile broader society--but being denied equality of opportunity in that society--has led many young Aboriginal men, especially, to lead self-destructive lives and to perpetuate acts of violence against those close to them, the fact remains that that is not the picture for the majority of Aboriginal people. For those whose lives are substantially characterised by such sad waste of talent and such little joy we must try to learn the factors in the broader society which so greatly contribute to that situation. But it must be kept steadily in mind that there is a majority of Aboriginal people who feel the pain and suffering of those of their brothers and sisters whose lives are blighted by alcohol and imprisonment but whose own lives are not so blighted. Many are frustrated at not being able to change these sorry facts.

11.9.34 The strength of Aboriginal culture and kinship is a powerful force for dealing with and overcoming the racism of non-Aboriginal society. In examining aspects of Aboriginal society which may have contributed to or been inadequate to prevent the social breakdown of the lives of many Aboriginal people, I hope that the strengths of Aboriginal culture which have supported so many other Aboriginal people in their resistance to the domination of non-Aboriginal society are not overlooked. In the following sections when I speak of the conduct of 'young men' these qualifying remarks must not be forgotten.

THE ROLE OF YOUNG MEN IN ABORIGINAL SOCIETY

11.9.35 Access by women to steady if not substantial income through Social Security pensions has altered the gender relations within fringe dwelling Aboriginal societies. Mothering is the key to such access to resources. Perhaps more importantly this access has acted to transform the position of motherhood itself into a source of status. Among the town campers in Alice Springs, because of the introduction of Social Security payments to women in the 1950s, the domestic

economy tended to become the mainstay of that society for a significant period in the 1950s and 1960s. Women in that period, principally because of their position as mothers, 'have privileged access to continuous pension incomes, and, therefore, substantially control the domestic economy'. Welfare practices contributed to the process in that women as mothers and housekeepers were supported in that role in a way that did not apply to men. For welfare purposes it was enough that mothers care for their children.[61]

11.9.36 The relationships between status and access to income through unemployment benefits does not exist in the same way for men. Sansom, writing in 1980, points out in relation to the Darwin town campers that the struggle for status for men in that situation was related both to the establishment of their place within the current order of the mob itself, but also to their sporadic work as stockmen:

> *Men are concerned with instant realisations of status, with striving to be someone, trying to sustain a marriage or attain social recognition within the current order of some mob. Male triumphs are inherently short-lived and the history of any man's career is a story of ups and downs. Women consistently devalue the short-lived excellencies of a man's past performance to make the inconsistent pattern of male careers the grounds for vocal reproach... With their reliance for status on a seasonal and fluctuating labour market, men are fated to be inconsistent providers. Their identities as stockmen are seasonally spoiled and, hence, the social grounds for male and female opposition are rooted in an imposed structure of racial inequality. In the end, the opposition between male inconstancy and the fealty of a woman' s 'lation's is a function of the opposition between wage dollar and pension dollar. 62*

11.9.37 The possibilities of stock work in the Northern Territory about which Samson was writing in 1980 have further declined in the following years.

11.9.38 Nor has the loss of job opportunities in that area been compensated for by an increase in job opportunities in other non-Aboriginal industries. An important development (and one which only commenced a matter of months ago) has been the introduction of a Community Development Employment Projects (CDEP) scheme into the town camps in Alice Springs. Prior to this development opportunities for employment, and hence status through employment, have been irregular and limited for most Aboriginal men living in the fringe camps of towns in the Northern Territory.

11.9.39 Nonetheless, the situation remains that for the various reasons mentioned, the effect of non-Aboriginal domination of Aboriginal life has been to destroy many of the bases upon which men hitherto relied for achievement of status within their own society. At the same time, activities and involvement with non-Aboriginal society, which had provided an alternative or supplementary means of achieving status both in Aboriginal and non-Aboriginal society, have also largely disappeared. The most important of these activities was involvement in primary industry in the cattle industry for some, in the cotton industry for others. The folklore, mythology and prestige which was associated with this work has gone as the jobs have disappeared. In their place are the dole or possibly CDEP work. CDEP will not necessarily meet this need for many good working men. They will adapt to it to survive, but sometimes without pride coming with it.

11.9.40 At the same time, what is also occurring through the establishment and operation of Aboriginal organisations is a re-establishment of the parameters of the public sphere of Aboriginal society but now within the broader Australian society.

The organisations, limited as their functions may be, are acting to redefine and represent public concerns and are, moreover, an important channel for resources. In this way, they appear to be providing a new basis, particularly for men's status and action, and for men to develop a meaningful place for themselves in the new order without compromising their own interests.

11.9.41 The organisations in general, however, offer this platform to the middle and older generations. This is not exclusively so, but on the whole young men in particular are not actively involved, while young women may be. Anderson and Coates, for example, point out that at Wujal Wujal:

> *Young men now have nowhere to go and nothing to do. They feel trapped. They fare little better, however, in constructing new, rewarding lives focused on the mission community. Because the young women are better educated and more articulate in English,*[63] *the overwhelming majority of young men will never be involved in the council and have little say in any aspect of community affairs. The council, in any case, is seen as 'office business', more masculine is the 'real' work outside.*[64]

11.9.42 While more research needs to be done on the process whereby young Aboriginal men achieve status and affirm their entry to adulthood, there is evidence to show that these desires tend more and more to be expressed through activities which bring them to the attention of police and the criminal justice system. These activities also bring these young men into disrepute amongst their own kin and fellow residents. The experiences of these young men occur in the absence of employment and education opportunities, and, crucially, in the absence of traditional means of shaping their transition to adulthood. These activities include drinking grog, going to gaol, targeting and destroying of European or public property, and assertions of power (and masculinity) through aggression and violence over women and, increasingly, over children.

Drinking

11.9.43 David Martin, in his paper to the Commission on the inclusion of underlying social phenomena in the Commission's hearings, talks about a 'crisis of identity' for young men at Aurukun.

> *Far more than was the case in pre-contact (or perhaps even the mission) society here, young men in particular have to socialise themselves (virtually a contradiction in terms) into manhood. We need look at the crucial period of adolescence when a young man is trying to establish a masculine identity vis-a-vis others around, and a sense of self in what is at many levels a very chaotic world within Aurukun.*[65]

11.9.44 n his *Background Paper on Social and Family Factors for the Aurukun Case,* also submitted to the Commission, David Martin discusses 'the new form of male identity' that is a part of contemporary Aurukun. His research shows the extent to which alcohol has become pre-eminent in the establishment and definition of the contemporary male identity. An analysis of drinkers by age and gender category for one month in 1988 show that

> *as young men mature, there is a decreasing proportion of those who drink only occasionally to the point where virtually all_males are regular (and heavy) drinkers. There are fewer women overall who drink, and more of them that do drink do so occasionally.*[66]

11.9.45 In relation to arrests, he found that close on 45% of all males aged between fifteen and nineteen, and an even higher percentage between 20 and 29, were arrested at least once in 1987. Again, the proportions of those arrested at least once are much lower for all ages of women, particularly for those over forty.

11.9.46 Anderson and Coates see the low status of young men and their opportunities as one of the underlying issues most relevant to the death in Wujal Wujal. They make similar observations about young men in that community--a group that is more than just chronologically young--that includes as well single men up to about middle age.

> *There exists a kind of 'group personality' with the young men. It is fatalistic, risk-taking, immature, thrill-seeking, with an ethos of the utmost indifference to life, an aimlessness, and complete of elders. With little else to do, drinking episodes become very exciting. The planning and stealth often needed to obtain alcohol, the sociality of drinking with friends, age-mates and kin, the fighting that usually ensues and the reduced inhibitions that allow one to say what one thinks, all combine to make drinking a desired full-time activity for many young Wujal Wujal men.*[67]

11.9.47 Similar situations appear to exist, to a greater or lesser but usually similar degree, in most other communities including, particularly, rural ones. This. lack of care and respect is experienced more and more by Aboriginal groups and communities today and the young men typify the view that no-one cares. They do not experience care for themselves except from amongst their peers, and they do not perceive care from the non-Aboriginal society for their older people and their ways. The resources and wealth to redress social and economic needs of the community are outside of their reach and control.

11.9.48 The question of meaningful employment as an alternative to boredom, and hence, to drinking has been widely canvassed, and is obviously a significant factor. Nevertheless, on its own it is not a sufficient factor in bringing about change, as suggested earlier in relation to the statistics produced by the Royal Commission. Material from a number of places, including Roebourne (Western Australia), Tennant Creek (Northern Territory), and Toomelah (New South Wales), supports this. In those communities, for example, some of the men who are in full time and potentially very meaningful employment, such as the health worker or ranger in a national park, remain among the most spectacular, even if irregular, drinkers. Other studies have shown the extent to which long involvement in the pastoral industry probably encouraged rather than discouraged the incidence of heavy binge drinking. What has occurred, it appears, is that drinking as itself a meaningful activity has been incorporated into the broader culture of some Aboriginal groups--again, young men are easily identifiable--and carries within itself, therefore, the processes of its own reproduction.

11.9.49 There is, however, an important factor which must be noted here. In many of the more remote and discrete communities which I have been discussing, especially the Queensland communities, particular factors apply which limit the opportunities which young men have for more productive lives. Apart from the local council structure and a regional body such as the Aboriginal Co-ordinating Council, few strong Aboriginal organisations exist in these Queensland communities. The domination and control which non-Aboriginal people had over those communities gave little scope or encouragement for the development of such organisations. Where, however, self-management has been more of a reality the picture is often very different. In Central Australia, for example, I heard many times from Aboriginal people how the opportunity to become involved in Aboriginal organisations which

were making major changes in the social and political situation of Aboriginal people was the direct impetus for people to abstain from alcohol. There are many remarkable stories of how these organisations played such a dramatic role in redirecting the lives of those who joined them.

Going to Prison

11.9.50 Being sent to prison seems to be another of the factors available to young men, perhaps particularly in remote areas, as grounds for status in the present situation. David Martin gave evidence before Commissioner Wyvill that:

> *People talk all the time about how people go out skinny and come back big from the Stuart Creek [prison] food I mean, that' s a very positive thing. They come back, having gone through what I term one of the new sorts of initiation rituals, the modern initiation ritual. They go out as boys and they come back in a very real sense as men.*[68]

11.9.51 Turner reports a similar attitude on Groote Eylandt, where, by 1985, figures showed it to have the highest imprisonment rate of any single place in Australia.[69] Minutes of the meeting held with the then Minister of Aboriginal Affairs in May 1984 reported about people from the community:

> *Some young people like going to gaol because they get good food, plenty of television, plenty of sport and they have a real good time. Plenty of mates go with them and they have a real good holiday at taxpayers' expense.*[70]

11.9.52 The situation at Yarrabah is reported in similar terms.

> *Long term gaol sentences do not appear to be attended by the same feelings of anxiety and stress us watchhouse confinement... Gaol ... is not seen by young people as a deterrent, but rather as an initiation... People here believe that you are not a man unless you go to gaol.*[71]

11.9.53 The distinction made here between attitudes to gaol as opposed to the watch-house is important. The role of the watch-house will be looked at in more detail in other chapters.

11.9.54 The views of the families of young men about their going to gaol are often quite different from those of the young men, as they have been presented here. In Aurukun, for example, members of families, especially the women, tend to display great grief and anger. In many places the imprisoning of family members many kilometres from home often begins an endless round of worry, anxiety and concern, especially for parents and grandparents. Commissioner Dodson has particularly noted this reaction among people in the Kimberley and the Western Desert of Western Australia where offenders may be imprisoned as far away from their communities as Perth. I heard similar concerns expressed during my consultations in the Northern Territory and submissions from the AIU suggest that the experience is universal.

11.9.55 It may well be that such attitudes to prison are specific to remote areas, and are very different in rural and urban areas. A possible indicator that such a difference exists is the number of self-inflicted deaths among the cases under investigation by the Royal Commission. It appears from the Commission's list that there is a difference in the rates at which men from rural or urban communities and those from remote communities may have taken their own lives in either prison or the police lockup. The figures available indicate that there is little difference between the two in relation to the police lockup--eight among those from settled

regions and seven from remote areas. This underlies the stress often associated with being placed in the lockup. Of self-inflicted deaths in prison, however, only one is of a man from a remote community. In contrast, eight are from settled areas, which suggests that the experience of prison for men from these communities is quite different from that of men from remote communities, and bears very little relation to achievement of status.

Aggression and Violence Against Women and Children

11.9.56 Behaviour of young men in relation to drinking, and the associated commission of street type offences and crimes against property resulting in going to prison, is perhaps not difficult to understand when seen as part of a search for status in the eyes of their peer group. What appears to be an increasing level of aggression and violence against women and children in some regions is perhaps less easily related to the question of status achievement. Nevertheless, there are indications from the data that similar connections between this type of behaviour and the development of masculine identity in some Aboriginal societies exist. It should perhaps be pointed out that this situation is not confined to Aboriginal communities. Whatever the motivation may be, violence against women and children is, of course, found in many other societies including non-Aboriginal Australian society.

11.9.57 The data in this area, particularly relating to violence against children, is very limited, but what facts there are--from a New South Wales Task Force on Domestic Violence in 1981 and one in Queensland in 1988 for example-indicate a significant problem in terms of Aboriginal young men. Barber and others found that over 70% of assaults on Palm Island were committed on women 'and most of these involved boyfriends or husbands who were said to be drunk at the time'.72 Atkinson indicates on the basis of her research that 'the nature, severity and extent of violence has increased dramatically over the last ten to fifteen years'.[73] Recent data collected by Brady at Yalata shows that

> *more women were presenting at the clinic with alcohol-related injuries than in 1982: 50%, as opposed to 38% in 1982. They still bore more head lacerations than did men, and suffered more bruises than did men. Lacerations are usually inflicted with bottles, iron bars and bricks, which are wielded as weapons during fights or arguments. In this community, alcohol-related crimes are virtually all against the person rather than against property, although some property damage does occur. The high number of head injuries sustained by women in this community, meant that they frequently suffered life-threatening injury.*[74]

11.9.58 The rising level of concern in many communities would also suggest that the incidence of serious crime in this area is on the increase. David Bradbury's film *State of Shock* graphically outlines the dimensions of the problem in Weipa South (Queensland).

11.9.59 Clearly the dimensions of this situation are enormous, and there is an urgent need to understand those aspects that pertain particularly to its occurrence in Aboriginal communities as opposed to the general characteristics shared with all incidence of domestic violence. Its particular place in relation to the question of young men and their crisis of identity is specifically relevant here.

11.9.60 Myers suggests that, for the Pintupi, a western desert tribal group, the issue is the tension in everyday life between personal autonomy and the cohesive forces of relatedness. He says:

A tension between 'relatedness'... and 'differentiation' (as expressed in conflict and violence) defines the basic lived problem of Pintupi life. Although shared identity, compassion, and the like constitute genuine, basic features of Pintupi social life, their opposite is also a fact of life. Violence, conflict, and threat exist, on the one hand, as well as a willingness among those threatened to stand up against these...

Fighting represents not so much an attempt at dominance as an assertion of autonomy. It is the ever-present possibility of conflict what I call 'differentiation' that gives relatedness its special value. Ultimately, they are two different trajectories of autonomy...

Among the Pintupi, conflict and relatedness define each other structurally as values... In suggesting that differentiation and relatedness are two trajectories for autonomy, I would argue that violence offers a way of sustaining and producing an image of the self. As such, it is tolerated as an acceptable form of action. Nonetheless, identity with others constitutes the primary condition and expectation of life, deeply embedded in personal experiences. When the capacity to complete oneself through relationship with others is threatened or prevented, the resort to violence establishes one' s own will.[75]

Violence and a sense of the self can therefore be seen to be related for the Pintupi.

11.9.61 Women are by no means simply passive victims in this context, as both Myers and Burbank indicate, and Biles presents illuminating figures that show that of the most serious offences of conviction or charge for Aboriginal women prisoners in all States except Queensland, 17.5% related to homicide. For Aboriginal women prisoners, this was the highest percentage of all categories of offence.[76]

11.9.62 Myers talks about both men and women being proud of their fighting prowess and speaking of past fights with animation. Burbank, analysing 333 instances of aggressive behaviour collected during 1977-78, found that proportionately women fought nearly as often as men. In 75% of the fights in which women were combatants they fought with men; she also found that women initiated the physical aggression on almost half of the occasions.[77]

11.9.63 What is particularly interesting about these fights is that, in the time that Burbank was carrying out her fieldwork, very few women were involved in drinking. Alcohol certainly played a significant role in men's fighting, and in men's aggression towards women, but the context of women's injury was not in general shared drinking with men. It would appear that in many communities this is still the case. A 1986-87 survey of drug use in the Northern Territory Aboriginal communities, for example, found that 80% of women interviewed did not drink at all. Brady found at Yalata, however, that women drinkers comprised approximately one-quarter of the total drinking population, that their drinking was conducted in the company of men, and that this increased their risk of serious injury and death.[78]

11.9.64 Women's active participation in fighting as in all other social practices is clear, therefore. This includes their role as supervisors in relation to other people's fights 79 A number of factors operate, however, to make women more vulnerable to serious injury now than previously. These are outlined by Brady:

Aboriginal women in remote Australia are vulnerable for many

reasons, particularly when their lives and social interactions are bound up with the use of alcohol In the examples I have mentioned here, their own use of alcohol or the fact of living in a community where alcohol use permeates the fabric of daily life, have been factors which exacerbate the myriad other difficulties experienced by Aboriginal women (and Aboriginal men) in their disadvantaged position in Australian society. Women may be deprived of the support of their kin because of social upheaval, dispossession, or early death; they lack institutionalised support services and shelters to protect them from violence. They are sometimes-it seems-deprived of the protection of Australian law. Bell and Ditton comment that the women they interviewed were critical of the role of 'legal aid' which they see as 'protecting men charged with crimes of violence against women' 80

11.9.65 The extent to which this kind of violence pertains specifically to young men as a group, as distinct from all men, is difficult to ascertain. Certainly the numbers available in relation to the deaths in custody under examination by the Commission are too small to be really even indicative. To some extent, also, they may mask the real situation in that they often identify only the final offence for which a man was in custody, as in the case of one of the men who died in Berrimah Prison, for example. Of the figures that are available to the Commission on the main offence for which men were charged at the time of death, nine relate to violence against women, two against children (both girls). Of these, four against women and one against a child fall into the twenty to 29 age group. Another four against women were by men between thirty and 39 and one by a man of over fifty. The other assault on a child was by a man in the forty to 45 age group. In so far as there is a clustering, then, it is between twenty and 39, although, as I have indicated, some of the other cases might usefully be included.

11.9.66 Audrey Bolger's study of Aboriginal women and violence in the Northern Territory provides some figures, although reporting problems in domestic violence cases and other problems with quantification of this kind of violence, including poor collection, must be taken into account. In 1987 there were 1,443 offences of murder, manslaughter, attempted murder and assault which were the subject of crime reports in the Northern Territory. The female Aboriginal victims numbered 257. In 1988 there were 1,811 such offences and of these 312 were against Aboriginal women. They were grossly over-represented as victims in the number of offences committed. Bolger suggests, from other estimates in the literature, that, accounting for reporting problems, there could have been a further 2,500 incidents which came to police attention but which did not result in a charge being laid. If half of all incidents were reported then there could be nearly 6,000 incidents altogether, or the equivalent of about one-third of the Aboriginal female population in the Northern Territory being assaulted in a year. 81

11.9.67 The fact is that fighting is an accepted part of Aboriginal culture (carded out within certain rules) at least in more remote areas of Australia, and that fighting is not limited to men, nor limited to fighting between people of the same sex. Accordingly, it is easier to understand that Aboriginal men and Aboriginal women when under the influence of alcohol should engage in fighting and why that fighting should be directed both against men and women. It is clearly shown that excessive drinking of alcohol is much more frequent amongst men than it is amongst women, and that fact will explain why drunken fighting is much more a function of males than females.

11.9.68 This leaves open the question of why so much male violence, and particularly violence by young males, is directed against women and particularly

wives and children. No doubt there are many explanations for this phenomenon.

11.9.69 The violence of man against woman and, particularly, violence of man towards woman in the domestic situation is a very serious problem in non-Aboriginal society, the extent of which is extremely hard to gauge. But from what is said by various writers and more particularly from what is said by the AIUs and what has been put to myself and other Commissioners in discussions, it appears clear that it constitutes a larger problem in Aboriginal society than in non-Aboriginal society. The explanation for that disproportion would appear to be found in a combination of factors. These factors include the practice of dispute resolution by fighting, a greater involvement of Aboriginal men in excessive and uncontrolled binge drinking, and the expression amongst Aboriginal men (and particularly young Aboriginal men) of anger associated with their loss of a status-sustaining role. The last two factors underline the importance of solving such problems as educational and employment disadvantage for Aboriginal men as a contribution to the lessening of this particular problem, as well as many others. But if these problems of young men are to be lessened, there must, in the processes of education and training, be an accommodation of Aboriginal social and cultural requirements. This question is discussed in more detail in Chapter 33 dealing with the subject of education.

11.9.70 Patterns in settled Australia seem to be less clear, and possibly involve other factors such as a wider involvement in generalised social relations. Little research in the area exists, and Aboriginal people, in particular, need to undertake much more research in order to understand this phenomena. It would be very important that the decision to conduct such research and the scope of the research should be in the hands of Aboriginal people. It is Aboriginal men, women and children who are suffering, and it is they who need to examine the reasons why violence is occurring and to determine how, in accordance with the principles of their own culture, it should be stopped. The fact of violence cannot be isolated from the broader anxiety of the young men's search for meaning and status.

11.9.71 Given, however, the kind of patterns of violence inherent in certain aspects of gender relations in Aboriginal society as indicated earlier, there is clearly another dimension to the questions discussed here that I have not so far touched on. This is the crucial question of social control. The discussion in the following sections looks at the extent to which violence was and is able to be managed by internal cultural mechanisms, what those mechanisms of social control are, and the dilemma posed for these processes now that Aboriginal people are incorporated into the wider system of Australian law.

11.9.72 It is hardly necessary to say that the matters discussed, specifically relating to young men and to violence (particularly violence associated with alcohol), are amongst the foremost reasons which account for the over-representation of Aboriginal people in custody. I deal further with the matter in CHAPTERs 14 and 15.

11.10 INDIGENOUS MECHANISMS OF SOCIAL CONTROL

11.10.1 Violence in Aboriginal society was accepted in certain situations and under certain conditions. It is important to understand how the social controls that applied in the society have been affected by the process of colonisation and the effects of those processes on the society.

11.10.2 A number of the central processes of social control in Aboriginal society can be readily identified. These include the following: avoidance and mobility; fighting, swearing, and violence; the responsibility of close kin to look after each other; witnessing; ritualised expressions of disapproval, or of anger and distress;

shaming; the imputation or externalisation of responsibility.

11.10.3 Two other processes have been identified which were not found in traditional Aboriginal society but are said by many to be now the important processes for social control. They are Christianity and the use of police and policing procedures, both of which have been Aboriginalised in various ways.

AVOIDANCE AND MOBILITY

11.10.4 The option to resolve conflicts by simply moving away was one of the deepest and most significant freedoms of Aboriginal society. The forms of this kind of mobility vary, but the practice remains important in urban and rural as well as remote areas.

11.10. 5 Brady and Palmer indicate how avoidance is used at Yalata to deal with drunks. Since it is not generally acceptable to reject demands from drunks for help, succour or aid, the only way to counter their sometimes unreasonable requests is to avoid encounters with them. One device employed is to camp some distance from the drinkers' camp and make it generally known that the camp is a 'dry' one. Non-drinkers seek to avoid attracting drunks by 'shutting up', that is by putting out their fires which attract drunks in the night. The response to trouble 'is still to utilise space and separation as an avoidance technique, not to confront it directly', especially when drunks are involved. 82

11.10.6 The inhibition to mobility caused by living in settlement or urban housing has removed this mechanism for resolving disputes in many communities. Mobility still occurs between houses, but one of the consequences of the conditions in which many Aboriginal people live is stressful overcrowding (see Chapter 18).

FIGHTING, SWEARING AND OTHER AGGRESSIVE BEHAVIOURS

11.10.7 Marcia Langton and Gaynor McDonald, amongst other writers, have pointed out the central place that rule-governed fighting can play in negotiating Aboriginal social life. McDonald suggests that fights amongst the Wiradjuri people of New South Wales do reveal conflicts and tensions within the Wiradjuri world, but they do not represent its breakdown.[83] A fight is about the negotiation of identity and is essentially an act of communication. It informs community members of the current state of play regarding certain others and allows them to devise appropriate responses on the basis of what they have witnessed (or heard about). As such, it is an essential mechanism for negotiating the social order:

> *[i]n the absence or irrelevance of externally imposed controls, social order has to be continually re-negotiated. Fighting is one of the ways in which re-negotiation (or continuing negotiating) occurs.*[84]

11.10.8 Marcia Langton also argues strongly for the need to see not just fighting but also swearing as rule-governed behaviour and as part of an effective process of social control.[85]

11.10.9 The fact that fighting is rule-governed and limited does not necessarily mean, however, that people did and do not find it disruptive and troublesome. David Martin, discussing the first years of the Aurukun mission under MacKenzie and the authoritarianism that was exercised there for forty years, suggests that people themselves made a choice to go in to the mission that was at least in part based on a wish to reduce levels of fighting.[86] The historical transformations which have been wrought on Aboriginal societies often mean that traditional structures of fighting and aggression have been rendered unworkable, if not

counter-productive. In a submission to the Commission it was commented that:

> *Traditional Aboriginal society experienced inter- and intra-tribal conflict and violence and as part of rituals, initiation and mourning Aborigines engaged in acts of self-mutilation. What needs to be recognised, however, is that this behaviour was structured: it emanated from, and formed part of, the cultural and social order. Since European settlement, the traditional Aboriginal social order has been irrevocably altered. The societal mechanisms and cultural institutions which once sustained and reproduced traditional social life, and which defined the boundaries of violent and conflictual behaviour, are no longer in place. 87*

11.10.10 Contemporary dissatisfaction with levels of fighting and violence (particularly domestic violence) in communities has led to the development of some alternative mechanisms for maintaining law and order which are discussed below.

WITNESSING

11.10. 11 An essential component of the rules governing fighting is that there is an audience. The audience acts, firstly, as an agent of control, with spectators acting to ensure that the fight does not get out of hand. An audience also restrains other onlookers from getting involved, prevents fighters from introducing inappropriate weapons, ensures that referees do their job, and stops a fight if the antagonists say they have had enough. Secondly, the presence of an audience legitimates the activity. Spectators are assenting witnesses. It is the presence of witnesses that distinguishes a fight from 'dirty fighting'. The latter--as in the case of so much domestic violence or non-rule governed drunken brawling--characteristically lack an audience to act as agents of social control and can actually threaten the social order.

11.10.12 Ironically, the concept of witnessing in Aboriginal cultural understandings is incompatible with the concept of 'witness' as defined in Australian law. A recognition of this is essential for an understanding both of the ways in which Aboriginal witnesses are disadvantaged in the legal situation, but also for some insight into the state of mind induced by the separation of the individual from his or her legitimate helpers or witnesses. Sansom has reported that Darwin town-campers label this latter state as 'fright'. He writes:

> *An Aboriginal in either the dock or witness box is trapped and lonely. Without access to trouble-helpers his isolation makes him a man under duress. And duress begins in the police station when statements are taken by police officers who isolate the alleged offender or the potential witness. In Western procedure, the witness is all the time required to be lonely. Therefore a witness is in a state of fright. Fright in this sense is a label for the state of being of a person in any situation of contrived isolation.88*

THE RESPONSIBILITIES OF CLOSE KIN

11.10.13 One of the most important mechanisms of social control in all Aboriginal societies is the reliance placed on the responsibilities of close kin. This is probably one of the major mechanisms of social control in Aboriginal societies, but one that is least recognised or tolerated by the broader legal system. The dimensions of this responsibility are described by Brady and Palmer in the context of the social organisation of drinking in Yalata, which is a matter of predicting danger and

forestalling damaging and potentially fatal interactions.[89] 'From an Aboriginal point of view it appears that physical harm is deemed to be a consequence of lack of vigilance on the part of others, rather than the drunken excesses of an assailant. Clearly, this has serious implications for the question of detention and people being left isolated, away from precisely those people whose responsibility it is to care for them. Detention itself, as a way of temporarily removing a troublesome person from his fellows, may not of itself be unacceptable to others. But as the experience of the Commission has shown, and as this chapter will demonstrate there are circumstances in which isolation of a person who is intoxicated or for other reasons is at risk can be disastrous.

RITUALISED EXPRESSIONS OF DISAPPROVAL OR OF ANGER AND DISTRESS

11.10.14 These are some of the informal methods of social control that people use with varying levels of effectiveness. Brady and Palmer identify one of the alternatives to coercion in Yalata as a ritualised monologue which usually takes place after dark when everyone is in their bush shelters. This is known as a *tjunparni* or 'growl'.

> *The tjunparni is a statement of authority and an expression of dissatisfaction with a promise of subsequent retribution to remedy wrongs if they occur in the future... The institutionalised 'growl' is an important way by which some men and women attempt to establish and maintain authority within their own camps by demonstrating their moral strength and opinions. 90*

11.10.15 The use of shaming has been noted by writers in many parts of Australia. The essence and effectiveness of shaming, or levelling, as a crucial method of social control lies in the fundamental ways in which the construction of the self in Aboriginal culture is enmeshed in one's place in relation to others. The kind of teasing that Carter discusses for coastal New South Wales, often quite savage, is in fact an effective process of levelling.[91] Ridicule or rejection by one's significant others, therefore, is a powerful attack not just on aspects of status or position but on the very self. The process is also tied to the important place occupied by the peer group in ensuring conformity as well as to maintaining egalitarianism.

11.10.16 The destruction of property, and various forms of self-mutilation are also widespread and rule-governed expressions of grief and distress in Aboriginal societies.

THE IMPUTATION OF RESPONSIBILITY

11.10.17 This aspect of Aboriginal culture also has implications for maintaining social control. The search for a culprit or culprits in relation to the outcome of certain situations--particularly deaths--is both a political and moral process entailing the correction of a 'wrong action'.

11.10.18 The question of sorcery which arose indirectly in two of the cases investigated by the Royal Commission--Paul Farmer and the man from Yuendumu-must be seen not as an exotic survival of ancient beliefs, but in the broader context of the imbalance created by certain actions and the need for this imbalance to be redressed. The process of imputation is part of a search for meaning, but it is also related to the negotiation of relations with a wider group and is often a way of reinforcing the observance by kin of their responsibilities. It is, in other words, a process of sanctioning.

11.10.19 Many of these indigenous forms of social control developed in small-scale groups where they were bound up with religion and age structures. There is a widespread perception amongst many Aboriginal people that they are no longer adequate in larger forms of settlement, or those parts of Australia in which Aboriginal culture has undergone significant transformation. In material prepared for the Royal Commission in Queensland, Dr Paul Memmott noted how the political and disciplinary power of elders was weakened or destroyed as a matter of policy by the managers of Aboriginal settlements. At Mornington Island (Gununa), for example, unless senior men were prepared to forsake their traditional religious beliefs and join the Church elders, they found themselves in marginal political roles, or else on Palm Island. The dormitory system also operated for many years at Mornington Island to break down traditional kinship responsibilities. The role of the disciplinary relative (whether it be parent or uncle) was usurped by the mission manager, and later the head teacher. This loss of social control by ciders was accompanied by the erosion of values concerning traditional social structures, the qualities of leadership, and the desirability of social control. Consequently, many young people have grown up without respect for--and sometimes even without experience of--traditional leaders and traditional methods of social control.

> *The weakness or absence of social structure and strong community leaders, and the lack of support from adults for token or unempowered leaders, results in an inability of a community to effectively address and solve major social problems or to maintain social order. This situation has been made worse by the introduction of alcohol into the majority of communities in recent decades.92*

11.10.20 Dr Memmott emphasises that there is a spectrum of situations in relation to the maintenance of traditional social controls, and particularly over violence. On Mornington Island, social control is no longer in the hands of elders, and traditional fighting models appear to be lost. At Aurukun, the opposite is the case, but fighting models are beginning to break down because of alcohol use.

11.10.21 It may be for these reasons, and particularly in response to unprecedented forces of de-stabilisation such as alcohol, that two completely external agents--the Christian churches and the police--have now become part of the repertoire of social control mechanisms to which people can appeal.

CHRISTIANITY

11.10.22 The importance of Christianity in many communities as one of the principal agents of control in relation to alcohol should not be underestimated. The presence and success of Christian churches in many towns and communities is a very important phenomenon. The measure of success that is important here is that being a Christian in many cases gives legitimacy to people's decision to give up the grog. In Roebourne, for example, it is said that there are two alternatives: to be a drinker or to be a Christian. Many members of the local Pilbara Aboriginal Church used to be drinkers and have given it up. The same is true in Tennant Creek. In Numbulwar, the church has inspired a revivalist movement that involves almost the whole community. In Yalata, to be a Christian meant that a person was unable to drink. Among the town-campers of Darwin, in a place dedicated to free grogging, this connection was recognised by the contemptuous appellation to non-drinkers of the term 'missionaries'. 93

POLICING

11.10.23 Like the churches, the relationship between Aboriginal people and the police, including community police and police aides, is complex, and fraught with ambiguities. There are, however, three important points that need to be made in relation to questions of social control.

11.10.24 One arises particularly from women, whose attitude towards the processes of customary law are, to say the least, ambivalent. Women in many instances in fact see the police as offering them or their children protection, particularly when alcohol is present. In many cases, including some before the Royal Commission (Glenn Clark, Alistair Riversleigh, the Aurukun case, Richard Hyde and David Koowootha), it has been women or other members of the family who have called the police in the first instance. The limits to the use of this method of social control are not, however, controlled by those who initiate it but by the police themselves. Other reports touch on this, and on the fact that people, especially women, often do seek police help in cases of fear of violence or actual violence. This tends to occur in the absence of any arbiter who might spell out the range of individual rights and obligations in Australian society and who also has an intimate knowledge of the local cultural practices. Where the attempt to control violence through the police goes wrong, however, is when the consequences to the person detained are serious or, in the cases of the deaths in custody, fatal.

11.10.25 A second issue is one raised by the Pitjantjatjara Council submission to the Royal Commission in relation to the need to balance community with individual interests. The submission identifies some of the problems faced particularly by small and isolated communities, but I suggest the issue has more far-reaching implications.

> *There are many instances where offenders create so much disturbance and disruption and instil such fear within communities that from time to time communities actually seek imprisonment of those people...The conditions in which people live in communities makes them ultimately more vulnerable to violent and disruptive behaviour with fewer resources to meet those forces than people in towns and cities. Similarly, the imposition of bail conditions will not necessarily result in protection of the Community.*[94]

11.10.26 Thirdly, as a number of people have pointed out, the use of police in disputes, especially drunken disputes, is one means of containing the spread of the conflict and of diverting serious social consequences.

11.10.27 Various forms of informal social control are still exercised in many Aboriginal communities. In many circumstances, however, such mechanisms are no longer adequate to deal with the kinds of situations that Aboriginal people either create for themselves or find themselves in. Importantly, they are no longer adequate from the point of view of Aboriginal people themselves. New forms of control, therefore, need to be canvassed, but in ways that incorporate rather than exclude indigenous principles of social control. The Julalikari Camp Patrols, including a women's patrol, that now operate in Tennant Creek with the support of the local police is an example of the kinds of social control that have been initiated. The voluntary community policing initiatives of the Julalikari and Gurungu Councils are an example of how creative schemes developed and carried out by Aboriginal people can work to improve police-Aboriginal relations and to lowering the disruption caused by alcohol in town camps. In Adelaide, local Aboriginal residents, particularly the women, have developed an organisation to provide a buffer between young Aboriginal people and the police (see the 'Streetmeet' example in Chapter 30).

11.11SELF-DESTRUCTIVE BEHAVIOUR AS A REACTION TO PRESSURES OF NON-ABORIGINAL SOCIETY

INTRODUCTORY NOTE

11.11.1 As I have shown in Chapter 3 many of the deaths in custody occurred as a result of direct self-inflicted injury. It is necessary then to look carefully at what has been regarded by many people as behaviour so inconsistent with Aboriginal culture and tradition as to indicate that the deaths must have been the product of someone's criminal intervention. As the case reports demonstrate, this has not been the case; these deaths were indeed self-inflicted. Why they may have occurred and whether they indicate either a new and alarming failure of Aboriginal mechanisms of social control or else indicate the dimensions of the pressure under which non-Aboriginal society is placing so many Aboriginal people, or else, whether both explanations apply requires careful consideration.

11.11.2 Before discussing in some detail the question of self-inflicted harm and self-inflicted death, I wish to clarify some of the terminology and concepts used. Lawyers-and the Commissioners who examined the deaths were all lawyers--consider the self-inflicted deaths from legal concepts. In law, 'suicide' is the causing of one's death by deliberate act done with the intention of causing death. In many other disciplines, however, 'suicide' is equated with death caused by deliberate act of the deceased but without reference to the intention which accompanied that deliberate act. In these contexts the word 'suicide' has a more general, non-legalistic, understanding. Whether death was intended, or the act was a protest which went wrong, or was a death which although appearing to be self-inflicted suicide was in fact the result of an accident, in these circumstances these deaths would popularly be regarded as suicide. In very few cases did the Commissioners find an actual suicide intent, although in all the cases of hanging they found that the hanging was self-inflicted. The word 'suicide' is sometimes mentioned in quotations from other sources. Its meaning will therefore depend on context, but I think that it is generally used without reference to intention.

SELF-INJURY AND SUICIDAL BEHAVIOUR

11.11.3 Forms of self-injury and self-destructive behaviour are clearly evident in many Aboriginal communities. The cutting of one's body in a range of ritual circumstances (mourning, circumcision, cicatrisation, blood-letting) was a common occurrence in traditional life and remains so m many communities. However, as Trigger rightly points out, these practices were not intended to produce serious incapacitation.[95] It is not my intention to consider these traditional practices in relation to the terms of inquiry of the Commission. However, it has been brought to my attention, in particular by Dr Reser, that in the contact period, particularly during the last few decades, new forms of self-injury and self-destructive behaviour have developed amongst Aboriginal people which bear some resemblance to traditional forms of body scarification, decoration and mutilation for various ritual and social purposes. The lack of abhorrence amongst many Aboriginal people for such body decorations is clearly part of the reason for new forms of self-injury.[96] These new forms are also the result of the Aboriginal cultural stance in relation to demonstrations of emotion, anger or rage in the context of alcohol misuse, mental ill-health, a lack of self-esteem and personal and social disruption. In the report of the inquiry into the death of the young man at Wujal Wujal in Cape York in Queensland, the examination of the background of the deceased reveals the connection between alcohol misuse and self-destructive behaviour beyond the bounds of ritually endorsed limits.

11.11.4 Although Wujal Wujal is one of the few reserve communities without a canteen, its people recognise that alcohol is one of their major problems. Most of the community see alcohol as a determining factor in the death of the young man who hung himself with a football sock at age twenty-six in the Wujal Wujal watch-house.[97]

11.11.5 The deceased had resided intermittently in this community since he was eight years old. He travelled away to attend Bloomfield Primary School, and then to high schools in Toowoomba and Brisbane. From age sixteen he travelled out of his community to work on various pastoral stations in the region. He developed a ringer's 'binge drinking style' as well as participating in 'outside drinking style' on the Wujal Wujal Reserve boundary. It was after a session of the latter that he became implicated in a family fight.

11.11.6 Deep-seated tension between his family and a second family who were affinally linked to them, appears to be the explanation of the cause of this fight, which occurred prior to the young man's death. The fight upset the deceased significantly and most likely contributed to a feeling of despair and to his resolution to commit suicide. The fight illustrates several important points about Aboriginal kinship and fighting and sweating behaviour.

11.11.7 The police encountered the young man having an argument with his brother. He was in a drunk and aggressive state. His brother had also been drinking heavily. The police attempted to seize the deceased, but he broke free, removed his shoes, rolled up his trousers and 'shaped up' to fight his brother. The police intervened and locked him in their van. Then an argument broke out between their mother and her daughter-in-law, the wife of the brother. The brother's wife allegedly insulted the mother in an Aboriginal language, using a swear word which usually incites rage. The deceased's brother intervened on behalf of his wife and struck his mother several times. Seeing this from within the police van, the young man became emotionally distraught, and began screaming out and throwing his body violently against the side of the van.

11.11.8 Eventually the deceased was taken to the watch-house by the police and locked up. Another detainee heard him weeping for his mother, crying out that he was going to hang himself, and stating that his brother hated him. Later in a conversation elsewhere, the brother said he was upset with his mother, because she 'was always stepping into his affairs with [his wife]'. For some time after the death it was said that his brother subjected his wife to violent outbursts.

11.11.9 The arresting officer in this case was the brother of the deceased's sister-in-law. He was assisted by a second brother, also a policeman. Furthermore, five years previously, the arresting officer had killed a type of second cousin of the young man and his brother. There may have been an ongoing grudge held, particularly by the deceased's mother, against the officer and his family and against her daughter-in-law (the wife of her son involved in the fight preceding the deceased's death). There is some evidence (although not conclusive) that his mother later made a statement to the effect that she thought the arresting officer was somehow responsible for her son's death. An unresolved issue and popular theory at Wujal Wujal was that somebody had taken the football sock to the cell, hence providing the means and a suggestive gesture of suicide.

11.11.10 At the time when the arresting officer had killed the deceased's cousin, he had served four years in jail, and then stayed briefly in Townsville and Yarrabah. He returned to Wujal Wujal because he said he had become lonely:

> *[B]ut my family didn't want me to come back up because of what I did, you know ... they still got something against me but I haven't got ...*

because I done my time.[98]

11.11.11 Anderson asserts that there was long-standing friction between these two family groups, that this conflict ultimately brought about the death of the young man, and that this view was also held by many of the community.

11.11.12 The young man took part in binge drinking in 'outside drinking style' to escape the tensions of his crowded community. On the night of his death, there was a complex of factors underlying the expression and fuelling of anger and violence. These factors included the transmission of a family grudge which involved the respective benefits which each family gained or were denied according to their status as local land owners. Other factors included the use of sweating behaviour at the mother by her daughter-in-law and the formal kinship relation of the two brothers. The conflict was also a public one which reverberated amongst kin. The young man's style of self-violence is yet another culturally distinct element of this case study. This will be considered in the next section.

11.11.13 The foregoing account of the young man's fight indicates that the deceased committed two acts of self-violence, first by throwing himself against the wall of the police van and then by actual suicide. One theory refers to this phenomenon as 'retroflective anger', anger turned inward by a person on himself. In reviewing this theory, Reser cites a suicide pattern which bears very close resemblance to the young man's case. The explanation of the pattern is that retroflective anger occurs in a cultural context involving the prohibition of the venting of strong negative feelings towards parents and older kin. Reser cites Hezel concerning an analysis of this syndrome amongst a Micronesian group.

> *There is a strong pattern that emerges in 74 out of 96 cases of Trukese suicides with sufficient detail to form conclusions on the reason for suicide. This pattern follows these lines: the victim, usually a young man and often intoxicated, hangs himself after he is scolded, refused a request, or otherwise rebuffed by parents or an older sibling. The motive that is almost universally attributed to the victim by family and friends, as well as by those who have survived suicide attempts themselves, is anger rather than shame or any other emotion. This pattern is so common and so recognisable by local people that it can be regarded as the folk explanation of suicide.*[99]

11.11.14 The theory of 'retroflective anger' is also applicable to intoxicated people smashing their house windows in a state of violent rage. Reser and others have described

> *situations where people attack some object and get hurt in the process. The overt intention is not necessarily to hurt oneself but rather to vent anger, or some other emotion by smashing something such as window panes or louvres. But it has the potential for fatal consequences. We know of at least two people from our Trust Area researches who have died from loss of blood after a louvre-smashing episode in the last ten years. 100*

11.11.15 Wattridge has also provided details of incidences of individuals lacerating themselves during 1986, by smashing their hands through glass louvres at Doomadgee.

11.11.16 Anderson claims that at Wujal Wujal, the intention of such violence is to injure oneself, as well as damaging the property. This indicates that it is in part, violent anger directed at oneself. A second possibility is suggested by Memmott that such house damage may well be an oppositional statement against the

reserve management, since all of the houses are rented by the Aboriginal people. Such violent acts may therefore have two purposes, one of defying authority, and one of expressing emotional anger at somebody which does not involve actually confronting that person. The theme of defying authority is amplified by Miller who argues that much family violence is based on 'deflected anger' arising from the widespread longitudinal structural violence of contact history and the ongoing white dominance. 101

11.11.17 A diverse range of situational factors, including economic issues, the role of alcohol and other drugs, and isolation while incarcerated, are involved in self-destructive behaviour. Situational factors might also include imitative behaviour or 'modelling' which can attend the self-inflicted death of a known individual. The family within this nexus is one significant locus of health and well-being.

11.11.18 The situational factors discussed here, however, need to be placed into context. They would be found in not a few non-Aboriginal people as factors affecting the individual. In the case of Aboriginal people, on the other hand, they should be seen in their historical and socio economic context. A central feature of this is disempowerment and the resulting reduction in the self-esteem of many individuals as they are placed in a position of welfare dependency.

11.11.19 If the family experiences distress owing to a variety of factors such as unemployment, alcohol issues, imprisonment or institutionalisation, then the cumulative effect of these factors may prove decisive in the initiation of self-destructive behaviour. The mental well-being of the Aboriginal family is particularly central as it is apparent that many Aboriginal communities are suffering what appears to be a breakdown of family structure. Dr Reser points out that it is apparent that particular families are prone to a range of mental health problems whereby other situational factors compound the situation. Dr Paul Memmott, in a paper for the Queensland Office of the Royal Commission, has described the lives of Eddie West, Perry Noble, and Patrick Booth in these terms. Each of these people experienced early contact with heavy drinking, domestic violence and family dispersal. The lives of these three are not unique in the cases heard by this Commission. One could say that many of the lives of those who died, examined by the Commission, reflect an experience of what could be called family breakdown. The disintegration of Aboriginal family support is reflected in domestic violence, poverty, shortened life expectancy, drinking, child neglect and fostering. What has been set in motion is a generational cycle of family breakdown. The socio-historical legacy of Aboriginal people is thus linked into the contemporary experience of a generation in which particular Aboriginal families are vulnerable.

11.11.20 Reser notes that there is considerable consensus amongst Australian ethnographers that there was no traditional precedent for suicide. However, Reser qualifies this broad assertion, with reference to a few known Aboriginal myths which incorporate accounts of suicide types. Indeed Sutton 102 has discovered a suicide myth in western Cape York owned by the Wolmby clan which he links to the case of the young man who died at Aurukun whose mother was a member of this clan. The myth centres on Cape Keerweer:

> *[T]here is a kind of suicide which takes place when two young women are in charge of a baby who had died and their relations won't come and mourn properly, they won' t show the proper grief, they don' t even attend and so they, holding the baby's body, they walk together into the water of the Lower Kirke River estuary and they drown themselves.*[103]

11.11.21 During the ritual release of the deceased person' s spirit from the Aurukun watch-house, two sculptured figures were used representing these two women and providing a social focus on the Cape Keerweer background of the deceased. The selective reference to this myth in this ritual represents an explanation and integration of the suicide into the community's social history and ongoing social fabric. However there has not been any suggestion that this mythological background to the young man who died at Aurukun's background in some way contributed to his death by providing him with a model of suicide.

11.11.22 There is one report from the Central-southern region of Queensland, a region in which there were no Aboriginal deaths in custody during the terms of reference of the Commission, which suggests drinking is itself a form of purposeful self-violence. Eckermann, after describing people 'busting out on a drunk' at Mitchell, says:

> *I believe that drinking patterns described here could very well be pathological. Total disillusionment, helplessness and perhaps self-pity is evident in the following statements: 7 don't really want to live--they reckon grog'll kill you -well I hope it does, I hope I can drink enough.' 'If I had any guts I'd take a gun and shoot myself but I'm a real coward .104*

11.11.23 Another quote from an Aboriginal woman at Mornington Island indicates the same syndrome:

> *I tell my daughter not to drink so much. She says 'mum what I got to live for?' .105*

11.11.24 The limited amount of research that has been carried out (most of which has taken place in Adelaide, Townsville, the Kimberley region of Western Australia and a number of smaller, remote communities), suggests that the incidence of self-inflicted deaths is increasing among Aboriginal people, for whom previously it had been exceedingly rare, particularly for those living in traditional communities. The increased incidence in the general Aboriginal community parallels the increase in suicide attempts in custody. Since the 1970s, it appears that self-inflicted deaths and other self-inflicted injury have become more common in many Aboriginal communities. If anything, the incidence of self-inflicted deaths appears to have increased dramatically in the 1980s: Reser points out that 'suicide and suicide attempts are (now) endemic in many communities throughout much of Australia'. As discussed below, in some communities there are indications of an epidemic of self-inflicted deaths.

11.11.25 The increase in self-inflicted deaths among Aboriginal people parallels increasing self-inflicted death rates documented for some groups m other indigenous cultures in North America and the Pacific. Studies of other minority indigenous populations (for example, Canadian native peoples) show that their self-inflicted death rates are especially high. A review of the literature reveals that the most dramatic examples of epidemic suicide are found in Micronesia. The group at greatest risk appears to be young males. These studies suggest that minority indigenous peoples (including Australian Aboriginal people) have developed similar self-destructive patterns.

11.11.26 Even though there may be difficulties in defining the concept of a 'traditional' Aboriginal community, it is likely that a distinction can be made between traditionally-oriented communities and less traditional settlements in the incidence of suicide and self-injury. 106 Based on his studies of certain remote communities in the 1970s, Eastwell concluded that 'low suicide rates are applicable widely and relate to Aboriginal people ... where there are strong

vestiges of the traditional attitudes and values'. But the relationship between remote-rural-urban living and self-inflicted harm is not a simple one. The study of self-destructive behaviour among Aboriginal people living in Adelaide, for instance, found no evidence for linking urbanisation with suicide attempts.

PRETENDED SUICIDE

11.11.27 Wattridge of the then Department of Community Services, reports of the reserve communities in Queensland that

> *the usual purpose of the suicide attempt is to seek and/or regain the attention and affection of a boyfriend or girlfriend after a quarrel or argument... It is fairly common on communities for men to shoot themselves through the fleshy part of the upper arm with a .22 calibre rifle. This action gains maximum sympathy from girlfriends, does no permanent injury to the man unless he is careless and the bullet unintentionally hits vital organs in the body... Stabbing or slashing of the arm, leg or chest are [also] common methods of 'attempting suicide'. Again there is usually no major damage unless an artery is accidentally severed. 107*

11.11.28 This category of self-violence incorporates so-called 'attempted suicides' of an ambiguous type, which could be better termed 'pretended suicides', aimed at achieving some social propose other than ending one's life. Reser and others also describe this category, noting that there is no intention of killing oneself and that it occurs under an impulse of a strong emotion, such as helplessness or desperation. It clearly stems from precipitating causes, however.

> *Our own observations would suggest that it is difficult to make clear distinctions between self-injury, attempted suicide, and [actual] suicide in Aboriginal communities, but that important differences in meaning, intention, and precipitating circumstance probably exist. It is clear that many attempts did not involve premeditation or planning, and constituted more of a reactive emotional response to a particular situation or set of events. It was also evident that many intentional self-injuries were not perceived by the individual involved as a suicide attempt.*[108]

11.11.29 As these authors point out, self-destructive behaviour is now commonplace in many Aboriginal communities, at least in Queensland, from the available evidence, but it is not clear how to classify its various manifestations and what social meaning or purpose can be attributed to it without more detailed data. Wattridge has given details of men shooting themselves during 1986 at Doomadgee (2 cases), Lockhart River (1 case), and Kowanyama (at least 2 cases), and of individuals (male and female) slashing their arms at Kowanyama (2 cases) and Weipa South (4 cases), also in 1986.109 Besides the death of the young man who died at Aurukun, Martin in evidence to the Royal Commission mentions a number of other previous self-destructive incidents at Aurukun, including two suicides by gunshot, a death from multiple self-injuries and a number of cases of self-wounding. Wattridge has also provided evidence in his *Report on Yarrabah Suicides* that at Yarrabah during the period 1982-87, apart from the three deaths in custody forming part of the Commission's inquiry, there were ten incidents of people wounding themselves by gunshot.[110]

11.11.30 David Koowootha and his family provide further examples. Some nine years prior to the death of David at Yarrabah, his eldest brother had travelled to Aurukun in 1978 where he stayed with relatives on an outstation. There he

became involved in a fight, then shot and killed himself, aged seventeen. David Koowootha himself, was said to be greatly effected by the suicide of his eider brother. David had spoken of killing himself on several occasions when intoxicated, saying that people did not want him to live. This had occurred after fights with friends. On the night of his death he had fought with his father and made a similar statement. Earlier that day David had accused his sister of not caring for him.

11.11.31 In the case of Perry Noble, also of Yarrabah, self-mutilatory and self-destructive behaviour became a distinctive syndrome in his family. He threatened to shoot himself regularly and actually did so in 1982 and 1986 whilst drunk. Two months after Perry had shot himself on the second occasion, his younger brother shot and wounded himself after a dispute with his girlfriend. A second brother also shot and wounded himself, and this same individual attempted unsuccessfully to hang himself in the Yarrabah watch-house, a year after David Koowootha had effectively done so (1987). Patrick Booth, whilst emotionally upset in the Rockhampton watch-house before he was transferred to prison for stealing convictions, said to a field officer of the Aboriginal Legal Service that he would hang himself if he could not shower and obtain clean clothes.

11.11.32 There are several accounts of pretend suicides from Mornington Island. The deputy chairman of the council describes a drunk youth threatening suicide to achieve his social ends: 'I offered him a bullet to do it--but he turned it down. He wanted to make himself the centre of attention, I think he just felt good and he wanted to attract attention from everyone'. 111

11.11.33 It is in order here to provide some more general cultural background to this phenomenon of simulated or threatened suicide as it has a bearing on the environmental problems and architectural design of watch-houses.

11.11.34 The traditional kinship role of checking the extent of violence during fighting or mourning behaviour has been previously described. Sutton extends this social model to incorporate the case of an intoxicated person threatening suicide. Under normal circumstances it would be the role of certain relatives to intervene. The case of an isolated individual in a cell however, creates a potential problem:

> *The intervening role disappears and the person, if very distressed, and especially under the influence of drugs of some sort might do something that they would not normally do.*[112]

11.11.35 The necessary corrective agencies are rendered inaccessible at a time of extreme stress, and distorted self-perception. The case of Alistair Riversleigh of Doomadgee conforms to and illustrates this analysis.

11.11.36 Alistair Riversleigh provided a 'dress rehearsal' for his suicide in his family back-yard a few hours prior to his actual death. While members of his family participated in a gambling circle, Riversleigh used a piece of garden hose to hang himself in a nearby tree. It is obvious that despite his intoxication (in the order of .26g%), he knew his family would intervene. However, his actions constituted his method of telling them what he felt like doing, and appealing to them to rectify the circumstances. Riversleigh expressed his grief and concern for his wife and children residing separately in Mt Isa; he accused his family of not caring for him; he told them he would be leaving them. Their response was to have him locked up by the Aboriginal Police because he was too drank, in fact 'drunk-mad'. 113

11.11.37 Riversleigh had 'threatened' his wife that he would kill himself on previous occasions during their marriage, these incidences occurring always when he was intoxicated. The implication here is that such threats, at least initially, are a type of ultimatum, designed to achieve a social goal via adjustments in the

behaviour of others in relation to ego**.** One such threat in fact was presented as an oven ultimatum to his wife, viz: 'he would cut his throat if ever she left him.'

11.11.38 The social function of pretended suicide is further substantiated by Trigger

> *[T]hreatening to harm oneself is not uncommonly a way of trying to direct who makes the following observations from his experience in the North-west region**:**aggression against others with whom one is in conflict, though this only occurs when the individual is drunk. For example, I have seen a teen-age girl in a drunken rage after arguing with members of her family, strip off her clothes and run out of her house clutching a knife, loudly threatening to kill herself. As in this case, usually the person would be restrained by relatives, though there can also be considerable reticence about trying to force a drunk person to do anything because they are unpredictable and dangerous... What may well be a relevant part of Aboriginal tradition at Doomadgee is the expectation that people should properly fulfil their responsibilities as close kin to you, and that this entails the responsibility they have for ensuring that you do not seriously harm yourself while out of control through being drunk. Threatening to publicly harm yourself is thus a way of directing aggression against your close kin who are present.*[114]

11.11.39 Some of the social and psychological problems experienced by the deceased are clearly evident: a consistently repetitive set of associations made between alcohol and violence, police offences and violence, alcohol and suicide, and suicide and police offences. The foregoing analysis of the charge patterns of the cases also clearly indicates a significant association between all of these factors (suicide itself is a form of violence).

11.11.40 Further associations between alcohol, violence, police offences and suicide are readily available from studies of the reserve communities with which the cases are linked. For example, from a survey of Aboriginal people in Townsville and five reserve communities, Reser and others concluded that. residents of the reserve communities

> *[a]re far more likely to have been arrested, more likely to have had alcoholic parents, more involved in fights, and more likely to have experienced violence in the home. It would also appear that pressure to use alcohol and drugs is very high in communities as compared with Townsville.*[115]

11.11.41 Of the five reserve communities in this survey, all but one had a beer canteen. Reser and others concluded that in these communities

> *[t]here does appear to be a very substantial increase in numbers of alcohol-related instances of self-injury, attempted suicide, and suicide .... [and] that the pattern of alcohol use by a number of heavy or periodic heavy drinkers is putting them at a much greater risk of attempting suicide.*[116]

11.11.42 At Yarrabah, the same team of researchers found that being arrested was a common experience in this community. All of the twenty-two suicide attempters who were interviewed had been arrested, and sixteen of them had been locked up on their own at least once.[117]

REASONS FOR SUICIDE

11.11.43 Acts of violence including self-violence may have multiple meanings and purposes. A number of the doctors and psychiatrists who gave evidence to the Commission argued convincingly that the explanation of death resulting from self-inflicted injury and suicide is multi-factorial, that there is always a range of causal factors, underlying issues, and contextual phenomena.

11.11.44 At the time of their death from self-inflicted injury, the deceased may have been experiencing multiple psychological stresses, some arising from happenings immediately prior to their internment (short-term stresses) and others having been present for lengthy periods of their lives owing to the problems of their social circumstances (long-term stresses).

11.11.45 Such social circumstances included for all but a few of the deceased a heavy drinking syndrome during part of their adult life and prior to death. It has been argued that alcohol in itself did not necessarily constitute an isolated cause of death from self-inflicted injury, although it provided a range of contributing circumstances. Alcohol may have been perceived as a long-term stress in itself (for example, in the case of Perry Noble), as well as having distorted self-analysis of behaviour at the time of death. Another long-term stress may have arisen from the victim's socialisation into patterns of violence.

11.11.46 A short-term stress may have been caused by the environment of the victim's cell, which was often confining and unhygienic (for example, in the case of Booth's earlier suicide threat, also Karen O'Rourke possibly). Reser has elsewhere analysed these environmentally induced stresses in detail.[118]

11.11.47 Reser puts forward the theory of 'reactance' as a possible contributing reason for suicide amongst Aboriginal youths in the watchhouses of certain North Queensland communities. 'Reactance' is the human tendency to attempt to restore freedom of action when it is taken away.

> *These reported suicides have occurred in police custody, in watch-house circumstances characterised by physical and social isolation, harassment and humiliation in some cases, in a context in which taunts and obvious counter-suicide measures constitute both expectation and cue, while engendering 'reactants'. This reactance, or reassertion of one's freedom in a situation where it has been denied, should not be discounted; control over one' s own life is one of the few salient options left in intolerable circumstances, when all other control has been symbolically and actually stripped away.*[119]

11.11.48 The Powder-Law report of 1987 asserts that most suicides result from family arguments. This was clearly the case with the young man who died at Wujal Wujal, Alistair Riversleigh, David Koowootha, Charlie Hyde, and Eddie West. Wattridge gives belief in persecution by one's family as a causal category.[120] For example, Alistair Riversleigh criticised his family for not caring for him. The young Wujal Wujal man resented the behaviour of his brother towards his mother. This syndrome would have been reinforced in the case of those deceased whose families called the police to lock them up (Riversleigh, Hyde, Koowootha). David Koowootha stated that people in his community did not want him to live. In the case of Charlie Hyde there seems to have also been some persecution from the community at large, some members blaming and taunting him for the deaths of some individuals in boating accidents in which he was involved. Such conflicts are likely to display specific cultural aspects of Aboriginal kinship behaviour.

11.11.49 Another category of cause is a belief in persecution by the police and/or

community council, also noted by Wattridge. Perry Noble regarded himself as the subject of police victimisation and developed a resentment and hatred of them. Eddie West, too, had developed a bitterness with the Cherbourg Chairman and Council, who were consistently responsible for having him interred in institutions because of his violent behaviour. West's own cousin arrested him on the night of his suicide. The young Wujal Wujal man was arrested by two brothers, one of whom had slain his cousin. At a more abstract level, an underlying issue in this last case is the forced juxtaposition of these two antagonistic families at Wujal Wujal, a state of social crowding owing to the artificial establishment of the settlement and the lack of access to traditional lands to permit adequate social spacing.

11.11.50 In the case of Gregory Dunrobin, a Cherbourg doctor argued that he did not take his life as a result of depression but rather as a protest against the spiritual suppression of himself and the community, a sacrifice to highlight the plight of his people using the only method he could find. However, an alternate hypothesis may be that one purpose of Dunrobin's suicide was a type of protest against the doctor himself who had refused to treat him (under certain conditions), and aimed generally at non-Aboriginal authority systems. A purpose of Patrick Booth's suicide certainly appears to be a statement of defiance against the Rockhampton prison authorities. There are, thus, a range of oppositional meanings that could be attributed to various suicides, ranging from opposition to family behaviour, to community behaviour, police, council and the authority of the State itself.

11.11.51 Lack of self-esteem and other negative feelings about self-identity are further causes which provide motives for ending life because of the sense of failing oneself, one's family or one's community. These will be considered in a later section. A further reason for suicide may have been to imitate the style of suicide of one' s kin, friends or Aboriginal compatriots in other communities as a type of mass protest in opposition against the forces of authority and institutionalism. This syndrome has been termed 'multiple suicides.'

EPIDEMIC AND MULTIPLE SELF-INFLICTED DEATHS

11.11.52 In Aboriginal communities in north Queensland there were six Aboriginal deaths by hanging in watch-houses within a period of four months. The death of Alistair Riversleigh in the Doomadgee watch-house was preceded by the deaths of Perry Noble and Charlie Hyde at Yarrabah. The day after Riversleigh's death, David Koowootha died in the Yarrabah watch-house. In the following month, there were two further deaths by hanging in watch-houses in the north Queensland communities of Aurukun and Wujal Wujal.

11.11.53 Looking more closely at the self-inflicted deaths at Yarrabah, it is noted that Perry Noble died on 4 December 1986 (age twenty), Hyde on 18 December 1986 (age 42), and David Koowootha attempted suicide on 18/2/87 but did not die until 14/3/87 (age nineteen). The fact that the three deaths in custody at Yarrabah occurred within a fifteen-month period to individuals who were closely associated, cannot be dismissed as coincidental. Noble was Koowootha's best friend and Koowootha lived next door to Hyde. There are a number of close similarities in the pattern of offending and death in these cases, a point analysed in some detail by a magistrate associated with the Koowootha case. As Commissioner Wyvill states:

> *Such a number of deaths by hanging in a small geographical area over such a short period raises the issue of the possible influence of suggestion, imitation or modelling in the actions of the individual victims.*[121]

11.11.54 This phenomenon has been described as a 'suicide cluster'. Dr Cantor, a psychiatrist who gave evidence to the Commission on the phenomenon of clusters of self-inflicted deaths, commented that it was reasonable to conclude that 'imitation may have occurred'. Clusters of self-inflicted deaths are thought to occur through a process of contagion. It is thought that most such clusters occur as a result of an 'index suicide serving as a model for subsequent persons to imitate, with each successive death presenting a further model, producing a potential for epidemic'. Most commonly, the model self-inflicted death is communicated to a 'potential imitator' via word of mouth or by the mass media. Colloquially speaking, this phenomenon is known as the 'copy-cat' syndrome, though I do not favour that expression as I believe it trivialises what is clearly a tragic and very complex issue.

11.11.55 By virtue of the existence of the Royal Commission, and from the media attention deaths in custody received, there may be a strong *prima facie* case for the existence of imitative self-inflicted deaths. In a separate analysis of the Commission's data base on the nine reported Aboriginal self-inflicted deaths occurring in Queensland in 1986 and 1987, Dr Reser concluded that there was strong support for a cluster interpretation for at least eight of these deaths, suggesting that this distinct category of self-inflicted death cannot be ruled out as a factor in these cases. Reser points out that the north Queensland deaths are strikingly similar to circumstances of adolescent clusters of self-inflicted deaths found in Native American communities.

11.11.56 However, while there is strong evidence that social behaviour is powerfully influenced by imitation and suggestion to the extent that suicide may occur as a result of this phenomenon, it is also apparent that there are other fundamental factors involved. Dr Cantor states that any recognition of the 'copy-cat' syndrome must not detract 'from the more fundamental causes of these suicides'. The relative contributions of the phenomenon of clusters of self-inflicted deaths and more fundamental causes to the rising incidence of self-inflicted deaths among indigenous populations and young males is not known. As Dr Cantor explained:

> *[I]f only the social and personal conditions experienced by the victim leading to a predisposition to suicide can be regarded as causal, it follows that explanation must centre on those conditions. Suggestion, imitation or modelling are possible but not necessary conditions and their significance to explanation is limited in comparison to other predisposing and precipitating factors... [A]ny weight placed on the possible cluster effect cannot be done to the exclusion or diminution of the social environment and its consequences as a focus of explanation. 122*

11.11.57 As well as broader epidemiological factors, there are localised factors specific to the families and communities concerned. In a separate study in 1989 of the 'cluster suicide' phenomenon in north Queensland, Reser recognised that there were also a number of distinct psychological, cultural, and community factors that needed to be considered. These include age, sex, alcohol and family-related self-injury and suicide attempts, circumstances (and prior history) of arrest, and interrelationships among the victims and communities involved.

11.11.58 Given the fact that there was a likelihood of predisposing factors to self-harm, including the possibility of depression and certain stressful events, Commissioner Wyvill concluded that knowledge of other suicide attempts may 'mediate the relationship between a desire to attempt suicide and the actual attempt'. Social and personal conditions which may precipitate self-harm, states the Commissioner, must remain as the central underlying causes of the

self-inflicted deaths.[123]

11.11.59 Further evidence concerning the occurrence of self-inflicted deaths in a sample of Queensland Aboriginal communities was demonstrated in a recent quantitative study carded out by Reser and others who obtained a data sample from Aboriginal people in five reserve communities (Yarrabah, Hopevale, Woorabinda, Pormpuraaw or Edward River, Napranum or Weipa South) and from Aboriginal, Islander, and non-Aboriginal/Islanders in Townsville. These researchers identified eighty individuals in these centres who had 'attempted to commit suicide', according to their evaluative measures of the meaning of this behaviour. 71% of the attempts in the reserve communities were by Aboriginal people in the 15-25 year age range. In the time period of their most reliable data, 1982-88, they concluded that a dramatic increase in the rate of attempted suicide had occurred during 1986-88.[124]

11.11.60 Reser also distinguishes 'cluster' or imitative suicide, which is highly likely to be implicated in many of the 1987 and 1988 self-inflicted deaths in and out of custody, and 'which was no doubt influencing more traditional communities as well'.[125] Reser may here be referring in part to the deaths in custody at Yarrabah which exemplify this syndrome well.

11.11.61 In his theoretical analysis, Rear hypothesised cluster suicides to be mediated by suggestion, imitation and modelling. He has applied this theory in his explanation of the suicide of youths in North Queensland reserve communities.

> *Aboriginal youth in these communities are also engaging in sustained binge drinking, in a cultural context in which 'being drunk' means one can exercise little control over their behaviour, and angry and violent behaviour is legitimised, and expected. The disinhibition of alcohol, the cultural character of 'being drunk', the reactive and expressive character of emotional response in an Aboriginal cultural context, all facilitate suggestibility, imitation and modelling, particularly in what has become such a symbolically charged situation, being locked up in a watch-house when drunk and upset...*
>
> *In the case of Aboriginal deaths in police custody, the alcohol-violence link can embrace the incident leading to the arrest as well as events following arrest and being locked up. Indeed the emotional upset of the precipitating event appears to strongly colour the whole context of arrest and confinement, with feelings of anger and shame mixing with feelings of injustice, powerlessness, isolation, fear, etc... In this context, the effects of alcohol and 'being drunk' can dramatically and negatively impact on emotional experience, expression and coping ability. It is likely that an identifiable category of individuals are at particular risk of self-violence in police custody circumstances, those who are young, socially marginal in their own communities, with a history of binge drinking and family conflict, and prior direct or indirect experience with self-injury or suicide.*[126]

11.11.62 The magnitude of the problem of self-destructive behaviour at Yarrabah can be gauged from the survey of Taylor and others who collected data concerning a number of cases.

> *While deaths in custody and suicidality may overlap, it is likely that Aboriginal communities are facing something of a suicide epidemic. All evidence to date indicates that most suicide attempts in Yarrabah have occurred within the last 10-15 years. Indeed, of the 22*

attempters interviewed, 7 had attempted during the past year. Most of these attempts have taken place outside custody, although a disproportionate number of possible completed suicides have taken place in custody. 127

11.11.63 Reser states that non-custody suicides and suicide attempts have grown to such a proportion as to be endemic in some Aboriginal communities such as Yarrabah. Another grave report is available for Palm Island.

Most recent social indicators paint a very grim picture of life on the island. For example, serious suicide attempts in this small community occur at the rate of 1.25 every month (Palm Island Base Hospital statistics, 1986), yielding an alarming annual figure of more than one per cent of the entire Aboriginal community. 128

11.11.64 In this discussion, so far, on self-inflicted deaths I have examined the situation of the Queensland remote communities with some particularity. It is on those communities that the majority of such deaths arose for investigation by the Commission. It should not be taken to be the case, however, that the question of self-inflicted death, both in and out of custody, is a matter of concern only in that State.

11.11.65 An important study is being conducted in Adelaide as a joint project of the Department of Primary Health Care of the Flinders University of South Australia, the Aboriginal Education Foundation of South Australia Inc. and the Sociology Department of Flinders University. That study is examining Aboriginal social health in Adelaide with particular reference to stress and destructive behaviour. The first report of the project titled *Taking Control* was published in 1990 and gives details of a survey of Aboriginal heads of household in Adelaide. The publication also provides a very useful review of research into Aboriginal self-inflicted deaths throughout Australia.

11.11.66 The survey disclosed that 31% of respondents (27 persons) had 'thought seriously about taking their own lives'. Twenty-three of those were females. Seventeen per cent of respondents (15 persons) had made at least one 'serious attempt' at suicide and seven had done so more than once.

11.11.67 The authors reported on the result of the survey that

The greater likelihood of an Aboriginal from this study attempting suicide, was associated with:

1. *Early experience*
   - *i) employment instability of parents/care-givers;*
   - *ii) lack of knowledge of at least one parent;*
   - *iii) foster-home (but not institutional) experience by age 12.*
2. *Social factors-contemporary*

   <u>Directly finance related:</u>
   - *I) pension/benefit recipient; receipt of past emergency aid;*
   - *ii) rented housing: too small, inadequate maintenance, or at least one move of house in last 5 years;*
   - *iii) personal mobility: lack of private vehicle in household;*
   - *vi) frequency of past employment,*

early life). unemployment.

Health:

v) Major present health problem in self or partner;

vi) Drug abuse [not including alcohol] a problem: (self), or, (partner).

Law enforcement intervention:

viii) police: number of calls at house.

Abuse experience:

viii) 'ever bashed or assaulted' (may have been in early life);

ix) 'ever sexually abused' (may have been in early life).

3. Personal perceptions

i) of 'non-acceptance' by the rest of society;

ii) that 'minor violations of the law' bring major distress;

iii) frequent feelings of anger;

iv) feeling that not in 'reasonable control over life'.

No evidence was found in this study of household heads/care-givers to support the notion that suicidal Aboriginals are more likely to be those who are new to 'city life' or urban environments, and who find it difficult to cope with environmental change as such. On the contrary, thirteen of the fifteen attempters had lived in Adelaide for greater than ten years, twelve had lived in cities less than twenty years. This, however, suggests inability to thrive in the new environment.

Nine of the fifteen left school earlier than they had desired. There were two cases where education was ended as a result of unsatisfactory fostering situations. Both were attempters. Five of the seven attempters who had been fostered described the experience in negative terms, three of them profoundly so.[129]

11.11.68 This report gives an indication of the dimensions of the issue in other parts of Australia, although research information is limited. Kamien's studies in Bourke, New South Wales, disclosed four attempted suicides in a two-year period in the 1980s (in an Aboriginal population of 730) and nine actual deaths in a five-year period (not all of which were demonstrably suicide). He concluded that the death rate thus disclosed was far in excess of what would be expected in the Australian community as a whole.

11.11.69 Hunter's research into Aboriginal suicide in the Kimberley, Western Australia, disclosed twelve male and two female suicides between 1957 and 1986. His detailed life histories of the individuals concerned led him to conclude that the harmful use of alcohol was a major factor. *Taking Control* discussed Hunters' studies as follows.

Aboriginal males have become isolated and psychologically insecure ... vulnerable to suicidal ideation, he alleged. In order to fully understand this destructive behaviour, Hunter suggested the need to consider ... the consequences of social and political changes... of the

last two decades concentrating on the impact on constructions of the self and social integration. He questioned the adequacy of the concept of 'anomie' however, alleging that western power has dominated Aboriginals for a long period yet the large increase in the incidence of suicide has been quite recent. Hunter proposes that for Aboriginals 'theoretical access to economic and political means, and thus to power, has never been greater' but he nevertheless reserved the significant caveat that the dominant society offers power and ideals, but neither personal help in building skills to utilise that power, nor, the material means of fulfilling those ideals. This presents a 'double-bind to Aboriginal people', he alleges, who are constantly faced with media images and political rhetoric about new freedoms and securities outside the Aboriginal cultural fabric.[130]

11.11.70 Later deaths in the Kimberley increased the numbers of suicides to 21 since 1957. Ten had occurred since 1985, two of those being deaths in custody. In subsequent interviews of 100 Aboriginal people Hunter reported that 25 persons demonstrated past suicidal ideation (20% of males, 37% of females) and fifteen had previously attempted suicide (12% of males, 30% of females).

11.11.71 Studies in the Northern Territory disclosed six Aboriginal suicides between 1979 and 1983 (5 males, 1 female). Reser considered that the official figures did not disclose the true situation but that those figures did not indicate a low rate.

11.11.72 *Taking Control* contains a useful comparison with the experience of other indigenous peoples. It quotes Professor Riaz Hassan, Professor of Sociology, who was one of the research team.

In summary, studies of self-destructive behaviour among the American Indians show some interesting patterns. Family disorganisation, alcoholism, high unemployment rates, child neglect and abuse, are forced to abandon their traditional way of life. There are also important attributes of communities which have high suicide rates. In general, the more traditional the tribe the lower the alcoholism, depression and suicide rate. These findings closely follow some of the correlates of suicide among the Australian Aboriginal groups in Adelaide which are reported in this Monograph. The important point to reflect upon is, why these similarities exist in the patterns of self-destructive behaviour among the American Indians and the Australian Aboriginals which has devalued and disintegrated their respective cultures and in so doing caused an injury to the society and its relationship to the individual... one consequence of which is the tendency to commit suicide and other forms of self. destructive behaviour. 131

11.12 ABORIGINAL IDENTITY

11.12.1 The discussion of aspects of Aboriginal society in the earlier parts of this section draws extensively upon the writings of social scientists. Aboriginal people, quite apart from being the most controlled group within the Australian community, must also have been the group most studied by non-Aboriginal people. The studies were intrusive enough in themselves, but much of the research conducted into Aboriginal society, although ill-informed, nonetheless helped shape official attitudes towards Aboriginal people. This in turn provided a theoretical basis to justify policies of government which had such a disastrous impact on the lives of

Aboriginal people.

11.12.2 Obviously the work of social scientists can also play a useful role in informing non-Aboriginal people about Aboriginal society and, by correcting past misconceptions, can assist to ensure that present policies do not repeat the errors of the past. The writers whose works I have cited assist the task of understanding rather than fostering misunderstanding.

11.12.3 However, for Aboriginal people there remains an understandable hostility towards much of the research which is still performed. Whilst recognising the value to themselves which may be gained from the work of academic and other researchers, Aboriginal people now insist on having control over the research so that what is studied reflects Aboriginal needs and priorities and the process of study meets their cultural requirements.

11.12.4 No area of research and commentary by non-Aboriginal people has such potential to cause offence as does that which attempts to define 'Aboriginality '. This determination of non-Aboriginal people to categorise and divide Aboriginal people is resented for many reasons, but principally, I suspect, because the worst experiences of assimilation policies and the most long term emotional scars of those policies relate directly to non-Aboriginal efforts to define 'Aboriginality' and to deny to those found not to fit the definition, the nurture of family, kin and culture. To Aboriginal people there appears to be a continuing aggression evident in such practices. Coral Edwards poses the question which would be familiar to many Aboriginal people.

> *How many times have I heard said, 'How can you really consider yourself an Aboriginal person when you had a white father, or if you've got white blood in you?' You cop it all the time from white Australians and I just say to them, 'Look, you are what you are and I am what I am. I'm an Aboriginal person. What are you?' 'I'm an Australian', they say. But what are they really? What are white Australians? They're always questioning our identity and we always have to prove our Aboriginality, but when have white Australians ever proved their identity 132 ?*

11.12.5 McCorquodale has recorded that since the time of white settlement there have been 'no less than 67 identifiable classifications, descriptions or definitions' used by governments to determine who was an Aboriginal person.[133]

11.12.6 From the late 1960s the world has seen a resurgence of ethnicity. It has also seen a resurgence of Aboriginality, based mainly in the Americas and Australasia, but manifesting itself globally as the Fourth World. 134 Governments who had been left free for generations to exterminate indigenous cultures and even indigenous peoples in the name of progress, have found that they must now answer to opinion in the advanced liberal democracies which see virtue in supporting indigenous rights. Although the changes are not always so marked on the ground, the new pluralism does recognise in principle the right of indigenous peoples, not only to maintain cultural difference, but also to recover some of what was lost under previous regimes, including those members who were lost through displacement and assimilation. Indeed, once indigenous peoples began to raise their voices in national political life, leadership has come from precisely these elements, since it is they who have the skills required to engage with the State. Thus, while there has been a revival of indigenous tradition, the indigenous community has become more diverse, particularly when viewed nationally.

11.12.7 In Australia, likewise, the more benign climate of the 1970s and 1980s has enabled those whose denial of identity was strategic to re-identify: witness the

marked increase in the numbers identifying as Aboriginal people in recent censuses. Those who were cut off from their families have had to identify with the public Aboriginality before experiencing a private Aboriginality. Some have been able to discover their families, creating the possibility of a place to be in Aboriginal society. Fitting into Aboriginal society and learning the culture from which they were cut off during the impressionable years is a difficult, even painful, undertaking.

11.12.8 Some illustrations of the difficulty faced by those Aboriginal people who suffered separation from their families under assimilation policies come from Aboriginal people who worked with the Commission. The South Australian AIU reported:

> *After settlement many of the family structures were broken by removing the families from their areas, the taking away of children and the general breaking down of the extended family. The major problem of identity today was caused by the removal of children from their parents and put with non-Aboriginal families or into institutions. Those children who were put into institutions became institutionalised and were unable to relate to a family structure. Those children who were placed in care of white families were enculturated into white society and their behaviour was the same as white children, after all that is all that they knew.*
>
> *To define the identity of Aboriginal people is not an easy topic as those who suffer the consequences of being taken away find it very hurtful to discuss the loss of identity which is very close to them. The efforts to revive culture and identity among Aboriginal people has many problems because of the lack of fundamental definition. Identity has been defined in many different ways by many different people. Also those people who have been institutionalised through no fault of their own find it very hurtful and too close to discuss the issue. So what we usually conclude is that it becomes an academic argument which is not what we want. 135*

11.12.9 The Victorian AIU agreed.

> *Kooris in Victoria, as in the rest of Australia, have been dispossessed of land, relocated, separated from families and had their children forcibly removed. In addition, name changes and denial of language and culture, ongoing application of the assimilation policy in the administration of Aboriginal Affairs have combined to have a devastating result for Kooris today. Much of the community has been dispersed by force or through economic necessity. Still, Kooris and Koori culture have survived against the odds. 136*

11.12.10 However, there are new ways of being Aboriginal. Participation in the Aboriginal movement and work in the various Aboriginal agencies are things that Aboriginal people do. So are Aboriginal dance, music, painting, writing and history making. Some of these activities can be represented as continuous with Aboriginal tradition, though generalised. The didgeridoo, which was formerly played only in some parts of the continent, has become the instrument of all Aboriginal people. Similarly, graphic forms which were originally associated with particular clans and places become 'Aboriginal Art' in a generic sense. Moreover, once Aboriginal people are released from prehistory and recognised as having a present and even a future, the space is made for them to adapt and invent. Today there are Aboriginal rock musicians, urban Aboriginal artists and Aboriginal writers. In sum,

Aboriginality no longer resides only in some notional 'tribe'; it has multiple and multiplying sites.

11.12.11 These developments are characteristic of nations which think of themselves as having a future as well as a past. They have, nevertheless, drawn the reproach of inauthenticity from those who think only of Aboriginal people in terms of the past. Similarly, it is alleged that many of those who claim to be Aboriginal are impostors, usurping the benefits intended for 'real Aborigines'. In the campaign against land rights, it has been proposed that only 'Full Bloods' should be regarded as Aboriginal. At the same time, the proliferation of Aboriginalities has created genuine confusion in a public, reared on the image (though rarely the reality) of the 'real Aboriginal'. Can people be deemed Aboriginal simply because of what they do? Just what is the difference, for example, between an 'Aboriginal artist' and an artist who uses Aboriginal themes but does not identify as an Aboriginal person?

11.12.12 Aboriginal people are very conscious of past efforts to assimilate them into the culture of the broader society and the personal costs which have resulted. They do not now want to be stereotyped. The Victorian AIU commented:

> *Many Kooris expressed the fear that the pressure on Kooris to assimilate would be impossible to stave off indefinitely. They said that it is hard to maintain a sense of cultural identity in young people who are confused about their Aboriginality because of racist stereotyping in the general community. Some Koori artefact makers of exceptional ability who are able to produce and market their high quality work resist stereotyping .*[137]

11.12.13 For those Aboriginal people who had struggled to regain their links to their Aboriginal families the process was often a painful one. Coral Edwards described the emotional turmoil which was involved.

> *Because the first meeting with their family was so great, some people suddenly think, 'I'm Aboriginal, I finally know who I am'. But then they can become caught in divided loyalties: 'I'm Aboriginal but what do I do about my white family who raised me?'. It becomes an emotional tug of war. Some people get to the stage where they actually reject their white family because they feel that's what they have to do now that they're Aboriginal. Others find that it' s very hard to talk to their white friends because they can't comprehend what they've just been through and are going through. They feel so good but they don't understand why their friends can't see that there' s a difference. But not only do the friends not understand, they often don' t want the ' white' friend they knew to suddenly change into an Aboriginal person, and they are uneasy at the transformation. 138*

11.12.14 Having faced the problem of, to an extent, disassociating themselves from their 'white' family's acceptance in the Aboriginal community was not always an easy transition. Pauline McLeod spoke of a confrontation which she had with an Aboriginal person in the Hunter River region in New South Wales. The man, who held an official position as a welfare officer, said to her:

> *You're white establishment, you're raised by white people, you wouldn't understand the black kids that were placed in a Home, things like that. I found out that I was fighting for my own identity, to be accepted by Aboriginal people. No matter what I did, it still wasn't enough, I wasn't accepted as an Aboriginal person by the Aboriginal people! And that almost was the last crunch. There were times when I*

really thought I was going to suicide. Because I wasn't fitting in anywhere. I just wasn't fitting in to any community whatsoever.[139]

11.12.15 Sharon Carpenter told of a similar experience in Coral Edwards and Peter Read's book 'The Lost Children':

I think maybe it's because the Koories who have grown up in the cities and towns have had such a struggle, maybe they think 'oh you've grown up white and had it all easy and now you want the glory of being black'. I can understand that. But it has to be a two-way thing. They have to understand how we feel as well. We've got the choice to be black or white, that's what they don't realise. But if I was to live in a totally white environment all the time I'd always be thinking about my people and wanting to do things with them. I know I've always had those feelings, even when I was a child. It' s always been there. I couldn't sit in a room full of whitefellers and them putting down blackfellers, pretending that I'm one of them. I couldn't do that, I'd get too angry. It's easy when white people say you're not black, that doesn't hurt. But when black people say you're not, that hurts. I can hack white people saying to me, 'Gee you don't look Aboriginal, you must be only an eighth', cause I can then say, 'Well if you'd been colonised for 200 years and your great-grandmothers had been raped, you'd look like me too it' s your fault I look like this, not mine!', you can throw all that back at them. But for an Aboriginal person to say, 'You're not Aboriginal', that hurts. The main thing is that you have to get the Aboriginal communities to understand what Koories like us have been through.[140]

11.12.16 Ruby Hammond, head of the South Australian AIU, explains why there was suspicion at times about those people who identified their Aboriginality late in life:

Aborigines who after being brought up away from their people and have been deprived of their heritage do have varied relationships to each other, to their community and to their newly discovered families. When becoming aware of their position in Aboriginal society, they also become aware what they have inherited an all embracing responsibility to their group, e.g. they are not only made aware of their Aboriginal name but also what is associated with that name, responsibilities, expected specific behaviour, respect to certain people, knowledge of Elders and their relationship to the group, marriage relationships (those people they can joke with, and those people they must be serious with). In general they are absorbed into the Aboriginal cultural group. In my opinion this is the scenario if Aboriginal people are serious about seeking their background and heritage. On the other hand, there are those Aboriginal people who only want the 'nice' part of this responsibility and they sit neither in the Australian or Aboriginal societies. Yet these people are the ones who are most acceptable to non-Aborigines when opinions are sought on Aborigines for policies (unfortunately they attract the label 'coconuts'--brown on the outside and white on the inside. It is similar to the American Indians where they are labelled 'apples'-red on the outside and white on the inside).

Those Aborigines who have chosen to live outside Aboriginal society and do not wish to identify as Aborigines are deterred by other

Aborigines from seeking government funding which are specifically provided for the purpose to assist Aborigines.[141]

11.12.17 In Australia, public Aboriginality has been largely the creation .of non-Aboriginal authorities, official, religious and scientific. It is only m the last twenty years or so that the Aboriginal movement has been able to contest these constructions in the public arena and propose its own idea of Aboriginality. In doing so it has drawn on private Aboriginality; but, given the heterogeneity of its Aboriginal constituency, the formulation is necessarily selective.

11.12.18 Most Aboriginal people who recognise themselves in the public Aboriginality feel comfortable with it. Others find an Aboriginality attributed to them which fails to some degree to correspond to their own experience; or they may be denied the Aboriginality which they believe to be theirs. Torres Strait Islanders long resisted identification as Aboriginal, and they are scarcely less comfortable with the conglomerate 'Aborigines-and-Torres-Strait Islanders'. This is not simply a matter of cognitive dissonance. Public Aboriginality, as manifested in official practice and the media, as well as the Aboriginal movement, is coercive. There have been times when governments have forced Aboriginal people to conform to their notion of being Aboriginal--for example when Aboriginal small holders were deprived of their land and forced onto settlements, where they were 'taught' farming. Even when direct pressures have been removed, people may come to feel that they should bring their lives into conformity with the prevailing idea of Aboriginality, even if they do not know how.

11.12.19 In discussing identity, then, it is important to keep in mind the tension between the way 'Aboriginal' is officially defined in the public domain, and the way it is experienced.

11.12.20 How 'Aboriginal' has been defined, and the qualities attributed to Aboriginal people, have varied over time and from place to place, in ways that can only be understood in terms of the local, national and international concerns of a European colony of settlement in the South Pacific. Declaring this or that individual person Aboriginal or not Aboriginal has been a political act, prompted often enough by administrative convenience or economic advantage, such as access to land or the control of cheap labour. Correspondingly, Aboriginal people have at times denied Aboriginal identity, as a strategy for evading official harassment or popular discrimination, and at other times claimed it as a means of improving their material or political circumstances.

11.12.21 In the investigation into the death of Tim Murray Commissioner Wootten received what he described as a perceptive paper from Millie Ingram then the Assistant Director, Community Relations and Special Projects, Office of Aboriginal Affairs in the New South Wales Premier's Department. She wrote:

Living in the heart of white suburbia as Tim did, it is very difficult for any Aboriginal child to hold onto a sense of pride and dignity about his or her Aboriginality. It is, in such a situation, very difficult not to be influenced into denying one' s Aboriginality. The overall effect of the pressure which surrounds you is to push you into wanting to be seen as a white person. Unless pride in being Aboriginal is instilled into the child at an early age so as to counter the pressure brought to bear by the combined forces of white suburbia, an Aboriginal child will bow to instincts of survival and begin to deny his Aboriginality. As well as the pride of being Aboriginal it is vital that the child should be made aware of and be recognised as possessing qualities which are different to non-Aboriginal people, and not inferior. This is a process which really

> *needs to be commenced in formative years, ideally at pre-school. It is vital that the pride and dignity be encouraged both at home and at school. If the Aboriginal child begins to deny his Aboriginality a very troubled life lays ahead for him. This fact is most often seen in the lives of people who were taken away from their Aboriginal families when still young and brought up by non-Aboriginal people.*[142]

11.12.22 The AIUs consistently identified the need to preserve culture, and hence identity, as critical if Aboriginal self-esteem was to be maintained in the face of the pressures of the broader society. The units also repeatedly noted the failures of the education system to strengthen and support the Aboriginal student's sense of identity. The New South Wales AIU reported:

> *The one thing that also appeared to be generally consistent throughout Aboriginal communities was the failure of the education system to acknowledge either Aboriginal history, culture and in some cases identity. Numerous complaints were made about the fact that in many schools throughout New South Wales Australian history is still regarded as commencing from the time of white discovery of Australia and that especially in areas where there are high if not majority Aboriginal enrolments in the school that little or no attention is given to the history and/or culture of the local people. It is claimed that this racist attitude or what people believe to be a racist attitude towards education has a great effect on many young Aboriginal students, especially those in early high school years who have been subjected or been made aware of political moves made by Aboriginal groups to establish both their identity and claims to land but such issues are rarely if ever discussed in the schools let alone any factual information being provided.*[143]

11.12.23 The Western Australian AIU said that 'It was felt that Aboriginal people were in danger of losing their identity and along with it their self-esteem'. The AIU saw the restoration of land as being essential.

> *It keeps our culture, our language and customs strong. Without it we have no future. The land to the Aboriginal people is like history books (milli milli to the gudias). The government through Conservation and Land Management (CALM) has taken this away from us and has broken this structure which gives Aboriginal people their identity, self-esteem, pride, responsibility and a future for our children. 144*

11.12.24 The Tasmanian AIU saw the issue of identity as being central to cultural survival.

> *Indeed it is the very issue of identity in Tasmania that forms the basis of Aboriginal culture. The re-establishment and re-assertion of culture in Tasmania has been driven by the desperate struggle to defend the existence and identity of the community against concerted attacks from both the white system and those it has educated. This struggle begins as soon as a child leaves the environment of the Aboriginal extended family to attend mainstream child care or pre-school and ends either at death, or if the individual is overcome by the system and consents to becoming a 'good black' 145*

11.12.25 The Tasmanian experience has been especially difficult for Aboriginal people. Tasmanian Aboriginal people are often singled out by non-Aboriginal Australians to deny their Aboriginality. The AIU reports that such pressures meant

that many Aboriginal people quietly submerged into the broader community and 'often hid their Aboriginality due to the policies of assimilation and intense racism and prejudice which dominated the State'. The results of such pressures, the AIU says, led to this result.

> *While there are many Aboriginal people in Tasmania whose identity is strong, firm and able to stand the pressures experienced in everyday life; there are many more whose Aboriginality is a fragile thing. Although inextinguishable, it is easily bruised and disfigured by the relentless rejection or qualified tolerance that is shown by white society. All too often such individuals are young, unemployed, poorly educated, drug using, mentally unstable, victimised, homeless or institutionalised.*[146]

11.12.26 Commissioner Wootten wrote about the Tasmanian experience in his report on the death of Mark Revell who died in 1982 aged twenty-seven. His appearance allowed him to choose whether he identified as Aboriginal or not and most frequently neither he nor his family did so. As Commissioner Wootten remarked, 'To be labelled Aboriginal in Tasmania brought no advantage and much pain in the form of discrimination and abuse'. 147

11.12.27 In his report Commission Wootten quotes Mark 's mother who described some of the anguish which issues of identity can bring and at the same time reflects the tremendous benefits which have resulted from the cultural revival and resistance which has occurred in recent years.

> *Mark was always looking for something. It was like he couldn't find it. What he was always looking for was the community. Although Mark was restless he'd always come back home again and stay for a while until he got restless again, but he never broke that tie with the family. Trouble was, he didn't have a tie with the community because the Aboriginal community was scattered... If there had been Aboriginal community organisations this would have helped Mark...*
>
> *In my opinion in the last decade things have improved a lot for Aboriginals in Tasmania. Aboriginal people have been getting together and speaking up for their rights. People such as Mr Michael Mansell and Mr Jim Everett are two Aboriginal people who I believe are an example of Aboriginals standing up for themselves. The local communities also now have within them strong Aboriginal communities. I believe that if Mark would have grown up in Tasmania today he would not have been so restless. It is my opinion that Mark would have developed strong Aboriginal community ties if given the chance. Today, I believe he would have found what he was looking for.*[148]

11.12.28 Aboriginal identity has emerged in a number of the cases under investigation as an issue which influenced the person's interaction with the broader community either to internalise anxiety as appears to have been the case of, for example, Darren Wouters, or to express hostility towards non-Aboriginal people. Commissioner Wootten described Peter Campbell as expressing 'intense anger at the mistreatment and plight of Australian Aboriginals'. He rejected a psychiatrist's assessment that Peter felt inferior to Anglo-Australians. It was not a sense of inferiority but of injustice which contributed to outbursts of violence.

11.12.29 The confident assertion of one's identity is clearly critical to a person's sense of well-being. Asserting Aboriginality, in the face of the racism of Australian

society, is not something which would be an easy course to adopt, and organisations such as Link-up, to which I have earlier referred, make an important contribution in assisting those people who are trying to rediscover their lost families.

11.12.30 The maintenance and revitalization of Aboriginal culture has been critical in giving support to many Aboriginal people. Aboriginal people want their culture respected but, also, they want it to be understood. Throughout Australia museums and culture centres are being opened to the public. I believe that these processes will do much to improve relations between Aboriginal and non-Aboriginal people and will also play a part in restoring pride and confidence to those Aboriginal people who have found the oppression of the broader society difficult to bear. The preservation of Aboriginal languages is an important aspect of the retention and revitalization of culture.

11.12.31 The teaching of Aboriginal languages and the emphasis on language as evidence of Aboriginality can create unfortunate pressures on those Aboriginal people who do not speak such a language. The opposition to the use of Aboriginal languages was one notorious pressure applied to Aboriginal people under earlier policies, and for many Aboriginal people loss of language, while deeply regretted, is accepted as a fact. Those people are no less Aboriginal because of that.

11.12.32 Commissioner Dodson in his *Regional Report of Inquiry into Underlying Issues in Western Australia* noted, however, that steps are being taken to recognise the need to encourage Aboriginal language use in education for those people who do wish to regain or to retain their languages. It is a very recent development. It was only in 1989, he reports, that the Western Australian State Education Policy first acknowledged that English was a second language for many Aboriginal students. A small program in the Catholic Education system in Western Australia to teach Aboriginal languages is commended by Commissioner Dodson as 'a small but significant step towards the recognition of Aboriginal culture and identity in the schooling process'.[149]

11.12.33 The Commission regards it as a matter of high priority that the National Aboriginal Language policy is implemented successfully for the maintenance and transmission of Aboriginal languages.

Recommendation 55:

That government and funding bodies reflect the importance of the National Aboriginal Language Policy in the provision of funds to Aboriginal communities and organisations.

Recommendation 56:

The Commission notes that many Aboriginal people have expressed the wish to record and make known to both Aboriginal and non-Aboriginal people aspects of the history, traditions and contemporary culture of Aboriginal society. This wish has been reflected in the establishment of many small local community museums and culture centres. The Commission notes that many opportunities exist for projects which introduce non-Aboriginal people to Aboriginal history and culture. One illustration is the work done by the Kaurna people in South Australia to restore the Tjilbruke track; another is the Brewarrina Museum. The Commission recommends that government and appropriate heritage authorities negotiate with Aboriginal communities and organisations in order to support such Aboriginal initiatives.

Recommendation 57:

That Governments agree that:

a. The records of the Commission be held in archives in the capital city of the state in which the inquiry, which gathered those records, occurred; and

b. A relevant Aboriginal body, for example the Aboriginal Affairs Planning Authority in the case of Western Australia, be givenresponsibility for determining access the material jointly with the normal authority for determining such matters.

11.13ADMINISTRATIVE DEFINITION OF ABORIGINALITY

11.13.1 According to the official formula, an Aboriginal person is someone of Aboriginal decent, who identifies as such and is recognised by .the Aboriginal community to be so. The proportion of Aboriginal descent is not specified here. Recognition by the Aboriginal community--in practice, *an* Aboriginal community--usually entails being situated in a particular family and network of kinship and affinity. Thus certified, the proportion of Aboriginal ancestry is irrelevant; what counts is a kin connection to other Aboriginal people. Although this conforms broadly to Aboriginal practice outside the official framework, it is, ironically, also consistent with longstanding White Australian practice. At the turn of the century, anyone with a 'touch of the tarbrush' was Aboriginal, and still today in country towns, any member of an Aboriginal family is 'black', regardless of appearance.

11.13.2 While 'recognition by kinship' enables communities to reincorporate 'lost' members, and individuals to place themselves in a community, it is less effective at the national level. Over the last twenty years or so, Aboriginal people have begun to recognise national leaders, who were kin only for a few. Similarly, the career structure in Aboriginal affairs takes Aboriginal people away from their own country and places them among strangers, who may not always find the means to integrate them. Nonetheless, as Aboriginal affairs has focused so much on national policies and programs over recent decades, one result has been that separation and division between Aboriginal people across the nation has tended to be de-emphasised. The factors making for this de-emphasis are likely to be continuing.

11.14THE LEGAL INTERPRETATION OF ABORIGINALITY

11.14.1 As noted in Part H of this report there were a number of challenges made to the jurisdiction of Commissioners to inquire into particular deaths because, it was claimed, the deceased person was not an .Aboriginal person. One such challenge brought by the former government m Queensland related to the case of Darren Wouters. That case was challenged in the Federal Court and eventually a Full Bench of three judges made a ruling which will have great significance for future attempts to define Aboriginality.

11.14.2 The judgment affirms that for the purpose of Australian law descent is an essential pre-requisite for a person claiming to be Aboriginal.

11.14.3 Justice French suggested that the task of the Royal Commission was closely concerned with the notion of Aboriginality.

> *It is not overstating the position to say that, in a sense, the idea of what it is to be an Aboriginal in contemporary Australia may be under inquiry.*

11.14.4 His Honour noted how the question of identity could have been important with respect to Darren's death.

> *[T]here may be cases involving persons of Aboriginal descent who, in life, did not identify themselves with and were not accepted as Aboriginals by 'the Aboriginal community'. Within that set of persons may be those who for whatever reason lacked any satisfactory sense of identity as either Aboriginal or white and may never have been accepted as members of either 'community'. This may be particularly so with persons like Darren Wouters who have a significant Aboriginal genetic heritage but may lack the physical indicia of Aboriginal appearance. When there is added to that factor, as in this case, a history apparently devoid of opportunity for development within the normal range of parent/child relationships, then confusion as to identity and the absence of a sense of belonging to any particular community is not surprising. 150*

11.14.5 Justice Spender said that if Aboriginal descent did not exist at all then the person could not be regarded, as a matter of legal interpretation, as being Aboriginal. However, he added,

> *I am not to be taken as saying that, when a person has to decide whether a person is an Aboriginal, the factors of self recognition, or recognition by persons who are accepted as being Aboriginals, are irrelevant. In cases at the margin, where Aboriginal descent is uncertain, or where the extent of Aboriginal descent might, on one view, be regarded as insignificant, each of those factors may have an evidentiary value in the resolution of the question. Once, however, it is established that the person is non-trivially of Aboriginal descent, then in my view of the ordinary meaning of the word 'Aboriginal', that person is within that meaning .151*

11.14.6 Justice Jenkinson, in agreement with the other judges as to the need for descent, said that where there was uncertainty about a person's race 'cultural circumstances' could be taken into account

11.14.7 The result of this case is that those persons claiming Aboriginality would, as a matter of law, be Aboriginal provided they were descended, to a degree which was not trivial, from Aboriginal people. Where that question is uncertain then factors such as community acceptance and recognition, and the person's own identification as Aboriginal, could determine the issue.

11.15 CONCLUSION

11.15.1 Aboriginal society is a dynamic, vibrant one. Like all cultures Aboriginal culture has aspects which could clash with those of other cultures. Some of the strengths of Aboriginal culture have been important to those who have fought to resist domination by Anglo-Australian society. At times Aboriginal culture has been unable to deal with some negative aspects of the broader culture simply because they were unknown to Aboriginal people before contact. But societies adapt, cultures are revitalised. This has happened and continues in Aboriginal society.

CHAPTER 12 RELATIONS WITH THE NON-ABORIGINAL COMMUNITY

> *This chapter analyses in some depth one key aspect of the status of Aboriginal people in Australia today, which was discussed generally in*

the

previous chapter: the relationships between Aboriginal people and non-Aboriginal society. Race relations, and discrimination against Aboriginal people, are at the heart of their over-representation in custody. The first part of the chapter discusses the concept of racism, observing that it has both personal and institutional manifestations. The history of race relations in Australia is reviewed, and particular attention is paid to contemporary community relationships with regard to local government, since non-Aboriginal control of Aboriginal people is very apparent at this level.

The balance of the chapter is concerned with the relationships---essentially power relationships--between Aboriginal people and non-Aboriginal people and institutions in four segments of Australian society: the hotels, the health system, the school system and the mass media.

12.1RACE RELATIONS AND RACIAL DISCRIMINATION

12.1.1 In his *Report of the Inquiry into the Death of Malcolm Charles Smith,* Commissioner Wootten identified racism as a central experience for Aboriginal people and one fundamental to the concerns of this Commission:

> *Asking an Aboriginal what he or she regards as the important factors underlying deaths in custody often elicits as a first reply 'Racism'. An increasing number of Aboriginals are seeing racism as a key concept in understanding and explaining their relations with the rest of the community. It is an uncomfortable subject which tends not to be talked about very openly and the existence of which is often vigorously denied by those who are its most obvious practitioners. Nevertheless in the evidence in this case there were a number of indications of the importance of racist attitudes...*
>
> *Because racism is perceived by many Aboriginals to be of pervasive importance and because there are many ways in which it could be relevant to the disproportionate imprisonment of Aboriginals, and to the stresses which may lead to their deaths in custody, it will be important for the Commission to keep the subject in mind as it hears other cases and proceeds with its general inquiries. 1*

12.1.2 The truth of this observation has been demonstrated throughout the hearings of this Commission. Evidence that has been presented indicates the nature of racism in Australia. Race relations are at the heart of the over-representation and deaths in custody of Aboriginal people. These issues can only be understood in the context of the radically unequal relations that operate between Aboriginal society and the dominant non-Aboriginal Australian society. Historically, these unequal relations were brought about by the dispossession of Aboriginal people from their land and thus from their economy, and the policies of control and assimilation that existed until twenty years ago.

12.1.3 The deaths in custody crystallise many of the factors that make up the context and day-to-day experience of Aboriginal people. Control over their lives by the State and the relentless discrimination often personal and consistently institutional--that was imposed (and in some respects still is) on Aboriginal people across almost every aspect of their interaction with non-Aboriginal Australia. What has become clear from the hearings of the Royal Commission is that, for each of the people who have been the subject of inquiry, and for so many others, the

tragedy lies not just in their deaths but very much also in their lives.

THE ABORIGINAL PERCEPTION/EXPERIENCE

12.1.4 Although there are differences among the various States, and these are important, the ways in which interaction with non-Aboriginal Australian society is experienced by Aboriginal people across Australia has much in common. The day-to-day realities were indicated by one witness:

> *With respect, I would like to state ... that to be an Aboriginal, living back in the sixties and up to the early seventies, you would never, never understand, being a non-Aboriginal, what racism means because we lived under it. We went to bed with it. We lived it day by day, we went to bed with it. We had to wake up with it every morning.*[2]

12.1.5 Government policies may have changed since then, but this kind of racism continues to be experienced by Aboriginal people in the most mundane or trivial as well as profound levels of interaction: in shops, in hotels, in refusal of admission to clubs like bowling clubs [3] or golf clubs, [4] in employment. In the latter instance, another witness described how she experienced the situation in a particular country town, one that may be seen as fairly representative of many other rural towns:

> *Swan Hill is run by the white people. The black people are just here and live in it and that' s it. No one is in the council or anywhere else, or own a business, work in shops or nothing. All the Aboriginals work for black organisations like the co-op and the welfare, or schools and that. That's it. That' s us far us they go. They don' t work in shops. Like I said before, it is all run by whites and that's it... It is just hard for any Aboriginal person to get a job in a white business. You go to the shops down here. You don't see an Aboriginal boy or girl behind the counter. It is all white or somebody else working there. 5*

12.1.6 Commissioner Muirhead, in his *Report of the Inquiry into the Death of Edward James Murray,* described another country town, that of Wee Waa in the 1960s and 1970s, as one where Aboriginal and non-Aboriginal people 'did not live in harmony'.[6] In this case, bad race relations in the town figured as crucial background to the death.

12.1.7 These are but an indication of the very many descriptions by Aboriginal people of how they experience their interaction with non-Aboriginal Australian society. The overall impact of this, as the Aboriginal Issues Unit (AIU) in Western Australia pointed out, is that 'Aboriginal people accepted discrimination as normal'.[7]

12.1.8 This situation affects not just Aboriginal people but also the rest of us. One of the submissions [8] to the Royal Commission, in discussing the unique relationship between Aboriginal and non-Aboriginal people, points out that the focus of understanding and change lies firmly within the broader Australian society: 'the bridging of the chasm caused by that relationship requires that we come to understand not so much Aboriginal history and society, but our own'. The failure by many non-Aboriginal Australian people and our institutions to recognise and accept Aboriginal people as part of the broader community is a dark side of Australian history. In the words of Kevin Gilbert:

> *The first casualty in the war of the races is the regard for one*

another's humanity. Whites since colonial days have regarded Aborigines as sub-human and Aborigines, too, doubt the humanity of whites, doubt their capacity for kindness, warmth and natural regard.[9]

WHAT IS RACISM?

12.1.9 There is no easy or single definition of racism. Despite the problems of definition, however, some specific things can be said about racism. One is that racism is prejudice, although it is usually of little significance unless the person having the prejudice also has some power in relation to the subject of the prejudice.

12.1.10 Racism is essentially an ideology that elevates apparent biological differences between human groups to the level of supreme importance. It then proceeds both to offer common sense explanations of those differences in order to legitimate relations of inequality and, at the same time, provides a basis for actions that further entrench inequality.

12.1.11 And racism, of course, exists in people. Hence the many examples that have come before the Commission of negative or hostile attitudes by some individuals towards Aboriginal people.

12.1.12 More significant, however--although not necessarily more hurtful at the level of personal experience--are the racist practices that are institutionalised in our day-to-day lives. As one writer describes it:

> *Racism permeates and operates through expectations, through everyday behaviour and practices which, while they may not be intentionally racist, are racist in their effects.*
>
> *Here we are in the cauldron of racism. 'Institutional racism' refers to a pattern of distribution of social goods, including power, which regularly and systematically advantages some ethnic and racial groups and disadvantages others. It operates through key institutions: organised social arrangements through which social goods and services are distributed. These include the public service, the legal and medical systems, the education system.*[10]

12.1.13 The experience of racism, although common to most Aboriginal people, is the outcome of particular historical and social events and processes that have locked Aboriginal people into a position of subordination within the broader Australian society. The crucial events are the colonising of the country and the enshrinement of the relations between colonisers and colonised in law and policy.

12.1.14 The individual cases clearly demonstrate the central role played by government policy in the lives of Aboriginal people. In formalising and institutionalising the domination of the colonising power, these policies have entrenched the unequal relations that are the basis and conditions of ongoing racial discrimination in Australia.

AUSTRALIA'S HISTORY IN RACE RELATIONS: THE QUESTION OF CONTROL BY GOVERNMENT

12.1.15 The laws that were made and the manner of their administration have acted to define Aboriginal people not as relatively but as essentially different and, even more importantly, as a 'problem'. The policies of the state have in general enshrined the notion of Aboriginal people as the white man's burden and in any event as his inferior.

12.1.16 have already discussed in Chapter 10 the various stages reflected in these policies: first protection, then assimilation, and then integration. Here I wish only to indicate the extent to which these policies have situated community relations irrevocably within relations with the state. Relations with the state and the processes of control by the state have been, and continue to be, central to the experience of all Aboriginal people.

12.1.17 First, the policy of protection, which ensured the removal of Aboriginal groups from their lands to reserves and missions. Despite some humanitarian intentions on the part of a number of the colonists, this basically allowed complete access by settlers, including governments, to the land. The consequence, of course, was the exclusion of Aboriginal people.

12.1.18 Another consequence has been the situation on contemporary communities that has come before the Commission time after time--artificially created communities whose tensions and conflicts so often reflect the forced proximity of separate and often antagonistic social or language groups. Cherbourg is one such place, as Commissioner Wyvill has described it:

> *At Cherbourg, Aboriginal people from different areas were forced into a single, artificial community. By 1934, members of 28 different linguistic groups lived on the reserve. Such a policy is testimony to the government's insensitivity to the differences between Aboriginal people and its ignorance of crucial kinship, family, language and territorial ties, and the role those factors play in the maintenance of a cohesive society. 11*

12.1.19 A much more recent and more remote community at Wujal Wujal demonstrates similar characteristics:

> *An awareness of the state of enforced co-existence of the various Kuku-Yalanji and Kuku-Nyungkul mobs at Wujal Wujal is essential for any understanding of the conflict and tension present in the modern community. In 1978 there were eight different mobs settled at Wujal Wujal amounting to over 200 people living in 31 households. With the growth in population to around 330 today, the problem of structural conflict and tension has been exacerbated.12*

12.1.20 The legacy of the policy of assimilation, which remains very much with us still, is twofold. In the first place, it projected the idea of an Australia that was equal, but equal on the basis that everyone accepted the Anglo-Australian model (including the migrants who were about to arrive in great numbers at the time when the policy was first officially defined). This is an idea that has now been rejected in favour of multiculturalism but which hangs on in many minds in relation to Aboriginal people.

12.1.21 On the other hand, the continuing impact of the assimilation policy is to be found in the shift that it marked in the form of state control over Aboriginal people. This was from centralised control through bodies such as Protection Boards to a more diffuse control through a wide range of different government departments responsible for education, health, housing, roads, water, community and social services. The list could go on, and remains essentially the same today. The assimilation policy therefore did not mark any real diminution in the extent of government involvement--that is, of state control in the lives of Aboriginal people, although overtly restrictive legislation, including that related to Protection Boards, was gradually repealed in the different States and the Northern Territory.

12.1.22 The destructiveness of the policy of assimilation lay therefore not only in

such' radical practices as those related to the removal of children from their parents. It is to be found essentially in the ways in which it officially denied any differences between Aboriginal and non-Aboriginal while, at the same time, continuing practices--in education, in employment, in housing, in interaction with the police that systematically defined Aboriginal people as distinct and lesser. In other words, assimilation meant that Aboriginal people, especially in urban areas and in the south-east, were denied any formal basis for asserting identity while, at the same time, remaining as subjects of special scrutiny by government departments and not incorporated as members with full rights within the broader society.

12.1.23 Further, the assimilation policy attempted to ignore the persistence of Aboriginal social and cultural forms and ways of acting. Ruby Langford is one among a growing number of Aboriginal people now writing autobiographies about their experiences. She gives some sense of what living in a government Housing Commission house in Sydney was like.

> *It meant putting us in among whites to see if we could live together, but because there were so few black families there in 1972 we felt very isolated from our friends and our culture...*
>
> *I found out that you were not supposed to create a nuisance or disturb any of the neighbours. You also weren't able to have anyone come and stay without permission from the Commission. It reminded me of the missions. The rule was useless in our culture, where survival often depended on being able to stay with friends and relatives. Here I'd thought I'd got away from this, finally. 13*

12.1.24 The move to the policy of self-determination (subsequently weakened to that of self-management and subsequently restored) was the first attempt by governments to recognise the unique position of Aboriginal people in Australia and to provide them with an effective basis for achieving a real level of control over their own lives. This has been most notable in the Northern Territory where the Commonwealth Land Rights legislation of 1976 addressed the issue of land. The result has been a fundamental shift in the position of Aboriginal people. Despite many ongoing problems, Aboriginal people now have an independent economic, political, and symbolic base for action. They have moved at least in part to a position of negotiation with the state. The importance of this is demonstrated in the growth of strong and effective Aboriginal organisations, and the extent to which Aboriginal people now have to be taken seriously as a significant group within Northern Territory society.

12.1.25 Outside the Territory the impact of the policy of self-determination has been rather more halting and varied. South Australia and New South Wales are the only States with serious land rights legislation. In some areas, indeed, because the policy has increased enormously the formal interactions between Aboriginal and non-Aboriginal people without appropriate training in the skills necessary to accommodate such interaction, the results have been in many ways counter-productive. In a number of the cases from remote communities in Far North Queensland--those from Aurukun, Wujal Wujal, Doomadgee, and Yarrabah--the increase in the sheer numbers of non-Aboriginal people now involved in administering the policies associated with self- management has in many ways meant not an increase but a further loss in control by Aboriginal people.[14]

INSTITUTIONAL RACISM

12.1.26 My experience in talking with non-Aboriginal people over many years (and including in the course of this Commission) is that many have great difficulty in understanding institutional racism and the sort of statement I quoted above about racism: 'We lived it day by day, we went to bed with it'. The difficulty is understandable. Many people in capital and main provincial cities had little contact at all with Aboriginal people and knew little of their circumstances. Furthermore, they knew neighbours, friends, work-mates who seemed decent people not given to going around abusing people for their colour, religion, etc. They knew similar people in other places. They can understand there might be some bad apples in the barrel but how can it be, they think, that Aboriginal people are experiencing racism every day. I think it is important to address this because it is not an uncommon view, including among people who think what happened two-hundred years ago was wrong.

12.1.27 When Aboriginal people say they lived with racism every day they are not meaning to say that all day every day they met non-Aboriginal people who insulted them and called them names (some of the time, of course, they did), but that every day the system of inequality put them down. They are talking about the laws, the systems that were put in place pursuant to the laws which operate every day whether the people who operate the system are well meaning and helpful or personally racist.

12.1.28 Institutional racism changes over time. Once people understand the facts they can see very clearly how Aboriginal people were continually subject to racism of the institutional type during the protection and assimilation periods discussed in the previous section. But gradually the special legislation discriminatory of Aboriginal people were removed. Now institutional racism is of a more subtle kind, not always obvious even to those involved.

12.1.29 I take a particular case, stressing that I do not mean to criticise a particular institution, but to make the point. The Alice Springs Hospital is a large general hospital, serving a wide area of Central Australia. Naturally, it has a reception area with staff who represent the first contact between the institution and the patients coming to it. About 50% of its patients are Aboriginal, most of them living in town camps or on communities, many of them not speaking much English and not accustomed to such surroundings as a hospital. I had sittings in Alice Springs in 1989 about health matters. There was then no Aboriginal person employed in the reception area of the hospital, either as a reception worker or interpreter. (I do not know the present position.) It is easy to understand how a person from a remote community would feel in coming into a large modern hospital; how much more so not to see an Aboriginal face or hear an Aboriginal tongue. That is an example of institutional racism.

12.1.30 I put it more generally. An institution, having significant dealings with Aboriginal people, which has rules, practices, habits which systematically discriminate against or in some way disadvantage Aboriginal people, is clearly engaging in institutional discrimination or racism. Generally speaking, if an institution which has significant dealings with Aboriginal people does not train its officers in such a way as to permit them to give the same level of service to Aboriginal people as it does to others, it is discriminatory against its Aboriginal clients. Medical and pain medical staff are good examples. Aboriginal patients have certain health problems which are not widely shared in the community; they present with some conditions in unusual numbers; many of them live in conditions in which non-Aboriginal people do not live. A doctor who has grown up in the broad society, been trained in Western medicine in a university influenced by Western culture is less able, without some special training, to provide a service to an

Aboriginal person than to a non-Aboriginal person; this represents a discrimination. A health service that sends doctors to areas with an Aboriginal population without appropriate training is discriminating in an institutional way. The Australian Medical Association's submission to the Commission (see Chapter 31) makes the point that 'appropriate orientation courses should be considered for medical practitioners ... who are to serve in' Aboriginal communities.

12.1.31 But what is true of doctors is true of other service providers. It is essential that service providers in areas of Aboriginal population should receive training that generally informs them of the traditions and culture of contemporary Aboriginal society, particularly in the area of service, and the history of relations between Aboriginal and non-Aboriginal people in that area.

12.1.32 Likewise, it is important that court officers dealing with Aboriginal people have some similar training.

12.1.33 Institutions which do not see the necessity for this training and do not provide it constitute examples of institutional racism which Aboriginal people are very conscious of. This is why my recommendations refer to this type of training, perhaps repetitively, but it is extremely important.

12.1.34 Local government organisations which provide a lesser level of service to Aboriginal residents than to others are guilty of institutional racism.

12.1.35 Laws against racial discrimination make it likely that those who wish to outrightly discriminate will find other bags for doing so. Membership of a club may be open according to the rules irrespective of race but some people may be made so uncomfortable that they will not become members in any event. Hotels may require a dress standard which outwardly is quite objective but which, in fact, is directed against Aboriginal people. Employers set standards of education for some jobs which are beyond what the job requires but limits the field of applicants, excluding the less well educated, amongst whom Aboriginal people are over-represented. These are examples of types of institutional racism.

I give two other examples taken from quite disparate areas of life.

12.1.36 After the 1967 Referendum and the establishment of the Department of Aboriginal Affairs, attention began to be directed to housing for Aboriginal people. In some parts of the country that proceeded by way of providing what was called 'Transitional Housing' (see Chapters 18 and 35). Public servants just assumed that Aboriginal people should go into transitional housing (which were little more than tin sheds) because they were not ready for proper (non-Aboriginal) housing. Many Aboriginal women who were taken as children to an institution or fostered, who were on missions, or pastoral properties were trained as domestic workers, many of them highly skilled. Women like this, some of them still working as domestics in fine homes, were put into 'Transitionals', because there was an inbuilt assumption of inferiority of Aboriginal people. Commissioner Dodson told me of this happening in Western Australia. It is an excellent illustration of institutional racism in action based upon stereotyping.

12.1.37 Marcia Langton, the head of the AIU in the Northern Territory, gave me another example which she thought to be a prime example of racism, although often well intentioned. She said non-Aboriginal people will not criticise or contradict Aboriginal people in educated discussion. It annoys her very much. It is treating Aboriginal people like children on the assumption that they cannot take criticism.

12.1.38 From the point of view of Aboriginal people the greatest example of institutional racism is probably their dependence upon government and thus being required to constantly be under the scrutiny of departments. They feel that they are

entitled to an economic base and entitled to make their own decisions. They feel that present arrangements subordinate them on an ongoing basis.

POSITIVE CHANGES IN COMMUNITY RELATIONS

12.1.39 It is a mark of many submissions made to the Commission that they (rightly) stress that racism is founded in the unequal position of Aboriginal people and that racism, and the community relations that go along with it, cannot be dealt with until Aboriginal inequality has been eliminated. In my view the second proposition is too absolute. The fact is, as I see it, that every step along the road towards equality has the potential to improve community relations, and every improvement in community relations has the potential to strengthen the move to equality.

12.1.40 It is important that the efforts which have been made by governments since the 1967 Referendum watershed should be critically examined and weaknesses exposed so that improvements can be made in the future. Likewise, Aboriginal people should, as at least in some cases to my knowledge they do, critically examine their own actions. There are plenty of errors that can be pointed to in the work of governments and the departments of government. I do not think that is surprising given the historical background and the fact that self-determination was something new as far as government and Aboriginal people were concerned. I believe that there is a wide area of agreement that there is a need for, and the possibility of, great improvements.

12.1.41 In my opinion, it is a grievous error to underestimate what governments, their agencies, and individuals and groups in the non-Aboriginal community have done and tried to do over the last twenty years. But it is an infinitely more grievous error, to the point of blind stupidity, to underestimate the effort which has been made by Aboriginal individuals, groups and whole communities to grasp the opportunities that have come their way, pursue their objectives and achieve success, some small (and perhaps fleeting), others solid and permanent, others spectacular, all of them history making. These successes cannot but affect community relations. A strong organisation has to be taken into account, to be dealt with on a proper basis, accorded respect; submissions and arguments have to be considered. People who deal with such organisations come, generally, to respect the people they deal with. A non-Aboriginal health worker in Alice Springs told me that Imparja television had profoundly affected many non-Aboriginal people--the idea that Aboriginal people could run a television station came as a great shock. Of course, many negative ideas still persist in the wider community.

12.1.42 In various out of the way places around Australia, Aboriginal medical services deal with non-Aboriginal patients. There is a renaissance of Aboriginal art and artifacts, dancing and singing. Many business people have mutually beneficial dealings with communities and organisations. In Darwin, the annual Aboriginal rock music event attracts great interest amongst non-Aboriginal people not only for the music but for the efficiency of the organisation and the 'grog free' status which the performers and organisers insist upon. The Aboriginal musical 'Bran Nue Day' has been hailed wherever it has been presented. Of course there are very many negative views in the wider community and some Aboriginal communities that are not doing well. Alcohol underpins stereotyping, and the very fact of Aboriginal success has its negative effects in the minds of people whose economic interests may be affected or who feel threatened in various ways. But overall, one cannot but be struck by the strong positive developments in Aboriginal/non-Aboriginal community relations, many instances of which are mentioned in this report as I discuss specific subject matters.

COMMONALITIES AND DIFFERENCES OF EXPERIENCE

12.1.43 One of the most striking features of the material that has come before the Commission, and one indicative of the comprehensiveness of state control, is the extent to which so much of the lives of those who died in custody and of their families is held in discrete official records-by government departments and welfare bodies; by various institutions such as children's homes, schools, hospitals; by police and other bodies within the criminal justice system. The extent of government involvement in, and control over, the lives of these individuals and families is staggering, ranging from surveillance of their domestic situation to the removal of children. It is clear from the cases that have come before us that instances of this involvement and control are not isolated but systemic. They both help to define, and are an outcome of, the position of Aboriginal people within Australian society. What emerges from a reading of the various cases is a stark picture of marginalisation, subordination, and alienation, for Aboriginal people as a group in relation to the broader society.

12.1.44 Foremost among these is marginalisation within the broader community. Such marginalisation is indicated by poor schooling, unemployment, poor health, poor housing, exclusion from the relevant processes of decision making. A medical practitioner from Carnarvon who gave evidence in the hearings relating to the death of Wayne Dooler described some of the physical aspects of this marginalisation which I describe in Chapter 18.

12.1.45 It must be remembered that these conditions existed, and were by no means unusual, at the very time when money was being lavished on building new towns, such as Karratha in the West Pilbara, in order to attract non-Aboriginal workers to the mining industry.

12.1.46 Other forms of marginalisation were a direct result of a government approach that, in the name of community interest, ignored the interests of a legitimate part of that community, that is, of Aboriginal people. Such policies have sometimes appeared to be in no way connected with Aboriginal people but have had a major impact on them. One such example was the choice by the British Government of Maralinga as the site for long range and atomic weapons testing.

12.1.47 Some of the effects of this are indicated in my *Report of the Inquiry into the Death of the Woman who died at Ceduna on 18 February 1983.* They included the separation of the southern Pitjantjatjara people--those associated with the mission at Ooldea and now Yalata--from their country and their northern kin. By forming a physical barrier to their access, the development of testing at Maralinga prevented not only the pursuit of hunting and gathering activities, but also the fulfilment of ceremonial obligations. I describe some aspects of this situation in my report:

> *An Aboriginal woman by the name of Alice Cox gave evidence before the Royal Commission into British Nuclear Tests in Australia in 1985. She gave details of an incident at Coober Pedy when the Native Patrol Officer MacDougall had cut rations to a group of Aboriginal people gathered at Coober Pedy in order to expedite their return to Yalata. This caused them to miss the ceremonies which they were proposing to attend. I understand that this woman was the mother of the deceased.*[15]

12.1.48 Secondly, and a crucial aspect of marginalisation, is a lack of control by people over many of the critical factors in their lives. Again, this is patent from many of the cases that have been heard by the Commission. Clarrie Nean's family, despite the fact that his father was employed and able to support them, had their

children removed from them and suffered constant 'intrusive scrutiny and surveillance'. 16 Malcolm Smith and his brother Robert were taken from their father, although they were not 'in bad health, undernourished, ill-treated or unhappy'. 17 Christine Jones, from the age of five, was brought up in missions separated from all but one of her family.[18] Christine's short life, including harmful use of alcohol, 'ducking police,'[19] and self-mutilation, shows all the hallmarks of being out of her control.

12.1.49 This dislocation of families has been a direct result of policies of the state and is perhaps the most eloquent testimony to the extent to which the state has exercised, and continues to exercise, control over the lives of Aboriginal people. One of its most profound impacts in people's lives has been a third theme from the Commission's hearings: that of a long experience of institutionalisation. The results were tragically clear, as I have suggested, in the cases of Karen O'Rourke, of Malcolm Smith, of Glenn Clark, of Christine Jones among many others.

BASES FOR CHANGE

12.1.50 I have no doubt, on the evidence that has come before me and before other Commissioners, that there is one fundamental change necessary to change the nature of race relations in Australia, and with it to reduce the over-representation of Aboriginal people in the criminal justice system. This is an alteration in the unequal relations between Aboriginal and non-Aboriginal Australians, in the position of Aboriginal people from being dependents on (and, in some instances, victims of') government controls to becoming negotiators with the government--and with other interest groups in the broader community. This must take place with due recognition of the special position of Aboriginal people as the original owners of this country and, at the same time, within the framework of their place as full citizens within the nation.

12.1.51 Some of this has already been achieved, as the result of a long and hard struggle in which it is impossible to name all the participants. But they include extraordinary Aboriginal activists and achievers like William Ferguson, Jack Patton, and Pearl Gibbs; the members, Aboriginal and non-Aboriginal, of groups like the Federal Council for the Advancement of Aborigines and Tones Strait Islanders (FCAATSI) who campaigned for a decade to achieve the success of the 1967 Referendum; the Gurindji people of Wave Hill; the founders of the first Aboriginal Legal and Medical Services. What these and other groups have already begun to achieve is a major shift in the approach to Aboriginal issues from a concept of charity or welfare to that of rights--the rights of Aboriginal people.

12.1.52 The establishment of this Royal Commission is one of the more recent outcomes of this long and ongoing process, and is an indication of the willingness of governments, Federal and State and Territory, to consider the dimensions of the interaction between their representatives in the criminal justice system and Aboriginal people. As the material coming before this Commission has made clear, there is still a long way to go, and the role of the third level of government, that of local government, is yet more problematic. This is a question that has arisen not only from the material presented to the Commission but also from reports by other bodies such as the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions. In a number of these, such as the Human Rights and Equal Opportunity Commission's *Toomelah Report in* 1988 and the Western Australian Equal Opportunity Commission's *Discrimination in Government Policies and Practices S.82(b) Report Number 6, Essential Service Delivery to Aboriginal Communities in Western Australia* in 1990, the role of local government and the operation of local government practices is seen to be a crucial area in defining

relations between Aboriginal and non-Aboriginal Australians.

12.2 RELATIONS AT LOCAL GOVERNMENT LEVEL

ABORIGINAL INTERACTION WITH LOCAL GOVERNMENT

12.2.1 Central to this issue, perhaps even more than at other levels of interaction with the state, is the question of a potential shift in the relations of power between Aboriginal and non-Aboriginal society. Here more than anywhere else can we consider without delay the possibility of Aboriginal people becoming *negotiators with the* State rather than dependents. I am happy to say, indeed, that in at least one local government area that I encountered in the hearings of this Commission, this situation seems to be already on the way to being achieved.

12.2.2 In the hearings in Alice Springs on local government, the Manager for Community Services on the Alice Springs Town Council made a statement to which I have already referred but which I repeat because of its importance in demonstrating what can be achieved when Aboriginal people play their appropriate role in relation to their own affairs. I refer to this example again, in another context, in Chapter 27 and Chapter 29. This example is given in the relationship between Tangentyere Council, a resource and service delivery body located in Alice Springs, and the Alice Springs Town Council.

> *I'd suggest that in Alice Springs we're in a fairly unique position in that we have a very strong organisation in the Tangentyere Council and rather than it being perceived as a threat by the Alice Springs Town Council I believe it's seen as an advantage because we have that representative organisation that we' re able to refer to and I would suggest that it's an illustration of the fact that there can be a very high degree of self-determination and self-management without in any way undermining the role and authority of local government.*[20]

12.2.3 This perception of the co-operation between the Town Council and Tangentyere Council is supported in a submission by Tangentyere to me which speaks of 'the harmonious relationship between [us and] the Alice Springs Town Council'. The Tangentyere submission also points out that the key to this harmony is

> *[t]he respective autonomy of the two Councils... Fortunately, under our current autonomous arrangement, Tangentyere does not depend on the Alice Springs Town Council responding to our concerns. We have internal control over our responsibilities. Tangentyere has made a conscious choice of not seeking funding from the Alice Springs Town Council, a decision which has denied us a source of much needed funding, but one which has allowed us to maintain a long-term basis for autonomous negotiation and coexistence.*[21]

12.2.4 Control by Aboriginal people over their own affairs, in other words, is a crucial aspect of the improvement in race relations in Alice Springs over the last decade. It is a situation which merits wide study not only by those interested in local government but by all interested in community relations.

12.2.5 The importance of local government in the whole question of Aboriginal self-determination is, of course, because local government is the tier of government that focuses specifically on the local situation, a focus that not only deals with the day-to-day realities of people's lives and the provision of services, but fits better than any other with Aboriginal modes of operating.

12.2.6 The material that has come before this Commission is an indication of the diversity of Aboriginal involvement or, more often, exclusion in the processes and decisions of local government, whether this be in areas with a majority or minority Aboriginal population. The situation across Australia is, however, very diverse and is discussed in detail in CHAPTERs 20 and 27. I summarise it briefly.

12.2.7 In New South Wales, under the *Aboriginal Land Rights Act* of 1983, Land Councils assumed responsibility for former Aboriginal reserves held since 1975 by the Aboriginal Lands Trust. This has led to some confusion in relation to who carries responsibility for local government services, since Lands Trust land was exempt from all local government rates, and despite the fact that the 1983 Act does not continue this blanket exemption from rate payments of Aboriginal land.[22] While there is provision in the Act for a local Aboriginal Land Council to apply to the Minister administering the Act for a declaration of exemption from local government rates, this applies only to former reserves. The legislation provides that the New South Wales Aboriginal Land Council is responsible for paying the rates owed by local land councils outstanding for more than twelve months. Most Aboriginal people in New South Wales live in ordinary Local Government Authority areas.

12.2.8 In Victoria, the only land granted to Aboriginal people under Victorian legislation is that at Lake Tyers and Framlingham, under the *Aboriginal Lands Act 1970.* Two other areas, Lake Condah and Framlingham Forest, were granted under Commonwealth legislation in 1987. The legislation refers principally, however, only to tenure and not to who is eligible, an issue that was raised in relation to Lake Tyers in the *Report of the Inquiry into the Death of Arthur Moffatt,* since all but a limited number of families with links to the area were excluded. All areas remain, therefore, under normal local government legislation. Hence all Victorian Aboriginal people live in ordinary Local Government Authority areas. Both Lake Tyers and Framlingham, through separate bodies, pay rates to their respective shire councils.

12.2.9 The situation in Queensland is quite distinct. There people living in communities on the former missions and reserves come under two quite distinct pieces of legislation (as well as some associated statutory provisions). These are the *Local Government (Aboriginal Lands) Act 1979,* which applies to Mornington Island and Aurukun, and the *Community Services (Aborigines) and (Torres Strait Islander) Acts 1984.* The 1979 Act created Aurukun and Mornington Island as Shires on a mainstream local government model. The 1984 Act established Community Councils and is the mechanism by which Deeds of Grant in Trust (DOGITs) have been granted to communities. The Deeds of Grant in Trust in effect provide inalienable freehold title to the Community Council area. Community Councils have limited power to enact bylaws.[23] All other Aboriginal people in the State live in normal Local Government Authority areas.

12.2.10 In Western Australia the entire State is incorporated into a system of local government. This means that all its Aboriginal communities are in mixed councils.[24] In 1987, for the first time, Aboriginal people won a majority of places on a shire council. This was in Wiluna, and created consternation among the local pastoralists who had traditionally held these positions.

12.2.11 The situation in South Australia is legislatively more complex than in other States or the Territory, but involves basically three types of communities: on Aboriginal lands where Councils have power to enact bylaws the Anangu Pitjantjatjara Lands (1981) and the Maralinga Tjarutja Lands (1984); those on Aboriginal land under the *Aboriginal Lands Trust Act 1966,* who have just been

given some very limited by-law powers; and those on non-Aboriginal lands, under ordinary Local Government Authorities; and those on non-Aboriginal lands but outside local government boundaries.

12.2.12 Tasmania has no special local government provisions that relate to Aboriginal people.

12.2.13 In the Northern Territory, a range of communities have councils incorporated as Community Councils under the Community Government legislation of 1978. These Councils may have full local government authority, including the power to enact by-laws. Councils also have considerable flexibility as to how they are constituted, and communities have taken advantage of this flexibility to develop different local models. This legislation applies not only **to** Aboriginal communities but also to towns with mixed Aboriginal and non-Aboriginal populations. At the end of 1989, three such towns, Borraloola, Elliott, and Pine Creek, were so incorporated.[25] In other remote areas the community councils have not elected to be incorporated under the community government legislation and remain incorporated under the *Northern Territory Associations Incorporation Act.*

12.2.14 There is some disagreement in the Territory as to the appropriateness of the local government provisions of Part VIII of the *Local Government Act.*

12.2.15 While I recognise the complexities of this debate, the Alice Springs situation that I referred to earlier may indicate that this situation is not insoluble, that the key is strong Aboriginal organisations, whether these take the form of local government councils or of other autonomous organisations. In my hearings into local government in Alice Springs there was discussion of the fears sometimes expressed in the wider community about the question of national unity and the possibly fragmenting impact of this kind of Aboriginal autonomy.[26] Again, the Alice Springs situation puts paid to these fears. What has been achieved, far from fragmenting the community, has enormously reduced the social costs of the racial disharmony and opposition that was so characteristic of the town before the development of the Aboriginal organisations. The same comment might be made in relation to Tennant Creek, where the same process of greater co-operation between the town council and the local Aboriginal organisations is taking place. This co-operation extends, as I shall discuss in the next chapter, to increasing and very important cooperation with police.

12.2.16 Clearly, these different provisions in different States and the Northern Territory mean that Aboriginal people live in a wide variety of different forms of local government. The impact of this on Aboriginal communities reflects this variety in important ways.

ABORIGINAL PEOPLE AS A PART OF MIXED LOCAL GOVERNMENT POPULATION

12.2.17 In many of the areas where Aboriginal people live as a part of mixed local government population, the material that has come before this Commission indicates that local government very often acts as a major force in the imposition on Aboriginal people of non-Aboriginal views. Commissioner Wootten discussed this in his *Report of the Inquiry into the Death of Harrison Day.* He examined the extent to which the views of predominantly non-Aboriginal Australians define the use of public space and impose penalties on those, particularly Aboriginal people, whose use of it, even when peaceable, is different. This is done through a process, often specified in local by-laws, of 'normalising': imposing, that is, a definition of the normal that in fact represents the particular standards of the non-Aboriginal Australian group. 27 Dr Edmunds points out in this context that not only are certain

behaviours defined as 'disorderly', but also that

> *[h]ealth and hygiene ... provide a discourse that allows practices that are essentially about controlling behaviour to be legitimated in terms of physical rather than social outcomes .28*

12.2.18 The end result of this is that many Aboriginal people are arrested for street offences and come into custody.

12.2.19 I deal with the issue of the involvement of local government authorities in determining police practices towards Aboriginal people briefly in Chapter 21 and with the issue of public space in Chapter 13.

12.2.20 There are other serious effects for Aboriginal people that result from the dominance of non-Aboriginal people in local government. The most glaring of these is the failure of local governments to provide appropriate services to their Aboriginal constituents. A number of reviews, from the National Inquiry into Local Government Finance in 1985, have made the point that, while local councils throughout Australia receive Commonwealth general purpose grants partly calculated on the basis of the Aboriginal populations residing within their boundaries, they 'do not generally cater adequately for Aboriginals'.[29] This observation was well supported by two subsequent inquiries. One was the Human Rights and Equal Opportunity's inquiry into the situation at Toomelah which

> *was appalled to find that the Toomelah community of almost five hundred Aboriginal people is denied the very services which most of us, and especially those non-Aboriginal people living in communities of similar size, take very much for granted.[30]*

12.2.21 In Western Australia, the Equal Opportunity Commission' s S.82(b) Report No. 6, Essential Service Delivery to Aboriginal Communities in Western Australia found

> *varying degrees of reluctance amongst local government authorities to accept responsibility for service delivery to Aboriginal people living within their areas .31*

12.2.22 In an earlier report in the same series, *S.82(b) Report No. 3, Local Government Services in Western Australia,* the Equal Opportunity Commission found even more damning in the Shire of Roebourne that:

> *The Council of the Shire of Roebourne may well have a case to answer over discrimination on the grounds of race in the provision of facilities and services in the town of Roebourne under Section 46 of the Equal Opportunity Act 1984.[32]*

12.2.23 *I refer to this review in my Report of the Inquiry into the Death of John* Pat, and to the fact that 'the Council is spending considerably less per head of the population of the town of Roebourne than it is spending, on average, on all residents of the Shire'.[33] This is in a Shire that is 'one of the richest Councils in the State outside the metropolitan area' 34

12.2.24 One of the major causes underlying this cavalier attitude on the part of local governments to Aboriginal people is the lack of representation of Aboriginal people on local councils. Aboriginal people have in many instances been excluded from participation in local government elections through particular provisions related either to rate payments or to residence. In other instances, such as in Roebourne, population distribution limits effective Aboriginal representation. The Roebourne Ward elects two councillors out of eleven. In 1988, an Aboriginal

Councillor was elected for the first time.

12.2.25 This lack of an Aboriginal presence in local government not only continues the separation of Aboriginal from non-Aboriginal people, it also prevents appropriate recognition of Aboriginal interests and therefore reinforces their marginalisation. There is some indication that, when there is a majority of Aboriginal people, there are marked changes in this situation. As I mentioned earlier, in 1987 Aboriginal people formed a majority for the first time on the Wiluna Shire Council. The effect is described by Gerritsen.

> *Reflecting Aboriginal priorities different from those of the pastoralists that had traditionally dominated the Shire, this election led to immediate changes in roads classification and consequently expenditures. The redirection of funding was towards access roads to Aboriginal communities rather than to stations or for tourist access roads.*
>
> *Wiluna is an important example of Aboriginal concerns being forced into the mainstream of governmental policies. Historically, in Wiluna as elsewhere in Australia, the political participation of Aborigines had been mainly passive, in the sphere of welfare policy. Aborigines were the subjects of policy rather than active participants in shaping it. Gaining power over the Shire and its interactions with State and Commonwealth government roads funding policies meant that the Aborigines of the Wiluna Shire were shaping policy to suit their majority in the Council.*[35]

12.2.26 What this suggests is that, even where Aboriginal people do not have an independent basis for action, the provisions of local government can make it possible for them to set the agenda for government spending. This is, however, a difficult and elusive goal, as the situation in many of these local government areas demonstrates.

ABORIGINAL PEOPLE AS A MAJORITY OF LOCAL GOVERNMENT POPULATION

12.2.27 The situations in the Northern Territory and Queensland indicate that the question of self-management for Aboriginal people has become at least in part a question of local government. That is, local government is the instrument which allows involvement by particular local interest groups, including Aboriginal groups, within existing institutions. In CHAPTERs 20 and 27 I deal more extensively with the significance of local governance as it relates to self-determination. However, there are aspects of that question which are central to community relations and I will here summarise the developments on local government and local .governance. As the submission by Tangentyere pointed out, however, the issue of delivery of municipal services

> *is not the central issue. Rather, it is the control of a broad range of social the priorities and devising the mechanisms for delivery.*[36] *and community related resources. This includes determining*

12.2.28 The importance of this observation, and the extent to which Aboriginal .people in the Territory are extending their control of such resources, is indicated by the range of different models that have developed there. At Angurugu on Groote Eylandt, for example, there is a clan-based scheme of representation, at Barunga-Wugala it is language based, and at Yuendumu it is based on sub-section or skin groupings.[37] Each of these schemes is an attempt to balance different

interest groups within communities. The Dunstan Report of 1989 commented in relation to three of these communities.

> *The three communities visited appeared to be operating well, the councils were in control of community business and had a good understanding of the legislation and had effective administrative infrastructures.*[38]

12.2.29 One of the serious drawbacks to the acceptance by Aboriginal communities of the local government model, however, is in relation **to** restrictions then placed on them in the control of financial matters, a pivotal aspect of autonomy. I return to the Tangentyere submission and its insistence that

> *a factor in Tangentyere's 'success' has been the ability to achieve autonomous power, and, for its early period of development, secure funding. The conditions for this 'success' is particular to the Northern Territory and may explain why there are so many successful Aboriginal Organisations in Central Australia...*
>
> *We would be less able to achieve our objectives if we were incorporated into the Alice Springs Town Council structure as an advisory or management committee, where we had to compete with mainstream demands for resources for town camps...*
>
> *The lesson from the Tangentyere Council and Alice Springs Town Council experience is the importance of autonomy of the institutions and respect for each Council's respective objectives, particularly for self-determination for the Aboriginal town campers.*[39]

12.2.30 What is clear from the differing situations in the Territory is that different communities have opted for varying structures in order to achieve self-management and that this reflects the very different regional factors involved. Despite continuing problems, the key to the situation **is** related less to formal involvement in local government, although this has been important in some communities, than to an effective shift in relations of power between Aboriginal and non-Aboriginal Territorians. This shift towards greater control over their own affairs is the factor that transforms Aboriginal people and their organisations into negotiators.

12.2.31 The situation with Community Councils in Queensland appears much less satisfactory. The problems occur because of the unsatisfactory nature of their legislation. Commissioner Wyvill, in his *Report of the Inquiry into the Death of the Young Man who Died at Wujal Wujal on 29 March 1987,* commented on the situation in that community.

> *Even now, the local government structure in place falls far short of effective self-management. The powers of intervention by State Government in internal affairs are much greater than for non-Aboriginal local governments. In addition, the Wujal Wujal Council bears responsibility for a range of functions which are not imposed on other local governments. The usual responsibilities of local government are onerous enough. Typically, administrative assistance is provided by highly qualified and experienced town clerks, town planners, engineers, solicitors and the like. However, Wujal Wujal is essentially without such expertise. A lack of even basic training for administrators and councillors has compounded this situation.*[40]

12.2.32 The Dunstan Report, 41 while finding that the communities, with the exception of Aurukun, were 'operating effectively with local government status', pointed to particular problems for the Councils. One was lack of control over access by outsiders to their lands. Main roads within their communities currently are public roads, not under community ownership. The other significant problem is the responsibility for Aboriginal police, and the divided powers between Community and State police. I will deal with this in Chapter 20.

12.2.33 At the same time, because Queensland Community Councils were not constituted under the *Local Government Act,* they were, as Gerritsen points out

> *not initially entitled to a wide range of subsidies from the Commonwealth and Queensland governments, or grants allocated by the Queensland Grants Commission, as well as a range of services provided by the Local Government Association of Queensland.*[42]

12.2.34 The history of the community councils demonstrates the quite different basis from which they arose in Queensland from the Northern Territory. In Queensland, the Government's declared preferred model was 'integration', that is, assimilation, of Aboriginal people into mainstream Queensland society.[43] Without the independence provided by the Land Councils and other Aboriginal organisations in the Territory, the Queensland Councils have been much less able to develop appropriate structures of their own choosing. This is markedly so in the case of Aurukun.

12.2.35 The situation in Aurukun came in for particular criticism in the Dunstan Report, as it did by Commissioner Wyvill in his inquiries into the death of the young man there. Here, the mainstream Shire model introduced in 1978 has proved singularly inappropriate for a remote community, and has resulted in an overwhelming increase in the numbers of outsiders, particularly non-Aboriginal outsiders, in the community. Rather than increasing the control of Aboriginal people over their affairs, the Shire model imposed by the Queensland Government on Aurukun has radically lessened it. I can only urge the present government to review urgently this situation, and to make a firm commitment to the development of appropriate serf-management for Queensland communities.

12.2.36 In South Australia, the Dunstan Report found that:

> *Aborigines are not receiving local government services in South Australia comparable to other members of the community, nor in accordance with need.*
>
> *Present structures of Aborigine self-management are not satisfactory for the provision of [local government] services. Additional funding and by-law making powers are required. 44*

12.2.37 The Report [45] also suggests a series of 'positive steps' that local government authorities could take to improve their relationship with Aboriginal communities within their boundaries, including--apart from the obvious one of provision of services--such possibilities as the appointment of an Aboriginal liaison officer or community worker and training in local government processes and community development skills. In 1989, the South Australian Department of Local Government initiated the Local Government Aboriginal Participation Project. This was designed to:

- *increase the participation of Aboriginal people as electors and Councillors;*
- *increase Aboriginal people's awareness of local*

government; and

- *encourage and assist Local Government's responsiveness to the needs .of Aboriginal communities.*[46]

12.2.38 For communities on Trust Lands, Dunstan recommended a revision of the Lands Trust and expansion of Trust government to allow

membership from Aboriginal and Torres Strait Islander Commission (ATSIC) regional councils.[47] It is interesting that the Pitjantjatjara people are now so comfortable with the form of council that they already have that these recommendations have not been implemented.[48]

12.3 HOTELS AND HOTEL-KEEPERS

THE CENTRAL SOCIAL ROLE OF HOTELS

12.3.1 I deal in other sections of this report (Chapter 15 and others) with the role of alcohol in a number of the cases of those who have died in custody. Here I wish to make some observations about the role played by hotels and hotel-keepers in the general context of relations between Aboriginal and non-Aboriginal Australians.

12.3.2 Central to an understanding of this situation is the whole question of the historical significance of drinking rights for Aboriginal people. In this, as in so many other areas of Aboriginal life, the state has played a critical role. The various forms of legislation regulating access to alcohol for so long by Aboriginal people are but one more manifestation of state control and of the importance of the state in defining the position and identity of Aboriginal people. What resulted from this involvement by the state was not only a further distinction between 'half-caste' and 'full-blood' people, but a most destructive nexus between the right to drink and citizenship. In other words, the right to drink and the right to enter pubs became a potent symbol for Aboriginal people of equality within the broader society. Rowley, in his pioneering studies of the history and politics of Aboriginal and non-Aboriginal relations, points to the irony that, in the long process of establishing equal rights for Aboriginal people, 'more attention was... given to the right to drink than to wage equality'.[49]

12.3.3 The pub became the place where, in theory at least, both Aboriginal and non-Aboriginal people can meet and mix on equal terms.

12.3.4 In practice, of course, there is often a disjunction between the symbolic and actual roles of the pub. The cases coming before the Commission show that this can take a number of different forms. One form is black and white bars. In the case of Eddie Murray the impact of a third form was made very clear, that is, of the power of publicans to bar individuals from entering at all, including their barring for life. In reality, therefore, pubs, while remaining a symbol of equality, often become yet another place of exclusion and discrimination for Aboriginal people, and therefore of confrontation between Aboriginal and non-Aboriginal people. I note in this context the number of occasions where, when there has been oven confrontation between Aboriginal and non-Aboriginal 'locals, the focus of Aboriginal anger has been the pub and the destruction of property has been confined almost exclusively to this building. This was so in Roebourne after the death of John Pat, in Brewarrina after the death of Lloyd Boney in Goondiwindi prior to the Toomelah Inquiry by the Human Rights and Equal Opportunity Commission, to name but a few such incidents.

12.3.5 There is another aspect of this differentiation between Aboriginal and non-Aboriginal people that has become clear from the hearings before the Commission. In a number of places, local non-Aboriginal people have access to the facilities of a club which then becomes a bastion of non-Aboriginal privilege and exclusivity, tending to reinforce the sense of separation between 'us' and 'them'. This issue arose in the public hearings of the Commission in Swan Hill in relation to access by Aboriginal people to the golf club. In the hearings in Roebourne, it was plain that, despite the very considerable segregation between the 'black' and the saloon bars at the hotel, many non-Aboriginal people also made use of the club. In other words, the place where people drink, even leaving aside for the moment the question of drinking in public places, has been made yet another marker distinguishing Aboriginal from non-Aboriginal people in many places.

12.3.6 Hotels have another role that relates to the question of the use of alcohol by Aboriginal-and non-Aboriginal--people. In many small country towns, they provide a focus for recreational and social life, a focus that is not challenged by the provision of other kinds of recreational facilities. In Roebourne, to take but one instance, there is not even a local swimming pool, despite the request over many years by local people for one, and despite the fact that the neighbouring non-Aboriginal towns both have excellent facilities. In a sense, then, pubs, and the consumption of alcohol, in these situations take on the role of institution in relation to social life.

12.3.7 The extent to which this role is assumed as much by default as for any more positive reason is indicated by the case of Eddie Murray. It was made clear that Eddie 's drinking was generally limited to those times when he was not in training for football in Sydney. During the football season, he drank little if at all. His drinking was confined to off-season periods in Wee Waa. There are clear implications here for the importance of providing other recreational facilities, especially in rural and remote areas, and particularly for younger people.

Recommendation 58:

That Governments give consideration to amending the liquor laws to provide a right of appeal to persons excluded from a hotel where that exclusion or its continuation is harsh or unreasonable.

ROLE OF PUBLICANS

12.3.8 Two matters concerning hotels and the publicans and managers of hotels have appeared quite regularly in discussions and in some of the cases. They relate to different and indeed rather opposed practices. But they engender great indignation amongst Aboriginal people and at least in some cases for good reason.

12.3.9 The first is that Aboriginal people are excluded by dress or other rules from hotels, or are made so little welcome that in effect they are excluded. This is a very frequent complaint in some cities and some larger towns. I remark elsewhere in this report that Mr Godwin, Commander of the Police Service in Alice Springs, told me that there was only one hotel (of very many) in Alice Springs where, in effect, Aboriginal people could comfortably drink (other evidence suggested two). The complaint here is exclusion and discrimination. Recently Aboriginal interests have successfully launched anti-discrimination complaints against hoteliers in Charleville and Mareeba (Queensland) and in Port Augusta (South Australia). Some quite substantial damages were awarded. These events are bound to have

effects within the industry.

12.3.10 The other complaint is even more common and very deeply felt. It is that it is common for hotels to serve Aboriginal people who are drunk and virtually unknown for the hotel to be charged with the offence of doing so. This is quite a complex question and an important one because it bears on a number of issues.

12.3.11 It is quite evident that in a country town there is a very close association between the hotel and the police. By close I do not imply impropriety. It is just that in the first place the police officers are likely to patrol the hotel very regularly; the number of police officers is small so that there is a constant interaction between the hotel management, staff and police. The hotels are likely to be places where there may be trouble in the way of fighting or threats of fighting; people are likely sometimes to be asked to leave and to refuse, or having left to return; juveniles attempt to be served. There are many opportunities for incidents which may get to the point of police being called. The police in some respects act as a defence for the publican if things get out of hand. It is also the case that in towns with a large Aboriginal population and numerous arrests for alcohol-related offences that many of those arrests occur in or around the hotel and some of them at the instigation of the publican. Furthermore, particularly if the town is small, there is very likely to be a natural social relationship between police and publican. All of those factors were very much present in Roebourne **at** the time of John Pat 's death.

12.3.12 It is absolutely predictable that Aboriginal people will in such circumstances feel that there is a very strong alliance between the hotel and the police with special advantages to the publican.

12.3.13 It is against this background that one has to see the complaint that hotels serve intoxicated Aboriginal people and are not charged with the offence of doing so. The fact that such people are served upsets particularly those who are concerned about the effects of alcohol in the community; but the fact that the persons are served to the profit of the publican and that the police are seen to be not interested is widely condemned. It is a very strongly felt grievance in many communities.

12.3.14 As to what the facts are, of course, I cannot say in any specific way. Having listened to much evidence relating to the hotel in the John Pat case I am quite sure that intoxicated people were served in Roebourne. The uncontradicted evidence is that if a person could get to the bar and stand there and ask for his order he or she would be served (I do not imply that this applied only to Aboriginal drinkers).

12.3.15 I asked a number of police officers about this (in the John Pat case and otherwise). They say there are difficulties. People who are not drunk buy for people who are. It does not follow that because a drunken person is carrying liquor away from a point just outside the hotel that that person purchased it; that it is not easy to judge how effected a person is by alcohol (unless the effect is gross); that Aboriginal drinkers do not help (if the officer goes into a bar and sees a person intoxicated and with alcohol in hand the other drinkers will not say whether that person bought the drink). I have no doubt there are difficulties. I also have no doubt that these difficulties could have been overcome on at least some occasions in Roebourne in 1983 with determination and perhaps some imagination. It is well known that other enquiries have recorded the same complaint and urged action. I think that the time has come for action. It will greatly improve the image of police in the eyes of Aboriginal people if they are seen to be active in enforcing the law not only against Aboriginal drinkers but also against publicans.

Recommendation 59:

That Police Services use every endeavour to police the provisions of Licensing Acts which make it an offence to serve intoxicated persons.

12.3.16 I consider that this is a very good area for negotiation between publicans, police and relevant Aboriginal organisations.

12.3.17 As in so many other matters, I am able to record the beginnings of change in relations. In October 1990 1 conducted a hearing in Katherine in the Northern Territory on some local matters. One of the Katherine hoteliers (who was additionally a principal officer of the Northern Territory Branch of the Australian Hotels Association) attended and gave evidence about various aspects of the industry in Katherine. In particular, he told me of efforts being made by him working together with the local police and Aboriginal interests to tackle the problem of juveniles buying alcohol in the hotels. Shortly afterwards I became aware of the fact that in Tennant Creek also discussions were taking place between the hoteliers, police and the Aboriginal organisations about matters of concern in that town. All those concerned are to be congratulated. It is the act of sitting down together and discussing things in a practical manner that signifies the step forward in community relations.

12.3.18 A further development which should be noted is that Aboriginal people have begun to undertake investment in the hotel industry (as in the case of the Gagadju Association) and more importantly from the point of view of the present discussion in the actual running and operation of hotels serving Aboriginal communities. There is no universal Aboriginal approval of such developments. However, it has led in some places to some control over drinking patterns in directions considered good by the community. It is a question for individual communities and organisations, but, it undoubtedly offers ways of exercising control in a very sensitive area.

12.4THE HEALTH SYSTEM AND ABORIGINAL PEOPLE

12.4.1 In CHAPTERs 23 and 31 of this report I deal with questions of the standard of health of Aboriginal people and the provision of Aboriginal health services. It is unnecessary at this point to more than indicate that relationships between Aboriginal people and those persons who are engaged in the administration and delivery of health services is a very important aspect of community relations. The cases reveal (and the other investigations which the Commission has undertaken confirm) that in the past relations between Aboriginal people and the health system have reflected all the negative aspects of relations in other areas. It is also clear that in many ways changes in relations in wider areas are being reflected also in this area. Of course, it is to be acknowledged that there have always been very dedicated health workers who have in some cases devoted their lives and in other cases much of their working lives to the service of the health of Aboriginal people, and many hospital staff who have applied themselves to their work with skill and a caring attitude. Nevertheless, the general perception of Aboriginal people is of unequal treatment and of an environment (including the actual structured environment in which health services were provided) insensitive to their style and thinking. This is not really surprising given that the health workers are recruited from the more general community and must inevitably reflect much of the general attitude.

12.4.2 This is an example of institutional racism, an assumption being made that there was no need to take into account Aboriginal sensibilities even in areas where the Aboriginal people constituted a very considerable proportion of the

population. There was very strong evidence in the cases of the fact that many Aboriginal people discharge themselves from hospital prematurely. It is quite clear that in many cases nursing staff in particular made considerable effort to persuade the patient to stay and were most professional and caring in their approach (an instance is referred to in my report of the inquiry into the death in South Australia of Eddie Betts) but at management level there does not seem to have been, at least in some cases, consideration to and investigation of the real reasons for early self discharge. The death of Eddie Betts prompted the Port Lincoln Hospital to appoint an Aboriginal liaison officer and both the Matron and the Manager said this comparatively simple step had excellent results for the service that the hospital was providing to Aboriginal people. It also made it easier for hospital staff to provide the service and that the appointment facilitated the work of the hospital staff. Many hospitals now have Aboriginal liaison officers and this is an excellent development.

12.4.3 The emergence of community controlled Aboriginal medical services is of course a major development in the area of delivery of primary health care to Aboriginal people; but also in the matter of community relations. Other health care workers now deal at the professional level with the services, and this can only have the effect of putting community relations on a more equal footing. Aboriginal Health Worker (AHW) Programs have the same effect. They are particularly well developed in the Northern Territory which, I understand, is the only place in Australia which has a registration board for AHWs. It is recognised that AHWs are in quite a unique situation. A career structure has been implemented for these workers which again helps to give the health workers, in particular, and the Aboriginal community in general higher status amongst health providers.

12.4.4 I mention one other matter. Evidence discloses that generally speaking there are very few Aboriginal persons who are members of hospital boards, even in those areas where Aboriginal people comprise a large percentage of the population. It is important that Aboriginal communities should be represented on hospital boards by people who are truly representative. In this connection I quote a passage from the report of the inquiry into the death of Mark Quayle who died in Wilcannia.

> *[T]he process of selection was one in which white people were given a say and indeed a veto over the selection of Aboriginal members, but no attempt was made to seek the opinion of the Aboriginal community ... of a list of seven members from the Aboriginal community who volunteered to become members of the hospital board after Mark' s death, two were excluded from the list because of objections by the local Member of Parliament. The advice of Matron Crisp was sought on the remaining five, as a result of which only two names were endorsed by the Matron. There was no Aboriginal community consultation or consultation with the existing Aboriginal board member. 50*

12.5 THE SCHOOL EXPERIENCE

12.5.1 I deal at some length in CHAPTERs 16 and 33 with the status of Aboriginal education and proposals for the delivery of services. Plainly again, the general inequality of Aboriginal people is reflected in the educational services with which they are provided. In fact, I think it would be fair to say that the education system as a whole made a very considerable specific contribution to Aboriginal disadvantage and to poor understanding in the community with consequential poor community relations by teaching Australian history, in particular, and other aspects

of the curriculum in general, in a way which very much marginalised Aboriginal society and Aboriginal people. As I discuss later, that position is improving.

12.5.2 I would only add this to what appears in the other chapters. What this chapter attempts to show is that there was a widely pervasive attitude in Australian society which regarded Aboriginal people as inferior on racial grounds. This attitude ran through all the institutions of the society so that it affected legislation, government policy, the education system, the health system and every other system the operation of each system strengthened the other. Parents had negative attitudes towards Aboriginal people; their children went to school and there received and brought back into their homes negative attitudes which reinforced the attitude in the home. This is but one example. Particularly important developments in the area of relations in respect of education are: the development of the national Aboriginal education policy which I discuss in some detail; the development of Aboriginal controlled and adult education providers; the taking of a position in relation to racism in the classroom---Vol 2 by education departments and by bodies like the Australian Teachers' Federation and its constituents; the training of Aboriginal teachers and their appearance in the classroom and the development of Aboriginal education workers along with some special steps taken by higher tertiary education bodies to facilitate the entry of Aboriginal students. All of these developments have an impact upon community relations all over the country, and, because of the very important role which education plays in the life of the country, will inevitably impact community relations even more profoundly.

12.6 MEDIA

12.6.1 In this general overview of the dimensions of racism in Australia as it has emerged from the hearings before the Royal Commission, my focus has been very much on the impact of state intervention and control on the lives of Aboriginal people. I have indicated the multiple forms that this has taken and continues to take. I have suggested that much of the racism that is experienced by Aboriginal people is to be found in our institutions and in institutional practices, and that the impact of those practices has been to maintain the inequalities in Australian society and the subordination of Aboriginal people.

12.6.2 The media does not easily fit into the categories that I have discussed. Nevertheless, the media constitutes one of the principal institutions in Australian society, but one that stands in a special relation to the institutions of government. From one point of view, the media incorporates the tensions that exist between the activities of government and the community. Historically in this country the best of the media has played the role of monitor and often critic of government institutions and agents. It stands in relation to government practice, therefore, as a form of collective conscience, challenging and putting other institutions under pressure and often acting as a catalyst for change. This it does, not necessarily by initiating change, but in two other important ways. One is by representing to the wider community those actions and processes that are concerned with change. The other is to represent to local communities the standards of a broader community against which their actions are then judged. It locates the local community in the broader community. The media to a large extent, by providing this broader context, sets the agenda. It may not tell us what to think, but it does set the parameters of what we think about.

12.6.3 The media played a significant role, for example, in the establishment of this Royal Commission. By its coverage of the issues, from the death of John Pat to that of Lloyd Boney, by placing them in their broader social and moral context, and by its presentation of the campaign of the Committee to Defend Black Rights,

the media has acted as one of the protagonists in the process of achieving greater justice for Aboriginal people that is the goal of this Commission.

12.6.4 This process, of course, is by no means a simple one. The media is also another place where Aboriginal people experience discrimination in access and presentation. There is a different historical role of the media, one that has relegated Aboriginal people to the fringes of society and is perhaps best seen in the cartoons that have appeared in our newspapers for almost 200 years. *The Bulletin,* one of our major weeklies, had as its masthead until as recently as 1960 the slogan, 'Australia for the White Man'.

12.6.5 How the media presents a particular group in the community is, of course, very important as to how that group is seen by the general public and, therefore, very important for community relations. Aboriginal people generally claim that they have had a very bad deal from the media. They receive support from the well-known lawyer and Australian Broadcasting Corporation (ABC) journalist Stuart Littlemore, who in a submission to the Commission said:

> *Any person who has watched television in this country in the last 25 years has seen the customary portrayal of Aboriginal life on the streets and in the reserves: almost invariably concentrating on drunken people and altercations between Aborigines, or between Aborigines and police.*[51]

As I say in chapter 28, I think that there are changes taking place.

12.6.6 Aboriginal people see police as having a privileged position in the media. In this overall situation, the voice of Aboriginal people is often markedly absent. Although this is beginning to change, in many ways on the basis of action by Aboriginal people themselves, changes are slow, and they vary enormously across the different kinds of media.

MEDIA REPRESENTATION OF ABORIGINAL PEOPLE

12.6.7 In discussing the question of media representation of Aboriginal people, it must be remembered that the same kinds of institutional processes are at work as those I have already alluded to in relation to other institutions. This was articulated by a journalist to the Commission in Perth.

> *Racial stereotyping and racism in the media is institutional, not individual. That is, it results from news values, editorial policies, from routines of news*
>
> *gathering that are not in themselves racist or consciously prejudicial. It results from the fact that most news stories are already written before an individual journalist is assigned to them, even before the event takes place. A story featuring Aboriginals is simply more likely to be covered, or more likely to survive sub-editorial revision or spiking, if it fits existing definitions of the situation.* 52

12.6.8 There is great variation between the print media and the electronic media, especially television, in the representation of Aboriginal issues. There is great variation within the various forms and outlets of the print media, for example between southern and northern, eastern and western, and urban and regional newspapers. There is considerable variation within television networks, especially the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Services (SBS) as distinct from commercial channels. SBS was the first national television network to present a regular Aboriginal program, and the ABC followed

not long after.

12.6.9 Although there are notable exceptions--and these are being seen with greater frequency--there are a number of ways in which the representation of Aboriginal people in the media is more or less common to all. On the one hand, Aboriginal interests are often ignored, and hence become invisible to the broader community. A common complaint relates to the absence of regular Aboriginal characters (or indeed other minority characters) in such popular television programs as *Neighbours* or *Home and Away,* programs that claim the validity of typicality.

12.6.10 A second, and perhaps more widespread, approach to Aboriginal issues in the media is the construction of Aboriginal people as a 'problem'. The most common issues dealt with are, on the one hand, matters of welfare such as health, education, housing, and employment. On the other hand are law & order issues, including those relating to deaths in custody--the representation, that is, of Aboriginal people as a dissident, disruptive, or criminal element. It was interesting to note the increase, during and after the Bicentennial year of 1988, in the use of the word 'riot' in relation to confrontations involving Aboriginal people in places as far apart as Redfern and Halls Creek. This trend can in fact be seen from 1987. An analysis of the *Sydney Morning Herald* from January 1987 to April 1990 shows that 40% of all references using the word 'riot' with reference to events in Australia were related to Aboriginal people.[53]

12.6.11 Some media 'beat ups' have been identified to the Commission. One such was analysed in Commissioner Dodson's Regional Report.[54] This referred to a story in the *West Australian* newspaper which appeared under the headline, 'Aboriginal Gangs Terrorise Suburbs'. In fact, as subsequent research, including interviews with local police, showed, there was no substance to the story at all. What the incident, by no means a typical, demonstrated was the sensational manner in which stories about Aboriginal people, and particularly about Aboriginal young people, are treated in the press. One response to the story indicates, however, the multiple voices that speak within the media. This was a letter to the Editor of the *West Australian* signed by ABC radio journalist, Doug Spencer, and forty-five other journalists, which deplored the way in which the 'gangs' and other Aboriginal stories had been treated.[55]

12.6.12 It is not necessary to pursue this question at this stage, although I do so to some degree in Chapter 28. But an important question is the development of an Aboriginal media which allows Aboriginal people to speak for themselves.

ABORIGINAL MEDIA

12.6.13 There are a number of significant Aboriginal bodies now devoted to media who offer to Aboriginal people the opportunity to speak for themselves. Perhaps the most notable, because most high profile, of these is the Central Australian Aboriginal Media Association (CAAMA), in Alice Springs. It is interesting that the focus of CAAMA's radio broadcasting is not non-Aboriginal people but Aboriginal communities, and many of its programs are in Aboriginal languages. Imparja, the television station, however, does target non-Aboriginal as well as Aboriginal people. The result is that, for the first time in Australia, the framework within which people view their television or, in the case of CAAMA, listen to their radio--is set in terms of Aboriginal priorities. The result is a mix of ordinary commercial programs, with all their underlying assumptions about the nature of Australian or Western society, in juxtaposition with programs or community service advertisements that include Aboriginal people not as different or dependent, but as

a normal part of an everyday world.

12.6.14 The ownership of these two licences by Aboriginal groups gives CAAMA and Imparja an advantage over other forms of Aboriginal involvement in the media. Nevertheless, the various regional media organisations are also providing a basis for access to media as well as for effective lobbying in relation to Aboriginal issues. In a number of newspapers, for example the *Northern Territory News,* there is now a regular column by an Aboriginal spokesperson, in the case of the *Northern Territory News,* by Galarrwuy Yunupingu, Chairman of the Northern Land Council. In Tennant Creek, the local *Barkly Regional* for several years also published regular articles by local Aboriginal organisations. While these are small steps, they are important ones, for what they do is to give Aboriginal people legitimacy in the world that is taken for granted by non-Aboriginal people. It also makes them actors, not victims, in this world, an interest group which is at last gaining a voice in the public arena.

ROLE OF MONITORING BODIES

12.6.15 One of the outcomes of the way in which the relationship between the media and government has developed in Australia is the extent to which, despite government legislation, the media tends to maintain considerable control over its own regulation. The media indeed is often presented as a model of self-regulation where self-regulation derives from the concept of professionalism, and what is regarded as appropriate professional conduct.

12.6.16 An important form is the code of ethics of the Australian Journalists Association (AJA) or the policy on racism adopted by the SBS. As well, there are a number of commercial sector bodies to deal with public complaints. Importantly, at least from the point of view of the industry, there are the Australian Press Council and the Advertising Standards Council.

12.6.17 I note, however, that notwithstanding the very many complaints about the media made to me and other Commissioners by Aboriginal people, few complaints were taken formally to the Press Council. One explanation for this 'may be that Aboriginal people simply lack faith in the complaint system; a lack of faith which extends to, and may well be influenced by, the difficulties that Aboriginal people have experienced in using other complaint mechanisms, especially those concerning police behaviour.

12.6.18 What is at issue in looking at the question of the role of the media in race relations is, yet again, the domination of another powerful institution by non-Aboriginal Australian people. This is the question that must be addressed in any moves to change the way in which media represents Aboriginal issues. I have suggested the pivotal role being played in this by CAAMA and Imparja in the Northern Territory. Other avenues are those being pursued by the SBS and the ABC in relation, for example, to Aboriginal employment, training, and programming. This involvement of Aboriginal people in the mainstream media, which must include the possibility for participation in policy and decision making, is essential, since it is mainstream media, especially the electronic media, that is most potent in mediating to us how the world is.

12.6.19 In the end, however, in the media as in all the other areas I have canvassed in this discussion on community relations, the key to real change is a change in the position of Aboriginal people. Aboriginal involvement in media is crucial. It is clear that they have many valuable allies among journalists and others working in the media. This is an alliance that reflects the best of the media's willingness to take a stand on difficult issues and to confront both governments

and their agents, as well as the rest of the community, with our moral as well as legal responsibilities. The media is a powerful institution. It is a power that must be shared, not in kindness but in justice, with Aboriginal people.

CHAPTER 13 THE CRIMINAL JUSTICE SYSTEM RELATIONS WITH THE POLICE

The broad discussion of relationships between Aboriginal people and the non-Aboriginal community in the previous chapter provides the background for this chapter's discussion of the relationships between Aboriginal people and the police. While I deal here specifically with Aboriginal/police relations, I view this relationship not only with regard to the behaviour of individuals but also in the context of the criminal justice system as a whole. Within this system the police represent the front line, the first point of contact, between Aboriginal people and the criminal justice system.

The chapter reviews the types of relationships that exist between Aboriginal people and the police, and the systems of social controls that Aboriginal communities themselves exercise. The historical basis for the present poor relationships are analysed and shown to be part of that legacy of history. The chapter concludes with an overview of the Aboriginal-police relationships existing in each State and the Northern Territory, and identifies pleasing improvements in some areas. CHAPTER 29 examines strategies available to improve relationships in this critical area.

13.1ABORIGINAL-POLICE RELATIONS IN THE CONTEXT OF THE CRIMINAL JUSTICE SYSTEM

13.1.1 Relations between Aboriginal people and police occupy, in one sense, a key role. The first step in almost every Aboriginal custody is a police action. Where that action is a result of some serious criminal conduct by an Aboriginal person, the police have no alternative to arrest, although, even then, the manner in which they treat Aboriginal people, and particularly the manner in which they treat juveniles, may have important effects in a number of ways. For instance, in an immediate sense the nature of this interaction is likely to determine whether or not there will be ancillary charges arising out of the arrest, against the offender or others. In the long term the interaction may also affect the future attitude of the offender and the offender's associates towards the police and the law. In other cases the matter may be minor and other options will be explored. The nature, however, of the Aboriginal/police interaction cannot be divorced from the nature of the criminal justice system nor the larger society picture in which the interaction takes place. Hence, to say that relations between Aboriginal people and police are a key point in determining the numbers of Aboriginal people that come into custody is not to suggest that the over-representation of Aboriginal people in custody can be explained solely or even mainly in terms of Aboriginal/police relations, or that it can be overcome merely by changes in Aboriginal/police relations. I have examined in Chapter 11 the social indicators of Aboriginal disadvantage; in subsequent chapters I discuss education, employment, health, housing and other disadvantages as causes of the disproportionate detention of Aboriginal people. Police officers have little to do with these matters (except in so far as individuals they are community members). It is the larger non-Aboriginal community that bears

responsibility for the circumstances that give rise to Aboriginal disadvantage and the legacy of history referred to in Chapter 10. Commissioner Muirhead has already pointed out the importance of this relationship between police and Aboriginal people in the Interim Report, identifying police as 'the cutting edge of an uncaring society'.

13.1.2 One of most significant findings of the Commission has been the massive over-representation of Aboriginal people in all forms of custody and, most particularly, in police custody. As has been pointed out in a number of different places in this report, according to the findings of the Commission's Research Unit, the overwhelming number of offences for which Aboriginal people find themselves in police custody are not serious crimes but alcohol related street offences. Not all, but a great deal of police intervention in the lives of Aboriginal people, therefore, is not in response to potentially harmful conduct, in relation to either persons or property, but is routine. Not only, then, does it reinforce the subordinate position of Aboriginal people in the broader society; it also acts powerfully to define them in the eyes of that broader society as deviant.

13.1.3 This situation is the outcome of the number of different roles, themselves to some extent in contradiction with each other, that the police are required to fulfil in society. On the one hand, police act to ensure the maintenance of good order, operating, that is, in the service of the community, including the Aboriginal community. On the other, police can act as the coercive arm of the wider society to impose control on the Aboriginal community. The police, like other institutions that have been canvassed earlier in this report, operate within a system that, taken as a whole, has been not just neutral but has operated against the interests of Aboriginal people. In the following sections I examine the nature of community relations that Aboriginal relations with police exemplify.

13.2 COMMUNITY RELATIONS AND CONTROL

13.2.1 Routine police intervention often acts not just against the interests of Aboriginal people, including their principles of social organisation, but against the very mechanisms for social control that continue to operate within Aboriginal societies. Both these processes--the undermining of principles of social organisation and conflict with the mechanisms of social control--pose particular problems in relations between Aboriginal people and police.

POLICE INTERVENTION

13.2.2 There are realities which must be faced if discussion of what is the most vexed and central issue addressed by this Commission, the disproportionate rate of detentions of Aboriginal people, is to be addressed in a realistic way. Too many commentators, both Aboriginal and non-Aboriginal, have been, in my opinion, more conscious of the maintenance of an ideological position, one which has police as the instruments of a racist state, than to frankly address other issues which are also part of the reality of the interaction between Aboriginal people and police.

13.2.3 Let me say at once, it is my opinion that far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent. There is absolutely no doubt in my mind that the antipathy which so many Aboriginal people have towards police is based not just on historical conduct but upon the contemporary experience of contact with many police officers. It also needs to be noted that complaints about the conduct of police officers were not restricted to non-Aboriginal police. Similar complaints were

reported by Aboriginal Issues Units (AIUs) in Queensland, Western Australia and the Northern Territory about the conduct of some Aboriginal community police and police aides. Let me add that very often police are the visible and obvious target for Aboriginal frustrations which arise from their disadvantaged position in society in matters outside of police action.

13.2.4 There are, however, many other truths which equally require acknowledgement.

13.2.5 In the first place, as the very interesting submission of the Police Federation of Australia points out, much of the criticism which is directed against police should be directed not at individual police officers but against law makers, administrators, and senior officers who set policy for the departments. It is they who make the law and who determine whether 'Law and Order' demands from politicians, local or State, will be addressed. It is they who can assess whether there is any basis for the fears which underlie such demands; it is they who decide the manner of response which their subordinate officers will be directed to pursue. Constables on the street, with whom Aboriginal people most frequently come into contact, do not pass legislation, they do not allocate funds to sobering-up centres, they do not decide what standing orders they will follow. There are many senior officers and leaden of police services who are making outstanding contributions to the improvement of relations between Aboriginal people and police which demonstrates that leadership at senior levels is an important determinant of the attitudes and practices which will be adopted by junior officers. Policing practices and, in particular, the allocation of police resources are issues further addressed in Chapter 21 of this report.

13.2.6 The second matter is this. There is clear evidence that in some places the laws which police officers have been directed to enforce have been based on unfair and racist assumptions that Aboriginal people, by their very presence in a community, offended non-Aboriginal codes of conduct. One example of this is local campaigns against public drinking. In some instances, the main objective of such campaigns has been the removal of Aboriginal people from the public view. The behaviour which is sought to be addressed is not so much unlawful but simply different to the proprieties observed, at least in public, by many non-Aboriginal people. In my opinion such laws, and the assumptions which underlie them, have no place in Australian society.

13.2.7 Of course, members of the public have a right to decide what conduct they find acceptable. This applies to both Aboriginal and non-Aboriginal people. Laws, however, which are based on racist assumptions, or on monocultural ignorance, or insensitivity, may have unjust consequences for some. Where such laws exist, efforts must be made to change the public consciousness which gave rise to them. However, it is a mistake, in my view, to pretend that because Aboriginal people are disproportionately policed with regard to some laws it must follow that either the laws are unjust or that the policing of those laws is discriminatory. There seems to be a great reluctance among some commentators to recognise this fact. There is, perhaps, a fear that to acknowledge the legitimacy of police conduct in some instances is to take sides against Aboriginal people. To me, this approach serves no-one's interest and leads to greater, and unproductive, division within the community, rather than to resolution of the very real problems which must be addressed.

13.2.8 It must be recognised that much of the behaviour which leads to detention of Aboriginal people by police is equally as unacceptable to Aboriginal people as it is to non-Aboriginals. The assumption that public drunkenness is not something which disturbs Aboriginal people is a myth. The tragedy of lives wasted

under the influence of liquor is well appreciated by the many Aboriginal people with whom I consulted. And Aboriginal people equally appreciate that the person drunk in a public street will in all probability find his or her way back to their camp or house with the result too often being uproar or even violence against family or friends.

13.2.9 The very conduct--loud public drunken behaviour, drunken fighting--which leads to so many detentions of Aboriginal people is conduct which Aboriginal people find alarming in their own homes, their outstations or their communities and which leads to many requests for the intervention of police or police aides to have the person concerned detained until sober. Aboriginal people told me, many times, that they did not find it acceptable for Aboriginal people to go to urban centres for hinge drinking and to engage in the very conduct which had them detained. Whether this expression of disapproval may be influenced by a desire to 'fit in' with the dominant society or perhaps even to meet with my approval, I cannot say, but it is clear that for many Aboriginal people the role of police in detaining such people is both proper and necessary.

13.2.10 Later in this report I will consider some of the remarkable programs which Aboriginal people and their organisations, and police services and their local personnel, have introduced in the Northern Territory and Victoria which are directed to these very questions of the maintenance of law and order in communities where both Aboriginal and non-Aboriginal people live together. What these programs have in common is that they all seek to confront behaviour which is as unacceptable to the Aboriginal community as it is to other members of the community. However, the identification of the causes of anti-social behaviour and the solutions presented may not always find immediate support within the broader community. All too often, these issues are seen in simplistic terms and short-term 'solutions' proposed. The result is that these 'solutions' invariably fail, partly because they depend on more heavy-handed policing to modify behaviour, but more importantly, because they fail to recognise that the behaviour which is sought to be addressed reflects a much deeper malaise.

13.2.11 But, while the precise strategies being adopted by Aboriginal people in some parts of the Northern Territory may not be occurring elsewhere, the concern which has led to their creation is the same as that expressed by Aboriginal people throughout Australia. These strategies arise because traditional policing responses have failed Aboriginal people, even though Aboriginal people, as I have said, share the concern of others in the community about behaviour which threatens their peace and safety. The challenge to the wider community is to understand and take account of Aboriginal perceptions of causes and solutions for such behaviour. The challenge for police departments is to accept that there is a basis for Aboriginal resentment and suspicion about police conduct and to consider the Aboriginal perspective when devising policing strategies.

13.2.12 Among those Aboriginal people who themselves object to offensive street conduct and who accept as appropriate the detention of such people by police there remain many concerns about police behaviour and the fairness of such enforcement of laws. There is no contradiction between these attitudes. It is perfectly consistent to accept that some public behaviour cannot be condoned and yet object to the manner in which that behaviour is dealt with.

13.2.13 What is reflected here is not a contradiction in Aboriginal attitudes but a conflict between the assertions of non-Aboriginal people and the observations of Aboriginal people regarding the creation and enforcement of laws. On the one hand, non-Aboriginal people assert that laws are created only after consideration is given to the views of all members of society and are enforced fairly against any

member of society who breaches them. On the other hand, it is Aboriginal people's observation that, in practice, their opinions do not count when the laws are formulated, that only Aboriginal people appear to be the target (or at least the main target) of the laws, and in the enforcement of the laws police behaviour is frequently rude, harsh, insulting or culturally ignorant.

13.2.14 There are many issues which need to be considered if the total picture of the reality of detentions for street offences is to be understood. All members of society, Aboriginal and non-Aboriginal, play a part in producing the end result of such detentions, and all members of society have an interest in ensuring that the laws which they authorise are fair and are fairly enforced.

ABORIGINAL SOCIAL CONTROLS

13.2.15 Relations with police have been one of many dilemmas for Aboriginal people. Like any other people, they too have a need for the enforcement of some form of law and order to maintain harmony, and to control violence and other unacceptable behaviour within their communities. The traditional ways in which Aboriginal communities coped with unacceptable conduct were very different from those of Western society, and relied far less on the conferring of power and authority on individuals and institutions. Dispute-settling mechanisms included the responsibilities of certain kin to intervene in disputes; an extensively elaborated set of rules for orchestrating disputes, of which fighting and swearing were an integral part; and avoidance and mobility, which were solutions available in traditional Aboriginal society in a way they are not today for many Aboriginal people. The central essence of these mechanisms are identifiable today in communities across Australia, whether these be urban, rural, or remote. I have already discussed the nature of these mechanisms in more detail in Chapter 11. These rules comprise a wide range of Aboriginal mechanisms for social control, and they constitute independent ways of dealing with disorder within Aboriginal groups and communities.

13.2.16 There are at least two ways in which, in contemporary Australia the very operation of these mechanisms for social control creates problems for Aboriginal people, particularly in their interaction with police. One is that the circumstances within which such mechanisms are now being applied have become vastly more complicated than those for which they were developed. Such complexity means that people's ability to deal with social disorder is impaired. It also means that what was once culturally appropriate behaviour may now, in the face of new factors such as easy to access alcohol, produce unintended consequences such as uncontrolled, as opposed to controlled, violence. Additionally, some of the very mechanisms of social control, such as the public nature of Aboriginal social interaction and the concomitant involvement of appropriate kin as monitors, may produce behaviours that are in conflict with non-Aboriginal, largely white, norms and laws. Such behaviours may therefore bring Aboriginal people into contact with the police.

13.2.17 There is another aspect of police practices that has emerged very clearly from the individual cases, namely, the exercise of control. This is related to conflicting definitions, already raised in Chapter 12, between Aboriginal and non-Aboriginal use of public space. Such conflict underlies much of Aboriginal interaction with police.

Definitions of Public Space

13.2.18 Most of the conflict with Aboriginal people arises from police endeavours

to enforce 'street offences' legislation, which seeks to impose on Aboriginal people the views of the European culture about the appropriate use of public space. While sections of the Aboriginal population have either adopted, or independently share, the values of the dominant community on these issues, the values are not always consonant with, for instance, notions about public drinking, noisiness, language, dress and general decorum. It is the dominant society that creates the law, and it is the role of the police force to enforce this law.

13.2.19 No doubt police seldom think of their role in keeping the law as maintaining the subordination of Aboriginal people, nor are they the only institution in Australian society that acts to do so. Inevitably their actions re-entrench the stereotypical views of Aboriginal people as offenders. The routine nature of much of police involvement with Aboriginal people means that their day-to-day practices also act to entrench the subordination of Aboriginal people and, with it, racist attitudes in the dominant society. As this report stresses in many places, the time has come for the issues to which cultural differences give rise to be settled by negotiation and with tolerance, rather than by repression and insistence on conformity.

13.2.20 In many cases, in fact a great majority of cases, Aboriginal people come into custody as a result of relatively trivial and often victimless offences, typically street offences related to alcohol and language. Many of these 'offences' would not occur, or would not be noticed, were it not for the adoption of particular policing policies which concentrate police numbers in certain areas, and police effort on the scrutiny of Aboriginal people.

13.2.21 Trivial as the offences may be in themselves, police reaction to them is fraught with grave consequences. Those arrested are criminalised in several ways. They acquire criminal records, they are defined as deviant not only in the eyes of police but of the broader society, they are introduced to custody in circumstances where they feel resentment rather than guilt, and hence arrest and custody cease to be matters of shame. In dealing with these situations, there is often a great deal of room for alternative courses of action by police, depending on how they interpret a situation, what aims they adopt in their policing, what judgments they make and how they exercise numerous discretions available to them.

13.2.22 All these matters will inevitably be influenced greatly by the state of relations between Aboriginal people and police in a particular community, and those relations will also be highly relevant to the conduct of Aboriginal people. The 'offensive' language, which so often initiates Aboriginal conflict with the law, often reflects resentment against police and their repressive role, and offences like resisting arrest and hindering or assaulting police will also be closely related to the state of police-Aboriginal relations. The interpretation by Aboriginal people of police action as either harassment, or as part of the ordinary execution of police duties, or even as attempts to make constructive contact, will also be dictated, to some extent, by police-Aboriginal relations in the community.

13.2.23 Non-Aboriginal Australian society has never been able to accommodate the essentially public nature of Aboriginal life nor the ways in which this renders much behaviour visible. The kinds of appropriate behaviour that belong to Aboriginal definitions of the use of public space are often precisely the kinds of behaviour that bring them into strife with police: socialising and drinking in the open, lingering outside shops, sitting on the ground in the street and fighting are all behaviours which, in conventional law, fall into the category of street order offences. Police action in this instance does not force Aboriginal people to be visible, although it may do so. In Alice Springs, for example, Aboriginal people feel that their drinking is forced into the open by widespread discrimination against

them in hotels, clubs and other venues. 1 What police action does in general do, however, is to apply punitive sanctions to the public nature of Aboriginal behaviour. By so doing, it transforms what in Aboriginal terms is often legitimate public behaviour into non-legitimate and deviant behaviour. But here, as in other matters, the police officers are enforcing a law made by others.

13.2.24 The result, as it is experienced by Aboriginal people, is the imposition of a definition of 'normal' that in fact represents the particular standards of the dominant non-Aboriginal, largely white, Australian group. This was discussed in Chapter 12 in relation to 'community standards' and, particularly, the role of local government. Its importance here is the way in which police are involved in the enforcing of these standards. This role is reflected in the high number of street order offences for which Aboriginal people are placed in custody. To take just one example, over two periods in Roebourne in 1983, the year that John Pat died in custody, virtually all the people arrested were Aboriginal, and drunkenness and offences related to licensed premises accounted for over three-quarters of the offences alleged.[2]

13.2.25 In no case were these issues more apparent than in that of Harrison Day. They form, however, the basis of arrest for many of those who died in custody. They underline also the active part played by police in the imposition of behavioural norms and definitions of the use of public space and 'normal' behaviour that belong to the dominant majority, and the absurdities and waste of police time and resources to which this may lead. The *Report of the Inquiry into the Death of Harrison Day points* out the 'costly and pointless ritual' associated in Echuca in 1982 with charging a pleasant and inoffensive Aboriginal man with being drunk and disorderly.[3] The same costly and pointless ritual, for the same reasons, engaged much police time in Roebourne at least in 1983. Here, the Shire Council has transformed the river bank area into the Harding River Reserve. The result is constant arrests of Aboriginal people for drinking in an area that they, with considerable justification, regard as peculiarly their own.

13.2.26 To say, however, that much street behaviour is unacceptable both to Aboriginal and non-Aboriginal people is not to say that the conduct should lead to arrest. Public drinking, which apparently, of itself, so offends non-Aboriginal people, would occur less frequently if Aboriginal people had places to go for racial drinking. Throughout Australia there is a recurring theme--Aboriginal people, either because of arbitrary and unjust 'barring' rules by publicans or because they are denied entry to establishments by cover or overt discrimination, frequently have no place to drink except in public places. And yet, so often it is the case that the very people who most actively propose laws to deny drinking in public places also oppose attempts by Aboriginal people to gain their own licensed clubs, or who deny and refuse to act to curb discrimination by hotel keepers against Aboriginal drinkers.

13.2.27 Aboriginal people then find themselves in a dilemma--wherever they drink it will be public; the location will be known to police and they will be constantly subjected to scrutiny by police patrols and they will inevitably and repeatedly be detained. With each detention the antipathy to police (who did not make the laws) will grow and frequently be expressed in terms which lead to arrests or charges of offensive language, or similar, and the whole process just continues unabated, the hostilities are compounded, the sense of injustice daily reinforced.

13.2.28 It is this cycle which must itself be broken. Police officers plainly are themselves in a dilemma. However fairly they attempt to enforce the laws,

inevitably it will be Aboriginal people who will publicly be found offending. However much they attempt to behave with courtesy, they will be seen as oppressors and be liable to abuse. However much they try to avoid racism, their constant interaction with Aboriginal people, often at their worst through alcohol, will tend to stereotype Aboriginal people as drunken, abusive and hostile.

13.2.29 All of those pressures will challenge even the fairest and wisest police officer. Unfortunately, the officers most usually called upon to take this role are the youngest, least experienced in life or police service and the least equipped to reduce rather than to exacerbate the tensions and hostilities which the very circumstance of the enforcement of the laws are hound to create. It is little wonder then that some younger officers, especially, cope with their role by adopting a hostile, aggressive posture, and with each word of abuse, each act of aggression or insensitivity on their part they perpetuate the division between Aboriginal people and police. It is impossible to know how often this happens, but certainly Aboriginal people suggest that younger officers offend more frequently. In pan, this perception may reflect the fact that younger officers are more frequently on street patrols.

13.2.30 This situation must be faced by the leaders of police departments. It is the reality which must change.

Public Violence

13.2.31 As I have stated above, there are aspects of Aboriginal social behaviour which are acceptable to Aboriginal people but conflict with non-Aboriginal (and, at times, Aboriginal) standards of public behaviour. Fighting and loud disputation may well be regarded, in some contexts, as appropriate, if not preferred, processes for resolving disputes. There is ample evidence that such conduct is tolerated to a much greater extent in Aboriginal society than in non-Aboriginal society. There are, however, serious limitations to the extent of such tolerance. As I have indicated earlier in this chapter, certain behaviour, in this case violent behaviour, is equally unacceptable to Aboriginal people as it is to non-Aboriginal people. As I have also stated, in the face of new factors, such as easy access to alcohol, once culturally appropriate behaviour may now produce unintended consequences, such as uncontrolled, instead of controlled violence.

13.2.32 The outstanding studies of violence against Aboriginal women in the Northern Territory by Audrey Bolger and in Queensland by Judy Atkinson demonstrate clearly that we must be very cautious about making assumptions that violent behaviour, whether the perpetrator be drunk or sober, is tolerated in Aboriginal society today. Whilst there may be occasions where violence is condoned or justified by Aboriginal people as being appropriate in their own culture, those occasions, on the advice which I have received, are limited. Just as Aboriginal attitudes towards violence appear to me to be changing, especially among Aboriginal women, so too are Aboriginal attitudes changing about the extent to which violent behaviour should be tolerated by the non-Aboriginal community when the conduct takes place in public in towns or cities with a substantial non-Aboriginal population.

13.2.33 In the absence of any effective internal means of controlling violence (in particular, drunken violence) in contemporary Aboriginal communities, Aboriginal people are dependent on police intervention. This is illustrated by the submission to the Royal Commission of the Pitjantjatjara Council in relation to the policing of the Pitjantjatjara Lands.[4] The dependence often produces an ambivalent attitude to police on the part of Aboriginal people, and sometimes a bewildering situation

for police themselves. This is particularly so when police officers are called to deal with one of the most common forms of violence, domestic violence. This conduct presents great difficulties for police in the general community, as women are often torn between the need to protect themselves and their children against violence from a perhaps drunken spouse, and their reluctance to be the cause of his incarceration, either for reasons of affection or for fear of subsequent retaliation. In Aboriginal communities, where people often do not live in nuclear families and a range of kin may see themselves as having some responsibility or right to intervene, the situation may become correspondingly more complex and more difficult for police.

13.2.34 It is significant that in a number of the cases that have come before the Commission, it has been women or other members of the family who have called the police in the first instance. This was so in the case of Alistair Riversleigh, of the young man at Aurukun, and in two of the cases at Yarrabah. It also occurred in the cases of Glenn Clark in Tasmania and Lloyd Boney in New South Wales. The report of the AIU in New South Wales showed that Aboriginal communities often rated local police according to the way they responded to calls for assistance with domestic violence, a particular community sometimes being divided as to whether police over-reacted or under-reacted.

13.3 THE HISTORICAL BASIS

13.3.1 If one leaves aside agencies dedicated to the management or reshaping of Aboriginal lives, such as protection boards and missions, police have been until very recent times, and in many places continue to be, the section of the non-Aboriginal community with which Aboriginal people have had most contact. It has for the most part been a highly repressive contact, which gave Aboriginal people much reason to fear and dislike police, and little reason to think well of them. Aboriginal resistance to the taking of their lands was put down by para-military forces along a moving frontier that spread from Port Jackson in 1788 and continued into more remote areas in Australia as late as the 1930s. Originally conducted by troops or armed bands of settlers, these operations were taken over by police as police forces were formed. In widespread Aboriginal perceptions of police there is an unbroken continuity. When warfare ceased at different times and different points on this moving frontier, control and repression of Aboriginal people did not cease. Attempts by Aboriginal people to maintain themselves from the settlers' herds that had displaced their game met with police action.

13.3.2 This period for Aboriginal people was a terrible one in Australian history, quite apart from any actions of police. The struggle for the land, between two groups whose views of the world had little in common, was conducted with cruelty and brutality, and Aboriginal women suffered particularly in a situation where the powerful dispossessors for years had few women of their own race with them. There was never a negotiated accommodation between the two groups; the invaders won so overwhelmingly by their superior weapons, settled life style, continual reinforcement from immigration, and superior immunity to the diseases which they brought with them, that they could look down on Aboriginal people as little more than pests. Into this situation police came as the representatives of law and order, but it was the law and order of a society which did not include the Aboriginal people. It is not surprising that police inherited, and embodied in their own developing culture, attitudes which regarded Aboriginal men as enemies to be subdued and accorded scant respect to Aboriginal women.

13.3.3 In talking about his life on the Mission near Brewarrina early this century, Jimmie Barker described how Aboriginal people viewed the police:

> *The attitude to the police among people living at the Mission was always one of fear. No Aborigines would ever go near the police station or a policeman. When help was needed the police would be the last people approached, probably because the normal words of greeting from a policeman were; 'What do you want, boong?' or 'Hey, Charcoal, come here.' In those days the police regarded the dark people as something worse than animals... They were cruel and terrible to all Aborigines. In those days a dark man would run and hide if he saw a uniformed policeman approaching.*[5]

13.3.4 The legacy of violence and disrespect remained long after the situation which gave rise to it, and still has not been entirely eradicated. Although attitudes have gradually changed, violence to men and abuse of women remains part of what Aboriginal people fear from police in many pans of Australia today, even where they no longer experience it. The continuing impact of this legacy is discussed in the report of the Northern Territory AIU:

> *Unfortunately, despite the many changes over the years, Aboriginal people believe that the 'frontier' relationship between Aborigines and the police is still evident in the Northern Territory. People cited to us, for example, two recent cases: at Ti Tree in 1980 (when it has been alleged an Aboriginal man was shot in the back by police) and at Elcho Island in 1990 (when it has been alleged a behaviourally disturbed Aboriginal man was shot in the head by the Northern Territory Police Department' s Special Taskforce). Whilst there were and remain doubts about the actual facts of these cases, to many Aboriginal people, shootings such as these are evidence that the police are still an army of occupation and still serve the purpose of instilling terror in the Aboriginal population as they did in the early years of this century. Past events have created a fear and distrust of the police among our people; current police aggression and violence maintain this attitude.*[6]

13.3.5 In this last connection I acknowledge that great improvements are being made. The AIU in the Northern Territory reports that there are indications of improvements in Aboriginal-police relations. 7 (In Chapter 29 1 document some of the changes that have occurred.) Similar attitudes came to the surface in Aboriginal reactions to two recent incidents in Sydney--the death of David Gundy in 1989 in the course of a raid on his home by the New South Wales Special Weapons and Operations Squad (SWOS), and an incident at a National Aboriginal Day carnival in Alexandria Park also in 1989, when a number of firearms were discharged in the vicinity of the crowd, including large numbers of children, by plain clothes police.[8] The matter of SWOS operations has been extensively discussed by Commissioner Wootten in the *Report of the Inquiry into the Death of David John Gundy.*

13.3.6 When Aboriginal people accepted their dependence out of necessity on the non-Aboriginal economy, it was police who had the task of controlling their behaviour and their movements within limits acceptable to the non-Aboriginal community. Throughout the many decades when policies of protection, welfare, segregation or assimilation called for Aboriginal people to be controlled, confined or moved, often with great anguish, from areas of traditional attachment, or for their children to be taken away to their irreparable heartbreak, police were always involved. Often police had to personally carry out the tasks on behalf of the administrative authorities, and there are many Aboriginal adults today who learnt as children to run and hide when police were sighted, lest they be taken away from

their parents. Even where officers from other departments carried out the policies which Aboriginal people feared, they depended on the force provided by police to protect them and enforce their decisions. That police did not make the policies which they enforced would often not have been obvious, and in any event would have been irrelevant, for Aboriginal people who suffered under them.

13.3.7 Until very recent times, Australia did very little to recognise the cultural difference of Aboriginal people. Not only was there no recognition of Aboriginal law or custom, but there was little tolerance of Aboriginal norms of behaviour which did not conform to European ideas of decorum. Traditionally, Aboriginal life was lived in the open. With rare exceptions, there was no housing as Europeans know it, and any shelter was simply rudimentary and temporary protection against the weather. As they were excluded from their traditional lands over time, many Aboriginal people moved to country towns. It was in these towns that Aboriginal people came under the censorious gaze of non-Aboriginal people who often found offensive their unconcealed poverty, their apparent obliviousness to European ideas of decorum, their hygiene, their family relationships and their attitudes to property. All this was exacerbated by alcohol, for the consumption of which there were no traditional norms in Aboriginal society, and which, much to the distaste of many Europeans, was absorbed into the public life which Aboriginal people led in the streets and parks and on river banks of towns.

13.3.8 The warfare for the control of the countryside has long since ceased, but in many towns in rural Australia another kind of warfare has continued for control and use of the open space in towns. Rarely has there been negotiation between the contending forces to see whether some accommodation could be found which would allow cultural differences to be maintained without undue violence to the life styles of either side. Instead, non-Aboriginal society, through its armed agents the police, has continually, although never quite successfully, sought to impose its ideas on Aboriginal communities. Some aspects of 'unacceptable' Aboriginal behaviour (by non-Aboriginal standards) have been defined as criminal through the various channels of local government law, street offences, 'protection' legislation and planning laws. For present purposes, the point is simply that through all this conflict the police have had the role of controlling and subordinating Aboriginal people. Issues that cried aloud for solution in a spirit of toleration and negotiation have been handed to police to resolve by the application of the force of the law. Intoxicated persons, usually of little danger to anyone except themselves, were made the responsibility of police, who had neither the training nor the facilities to look after them, instead of being taken into appropriate care.

13.4THE LEGACY: FEATURES OF THE RELATIONSHIP

13.4.1 Aboriginal people in their many submissions and in consultations conducted during this inquiry have most frequently identified their relations with police officers as the most serious and constant indicator of the injustice and prejudice which they experience in society. The circumstances which gave rise to this Commission illustrate starkly the extent to which Aboriginal people regard police as enemies. When a series of Aboriginal hangings occurred in police cells, there were large numbers of Aboriginal people who could and did readily draw the conclusion that police were simply killing Aboriginal people. Hostility to police is widely shared among Aboriginal people of all ages and in most communities throughout Australia, whether people are living on remote outstations, in rural towns and fringe camps, or in major cities.

13.4.2 On both sides, from the police and Aboriginal viewpoint, there is the tendency to stereotype. Often the stereotypes have more to do with historical

legacies, or particular past experiences, than with the realities of the current situation. Even the interpretation of the contemporary situation is often highly selective, police tending to stereotype all Aboriginal people according to the characteristics of a minority with whom they have problems, and Aboriginal people often having their current view of the situation dominated by a minority of police who conform to the historical stereotype of a rough, offensively spoken and racist officer.

13.4.3 Fortunately there is much happening on both sides to destroy these stereotypes. New images are emerging, particularly where there has been some shift of power and resources into Aboriginal hands. Where Aboriginal communities or organisations have acquired funds and property and conduct a range of activities, their spokespersons are able to speak with a new confidence and cannot be easily dismissed. Whereas the Aboriginal people who were not in conflict with the law tended in the past to be inconspicuous, accepting of assimilation and unassertive, today they arc increasingly able to assert themselves and their Aboriginality through organisations and communities.

13.4.4 This change on the Aboriginal side has necessitated a reappraisal of police attitudes in many places, and often there has been an intelligent response by police to the new situation. In many of the police services (as the former police 'forces' are increasingly called) this has been assisted by an enlightened realisation at senior levels that the old relationship with Aboriginal people is no longer acceptable, and by a real attempt to change the attitudes and practices that have been inherited from the past.

13.4.5 The process of change is a difficult one, and has a long way to go. Like a battleship trader full steam, the traditional relationship between police and Aboriginal people has a tremendous momentum from the past, and it will take time and great effort to turn it round. The encouraging thing is the growing numbers of people on both sides who are trying to do so. It is a situation of which it is difficult to write in a fair and balanced way, which, on the one hand, gives due credit and encouragement to those who are seeking to change the situation, but, on the other hand, does not down-play the legacy from the past or exaggerate what has been achieved.

Factors Limiting Police Responses

13.4.6 As I will illustrate in the next section and in Chapter 29, where I review some of the important changes that are taking place in the various States and the Northern Territory, there have been many significant responses by police to what is increasingly recognised by them as an unacceptable state of relations with Aboriginal people. In this section I will refer to some of the factors limiting that response. One of these factors--a very important one--I have already discussed. It is the legacy of the past, which means that both Aboriginal people and police bring a great deal of historical baggage to their contemporary relations. Each has difficulty in discarding past distrust and antipathy. That difficulty is compounded for police services by both internal and external pressures, to which I now refer.

Police Culture

13.4.7 Neither police services nor Aboriginal communities are monolithic in character. Seldom are there uniform attitudes and reactions on either side in a local area, much less across a state or across the whole of Australia, even though it is possible to identify an Aboriginal culture and a police culture. Indeed, people have written in a generalised way of a police culture, common at least to police in

the common law world, and in some respects much more widely held. There are often surprising similarities in the cultures of indigenous peoples in different countries in the world. It is also of note that there are similarities in the relations between police and indigenous people in different countries. The fact that this similarity exists suggests that the beliefs, attitudes and reactions which characterise the interaction between the two cultures are, to a considerable degree, the product of a common historical situation, where police, as the front line agents of a dispossessing, invading society, have had to confront and control the dispossessed. But, while it is enlightening to note the common features even at this international level, and the increasing solidity of the cultures at national, State, regional and local levels, it is important to remember that there are always conflicting tendencies within each culture, and that individuals always vary in the extent to which they conform.

13.4.8 It is also important to bear in mind that the police culture is a subculture within the wider culture of non-Aboriginal Australia, in which both Aboriginal people and police are enveloped. Police and Aboriginal people do not interact separately from the rest of the community, but as part of it. Police are agents of the dominant non-Aboriginal community and are almost entirely drawn from it. What they do is in a large degree responsive to attitudes in the wider community, although in times of change police attitudes, embedded in a police culture that is highly resistant to change, may lag behind changes in the rest of the community. On the other hand, with successful and enlightened leadership, police attitudes may be in advance of those of the rest of the community. Certainly the Commission has seen examples at the local level and at the highest level where police have been quicker than the general non-Aboriginal community to respond to new situations and new ideas. Often this is because of the enlightened leadership of some police officer, but it is often reinforced by the realisation of the rank and file police that a good relationship with the local Aboriginal community can make their work more pleasant and less onerous. Aboriginal people themselves become agents of change in police attitudes as they win the respect of police by their efforts and achievements, and by their constructive efforts within their communities.

13.4.9 In his Report of the Inquiry into the Death of Bruce Thomas Leslie Commissioner Wootten wrote:

> *It has become increasingly apparent to me as I have conducted inquiries into deaths, that there is what might fairly be described as a 'police culture' --a set of beliefs, values and attitudes which are wide-spread amongst police officers, highly resistant to change, and passed from one generation of police officers to another. I would not wish to suggest that this culture is wholly negative. Obviously some of it--such as traditions of bravery, dedication, loyalty and discipline--are, if properly directed, admirable. Nor would I suggest that there are not many police officers who discriminate in their adherence to police culture, and reject parts of it. Nor would I suggest that it does not change. However there are obviously many elements of this culture that are*
>
> *highly resistant to change and certainly cannot be changed merely by the issuing of instructions or the giving of a few hours lectures to new recruits at a police academy.*[9]

13.4.10 The Fitzgerald Report also pointed out that a specific manifestation of police culture is an unwritten 'police code', which 'exaggerates the need for, and the benefits derived from, mutual loyalty and support'.[10] He describes the code as

embracing both an attitude that it is impermissible to criticise other police and a rule of operation that police will not enforce the law against other police, nor cooperate in any attempt to do so, and perhaps even obstruct any such attempt. As Armstrong[11] has observed in a research paper prepared for the Commission on police accountability, 'To be effective, any system of regulating police or investigating police misconduct must take account of these institutional practices and pressures within the force'.

13.4.11 One recent example of the existence of such a police culture was the evidence given by a probationary constable in New South Wales to the Independent Commission Against Corruption that some of the instructors at the Police Academy had suggested to recruits that it was permissible to lie to protect fellow officers. Significantly, this advice was not given as part of the formal training course. The witness said that he had been advised by other police, once he began duty, that it was police culture to tell a 'white lie' to protect mates from situations which could develop into a major investigation or from situations which would discredit the force. He admitted to the ICAC that he had lied under oath to protect mates.[12]

13.4.12 Given the amount of interaction between Aboriginal people and police, the propensity for police to protect each other creates a situation in which Aboriginal people feel powerless to achieve redress for any wrongs suffered at the hands of the police. Commissioner Dodson reported:

> *Aboriginal comment to me in my investigations suggests that people are subject to discriminatory and unfair Police practices: excessive force in arrests and at Police stations; intimidation in investigations; and racist abuse. It is clear to me that they have no confidence in the investigation process of Police complaints.*[13]

He observed that one of the reasons for this lack of confidence was 'ingrained cynicism and mistrust about Police investigating Police'.[14] As one field officer with the Western Aboriginal Legal Service in Dubbo commented, 'This is a situation where you have police investigating police, it's like asking me to investigate a complaint against a fellow Field Officer'. 15

13.4.13 Any group of people who work or pursue common interests on a permanent basis will develop over a period their own 'culture', and this is apparent to a greater or lesser degree in all professional and vocational groups. However, **it is** particularly strong in disciplined bodies like police and the military, whose members are required to perform certain duties for the community as a distinct force, and who must depend greatly on each other in their day-to-day activities. This has been noted by many writers in many countries. Police culture is not only particularly strong but is particularly important to the community. This was noted in the Fitzgerald Report in Queensland:

> *The institutional culture of a police force is of vital importance to a community. A police force is numerically strong, politically influential, physically powerful, and armed. It stands at the threshold of the criminal justice system and is in effective control of the enforcement of the criminal law. Each police officer has extensive authority over all other citizens, however powerful, coupled with wide discretions concerning its exercise. Subsequent stages in the criminal justice process, including courts and prisons, are largely dependent on the activities of the Police Force, and will inevitably be affected by its deficiencies, especially any which are cultural and therefore*

widespread.[16]

13.4.14 One of the less desirable features of police culture is what Commissioner Wootten described as 'the high level of toleration of police untruthfulness within the force'.[17] Commissioner Fitzgerald observed in his report on the Queensland police that 'the police code effectively requires that it be assumed that whatsoever is done by a police officer legitimately occurs in the course of his duty'.[18] A related matter is the difficulty illustrated in many of the deaths inquired into by the Commission which many police have in investigating the conduct of other police with thoroughness, objectivity and impartiality. I refer to this in Chapter 4.

13.4.15 One aspect of police culture of particular relevance to this Commission is the way in which particular stereotypes are passed on from generation to generation within the culture, so that they are unquestioningly accepted as 'knowledge' or 'common sense'. Moreover, they are constantly reinforced and reproduced by routine police practices. *The Report of the Inquiry into the Death of Arthur Moffatt* identifies

> *different attitudes and practices in relation to the policing of certain groups, the use of roughness, violence and hurtful language, and the differential application of discretions in many matters, including the relative use of*
>
> *the 'blind eye', the caution, the summons and the power of arrest.*[19]

Stereotypes commonly relate both to 'drunks' and to Aboriginal people. The cases investigated by the Commission provide powerful examples of the way in which the stereotyping of individuals, particularly intoxicated persons, can have disastrous consequences. In a number of cases, the deceased person was detained as drunk when in fact he/she was in an unconscious condition due to some serious, life-threatening condition.

13.4.16 I do not mean to suggest that the stereotyping of individuals or the process by which they are passed on lies only within the province of the police. That is certainly not the case. This is something which is common to the general community, including Aboriginal people.

13.4.17 When based on stereotypes of Aboriginal people, such practices act as racist practices irrespective of the intentions of the person carrying them out. Such institutionalised practices are then not just discriminatory in relation to Aboriginal people, but also operate to reproduce racist views. This occurs both among police themselves, as their contact with Aboriginal people tends to be a matter of routine, and in the general society, where the over-representation of Aboriginal people in the criminal justice system defines them as disorderly or criminal. In this way, without any deliberate intention on the part of those caught up in it, police culture plays an active role in reinforcing not just the subordinate position of Aboriginal people in the society at large but also the negative views towards them of many of those in the dominant society. It forms an element in the forces of inertia which those trying to turn around the battleship of bad police relations must overcome.

13.4.18 As I have said, matters which are embedded in the culture of a group are highly resistant to change. Obviously it is important that Police Instructions and training should endeavour to combat unacceptable elements in the police culture, and that when examples of misconduct come to light, there should be no equivocation in dealing with them.

13.4.19 However, exhortation, training and punishment are not necessarily effective. In the long run it would seem important that the existence and nature of

police culture should be thoroughly studied and publicly discussed and examined so that police will realise that the public is looking at it critically, and they must do so too. In this there is obviously a valuable role to be played by academic and other researchers, journalists and publicists. Such study and examination already occurs to some extent within the police force and outside it. The increased reflection on their own practices which is occurring through recent educational initiatives in the New South Wales Police Force is a most encouraging sign.

13.4.20 One important aspect of this is the general ethnic homogeneity of much of the force. Commissioner Muirhead commented in the *Interim Report* 20 on the glaring absence of Aboriginal people from the mainstream police forces. A similar absence of other minority ethnic groups has also been noted in other contexts.

13.4.21 Young police officers have emerged from the hearings of the Commission as a problematic group for many Aboriginal people. The problem as seen by Aboriginal people tends to relate both to their lack of police experience and also to their experience of living. The initial experience for police is also an aspect Of their first confronting the realities as opposed to the image of police work--realising the contrast between a glamorous image of high-powered law enforcement and crime-busting and the frustrations of the routine work which they are mostly required to perform. The potential in such a situation for cynicism and toughness, along with practices for reward that encourage high arrest rates, is often realised in the way in which police interact with particular groups in the community. Among these are Aboriginal people. As one group in Western Australia pointed out, 'Young police recruits cut their teeth on Aboriginal people and feel it is okay to treat them all bad' .21

Police Survey

13.4.22 During the course of my inquiries it became apparent that there had not been the formal opportunity for individual police officers to make a submission on the matter of their attitudes regarding police and Aboriginal issues. With the full co-operation of the police departments and Police Unions of South Australia and Queensland, questionnaires were developed and administered to gain some insight to the views of police officers in these States. The exercise, whilst necessarily limited in scope, gives some illustration of police attitudes towards Aboriginal-police relations.[22] I am indebted to the assistance of the Queensland Criminal Justice Commission in processing the questionnaire for both States.

13.4.23 Of the total number of police officers in South Australia who received the questionnaire (3,400) some 42% (1,428) responded. Of 6,300 officers who received the questionnaire in Queensland 1,318 responded (20.9%). Although the response is very good for a mail-out survey research bodies regard a 15% return as satisfactory--the fact that there was no response from a majority of officers means that any conclusions reached on the basis of the responses received should be qualified.

13.4.24 Whilst the responses were made by officers of all relevant ages, most came from police officers with between seven and thirteen years experience in either police services. In South Australia, 33% of respondents held the rank of constable or probationary constable and of the more senior ranks, senior constables (40%) responded most frequently. In Queensland, on the other hand, 65% of responses were from constables or trainee constables. Of the South Australian respondents 28% were below the age of thirty but 41% of Queensland respondents were below that age.

13.4.25 The officers were asked whether their cadet training had included any

lecture or other sessions on Aboriginal society or Aboriginal cultural issues. Sixty per cent of South Australian respondents answered 'no' and in Queensland 58% answered 'no' with a further 9% saying they were not sure in that State. In South Australia 45% of those who did receive training thought it was either useful or very useful. In Queensland the equivalent figure was 21%.

13.4.26 On-the-job experience as the basis for gaining an ability in dealing with experience was, however, highly regarded. Seventy-nine per cent of South Australian respondents found this to provide useful or very useful information for carrying out their duties. The Queensland response was similarly positive for 70% of respondents. In this regard it is interesting to consider the range of factors which would come to play a part of the daily experience of the job of policing so as to evaluate which factors might have most significance in informing police as to the most efficacious means of dealing with Aboriginal people in the course of their policing duties.

13.4.27 The survey sought evaluation as to the importance of each of the following potentially influential factors: police regulations and orders, departmental policy, police training, relations with the local Aboriginal community, attitudes of other police in the station, attitudes of local Aboriginal people to police and the behaviour of offenders.

13.4.28 In South Australia the attitudes of local Aboriginal people towards police were regarded as a very important factor affecting police duties by 53% of respondents and by 45% in Queensland. Relations .generally with the local Aboriginal community were rated as a very important factor by 40% of respondents in South Australia (35% in Queensland) and the behaviour of offenders as very important for 43% in South Australia and 34% in Queensland. The attitudes of other police in the station were rated as very important in effecting police duties by 30% in South Australia and 25% in Queensland. This is roughly on a par, in both States, with the importance attributed to police training. Fewer thought that police regulations and policy determinations were important determining factors.

13.4.29 Given the importance attached by police to relations with Aboriginal people at a community and local level, it is, perhaps, significant that, whilst 25% of South Australian respondents had daily contact with Aboriginal people in the course of their duties and a further 54% had contact at least weekly or monthly, only 4% had daily contact outside of police duties and a further 30% had such contact on a weekly or monthly basis. In Queensland the figures were 22% daily official contact (and 8% non-official contact); 52% had weekly or monthly official contact (and 39% had weekly or monthly non-official contact).

13.4.30 It is perhaps not surprising that police contact with Aboriginal people is made principally in the course of official duties. The downside of this is that contact would mostly be in circumstances of negativity and involve possible stereotyping on both sides. If police had greater social contact with Aboriginal people, relations between the two might be improved. Certainly, Aboriginal people have frequently said that they would welcome less formal and more friendly contacts with police officers.

13.4.31 Police themselves obviously recognise that relations need to be improved. Only 28% of respondents in South Australia thought relations were good, and .1% thought very good. In Queensland less than 2% thought relations to be very good, 13% said they were good and 37% fair (the last being a category not provided in the South Australian survey from). One of the chief suggestions in South Australia for improving relations (83%) was the notion of police speaking to children at schools. (I discuss the value of such a scheme in Chapter 30 in the

Northern Territory which has a school based policing program.)

13.4.32 Apart from completing the survey form, police respondents were invited to write their own comments and suggestions about what might be done to improve Aboriginal-police relations to lower the numbers of Aboriginal people in custody and to reduce deaths in custody. In the Queensland survey a further set of survey questions sought attitudinal responses on public and social questions concerning Aboriginal people.

13.4.33 As one might expect, the responses produced showed a very broad range of opinions and attitudes and the range of solutions proposed was diverse. Overall, however, these responses indicate that the police respondents in fact mirror the range and diversity of opinions held in the general community.

13.4.34 It is interesting, however, to note that 86% of Queensland respondents to the additional survey questions strongly agreed that Aboriginal people should have full use of public facilities which are used by non-Aboriginal people. Three-quarters disagreed or strongly disagreed with a suggestion that it was going too far to allow Aboriginal people to vote and to drink in public places. Eighty-five per cent of Queensland respondents agreed or strongly agreed that Aboriginal people should be encouraged to join local organisations so as to play a part in the life of the town in which they lived, perhaps an assimilationist notion but, nonetheless, a positive acceptance of Aboriginal people being part of the community rather than seeking their exclusion. Over half of the Queensland respondents, however, agreed or strongly agreed that Aboriginal people probably preferred not to mix with non-Aboriginal people. An interesting finding regarding recruitment, arising from the South Australia survey, was that 80% of the respondents thought that the recruitment of Aboriginal Police Officers was a good idea.

13.4.35 In the volunteered responses (of which there were 1,008 instances) the majority made helpful and constructive suggestions, although there were a small number which demonstrated hostility towards Aboriginal people. The survey responses in both States were anonymous. The following comments do not distinguish as between the two States. Stopping 'preferential treatment' to Aboriginal people was the most frequently expressed suggestion for improving police-Aboriginal relations. This is a somewhat negative response, yet almost as many respondents identified the need to improve communication and liaison between police and the Aboriginal community, and a nearly equal number again (i.e. all three responses having much the same number of advocates) suggested that education of police about Aboriginal culture, society and the law was the best option. These responses were collated into thirty broad categories and this shows that overwhelmingly police attitudes towards change in relations were positive, although the solutions, at times, were simplistic or ill-considered, which is a situation unfortunately shared by a great number of policy makers over the last decades!

13.4.36 I am grateful to the police officers who participated in the survey and to their unions and chief commissioners for their co-operation. It has proved impossible in the time available to complete the analysis of the returns, but the exercise demonstrates that there is value in such a process having been undertaken and the police themselves obviously welcomed the opportunity to put forward their opinions. Many of the comments were extremely frank, acknowledging problems in police attitudes and approaches, and overall the survey has confirmed the correctness of the observations and analyses which this report provides as to police-Aboriginal relations. What emerged most strongly from the survey is that police also know there is a problem and they too want to see a change take place.

External Pressures on Police Services

13.4.37 The willingness and ability of police to alter their practices do not, however, depend only on internal factors. In Chapter 12, I discussed the kinds of pressure that can be exerted on police by their role in relation to such other institutions as local government. Although the power of discretion exists and might be invoked more widely than it generally is at present, police in the end are required to enforce laws made by other members of our society. Elsewhere in this report I indicate how police have been caught up in a particular political process in north-west New South Wales. The work of the Commission would seem to indicate that none of these approaches is likely to improve relations between Aboriginal people and police, or with the general community. On the other hand, there are many instances of senior police publicly rejecting attempts by local politicians and interest groups to promote more repressive policing practices. The police, however, are invariably drawn into, and feel pressured by, campaigns at a local level such as those which occur from time to time in many rural areas. Recent examples were calls for a 'curfew' to be imposed on young people in Port Augusta and Moree. In fact in the case of Port Augusta police not only resisted such pressure but have become associated with a citizens organisation to tackle the problems in a constructive manner. Similarly, at Fitzroy Crossing police have attempted, along with the Aboriginal community, to prevent taxis bringing alcohol into the communities. What is very clear is that what is needed for Aboriginal people is not more law enforcement or more police powers, but a constructive involvement with truly representative organisations of the Aboriginal community. Likewise in Alice Springs the officer in charge has publicly supported the attempts by Aboriginal people to gain a licensed club.

13.4.38 Even more fundamental in changing poor relations between Aboriginal people and police, as I have already suggested, is a real shift in the relations of inequality that currently exist between Aboriginal people and the rest of the community.

13.4.39 As I have said, it is not always the case that police actions are seen to conform to the wishes of the dominant community to the detriment of the Aboriginal community. Two illustrations will suffice. The South Australian police, through the officer in charge at Marla, gave very great support to Aboriginal objection to the granting of a take-away licence to the Curtin Springs Roadhouse in the Northern Territory. In placing themselves in opposition to the interests of the publican and tourists the police were recognising that Aboriginal interests should be given priority. A second case also involves the Northern Territory. In Elliott the Aboriginal Council, as volunteers, acted as wardens to patrol the camps at night and to discourage and attend to unruly behaviour. The councillors acted as go-betweens for community and police. When, finally, funding was granted through the Aboriginal and Torres Strait Islander Commission (ATSIC) to employ the councillors in this role, this was seen to be a breakthrough. Funding, however, was then withdrawn and the sergeant in charge supported the protests of the community to ATSIC about this unfortunate decision. A less sensible sergeant may have seized the opportunity to call for more police to be stationed at Elliott.

INSTITUTIONAL DISCRIMINATION AND RACISM

13.4.40 In Chapter 12 I discussed the notion of institutional and community racism. I have referred throughout this chapter to aspects of .racism in police relations with Aboriginal people. The kind of racism that is referred to can be experienced as direct or indirect, and as personal or as institutionalised. Particular ways of treating Aboriginal people may have become so entrenched as to seem

normal or necessary, and be carried on without any individual ill-will, or desire or intention to discriminate. Racism is perhaps the most extreme expression of a whole gamut of behaviours. Much of the material that has come before the Commission indicates that Aboriginal people continue to experience the behaviour and attitudes of many police officers on a day-to-day basis as racist

13.4.41 As I have mentioned at the outset of this chapter it is clear that relations between police and Aboriginal people cannot be seen outside the broader relations of Aboriginal people to non-Aboriginal, largely white society. Within this context Aboriginal people suffer from racism and poverty.

13.4.42 This is not to say that all, or even most, police wish to maintain the subordination of Aboriginal people, nor that they are the only institution in Australian society that act to do so. Nevertheless, the routine nature of much of their involvement with Aboriginal people means that their day-to-day practices act to entrench the subordination of Aboriginal people and, with it, racist attitudes in the dominant society. These actions cannot be divorced, however, from the context of law enforcement which both legitimises them and in which they are carried out. An example of this dilemma is the situation that has developed in relation to protective custody in the Northern Territory. The report of the Northern Territory AIU summed this up:

> *Section 128 of the Police Administration Act was supposed to be an act of law reform, intended to decriminalise drunkenness and provide an alternative to arresting and imprisoning people. In practice, however, police continue to treat drunkenness as an offence, and because of the lack of beds at sobering-up shelters, many of our people find themselves locked up in the 'drunk tanks' at the police cells anyway.*
>
> *To many of our people it seems that they can be detained by the police at any time of the day or night. It seems there is a set of charges apparently reserved exclusively for our people: offensive behaviour, abusive language, resisting arrest. It seems that rarely, if ever, do non-Aboriginal people require protective custody. It seems that we are supposed to be so deviant and offensive as to constantly require imprisonment, to be locked up in police cells, in prisons, and in juvenile detention centres. It seems that the lists of charges and rules and regulations, so familiar to our ears, aptly summarise the relationship between their society and the dominant Anglo-European one. 23*

13.4.43 In addition to institutional racism as reflected in the police role within the criminal justice system there are also examples of individual racism, for instance verbal and physical abuse and harassment of Aboriginal people by police. In New South Wales, many of the Aboriginal people who appeared before the Human Rights and Equal Opportunity Commission's National Inquiry into Racist Violence identified relations with police as the most significant aspect of the violence that they continue to experience. Complaints of police bashing were made to AIUs by a number of communities. In Chapter 14, I discuss similar complaints in relation to youth. In the study carried out in 1988-89 on Aboriginal Social Health in Adelaide one-in-five of all respondents (16, or 19%) claimed that someone in their household had been 'physically abused by police'. 24

13.4.44 In the following sections I give examples of the nature of police harassment which Aboriginal people say they experience. I concentrate particularly on general harassment of Aboriginal people and the issue of inappropriate

treatment of Aboriginal women by police. This recounting is not merely to repeat a litany of alleged wrongdoings on the part of the police, but to show that racism and various forms of harassment and discrimination are still said to be very much in evidence. The persistence of such attitudes means that, although one can commend the changes that have taken place, one cannot be complacent about them.

13.4.45 I have discussed, briefly, studies that report incidences of physical abuse experienced by Aboriginal people, experience which a number of the AIU reports also record. Discrimination can extend to other forms of behaviour including racism that is expressed in verbal harassment. One of the most deplorable and racist comments this Commission heard was the comment made over the police radio by a senior constable first grade after the death of Craig Karpany: 'Oh, we're just looking for something to celebrate the death of a coon '.25

13.4.46 That not all officers approve such conduct was shown by the reply of another officer during the enquiry to the effect that he found the remark disgusting. The comment also produced a radio response from another officer which summed up the situation well: 'Sick, man, sick'.

13.4.47 The existence of racist entries in various police records, notably watch-house charge books, indicate that such attitudes are tolerated, if not shared, by some supervising officers. I note the existence of two such entries which had been made on prisoner index cards after the deaths of Fay Yarrie and the young man who died at Aurukun. These read, 'Gone to big watch-house in sky' and 'done hung himself' respectively. In New South Wales the AIU was told of a case where a Court Attendance Notice directed to an Aboriginal showed his occupation as 'bludger'. He was in fact employed, although that is irrelevant: the entry was obviously a gratuitous attempt to denigrate and hurt.

13.4.48 I pause here, however, to repeat an observation that I have earlier made. -Insofar as the attitudes of some police may be racist or insensitive, they reflect attitudes in the broader community. I am quite sure that the files of many government departments, if examined, and the words used in private in many institutions, if overheard, would disclose similar examples of insensitive or racist attitudes. I am also satisfied that such remarks represent the point of view of a decreasing section of police officers.

13.4.49 No doubt some of the offensive language used by police is in response to language addressed to them. While this may make the response understandable in some cases, it does not excuse it. Police are performing public duties, Aboriginal people are not. Police on duty are sober, while those using language to them are often drunk. Aboriginal persons may have low self-esteem as a result of widespread racist treatment and may be merely expressing pent-up resentment. They may be vulnerable to humiliation. Police should be secure in their role and can afford to ignore abuse. They should be prepared to take the lead in breaking the cycle of abuse rather than perpetuating it.

13.4.50 Various forms of police conduct are experienced as harassment A common complaint recorded by the AIU in South Australia was that Aboriginal people were stopped for 'no reason'. The nature of this kind of police interaction with Aboriginal youth has been discussed in Chapter 14. The oppressive scrutiny by police in cars slowly cruising up and down the streets of towns in western New South Wales is another example of harassing conduct experienced by Aboriginal people, as is the police use of spotlights in Aboriginal residential areas.

13.4.51 An example of personal and damaging racism is the treatment of the families of the deceased by police. This was illustrated in some of the

Commission's inquiries by the neglect of police to inform them immediately or appropriately of the death, as in the cases of Bruce Leslie and David Gundy. Sometimes the treatment has been more brutal, as in the case of Mark Quayle's family when:

> *In a revolting display of inhumanity Constable [name withdrawn] stopped an ambulance, containing Mark' s body in a bag, in a main street in Wilcannia and called on Mark' s brothers to get in, climb along their brother' s body to his head and identify him, on the implied, if not expressed, threat that if they did not do so the body would be taken to their mother's house for identification.*

13.4.52 This was an exceptional case, but it illustrates the extent to

which insensitivity can go when police come to see Aboriginal people as stereotypes rather than individual human beings.

13.4.53 The lack of trust and Aboriginal sensitivity to police surveillance reflects powerfully on the inherited legacy of poor relations between police and Aboriginal people to the extent that this past history may at times interfere with the willingness of both sides to heal the rift. A Victorian police officer told Commissioner Wootten how be had set out to cultivate friendly relations with Aboriginal youths in his town by talking to them in the streets, only to be accused of harassing them. What this demonstrates is the importance of frank discussion and negotiation between police and Aboriginal communities about policing methods, with a view to developing mutually satisfactory approaches, or at least understanding of the purpose of police operations.

Treatment of Aboriginal Women by Police

13.4.54 The issue of the treatment of Aboriginal women by a largely male police force assumes a particular importance in view of their alarmingly high level of arrest. Across the country, Aboriginal women made up nearly 50% of all women in police custody in August 1988, although they comprised less than 1.5% the national population of women. 26

13.4.55 The issue was raised in a study carried out by the Special Cabinet Committee on Aboriginal/Police and Community Relations in Western Australia in 1986. This was titled 'Aboriginal/Police Relations in the Pilbara'. The study concluded:

> *Aborigines believe police do mistreat Aboriginal women...*
>
> *The abuse and exploitation of women is a topic which touches the sensitivities of Aborigines and police. Police and Aborigines had more difficulty attempting to gauge the views of the other party on this subject than on any other. As part of making sense of current race relations in the Pilbara, contacts between police and Aboriginal women and girls today cannot be seen in isolation from the contacts and experiences of past generations.*
>
> *Police do not appear to realise that the way they treat Aboriginal women is condemned by the Aboriginal*
>
> *community. As long as Aborigines perceive police behaviour towards Aboriginal women to be offensive,*
>
> *relations between the two parties will remain strained. 27 .*

13.4.56 It is not merely a question of physical mistreatment or sexual abuse or

harassment. Relatively subtle differences in address or behaviour can be very damaging to self-esteem, and to good relations, especially when obviously discriminatory. In south-eastern Australia a light-skinned woman told Commissioner Wootten how she was treated and spoken to by police more politely than her darker sister, until their relationship became known, when she received the same brusque and discourteous treatment.

13.4.57 Many of the offences for which Aboriginal women too are detained are street order offences, although there is considerable variation from region to region. In Queensland, Western Australia, South Australia and the Northern Territory, many more Aboriginal women than non-Aboriginal women were placed in custody. In both Queensland and Western Australia, 25% of all Aboriginal custodies were women compared with, for example, 9% in New South Wales.[28] The authors of a submission presented in the Northern Territory commented:

> *It should be noted, however, that whilst surveys across Australia have shown that up to eighty per cent of Aboriginal women do not drink alcohol at all the incidence of drinking is greatest among those women living in towns and fringe camps, the areas where police observation is most probable, and that there has been a disturbing trend noted, at least in the Northern Territory, that the incidence. of Aboriginal women drinking and drinking to excess is increasing significantly.*[29]

13.4.58 Queensland, where the level of over-representation of Aboriginal women in custody is very high, also had the highest number of deaths of Aboriginal women (6 out of 9). All of these, apart from Karen O'Rourke who was in a juvenile institution, died in police custody. Although the numbers are statistically too small to elaborate any firm suggestions, there appears to be an interesting connection between the use of the obscene language charge in Queensland and charges against Aboriginal women.[30] All of the adult women in the Queensland cases heard by the Commission had had obscene language charges laid against them. There can be little doubt of the conflict between police and Aboriginal views of appropriate behaviour in women. Where this combines with drunkenness, which in each of these cases it did, the power of police to bring charges including vagrancy--is extensive.

13.4.59 In recent years the police services have increasingly recruited women as police officers. While a major impetus has been the pressure for equal opportunity for women, there is clearly great potential for the more diverse and representative force to change some of its attitudes. Hopefully Aboriginal women will be amongst the beneficiaries of change to attitudes that are rooted in a frontier past in which non-Aboriginal women had little presence. As the report of the Tasmanian AIU comments, after referring to community complaints about police treatment of Aboriginal women:

> *The attitudes expressed by police in these instances refer directly to an historical stereotype which maintains that Aboriginal women can be regarded as available for the convenience of those in power, and accorded little, if any, respect.*

Recommendation 60:

That Police Services take all possible steps to eliminate:
a. Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and

b. The use of racist or offensive language, or the use of racist or derogatory comments in log books and other documents, by police officers. When such conduct is found to have occurred, it should be treated as a serious breach of discipline.

Recommendation 61:

That all Police Services review their use of para-military forces such as the New South Wales SWOS and TRG units to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.

COMPLAINTS MECHANISMS

> *We do not all hate the police. We are not trying to say that all police are bad but what we are trying to say is the system has got to work out to make police accountable to someone so we do not have to cop racism. 31*

13.4.60 This statement given by a witness in describing the situation in Redfern for the Human Rights and Equal Opportunity Commissions Inquiry into racist Violence underscores the need for police accountability. This matter is discussed in some detail in Chapter 29. In this section I refer to the need to address the nature of complaints mechanisms.

13.4.61 It was not the function of the Commission to investigate specific complaints (other than relating to the deaths in custody) and it did not do so. Indeed, there have been relatively few formal investigations of this sort. Police point to this fact as showing that complaints are not bona fide and cannot be substantiated. Aboriginal people point to it as evidence of the fact that the mechanisms for dealing with complaints are so loaded against Aboriginals, and the fear of retaliation so great, that few Aboriginals dare to complain. Complaints are dealt with in a formal manner and usually investigated by police; the complainant is usually alone against an array of police witnesses, and handicapped by a record of previous convictions, and as a result unable to discharge the burden of proof placed on him or her. As the South Australian AIU was told by one community 'The local Aborigines are reluctant to take action against the police because if they do the police retaliate and the Aborigines always come off second best'. Having lodged one unsuccessful complaint, the complainant feels vulnerable to retaliation. either personally or against relatives. The existence of these problems emphasises the critical importance of improving complaint mechanisms as a step in improving Aboriginal confidence in police.

13.4.62 It is clear from AIU reports that many Aboriginal people perceive local policing as discriminatory. They complain that Aboriginal people are arrested for conduct that is ignored in non-Aboriginals, that in the event of a fight between an Aboriginal person and a non-Aboriginal it is invariably the Aboriginal who is arrested, that Aboriginal complaints against non-Aboriginal people are not taken up, and so on. It is important that there should be the sort of dialogue between police and Aboriginal communities at the local level in which such issues can be brought to the surface and resolved. They will never be resolved while police refuse to consider such issues except on the basis of formal complaints about specific acts. What is needed is not the prosecution of individuals so much as the examination of patterns of behaviour in frank discussion. If community policing means anything it should mean a real willingness to account to local Aboriginal communities, not a holding of them at arm's length by an insistence that

complaints must be dealt with by adversarial process.

13.5 THE GENERAL SITUATION IN STATES AND THE NORTHERN TERRITORY

13.5.1 Although there are many features, including those discussed above, which are common to the relations between Aboriginal people and police across Australia, the significant regional differences constitute perhaps one of the Commission's most important findings.

13.5.2 I have already referred to the difficulty in writing in a balanced way about the complex subject of police-Aboriginal relations--that is, giving full credit to the changes that are taking place while acknowledging how bad things have been and how much remains to be done. The difficulty is compounded when one seeks to discuss the situation on an Australia-wide basis, for one has only to look at the statistics of arrests of Aboriginal people to realise what enormous differences there are between different States and Territories, each of which has its own police service. A closer examination of these statistics shows that there are also very great differences between various parts of States, policed by the same police service and ostensibly applying the same policies. Talking to Aboriginal people and to police officers reinforces this picture of diversity. It has not been possible for this Commission, which has had to put so much of its effort into the investigations of particular deaths, to document all these differences or to seek out explanations for them. Clearly, many factors have operated to create this diversity ranging from different histories, traditions, and economies to the influence (for good or bad) of outstanding individuals amongst Aboriginal people and police officers.

13.5.3 I can paint the picture only with a broad brush. In this section I will describe what has been, and to a large extent remains, the general picture across Australia. It is a picture of, on the whole, bad relations of which no-one can be proud. But it is a picture which, I believe, not only can be changed for the better but has already has been changed in some places. Later in this report (Chapter 29) I refer to the encouraging and enlightened stand taken by the Police Federation of Australia and New Zealand on behalf of its members, and in the next section, in the course of reviewing the situation jurisdiction by jurisdiction, I will refer to some of the constructive changes that are going on of which everyone can be proud, particularly the Aboriginal communities and the police whose cooperation has brought them about. In the following States and the Northern Territory I discuss some aspects of Aboriginal-police relations. Some of this material reiterates themes that have previously been discussed in this chapter.

New South Wales

13.5.4 New South Wales is the State with the second highest Aboriginal and Torres Strait Islander population in Australia--59,011, or 25.9% of the national population, following closely behind Queensland where the total is boosted by a large number of Torres Strait Islanders (1986 Census). In these terms, the number of deaths in police custody in New South Wales, nine, or 14% of the national total in the period investigated by the Commission, is relatively low compared with Western Australia or Queensland, for example, each of which had nineteen such deaths. The level of over-representation in police custody in August 1988 was also lower than the national rate, at fifteen times that of non-Aboriginal people compared with the national rate of twenty-seven times. However, while New South Wales may look good by comparison with some other States, by any other standard this is still a distressingly high level which calls for vigorous but carefully considered and sustained action.

13.5.5 New South Wales is a State in which the metaphor of trying to turn the battleship around is particularly apt. The police service has traditionally had a poor image with Aboriginal people, and a series of recent incidents has reinforced this image. This is despite the fact that, in the words of one senior officer, the service has, under Commissioner John Avery, 'been undergoing a cultural revolution'. There has been an attempt to broaden the philosophy of the service from the traditional role of simple law enforcement to a developing concept of 'community policing'. As a step towards greater responsiveness to local communities the service has been regionalised, a process which itself has meant a major upheaval to which the service is still adjusting.

13.5.6 The transitional stage which the service has reached is reflected in its relations with Aboriginal people, which vary enormously from place to place. Commissioner Wootten told me that this was apparent to him in his own visits to a number of centres and was confirmed by the AIU. Some communities hold a very adverse view of local police, their complaints going as far as physical bashing, and some others have praise for them. A large number are ambivalent, pointing to good and bad features, or a fairy even mix of sympathetic and unsympathetic officers, although it is not unusual for these communities to concede that relations were improving, but with a long way to go. Some people in these communities articulated the burden of history, saying how hard it was for both police and Aboriginal people to overcome their stereotypes and traditional reactions.

13.5.7 In addition to the complaint that bashing still continued in some areas, the complaints covered ground that is familiar in most of Australia: perceived discrimination in the application of the law, lack of even-handedness in conflicts between Aboriginal and non-Aboriginal people, rough or discourteous behaviour, hurtful or belittling remarks, disrespect or worse to women, harassment of youths or previous offenders, excessive and unnecessary use of the power of arrest, provocative behaviour and multiple charging, and so on. Sometimes much of the discontent focuses on the conduct of a minority of officers in the town whose racist attitudes poison what might otherwise be a good relationship. In larger centres, whether the general pattern is good or bad, Aboriginal people usually point to some officers who have a different attitude to the majority. As in other States, it is usually the younger officers, still learning to handle the power that has suddenly been conferred on them, who are found to be the most arrogant and the least able to listen and understand.

13.5.8 The State-wide statistics quoted earlier conceal important local and regional differences. The Aboriginal population, which comprises 1.1% of the total State population, is concentrated in certain areas. Even allowing for this, however, there are significant differences in the rate of arrest between urban area-except for such specific areas as Redfern--and rural towns, especially in the north-west and far west. A breakdown of the figures in the National Police Custody Survey of August 1988 32 shows very sharp differences between regions. The starkest contrasts may be seen in the levels of over-representation in police custody, the level in Sydney being 7--that is, Aboriginal people are seven times more likely to be in police custody than non-Aboriginal people. In the north-west, this figure is 67 times, and, in the far west, 223 times.[33]

13.5.9 In his *Report of the Inquiry into the Death of Clarence Alec Nean,* Commissioner Wootten discussed some of the issues that relate to these regions:

> *The North West of New South Wales has the largest concentration of Aboriginal population in New South Wales outside of Sydney. There are a number of towns, of which Walgett is one, in which there is a high proportion of Aboriginals in the population. These have a number*

of problems in common as well as specifically local problems.

Collectively they form a group of towns which are the source of a large number of Aboriginals in custody in New South Wales and a significant proportion of the deaths in custody. They have high numbers of police and what is felt by many Aboriginals to be oppressive policing. There are many indications of racism that make life unpleasant for Aboriginals.

13.5.10 The nature of that racism was vividly documented in the *Report of the Inquiry into the Death of Mark Anthony Quayle,* which related to Wilcannia.

13.5.11 Wilcannia, the western town in which Mark Quayle died, illustrates one response to tensions in the town, that is, more police, more weapons and more surveillance. This response is evident in the town, as is the problematic result. Commissioner Wootten wrote:

Wilcannia, with a population of 1,000 of whom some 800 are Aboriginal, is serviced by 11 police, a police population ratio nearly six times that of the State as a whole. Aboriginal people often ask 'Why are there so many police?' The facts are that the State-wide police/population ratio is 1:432. In Chatswood it is 1:926, in Redfern 1:353, in Bourke 1:142, and in Wilcannia 1:77. The bill for policing in Wilcannia was $816,581 for 1989/90, with other costs, including the cost of the court, bringing the cost of 'justice' in Wilcannia conservatively to $1,143.581 per annum.

Some observers see this massive police presence as a cause of, rather than a limitation on crime. A major offence in Wilcannia is swearing at the police. Arrests for swearing at police often arise as police constantly drive up and down the main streets of the town obviously scrutinising the Aboriginal population. Eventually some Aboriginal calls abuse at the police, who seek to make an arrest. Charges of resisting arrest and assaulting and hindering police are likely to follow.[34]

Victoria

13.5.12 Victoria, although it has a relatively low percentage of Aboriginal people (5.5% of the national Aboriginal population and only 0.3% of the State population), nevertheless shows similar characteristics to other States in terms of over-representation. The National Police Custody Survey, 35 showed that in Victoria Aboriginal people were likely to be in police custody at a rate of thirteen times that of non-Aboriginal people, a level of over-representation in police custody higher than that of the Northern Territory. Although the actual number of deaths in custody is only three, relations between police and Aboriginal people appear to be problematic here also.

13.5.13 The AIU reported to the Commission that all of the communities that it interviewed reported some problems with the police. 'These problems ranged from discriminatory attitudes to intimidation by constant surveillance and physical abuse.'

13.5.14 There was a very widespread perception of discriminatory attitudes on the part of police officers. There were frequent complaints that Aboriginal people were charged in situations where non-Aboriginal people would not be charged. It seemed to be almost unknown for a non-Aboriginal person who assaulted an Aboriginal person to be charged, it was said, but the reverse situation invariably

brought charges. A fight between an Aboriginal person and a non-Aboriginal person would invariably lead to the charging of the former. In many communities Aboriginal residents felt under suspicion when any offence had been committed, even though it might turn out in the end to have been committed by a non-Aboriginal person. Aboriginal people who arrived from out of town were stopped by police and questioned as to who they were and what they were doing. It was felt that young people in particular were targeted and harassed by police in a way that gave them little opportunity for rehabilitation if they had offended.

13.5.15 A number of communities complained of bashing by police, both of males and females. Complaints by no means related to all officers; there were communities who had relatively few and mild complaints, and usually distinctions were drawn between good and bad officers from an Aboriginal point of view. A number of communities conceded recent improvement. One community linked this to the Royal Commission and wondered what would happen when it was disbanded.

13.5.16 Harassment was a frequent complaint. An example was given of police cars constantly driving past Aboriginal (Koorie) houses and Koorie areas 'just checking, keeping a vigil, reminding us that we are "bad" and need to be kept an eye on. They tried to intimidate us', one person told the AIU. Police were reported to have told other children 'not to hang around with blacks'. Koorie kids going to a Blue Light Disco felt harassed when they were greeted with comments like 'You're not going to muck up tonight, are you?' The success of police liaison officers and Liaison Committees clearly varied from town to town, and on the whole did not appear to have had a great impact.

13.5.17 There was a common feeling that there was little point in making complaints as they were not sympathetically considered and invariably rejected. It was difficult to get witnesses to come forward for fear of retaliation.

13.5.18 As in New South Wales, there have been considerable endeavours at a senior level to turn round a situation now recognised to have been very unsatisfactory over many years. The view that has been officially adopted is stated in a history of the Victorian Aboriginal/Police

> *Police and Aboriginal people have come into conflict due to the role that each has traditionally undertaken within the Community. This conflict has resulted in both Aboriginal people and the Police being stereotyped by the others. This stereotyping has acted only to exacerbate the conflict, and is born predominantly oat of ignorance which results in an identified lack of understanding and communication between them.*

Queensland

13.5.19 Queensland is the State with the highest numbers of Aboriginal people---61,268 in the 1986 census, comprising 26.9% of the national Aboriginal population. The Aboriginal percentage of the State's population is 2.4%. Queensland's number of deaths in custody was second only to Western Australia. The level of over-representation in police custody is, however, markedly lower (although still high) at 17 times the rate of non-Aboriginal people.[36] The State also provided the most dramatic cluster of self-inflicted deaths in 1987 in remote communities. The reports of Commissioner Wyvill in relation to these deaths raise important issues concerning Aboriginal community police. (The issue of community policing is discussed further in Chapter 29.)

13.5.20 Senior Sergeant Trevor Adcock of the Queensland Police, in a paper for the Royal Commission in Queensland, pointed out that Aboriginal communities or Trust Areas have been for many years 'a secondary consideration, approached generally in a reactionary fashion rather than in a needs-based fashion'. 37 Sergeant Adcock further pointed out that policing has been carried out with an apparent ignorance or lack of concern (or both) for the huge social problems 'created' on the communities. Many of these communities are artificially created and located in extremely harsh environments.

13.5.21 Aboriginal communities, however, are not the only matter of concern in Queensland. The fact that other deaths occurred in rural or urban watch-houses, including five in the Brisbane City Watch-house or in hospital while in custody from there, indicates that problems similar to those in other cities or towns in Australia exist for Queensland Aboriginal people outside the communities. The problems that exist for Aboriginal women have been discussed already, as well as the use of particular provisions, such as obscene language and vagrancy (insufficient lawful means), that have a discriminatory impact on Aboriginal people. I have already referred to the difference in the experience of Fay Yarrie between her constant contact with police in Queensland and her arrest-free twelve months in South Australia, and the implications of this for different attitudes by police in the two States towards drunkenness.

13.5.22 Such problems with police again reflect the subordinate position of Aboriginal people in Queensland society in general. This is the situation that, as in other States and Territories, must change through a sustained move towards self-determination on the basis of access to adequate economic, social, and political resources. As part of the process, there must be no delay to changes in general policing practices and comprehensive reorganisation of the status and conditions of Aboriginal police. Positive signs have been received from the Queensland police force about changes that are currently underway in the fields of recruiting, education and training, including the proposal for the setting up of an inter-disciplinary and inter-departmental body comprising Aboriginal representation.[38]

13.5.23 There are a number of initiatives under way in Queensland which indicate that past policies and attitudes toward policing Aboriginal people are changing for the better. The trend toward community policing as a consequence of the Fitzgerald Inquiry reforms is heartening. The Criminal Justice Commission, in association with the Office of the Minister for Police and the Police Service is currently reviewing all legislation pertaining to police powers. The Police Service Office of Policy and Evaluation has determined as a matter of priority the development of an Aboriginal, Tortes Strait Islander and Ethnic Minority Strategy for policing in Queensland.

Western Australia

13.5.24 Western Australia, a State with 16.6% of the national Aboriginal population, has the dubious distinction of having not only the highest number of deaths in custody, 32, but truly shocking levels of over-representation of Aboriginal people in police custody. In a State where Aboriginal people form only 2.7% of the total population, there were in August 1988 actually more Aboriginal (54.2%) than non-Aboriginal people in custody, and they were over-represented in police custody at an appalling rate of 43 times that of non-Aboriginal people. The implications are 'clear that relations between Aboriginal people and police in Western Australia are abysmal.

13.5.25 In view of what has been said already about the need to situate the question of relations with police in the broader context of community relations in general, it is not accidental that Western Australia also emerges from other studies as worst in terms of general attitudes towards Aboriginal people. In the 1967 Referendum, in which 90.77% of voters agreed to grant comprehensive power to the Commonwealth to legislate in Aboriginal matters, a breakdown of the figures shows that Western Australia returned the highest 'No' vote (19.05%) of all States. Within the overall State response, one of its divisions, that of Kalgoorlie, recorded the highest 'No' vote (29.04%) in the country.[39] A national survey on attitudes to land rights carried out in 1984 identified Western Australia, along with Queensland, as consistently more negative on a wide range of issues than any of the other States.[40]

13.5.26 The specific problems demonstrated in relations between police and Aboriginal people have been documented in a number of reports. One of these was the *Report of the Laverton Royal Commission 1975-76.* I was one of the three Commissioners who investigated that matter. This report examined a particular series of confrontations between police and Aboriginal people that arose from an increase in the number of Aboriginal people in the Laverton area over December 1974 and January 1975. The cause of the increase was the movement of people from the Warburton Ranges area through Laverton to Wiluna for ceremonies. One of the comments of the report was in relation to the need for extra training for police in relation to Aboriginal matters:

> *The complete lack of knowledge displayed by some of the police officers concerning the mode of life and customs of the Aborigines with whom they came in contact was disturbing.*[41]

The report went on to recommend 'that suitably qualified Aborigines should play a part in any training programs that may be introduced in the Police Department'.[42]

13.5.28 Ten years later, a report by the Special Cabinet Committee on Aboriginal-Police and Community Relations the Committee itself a result of the recommendations of the Laverton Royal Commission--found that both police and Aboriginal people in the Pilbara saw relations between them as being, at times, violent. The single most important policy which Aboriginal people felt should be adopted to improve relations was to ensure that only police suited to working with Aboriginal people be posted to the Pilbara.[43]

13.5.29 In 1990, the Western Australian Equal Opportunity Commission published a *Review of Police Practices (S.82 (b) Report no. 8).* In it they found that:

> *While the Terms of Reference for this review required an examination of the perceptions of a number of groups, it soon became evident that the greatest problems existed in the area of Aboriginal/police relations... While not denying the efforts of many individual officers who appreciate Aboriginal culture and have established good relations with Aboriginal*

communities, the almost universal sentiment from Aboriginal people about their relations with police is one of resentment at the level of control over their affairs and the way this control has been exercised. 44

13.5.30 The submission made to Commissioner Dodson in July 1990 by the Western Australian Police Union of Workers provides a perspective on police-Aboriginal relations which is very different to that later presented by the

Police Federation. The Police Union canvasses those factors which it regards as relevant to the deaths in custody but the focus of the submission is a narrow one.

13.5.31 The Police Union states that as an 'overburden' most police officers accept 'a welfare role, particularly in the country areas with Aborigines as the major beneficiary'. In order that police may meet that task the submission adds:

> *There is a degree of education towards this end delivered by officers to their counterparts as part of the culture within the Force, which has produced a fair understanding and consideration of Aborigines and their place in society in general.*[45]

13.5.32 It is my opinion that the perception of Aboriginal society which is espoused in the Police Union's submission and its understanding of the problems which Aboriginal people may confront and the possible solutions to those problems show serious misunderstandings. These misunderstandings may help to explain why relations between Aboriginal people and police in Western Australia are as poor as I believe them to be and as Commissioner Dodson has reported.

13.5.33 The Police Union categorises Aboriginal people according to three groupings; they are differentiated according to the degree of Aboriginal blood which they have as much as by their places of residence. The Union recognises that 'Prejudice against the Aboriginal race is prevalent in most areas of WA' and adds 'this is now being returned by many Aboriginal people'. What the union reports as being the increase in hatred by Aboriginal people towards non-Aboriginal people 'appears to be nurtured by Aboriginal lobby groups'.

13.5.34 The submission notes, correctly in my view, that Aboriginal people have suffered as a result of contact with the broader society. It notes;

> *The prejudice directed at Aborigines has seen them generally typecast and considered a lesser race, leading to a very poor socioeconomic existence. Limited employment opportunities in general has seen a decline in work opportunity for Aboriginal people which must have a far reaching impact on them. Lack of suitable housing, mental depression and absence of positive role models have no doubt great influence on the expansion of the gap between Aboriginal and non-Aboriginal people.*[46]

13.5.35 Having correctly identified such issues the union confuses the issue by adding this: 'Fragmentation of their traditional aims and ideals through lack of education, motivation and the breaking down of pure blood lines must add fuel to that fire ,.47

13.5.36 The union sees alcohol misuse as being 'the major cause of Aboriginal end-user abuse of the welfare system' and rejects processes which the Police Federation of Australia saw as necessary if solutions were to be found. The union submitted:

> *Injection of money was tried by the Federal Government as a means to overcome the Aboriginal plight in the early 1970s. This led to an attitude problem where there is now complete expectation due to birthright with no requirement morally or legally for input by Aborigines. This attitude must be turned around as any endeavour to 'bridge the gap' will be severely hampered by such prejudiced expectations. Ideals such as the promotion of Land Rights will not overcome the lack of positive attitude to self-advancement gained through personal input by Aboriginals.48*

13.5.37 Rather than viewing Aboriginal people as passive victims who should have an absolute entitlement to receive welfare and charity, this report has sought to emphasise the importance of empowering Aboriginal people to take control of their own lives**.** In my view, it would not be unfair to label the union approach as outdated and assimilationist**.** Its failure to understand the important role of Aboriginal organisations is particularly unfortunate. The union says:

> *Creation of services for exclusive use by Aborigines, such as the Aboriginal Legal Service and the Aboriginal Medical Service, has had a detrimental effect on Police-Aboriginal relations. In many instances there has been a downturn in attitude to law and order as set by community standards due to the creation of the Aboriginal Legal Service, as it has introduced an expectancy of acquittal into Aboriginal offenders. This has led to insolence for authority mainly in the younger people, which is now visible in the development of hatred for those vested with the task of law enforcement. The Union recommends abolition of the racially titled service groups and their absorption into the all encompassing agencies.*[49]

13.5.38 For reasons which I have explained elsewhere in this report I think that this is entirely the wrong approach. I would strongly urge the Police Union to reconsider its attitude with respect to Aboriginal organisations in light of the experience elsewhere of the vital role which they have played in improving relations with police. That improvement has been achieved because the organisations are strong and articulate advocates of the rights of Aboriginal people.

13.5.39 Equally, I believe the union' s perception of the 'solution' to the problems faced by Aboriginal people to be misguided. It emphasises the need for Aboriginal people rather than non-Aboriginal people to change their attitudes. They note:

> *There has to be a collective responsibility of the Aboriginals and such an awakening has its best chance if*
>
> *brought about by a strong plea by this Royal Commission for Aboriginals to accept personal responsibility for their own destiny and that of their fellow Aboriginals. Similarly no amount of white paternalism by the imposition of further rules and regulations be it upon white custodians or upon black prisoners will ever alleviate the aggravation and trouble caused by citizens who do not respect the law if those citizens are not prepared to accept responsibility for their own actions. In other words, unless the Aboriginal people are encouraged to embrace the society in which they live, and the rules and norms of that society, they will always be at war or at odds with that society, and it is a matter of inevitability that there will always be a social fall-out from such conflict. 50*

13.5.40 I do not disagree with the proposition that Aboriginal people must accept personal responsibility for their own destiny. This indeed is the message of this report and it is what Aboriginal people themselves have said they want. The principle of self-determination is all about Aboriginal people taking control of their lives, making their own judgments about the causes of problems which confront them, identifying and implementing the solutions to those problems. The Police Union, however, fails to recognise the extent to which it is the actions and policies of non-Aboriginal society which constrains Aboriginal people in their capacity to control their own destiny.

13.5.41 This approach of the union, which I believe to be flawed, motivates their

rejection of some proposals which I believe have merit. The union rejects the Interim Report recommendation that said 'where practicable' the Aboriginal Legal Service (ALS) should be notified when an Aboriginal person is detained in custody or else where the ALS cannot be contacted then another designated member of the Aboriginal community be contacted. The union's response to this was:

> *The Union strongly resists this as any sort of workable recommendation. It is in itself discriminatory, would be far too time consuming, in fact would invade the privacy of many Aboriginal people who do not wish to seek the services or have their plight known to the Aboriginal legal Service, or others, and for those basic human rights type reasons it should be resisted.*[51]

13.5.42 Although the union identifies racism as being prevalent throughout Western Australia, unlike the Police Federation it is reluctant to accept that it may also affect some police officers. The union rejected an Interim Report recommendation that screening processes be implemented to prevent police who have racist attitudes being recruited or retained if training programs fail to change their racist attitudes. Its response was:

> *This recommendation is totally rejected as a purely emotive statement. There is no basis and no proven cases of racism by police officers within Western Australia. If there were ever such a thing found there is adequate provision with the Police Regulations to deal with that matter now.*[52]

13.5.43 There are many matters with which I am in agreement in the submission and it is a pity that these positive contributions are diminished by more negative and reactionary responses. In particular, I welcome the union's comments about the need for education and training and its support for police aides. As to education and training the union said:

> *Education of Police specifics [sic] of Aboriginal relations requires extension by the Force. Call for education on both sides is fair comment. Many variations of useful further education have been proferred by individual members during the hearings and it is recommended they be extracted from the transcript to form the basis of a study aimed at designing and implementing a more comprehensive training curriculum.*
>
> *On each, the Union is prepared to assist whole-heartedly.*[53]

13.5.44 I believe that constructive proposals such as this should be the focus of union endeavours to improve police-Aboriginal relations. Although I have identified what I believe to be some inadequacy in the Union's analysis of the issues and in its prescription for change the Union, the police hierarchy and the Western Australian Government have nonetheless all played a part in some important initiatives which have occurred in that State and which demonstrate that improvement in relations between police and Aboriginal people is sought generally and is slowly being achieved in some places. A number of initiatives have been taken and are important to mention.

13.5.45 One of the responses of the Western Australian Government to the problem of Aboriginal-police relations, and in particular of Aboriginal deaths in custody, was the setting up of an Interim Inquiry into Aboriginal Deaths in Custody in late 1987. Its report, the Vincent Report (1988), made a number of specific recommendations in relation to both police and prison custody.

13.5.46 On the positive side, there is some other evidence that efforts to improve relations are being made. A comparison of patterns of arrest, custody and bail at the Kalgoorlie police station during 1 October to 8 November 1987 and 1 March to 14 April 1990 [54] showed identifiable changes in police practices in that area. The most significant of these findings were: first, the substantial decrease in the number of Aboriginal people arrested; second, a massive reduction between 1987 and 1990 in the numbers arrested for drunkenness, despite the fact that public drunkenness had still not been decriminalised at the time of the1990 survey; and, third, an increase in the number of both Aboriginal and non-Aboriginal people released on bail. It is to be hoped that this kind of improvement will be speedily followed by the setting up of adequate detoxification centres throughout the State.

13.5.47 Commissioner Dodson informed me that during the course of his investigations in Western Australia the police commissioner, the police union and the local superintendent of the Kimberly were all supportive of a three-day meeting held on the banks of the Mary River. This involved the union representative, the local superintendent and the officers in charge from major Kimberley towns, with representatives from most Kimberley Aboriginal communities. It was an occasion of mutual benefit, and the first time that such a large meeting had been undertaken to discuss the broad issue of Aboriginal-police relationships.

South Australia

13.5.48 South Australia, although with a substantial number of Aboriginal people (14, 291 at the 1986 census), ranks quite low against other States and the Northern Territory in terms of its percentage of the national Aboriginal population (6.3%). The State's twelve Aboriginal deaths in custody, while unacceptably high, were by no means among the highest numbers to be examined by the Royal Commission. The level of over-representation, however, as measured in the National Police Custody Survey in August 1988, 55 is very high, at 26 times that of non-Aboriginal people. This level is second only to Western Australia, and has to be assessed in the light of the percentage that Aboriginal people comprise of the State population (i.e. 1.1%).

13.5.49 From a policing and other points of view, Aboriginal people in South Australia experience three different situations applicable to:

(a) the Aboriginal lands in the north west and far west of the State. In these areas the evidence before me is that the position is satisfactory, particularly in the Pitjantjatjara Lands where the Council is pleased with the operation of the police aide scheme;

(b) the communities situated in rural or outback areas or in country towns. The actual situations are different and the views of the people are different ranging from a feeling that the situation is bad in one place to good in another and in between; and

(c) the metropolitan area of Adelaide where dissatisfaction is most widely expressed. A study carried out on Aboriginal Social Health in Adelaide in 1988-89 found that of the heads of household interviewed:

- · *Three-in-five of all respondents (54, or 62%) reported police had visited their households in the last two years without having been called; 24 had police 'call' at least flour times in the last two years.*
- *One-in-four of all respondents (20, or 24%) reported that police had 'entered their houses*

without invitation or a warrant, and without proceeding to arrest someone'.

- *One-in-five of all respondents (16, or 19%) claimed someone in their household had been 'physically abused by police'. One half of people allegedly abused were children of respondents.*
- *One quarter of all respondents (22, or 26%) regarded 'frequency of contact with police' as one of the most stressful matters of their lives. 56*

13.5.50 The type of complaint referred to in the Adelaide study seems to be typical of the complaints from the rural areas that is to say mainly of over policing, on the one hand, and of overbearing attitudes, on the other. There is no doubt that there is a legacy of inherited suspicion, distrust and hostility among many Aboriginal people. On the police side, there is a perception that young people are not controlled and act unlawfully but also provocatively to police.

13.5.51 There are undoubtedly improvements in many areas; where there are complaints they are usually not of violence but of attitude or over-policing including discriminatory policing. What appeared might be an example of the latter was made the subject of critical remarks by the Chief Justice in R.v. Armstrong (1989) 53 S.A.S.R.25. The Chief Justice stated:

> *I think that one aspect of the evidence requires comment. The four passengers in the appellant's car were Aborigines and the appellant described himself as 'connected with the Aboriginal people'. The car was stopped on the outskirts of Port Augusta without apparent reason. The only reasons given to the appellant were that the occupants were not locals, the police did not recognise the car, the police "like to know who' s just passing through town" and it was "just routine check". For no better reasons than these the appellant was asked to furnish his name, address, date of birth, occupation, place of accommodation, place of commencement of his journey, his destination and the purpose of the journey. He was asked to open the boot of his car to enable an inspection by the police. It is inconceivable that the police stop every car which passes along the main highway through Port Augusta unless the car or the occupants are known to the local police. There must have been some reason for stopping this particular car. It is not to the point that in the event items of property were seen in the car which subsequently led to a charge. There is nothing in the evidence to suggest that the police had any reason to suspect this when the car was stopped. There may have been some reason for stopping the car which was not disclosed in the evidence. If it was stopped for no better reason than the racial characteristics of the occupants or the absence of an air of affluence about them or about the car, the action of the police would have to be characterised as high-handed and arbitrary. Harassment on such grounds could not be tolerated. The police officers have not been questioned about these matters and I make no judgement about them. I think there is sufficient material, however, in the evidence to justify some inquiry by the Commissioner of Police into the circumstances in which the car came to be stopped. 57*

13.5.52 The police department is, I am satisfied, making some vigorous efforts to improve matters. Encouraged by the success of police aides in the north-west, it has extended the scheme to the metropolitan area and to some selected country towns. In Port Augusta, police are associated with a public committee which the

Government, Aboriginal people and others support to tackle the basic causes of problems of juvenile behaviour in a constructive way. In other places, attempts are being made to liaise and work together in Aboriginal groups; an important example of this is in Hindley Sweet, Adelaide. Some officers from Elizabeth are doing excellent work with schools in that area. There is good support amongst police officers for the police aides and for the recruitment of Aboriginal police officers. There have been changes made with police support as to handling intoxicated Aboriginal persons in Adelaide. There are ongoing relations between Aboriginal communities and police by way of liaison committees or persons at several centres, and police co-operate very well in the visitors schemes (see Chapter 24 and 29).

13.5.53 I am particularly impressed with the actions taken by the department during the life of the Commission on the question of custodial care. The most recent orders relating to the frequency and standard of checking are, in my opinion, excellent. The attitude to 'Arrest as a Last Resort' is also very positive, and initiatives in teaching the concept at the Academy are also very positive. I have said in other places that in my opinion, leadership and training at the operational level is most important. I mention another matter which I regard of particular importance. The department' s policy on selection of and training of volunteer officers to be posted in the north of the State (including those under consideration working in the north for a short period) is very good.

13.5.54 I have had good reports from Ceduna of the operation of the shelter for intoxicated people and of the co-operation between shelter staff and police. Additionally, I think that it is significant that in the recent Port Augusta call for a curfew for young people the police leadership took a very independent position and, as mentioned, are working with a committee referred to above.

13.5.55 On a whole range of matters that have arisen during the life of the Commission the department has been very cooperative and has come up with practical and useful proposals. I mention the feedback proposal. I have also had very good relations with the Police Association of South Australia.

13.5.56 My judgment is that there are problems, some that are real and ongoing and that have to be patiently addressed, and some that have their basis in history; but that on both sides there are changes of attitude taking place and a greater willingness to cooperate.

13.5.57 I recently raised with the union the concept of promoting the importance of improving police-Aboriginal relations by establishing some award or citation for officers who make an outstanding contribution in this respect--recommendations for the award being in the hands of Aboriginal communities or organisations. I am advised that both the Commissioner and the union would support the concept. The idea was very recent and I have not been able to take the matter up with Aboriginal organisations, but I commend the idea to all concerned and hope that it can be put in place. It will be a way for Aboriginal communities and organisations to express both their conception, and their appreciation, of good policing, and provide appropriate recognition for the efforts of the officers concerned.

Tasmania

13.5.58 In the 1986 census, the Aboriginal population of Tasmania amounted to 6,716 people, 3% of the national Aboriginal population or 1.5% of the State population. This, remarkably--and despite popular misconceptions--is a percentage of the State population slightly higher than Victoria, New South Wales, or South Australia. The figures marked an increase of 149.9% over the figures available

from the census of 1981.[58] This increase cannot be explained by reference to natural growth rates. While there is some debate as to the reasons for this increase, substantial weight is given by most commentators to a greater willingness by people to identify as Aboriginal. Given the sorry history of race relations in this State, and the dominance for so many decades of the view that Tasmania had no Aboriginal population, this is a significant change. I deal further with issues **r**elating to Aboriginal identity in Tasmania Chapter 11.

13.5.59 Despite the denial for so long of the existence of Aboriginal people in Tasmania, the level of their over-representation in police custody is still, ironically, quite high: five times that of non-Aboriginal people in the National Police Custody Survey.

13.5.60 In his *Report of the Inquiry into the Death of Mark Wayne Revell,* Commissioner Wootten discussed the issue of the choice open to Mark Revell to identify as Aboriginal or not:

> *To be labelled Aboriginal in Tasmania brought no advantage and much pain in the form of discrimination and abuse. There is now a strong and proud Aboriginal*
>
> *community, serviced by the Tasmanian Aboriginal Centre. Mark' s mother now lives in Aboriginal housing*
>
> *and was represented before the Commission by the Aboriginal Legal Service. His sister has studied on an Aboriginal scholarship.*
>
> *His mother believes that if he had been alive today he would have found what he was looking for in membership of the strong Aboriginal community which has developed in Tasmania.*[59]

13.5.61 What emerges from this discussion, which I also touched upon in Chapter 11, is the dilemma that Mark Revell and many other Aboriginal people in Tasmania have lived with. This dilemma relates to a denial by non-Aboriginal society of the fact that Aboriginal people existed in Tasmania. Implicit in this denial is that all persons, both Aboriginal and non-Aboriginal, should be treated as equals, yet Tasmanian Aboriginal people suffered (and continue to suffer) the same disadvantages as Aboriginal people in other parts of Australia.

13.5.62 A very negative picture of Aboriginal-police relations comes from the Aboriginal side. The report of the Commission's AIU said:

> *For most Blacks, the only contact with Police usually amounts to a bad experience. It is not surprising therefore, that the reputation of Police in the community is very poor. This is not to say that the community believes that every police officer is bad. However, the intensity of racism demonstrated by those officers who are involved in conflicts with Aborigines has a great impact on the community, as the story of experience while in custody is shared around very quickly.*
>
> *Of particular concern to the community is the attitude of Police Officers to Aboriginal women. During arrest and detention, Aboriginal women are consistently abused, verbally with terms such as 'black slut', 'whore', etc. While it is improper for individuals to be insulted by police officers in the first place, the nature of such insults is particularly threatening for young women who are placed at the mercy of several white males in unfamiliar surroundings.*

13.5.63 Because of the time constraints that the Royal Commission faced, no

discussion was held in Tasmania to fully investigate the responses to the issue of Aboriginal police relations from the Tasmanian Aboriginal community nor from the Tasmanian police. It is apparent that more in depth inquiries need to be undertaken. The particular importance, however, of the development of Aboriginal organisations in Tasmania may well prove to be important in improving Aboriginal-police relations in this State. Of additional note, in this respect, was the submission received from the then Police Commissioner, Mr Horman. His submission was one of the first received by this Commission and was very comprehensive. The submission reflects some sensitivity to the issues facing Tasmanian Aboriginal people and the issues police must face when dealing with Aboriginal people.

13.5.64 It appears that in Tasmania there has been a strong disinclination to acknowledge the existence of Aboriginal people as an identifiable group and this attitude has, in the past, been reflected in police approaches. It is apparent that questions are now being addressed in a more positive way although Tasmania Police are still lagging behind most other Australian Police Services in their understanding of Aboriginal people, recognising them as a distinct group, in entering into dialogue with the Aboriginal community, and in seeking constructive ways to improve relations between Aboriginals and police and reduce the numbers of Aboriginals coming into custody.

Northern Territory

13.5.65 One of the most positive outcomes of the Commission must be the identification of moves to improve relations between police and Aboriginal people in the Northern Territory based on the presence and growing strength of Aboriginal organisations, and the willingness of senior police administrators to address the problems that exist

13.5.66 While, in plain numbers, there are fewer Aboriginal people in the Northern Territory than in Queensland, New South Wales and Western Australia, they comprise a very substantial proportion of the total Territory population: 22.4% or nearly one-quarter of the Northern Territory population are Aboriginal people. Their level of over-representation in police custody is markedly lower than the national level. Aboriginal people in the Northern Territory are held in police custody at a rate of eleven times that of non-Aboriginal people: the national rate is twenty-seven times. It is a favourable comparison that should not deflect attention from other indicators of Aboriginal relations with the criminal justice system. In August 1988, the proportion of Aboriginal people held in police custody in the Northern Territory was 77.3%--the highest in Australia.

13.5.67 There can be no doubt that Aboriginal people continue to face problems in their relations with the police in the Northern Territory. Of the nine cases to come before the Commission, five arose from contact between Aboriginal people and police officers. Every one of those cases arose as a result of the police taking the deceased into custody pursuant to Section 128 of the Police Administration Act--the protective custody provision. In the period 1 January 1980 to 30 June 1987 there were approximately 160,000 incidents of Aboriginal people being taken into police custody: 112,693 were detained for protective custody. This represents approximately 86% of all persons held in protective custody in the Northern Territory during that period. As Deputy Commissioner Goedegeburre stated: 'The number is horrific'.[60] I have already quoted the Northern Territory AIU statement on protective custody detentions.

13.5.68 The response of senior police administrators to the acute problem of

alcohol-related detentions and arrests forms part of a broad shift in their approach to police work generally. The adoption of a community policing model has resulted in the recasting of the role of the Northern Territory Police Service. This has direct implications for the interaction of police with the community in general and with the Aboriginal community in particular. It is the conclusion of Ms Marcia Langton, Head of the Aboriginal Issues Unit, that the striking improvement in relations in the Northern Territory has resulted from

> *the increased involvement of police officers with Aboriginal communities and organisations and their willingness to consult and deliver good policing services.*[61]

13.5.69 In a Commission conference session, held in Katherine to discuss community relations, the officer in charge, Superintendent Terence Ey, described the thrust of the community policing model:

> *It' s part of the corporate plan for the Northern Territory Police Force ... the people at the ground know what their problems are in their own communities and so what we've been trying to do with the Division is to push it right down to the people on the ground to say: 'What are your problems and what do you see are your strategies, (what) can you do about it?'*62

13.5.70 In direct consultation with Aboriginal communities and organisations, an attempt is made to consider problems in their wider social context. This reflects a realisation that many policing issues arise from causes which even the most vigorous exercise of police powers cannot resolve and may, in fact, aggravate them. Such consultations have resulted in the setting of corporate plans for police with explicit objectives reflecting local conditions and the concerns of local communities. A common, primary objective is the reduction of the rate at which Aboriginal people are taken into protective custody. In the same session, the representative of the local Aboriginal Legal Service spoke of good relations with police.

13.5.71 Specific members, designated community police officers, are available to liaise with Aboriginal communities and frequently work closely with Aboriginal police aides. It is often thought that the work of such officers may be marginal to hard-core community and police problems, however, I note that in Katherine the Community Police Officer was invited to and participated in workshops convened by Aboriginal women on family fights/domestic violence. The workshops were held in Aboriginal communities. The constable explained recent domestic violence legislation and the protection it offers to women subject to abuse. This is an excellent illustration of the police responding to a need defined by Aboriginal women and delivering a valuable police service. On an earlier visit to Katherine the local police sergeant participated in a very important discussion about community problems which the people had arranged at Burunga.

13.5.72 The broader characteristics of community policing were described by Superintendent Warren O'Meara, officer in charge, Tennant Creek:

> *Wherever possible, we have moved away from a reactive role into a more pro-active one, encouraging*
>
> *greater community involvement (than)...was originally perceived to be a traditional police role... The encouragement and support of community self-help programs such as the Julalikari Night Patrols will go a long way to improving community relations with the police and the Aboriginal community at Tennant Creek.*[63]

13.5.73 The operation of the Julalikari Night Patrols are specifically considered in Chapter 29. In the present context this passage identifies how police work may be structured on a basis of co-operation and coordination with Aboriginal organisations, such as Julalikari Council. In place of abrasive confrontation there exists the potential to develop a cohesive approach where police services are delivered in concert with the efforts and aspirations of Aboriginal communities.

13.5.74 The source of much disillusionment and friction in relations with the criminal justice system is the Aboriginal perception that the police essentially enforce the values of non-Aboriginal society. This remains particularly true in urban areas such as Alice Springs, where the operation of the two kilometre rule in conjunction with protective custody legislation has a disproportionate impact on Aboriginal people. Of paramount importance in the approach of the Northern Territory Police Service is the recognition that the Aboriginal community have a distinct need for police services and, moreover, that Aboriginal organisations are proper points of reference in the process of the formulating of police policy and operational practices.

13.5.75 In Alice Springs, the Central Australian Aboriginal *Congress* and Tangentyere Council have developed a comprehensive range of strategies to address alcohol mis-use, One strategy is a Social Behaviour Project which is designed to resolve social control problems and is firmly focused on areas of *day-to-day* life for Aboriginal people in the town of Alice Springs. Tangentyere Council and the Central Australian Aboriginal Congress have also produced a Grog Strategy and Discussion Paper. One of its guiding principles is that:

> *The overall strategy must be undertaken with a bipartisan approach involving a positive and co-ordinated effort from both Aboriginal and non-Aboriginal organisations and people.*

13.5.76 There exists a common interest between the Aboriginal community and the Northern Territory Police Service in reducing the rate of protective custody apprehensions and the level of Aboriginal contact with the criminal justice system generally. Through consultation and cooperation, the Northern Territory Police Service is attempting to develop the delivery of appropriate police services which are designed, not to contain an Aboriginal problem, but rather to assist the tenacious endeavours of the Aboriginal community and its organisations to address underlying social issues.

13.5.77 In 1980, an Aboriginal man was shot dead by a police officer who was subsequently tried for murder, and acquitted. In the report of my inquiry into this death, I observed that it was a turning point from race relations in the Northern Territory. The reason why I saw it as a turning point is, as I further indicate, the extent to which, nine years after the event, all parties to the hearing agreed that it was unnecessary to conduct a further inquiry into the circumstances of the death. Instead, I was able to address underlying issues in great depth. In this context, I went on to say:

> *If it could be said that the death of Jabanardi represents, in a particularly dramatic way, the very great problems which can occur between Aboriginal people and police, there is evidence that much has been done since 1980 to address the apparent gulf which can separate Aboriginal people from the broader community, whereby interaction with the police gains a particular focus and is an indicator of the nature of relations between the Aboriginal and non-Aboriginal community...*
>
> *I believe that there is much to be learned from the Northern Territory*

experience which will be helpful in other places throughout Australia.[64]

13.6 CONCLUSION

13.6.1 Overall, as this chapter demonstrates, the legacy of history and the continuation of some police practices, especially by young police officers, which are seen by Aboriginal people to be harsh and discriminatory, results in the situation that relations between Aboriginal people and police are very poor indeed. There are hopeful signs of change emerging and improvements in attitudes on both sides can be observed. In Chapter 29 I explore those policies and practices which I believe can lead to faster, more sustained and more widespread improvement in relations.

13.6.2 Before leaving this chapter I would add the following. I conducted most of the inquiries in South Australia and the Northern Territory. Because this area of police-Aboriginal relations is such a vexed one, I wish to place on record that in both places I had total co-operation both from the police personnel--from the Commissioner to officers in remote areas--and from Aboriginal organisations and individuals interested in these issues. On both sides the attitudes were positive and constructive. The AIUs in both regions were straightforward and objective in reporting Aboriginal perceptions. Counsel for Aboriginal interest and police were helpful and cooperative (as were others), Counsel for NAILSS in South Australia (it did not appear in the Northern Territory) was consistently positive, raising many important issues. These attitudes and approaches were typical of my experience, both in South Australia and the Northern Territory, in all aspects of my inquiries, but I mention the matter here because the improvement of relations between Aboriginal people and police can provide a basis and an encouragement for efforts to find solutions to wider problems.

Chapter 14 Young Aboriginal People And The Criminal Justice System

The material before the Royal Commission has highlighted young Aboriginal people as a particular group within the Aboriginal community that warrants special consideration. However, although Aboriginal young people have been treated discretely in this chapter and Chapter 30, this treatment is not meant to imply that the issues facing Aboriginal young people can be treated separately, as the underlying issues addressed in this report apply to the whole Aboriginal community.

The chapter opens by noting that young people make up a high proportion of the Aboriginal population and that, as they move into their young adult years, given the current rates of custody they will comprise an increasing proportion of the total custodial population. The six cases of Aboriginal juveniles, aged between 14 and 17 years, who died in custody are reviewed, and the chapter then focuses on the very high level of young Aboriginal people in custody. I discuss the great variation existing between the eight States and Territories in legislation, policies and procedures regarding young offenders, noting that some jurisdictions operate primarily on a justice model whereas others adopt a more welfare orientation. The chapter concludes with a review of the reasons for Aboriginal youth offending, including the nature of the criminal justice system itself, socioeconomic disadvantage, the role of the family and home life, cultural factors, the experience of racism, the role of alcohol, boredom, the more general experience of growing up and the role of peer group pressure. Chapter 30 provides my suggestions for action to resolve many of the problems identified, and Chapters 16 and 33 are also relevant to this topic, being concerned with education.

14.1 INTRODUCTION

14.1.1 Aboriginal juveniles, particularly males, require very particular consideration in this Report. Of the 99 deaths investigated and reported upon by Commissioners 13 died under the age of 20; 14 died between the ages of 20 and 24; 23 between the ages of 25 and 29. The mean age for all deaths was 32 years, the median age (the age above and below which half the cases fell) was 29 years. Of those who died under the age of 30 (50 cases) only 5 were females. Whilst the increasing involvement of Aboriginal females in the juvenile and adult justice system and the deaths of some of them is a matter of great concern, overwhelmingly the typical portrait of the Aboriginal deaths in custody was that of young males. These young people, male and females, should have been in the prime of their lives. We must understand why this tragic loss of Aboriginal youth has occurred.

14.1.2 There is another reason why attention should be focused on young Aboriginal people. By the year 2001 the Aboriginal population structure will have undergone what demographers have described as 'massive changes' in just twenty years (see Chapter 11). In those twenty years the median age of Aboriginal males and females will increase from 17/18 years to 23/25 years. What this massive shift in the population profile means is that if the rates of imprisonment and detention, as experienced now by Aboriginals, were to continue over the next ten years, Aboriginal prisoners will constitute an even larger proportion of the prison population than they do now. This is because the Aboriginal population is growing much more rapidly than is the general population and in precisely the age groups at which the majority of persons are imprisoned.

14.1.3 I first look at the experience and impact of the juvenile system from the stories of the lives and deaths of some of those people whose deaths in custody we investigated; then at the extent of Aboriginal over-representation in the juvenile criminal justice system; next, what is perceived to be a wrongful emphasis on the welfare model in the juvenile system; and, finally, an examination of the reasons which it is suggested lead to Aboriginal juveniles being disproportionately in the justice system.

Recommendation 62:

That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.

14.2 THE CASES

14.2.1 Of the 99 Aboriginal and Torres Strait Islander deaths in custody examined by the Commission 6 of those deaths were of juveniles, ranging in **age** from 14 to 17 years. 1 At the time of death and/or the events leading up to death Michael Gollan and Thomas Carr were in youth detention centres, while John Pat and Darren Wouters were detained in police custody. Patrick Booth was in prison at the time of his death. The youngest of these juvenile deaths, Karen O'Rourke, took place as a result of burns received in a children's home. While Karen

O'Rourke was not a juvenile offender, her treatment by the welfare system has the hallmarks of the criminal justice system. Karen had been placed in the security room at Birralee Children's Home in order to prevent her from carrying out her stated intention to abscond. All six cases highlight the diverse ways juveniles are treated 'in the system' where to be a juvenile offender does not necessarily mean being treated within the juvenile justice system and where to be in the welfare system does not necessarily mean one is treated differently from juvenile offenders. It is these anomalies that need examination in order to understand the more complex underpinnings of juvenile offending.

14.2.2 There would seem to be a particular tragedy to juvenile deaths in custody. These deaths are part of a larger custodial picture in which Aboriginal youth is 'over-represented at every level of the juvenile justice system throughout Australia, from the point of apprehension through the various pre-trial processes to the ultimate stage of adjudication and dispositions' .2

14.2.3 The cases that the Commission investigated have highlighted the incidence of juvenile offending in a number of the deceased's lives. In the majority of cases those who died in custody had a recorded history of juvenile offending. Of the 99 cases, 63 were 17 or under and 53 were 16 or under when they were first dealt with for offences. The youngest age of first charge was 9 years and the median age of first charge was 16.0 years.

14.2.4 One cannot make statistical conclusions from these cases; however, these figures do suggest the significant role of juvenile offending in the passage of an Aboriginal person for the juvenile justice system into the criminal justice system. Dying in custody is one final and tragic outcome of this passage. As Commissioner O'Dea sums up in the case of Graham Walley: 'Walley's treatment by the juvenile justice system is probably the single most important underlying issue related to his death ,.3

14.2.5 Evidence arising from the Commission shows how critical the point of entry into the juvenile justice system is in setting the pattern for a longer term entry into the criminal justice system. As Commissioner O'Dea sums up in the case of the young man who died in the Charles Gairdner Hospital:

> *Man and boy, the prisoner was caught up in a revolving-door sequence of offences, followed by imprisonment, which did nothing to rehabilitate him, or to alleviate his alienation from the society to whose norms he was expected to conform.*[4]

14.2.6 Commissioner Muirhead discusses a similar scenario in the case of Paul Farmer.'

> *Farmer offended as both boy and man, but it is difficult to escape the conclusion that the initial sentence he received as a youth of 15 which was served in adult prisons, coupled with the circumstances of the offence and his background, set a pattern for the future from which there was no turning back.*[5]

14.3 DISPROPORTIONATE NUMBERS

STATISTICS AS TO DISPROPORTION

14.3.1 At no level of the criminal justice system is statistical information more inadequate than it is with respect to juvenile offenders. 6 Whilst some States maintain reliable records and statistics with respect to juveniles, very few maintain

any comprehensive data which allows a comparison to be made between Aboriginal and non-Aboriginal offenders. 7 Moreover, in many States it is difficult to distinguish statistically between juvenile offenders and juveniles who are under child welfare provisions who may be placed in institutions. The incomplete nature of this data highlights the need for relevant government bodies to address this general lack of discrete statistical information on Aboriginal youth offending. The maintenance of detailed statistics on Aboriginal youth offending is imperative not only in order to identify disproportions but also it shows a readiness on the part of the administration to deal with the social implications of such disproportions. Notwithstanding the deficiencies in the data, one point emerges with clarity no matter what the process of evaluation: Aboriginal juveniles are grossly over-represented in appearances in the juvenile justice system throughout the country. Not only do they come into the system to a disproportionate extent, the penalties which they receive are demonstrably more severe than those of equivalent non-Aboriginal juveniles and they have an accelerated profession through the various stages of the juvenile justice system until the point of detention in a juvenile institution. Detention as a juvenile is in turn a critical determinant as to further progression to the adult criminal justice system.

DISPROPORTION OF ABORIGINAL JUVENILES IN CARE

14.3.2 While it is not the purpose of this chapter to examine the implications of child welfare practices it is relevant to point out that there has, historically, been a significant interrelationship between the welfare and justice systems and the institutionalising of children. This interrelationship is shown in the treatment of children in care either as if they had committed an offence or more obviously, by the placement of juveniles in care in the same institutions as youth offenders. The experience of Karen O'Rourke mentioned earlier in this chapter is a case in point whereby her treatment by the welfare system had all the hallmarks of treatment in the criminal justice system.

14.3.3 The difficulty in distinguishing from statistical information about the exact numbers of Aboriginal juveniles in detention as opposed to care, reflects the intermeshing of the juvenile justice and welfare systems. In short, over-representation of Aboriginal juveniles in the justice system cannot be considered without acknowledging the over-representation of Aboriginal children and juveniles in 'care'. Mr Des Semple, the Director General of Community Services in Western Australia, pointedly remarks that it is this confusion between the welfare and justice considerations that has led to the 'gross over-representation of Aboriginal children in Juvenile Justice systems across all States and Territories'. 8

TABLE 14.1: ABORIGINAL CHILDREN IN CARE BY STATE

State	*Aboriginal people as % of population*	*Aboriginal children as % of those in care*	
NSW	<1.0%	15%	
Qld	2.0%	30%	approximately
SA	1.0%	17%	approximately
WA	2.4%	57%	(residential care) 54% (foster care)
NT	24.0%	60%	(residential care) 93% (foster care)

Source: Senate Standing Committee on Social Welfare, *Children in Institutional and Other Forms of Care* (PP 324/1985) para 1.10 cited HREOC, 1989:133.

14.3.4 In 1985 the Senate Standing Committee on Social Welfare reported on the proportion of Aboriginal children in care for all States except Victoria and Tasmania. I have recorded these findings in the table on the previous page.

14.3.5 It is likely that there have been significant changes since the Senate Standing Committee on Social Welfare tabled its report. More recent statistics, however, confirm the over-representation of Aboriginal children in care. In Queensland, information available to Dr O'Connor, Senior Lecturer with the Department of Social Work, University of Queensland, from the Department of Family Services and Aboriginal and Torres Strait Islander Affairs between the years 1986 and 1989, revealed that Aboriginal and Torres Strait Islander children were over-represented in welfare case notifications received in the department to the extent of one in ten. 9 There is also some indication that these statistic actually under-represent the number of notifications. I summary, Dr O'Connor found that Aboriginal and Torres Strait Islander children in care and protection and protective supervision were grossly over-represented, that this number is increasing and that the extent of this over-representation increases as Aboriginal and Torres Strait Islander children are drawn deeper into the welfare net.

14.3.6 The recently released Western Australian study on substitute care confirms that Aboriginal children are over-represented in substitute care in that State. 10 The study found that 'about a third of children in care in the metropolitan area are Aboriginal; in the Country areas this proportion ranges from two-thirds in the East and South regions to 90% in the Northern Region'. This is an extremely high disproportion.

THE EXTENT OF DISPROPORTION OF ABORIGINAL YOUTH IN POLICE CUSTODY

14.3.7 The information available at a national level on Aboriginal juveniles taken in police custody is provided by information drawn from the Royal Commission's Research Unit National Police Custody Survey (Research Paper No. 13), August 1988. The juvenile age was determined to be under 17 years. 11 Table 14.2 shows the proportion of Aboriginal juveniles compared with the adult population. It is apparent that, based on the figures of the 1986 Census, Aboriginal juveniles constitute a significantly greater proportion of the Aboriginal population (45%) than in the total Australian population (Aboriginal plus non-Aboriginal) where those under the age of 17 years comprise 27% of the total population. 12

TABLE 14.2 NUMBER AND PERCENTAGE OF JUVENILES, ABORIGINAL AND TOTAL POPULATION, 30 JUNE 1986

	Aboriginal				*Total population*			
Age Group	*Male*	*Female*	*Total*	*%*	*Male*	*Female*	*Total*	*%*
Under 17 years	52.6	50.5	103.1	**45.3**	2 146.7	2 042.9	4 189.5	**26.9**
All ages	112.7	115.0	227.7	**100**	7768.3	7833.8	15602.2	**100**

Source: Australian Bureau of Statistics Census of Population and Housing, 30 June 1986 Population given in thousands of persons

14.3.8 Table 14.3 below shows:

- the numbers of Aboriginal youth in police custody for the month
- of August, 1988

- the custody rate per 100,000 based on the 1986 census population and
- the rate of Aboriginal juvenile over-representation in custody compared with non-Aboriginal juveniles in custody.

14.3.9 Significantly, these figures show that although both Aboriginal boys and girls are over-represented in police custody for the month of August, the rate of over-representation of Aboriginal girls compared with all girls is much higher than the corresponding rate for Aboriginal boys.

THE EXTENT OF DISPROPORTION IN DETENTION, BY STATE

14.3.10 The extent of Aboriginal juvenile over-representation by State can initially be seen by comparing the number of Aboriginal juveniles in juvenile corrective institutions between States. Information based on statistics available for the 30 June 1987 show that New South Wales detains Aboriginal juveniles at a rate higher than any other State or Territory. 13 Semple showed that New South Wales committed Aboriginal juveniles at a rate 25 times greater than the non-Aboriginal population. Over-representation in the other States was found to be as follows: in Victoria, Aboriginal juveniles were committed to juvenile corrective institutions at a rate 20 times that of the non-Aboriginal juvenile population, Queensland at a rate of 16 times, Western Australia at a rate of 14 times, South Australia at a rate of 10 times and the Northern Territory having the lowest rate of 7 times. Tasmania and the Australian Capital Territory had no sentenced Aboriginals incarcerated at this time. The Table below outlines visually the nature of this over-representation. 14

FIGURE 14.1: DETENTION OF ABORIGINAL AND NON-ABORIGINAL JUVENILES, JUNE AUSTRALIA[15]

New South Wales

14.3.11 The finding that Aboriginal youths are detained to a far greater extent than in all other States and Territories is likely to be undernumerated. The Youth Justice Project reports that: Aboriginality is not a mandatory reporting category in FACS (Department of Family and Community Services) data collection and individual detention centres' records were found in the course of the research to be incorrect in relation to the young people's self-report of Aboriginality in 24% of cases.

> *A survey (Howard, et al, 1989) conducted in late 1988 found that 30.4% of young people in detention centres identified as Aboriginal and yet official figures for October 1988 identified only 23.3% as Aboriginal.*[16]

14.3.12 New South Wales has the highest rate of Aboriginal juveniles in detention of any State or Territory in Australia. The 1990 report of the Youth Justice Project, 'Kids in Justice--A Blueprint for the 90s', determined that of 450 young people in New South Wales detention centres in April 1990, 143 (32%) were on remand and the rest were committed to detention. The authors continued:

> *Although [Aboriginal adolescents constitute] only 1.8% of the adolescent population in New South Wales, 20% of detainees were identified in FACS [Department of Family and Community Services] data as Aboriginal. Hence Aboriginal youth in New South Wales are over-represented in the State' s detention centres by a factor of ten or more.*[17]

14.3.13 A separate study of Aboriginal juveniles in detention in New South Wales in April 1990 recorded that in that month 23% of those detained were Aboriginal juveniles and that Aboriginals were accordingly over-represented in detention at a

rate 16 times that of non-Aboriginals.[18]

Victoria

14.3.14 The Corrections Census for Youth Training Centres and State-wide Correctional Supervision taken at 30 June 1989 disclosed that 21 Aboriginal males and 2 females were in custody in youth training centres, of whom 16 were sentenced, 3 were on remand and 3 were wards. These 23 Aboriginal juveniles comprised 9.1% of all youths in custody in Victoria at that date. Aboriginal people comprised 0.7% of the Victorian youth population. On the same date 60 Aboriginal youths were under supervision on community-based orders, which comprises 6% of the total of Victorian juveniles placed under such supervision. This represents a figure 8 times that of the average population. 19

Queensland

14.3.15 Research conducted for the Royal Commission by Dr Ian O'Connor demonstrated that the number of Aboriginal and Torres Strait Islander youth committed to care and control, i.e. detention, is substantially higher than the number committed to supervision. He concluded that this was the reverse of the case for non-Aboriginal youth.[20]

14.3.16 At 30 June on each of the three years 1987-1989 slightly more than 30% of children in detention centres in Queensland were Aboriginal. At 30 June 1990 that number had increased to 46.7%. Aboriginal and Tones Strait Islander children constitute 3.88% of the Queensland children's population. These figures suggest that the over-representation of Aboriginal and Torres Strait Islander children within the juvenile justice system is far greater than the level of over-representation of adults in adult institutions.

14.3.17 A study by Cunneen noted that at April 1990 32% of all juveniles detained in that State were Aboriginal and Torres Strait Islander and that the level of over-representation was such that an Aboriginal youth was twelve times more likely to be in a detention centre than a non-Aboriginal youth.[21]

Western Australia

14.3.18 The Director of the Eastern Metropolitan Region of the Department of Community Services in Western Australia, Mr Budiselic, told the Royal Commission that approximately 67% of those housed in juvenile detention centres in 1989 were Aboriginal. 22 This percentage is probably an under-estimate and occurs notwithstanding the fact that since 1988 the department had adopted an approach which emphasises the alternatives to custodial sentences for juveniles.

14.3.19 Mr Budiselic's estimate closely accords with the conclusion reached by Cunneen who found that at April 1990 73% of those detained in juvenile institutions were Aboriginal youths, notwithstanding the fact that they comprised only 4.1% of juveniles in that State.[23] Cunneen calculated that the level of over-representation for Aboriginal youth detained in juvenile institutions was such that Aboriginal youth were 62 times more likely to be in detention centres than non-Aboriginal youths.

14.3.20 The Western Australia Regional Report of Commissioner O'Dea has drawn together the statistics available from the Department of Community Services for 1989-90 on Aboriginal Youth in the Juvenile Justice system in Western Australia. These statistics highlight, in particular, how the over-representation of Aboriginal youths manifests in the juvenile and adult justice systems. The figures show that, of the charges heard by the Children's Court or Panel during 1989-90, 35% were against Aboriginal juveniles; and that Aboriginal youths accounted for 65% of children admitted to department detention centres and 62% of those

sentenced to imprisonment (in adult prisons) during this period.[24]

South Australia

14.3.21 Although the information from South Australia is not directly comparable with those presented to other States 25 the information does highlight the over-representation of Aboriginal youths in the juvenile justice system, particularly since it relates solely to juvenile offenders and not to juveniles in 'care'.

14.3.22 Aboriginal youth comprise 1.2% of South Australia 's youth population. The study by Gale, Bailey-Harris and Wundersitz examined the juvenile justice system in the period between 1979 and 1984 and concluded that during that period Aboriginal youth represented 7.8% of all youths apprehended, 13.9% of all court referrals and 28.1% of all detention orders made in the State. They concluded that Aboriginal youth is over-represented in relation to the population numbers by approximately 7 times at the point of apprehension and 23 times at the point of detention.[26]

Northern Territory

14.3.23 Although statistics for juvenile detention in the Northern Territory are not comprehensive, the Northern Territory Aboriginal population is characterised by its extraordinary youth. The 1986 census disclosed that 52% of the Aboriginal population was below the age of 20 years contrasted with 31% of the non-Aboriginal population being of that age. 27

14.3.24 Although there are some limitations in the information available, some indication of the relative detention rates of Aboriginal juveniles may be gleaned from figures supplied by the Department of Correctional Services. At 31 October 1989 there were a total of 38 juveniles in custody of whom 22 were serving a sentence and 12 of those were Aboriginal. Of 15 persons on remand 9 were Aboriginal and 1 Aboriginal was remanded in Darwin gaol. Thus Aboriginal juveniles were approximately 57% of the numbers in custody at that time and approximately 54% of those serving sentences. In fact, as the evidence of Mr Doug Owston, Secretary of the Department of Corrective Services, disclosed, the intake of juveniles at that date was probably somewhat less than would have been the case 12 months or 2 years earlier. Mr Owston noted, for example, that in March of 1990 there was only one juvenile from Groote Eylandt in detention, whereas he would normally have expected as many as 10 Groote Eylandt juveniles in detention at any given time. At the same date there were some 193 juveniles on community-based orders of which a significant percentage would have been Aboriginal.

Tasmania

14.3.25 No statistics were available from Tasmania which specifically identified Aboriginal young offenders. However, it can be noted that between the period 1980-86 there was a decrease in the rates of detention of juveniles in Tasmania by about 25%; from 83.5 per 100,000 of the population aged 10-17 to 63.6. Furthermore, there was a general decrease throughout the country in the rate of detention (with some minor, and perhaps uncertain, exceptions), but both at 1980 and 1986 Tasmania's rate of detention was lower than the National average.[28]

ABORIGINAL YOUTH IN PRISON

14.3.26 In illustrating the disproportionate involvement of Aboriginal youth in the criminal justice system I have emphasised in this section the rates of detention in juvenile institutions. This is the more appropriate measure to adopt given that the overwhelming number of occasions on which a juvenile is deprived of his or her

liberty involves such detention. There are, however, circumstances in most Australian States, and in the Northern Territory, where juveniles may be sentenced to a term of imprisonment to be served in an adult institution. The exception to this is the Australian Capital Territory. It should also be noted that in some jurisdictions a juvenile may only be detained in a juvenile institution so long as he or she has not attained adulthood. The harshness of a juvenile being detained in an adult institution is ameliorated to some extent by the fact that either the prison authorities or the courts retain powers to direct that the term of imprisonment be served in a juvenile institution. In Tasmania it is a matter for the discretion of the Minister where the sentence is to be served.

14.3.27 Whilst the number of juveniles in prisons is not great, it is probable that the disproportionate imprisonment of Aboriginal juveniles will still clearly emerge. In 1985 the prison census showed only ninety-seven 17 year olds in prisons across Australia.[29] Although I am not able to say how many of those were Aboriginal juveniles, a study carried out by the Criminology Research Unit of the Royal Commission and based on the prison census data for 30 June 1987 disclosed that of those aged between the ages of 16 and 19 in adult prisons Aboriginal people comprised some 15% in that age group.[30]

TRENDS IN INVOLVEMENT OF ABORIGINAL YOUTH IN THE CRIMINAL JUSTICE SYSTEM

14.3.28 There has been a general reduction in the rate of juvenile detentions throughout Australia as the emphasis has switched to non-custodial options. In September 1980 the rate was 96.6 per 100,000 of the relevant Australian juvenile population, and this had reduced to 67.3 per 100,000 in June of 1986. This represents a drop of approximately one-third of the population in detention.[31] These statistics do not, of course, differentiate the race of detainees.

14.3.29 It is a matter of concern, however, that there is some evidence to suggest that the disproportionate rate of involvement of Aboriginal youth in the criminal justice system is increasing. The South Australian study by Gale, Bailey-Harris and Wundersitz detected such an increase. The authors noted that between 1972-73 and 1984-86 there was a 111% increase in the actual number of offence-related appearances by Aboriginal youth before the Aid Panels and Children's Court, whereas during the same period appearances involving non-Aboriginal youths rose by only 65.2%. The Office of Crime Statistics in South Australia has furnished more recent information that shows that there has been an 11.2% increase in the appearance of Aboriginal juveniles appearing before children's aid panels between 1982 and 1988. This trend contrasts with the overall reduction in appearance of juveniles before the children's aid panels in South Australia.[32]

14.3.30 Whether the extent of Aboriginal detention has increased disproportionately to the detention rate of non-Aboriginal juveniles over a similar period is difficult to determine. There is some hopeful evidence, at least so far as South Australia is concerned, that this might not be the case. The authors note:

> *In fact, in 1979-80 Aborigines accounted for 29.1% of all detention orders but by 1985-86 this had declined to 21.4%. It seems then, that in this one area, the disparity in outcomes between the two groups is narrowing. This is in stark contrast to the deteriorating situation of Aborigines at all other discretionary levels, and has been achieved only by a conscious determination on the part of judges and the Children's Court to keep young Aborigines out of detention for as long*

as possible.[33]

14.3.31 On the other hand, there is some other evidence which would suggest that the disparity between the two groups may be increasing, or at least that the disproportionate rate of Aboriginal detention may be increasing in some regions. A recent study in Armidale, New South Wales, demonstrated that there had been a 139% increase in the number of Aboriginal youth with no previous convictions being sent to institutions.[34]

MULTIPLE OFFENDING

14.3.32 It has been suggested that one explanation for the statistics which demonstrate such apparent disproportionate involvement of Aboriginal youth in the criminal justice system and which also may explain the apparently harsher sentences which they receive is that Aboriginal juveniles, as individuals, are more likely to be repeat offenders, thereby inflating those statistics. The South Australian study showed that there was some basis for this hypothesis.

14.3.33 During the five year study period 58% of Aboriginal juveniles coming into contact with the system appeared at least twice during that period and some 20% made at least five appearances. The average was three appearances per individual. The authors of the study concluded that official appearance figures therefore over-estimated by some two-thirds the numbers of Aboriginal youths, as individuals, involved over that period. For non-Aboriginal youths almost three-quarters were apprehended only once during the five-year period, just over one-quarter appeared on two or more occasions and only 3.6% faced five or more hearings. Overall, non-Aboriginal youths averaged 1.5 appearances per individual. The authors note, however, that whilst multiple offending is an important factor, this still does not account for the significant over-representation of Aboriginal youth at the point of entry into the South Australian juvenile justice system.[35] More specifically, Gale and others found that even when the unit of analysis is the number of individuals involved rather than the number of appearances, Aboriginal youths are still over-represented at the point of entry.

14.3.34 It is likely that the incidence of repeat offending would be similar in other Australian jurisdictions. In New South Wales it has been reported that some 20% of Aboriginal youths appearing in court had five or more previous appearances. 36The authors, Hazelhurst and Dunn, have commented:

> *Recent studies have demonstrated that a greater proportion of Aboriginal appearances before courts*
>
> *involve younger children and that, by the time they reach adulthood, most Aboriginal offenders are receiving*
>
> *harsher sentences as a consequence of their prior convictions.*[37]

GEOGRAPHICAL FACTORS

14.3.35 Gale, Bailey-Harris and Wundersitz examined the rate of detention of Aboriginal juveniles on a regional basis in South Australia and concluded that there were dramatic variations **at** each level of the criminal justice system in the degree to which Aboriginal youth were over-represented or were disadvantaged by the system. For instance, Aboriginal youth were over-represented by some seventy-six times compared with the far northern regions of South Australia where they were over-represented in arrest figures by only four times. 38

14.3.36 In New South Wales a study by Cunneen and Robb in 1987 found similar variation in the level of over-representation for Aboriginal youth facing charges in towns throughout rural New South Wales. The level of over-representation varied from a rate of six times that proportionate to Aboriginal numbers in the population at Dubbo to ninety times the rate at Walgett.

14.3.37 The report of the Youth Justice Project in New South Wales also pointed to evidence of a geographical factor concerning detention rates. Studies carried out by the researchers disclosed that a young person in Burke was twelve times more likely to be cautioned, fourteen times more likely to be charged and eighty-one times more likely to be committed to detention than a young person at Willoughby. Additionally, the authors of the report commented as follows:

> *In Western areas of New South Wales Cunneen and Robb found that Aboriginal youth were greatly over-represented among those charged by police. For example, in Burke, also studied by this project, Aboriginal young people were 36 times more likely to be charged than non-Aboriginals.*[39]

14.3.38 In the report of his inquiry into the death of Mark Quayle, Commissioner Wootten describes the detention rate of Aboriginal juveniles in the far west of the State as 'staggering'. Commissioner Wootten points out that the relationship between the rate of detention and the different policing strategies requires further study.

TYPE OF OFFENCES

14.3.39 The majority of offences committed by Aboriginal youth are property related. Throughout Australia, the most common charge against juveniles, Aboriginal or non-Aboriginal, are break, enter and steal and motor car theft (or illegal use).[40] The South Australian study by Gale and others found that this was certainly the case for Aboriginal juveniles in that State. Aboriginal youth, however, are more likely to be charged with the more serious of property offences such as break, enter and steal than with larceny charges.

14.3.40 Whilst it is true across Australia that Aboriginal juvenile offending is predominantly concerned with property offences and theft of motor vehicles, this is not to say that there are not other, and disturbing, patterns of criminal behaviour evident in the statistics. A submission to the Royal Commission by the Aboriginal Co-ordinating Council in Queensland (ACC) compared appearances in the Children's Court in 1988-89 by Aboriginal children from remote communities with appearances by non-Aboriginal Queensland children. The ACC describes the results as 'very disturbing'. The ACC found that the rate at which juveniles from Aboriginal communities committed offences of both major and minor assaults was seven times that of the general Queensland youth population. The assault offence rate was 5.21 per 1,000 for Aboriginal juveniles as against the State-wide rate of 0.78 per 1,000. The submission continues:

> *No Aboriginal children appeared in court for rape (although it did occur). Community Aboriginal children were 11 times more likely to appear on other sexual offences, 0.65 per 1,000 compared to 0.06 per 1,000 for Queensland children. Community Aboriginal children were 26 times more likely to appear on charges of robbery and extortion, 11 times more likely to appear for theft, 19 times more likely to appear for other break and enter charges, 9 times more likely to appear for property damage, 41 times more likely to appear for weapons offences and 17 times more likely to appear for Liquor Act*

offences than Queensland children as a whole. They were less likely to appear on charges of fraud, driving offences, drugs and trespassing. Thus juvenile offending on communities is a major problem. 41

The ACC comments that these alarming statistics are symptoms of 'the social disintegration on Aboriginal communities'.

14.3.41 I am not able to say whether the statistics relating to criminal behaviour referred to by the Aboriginal Co-ordinating Council would necessarily be similar for Aboriginal communities elsewhere in Australia. The five year study conducted in South Australia possibly echoes a similar trend in that State to the extent that Aboriginal youths in South Australia are substantially over-represented in relation to serious offences against the person. 42

14.3.42 Information supplied to the Commission from the Department of Community Services in Western Australia, whilst needing to be treated with some caution because of the substantial numbers of cases in which the race of the offender was unknown, demonstrated once again that the major categories of offences dealt with by the Children's Court in that State, for both Aboriginal juveniles and non-Aboriginal juveniles, related to theft charges and traffic offences. In 1989-90 those two categories comprised some 31% of all offences for which Aboriginal juveniles appeared before the Children's Court. Justice offences comprised nearly 14% and good order offences approximately 10%. Offences involving assault comprised less than 4% of all matters involving Aboriginals before the Children's Court in that year and robbery offences comprised less than 0.5% as did sexual offences. A similar pattern emerged in the periods 1988-89 and 1987-88. Whilst extreme caution must be exercised given that some 20%, approximately, of all cases in each of those three years were unable to be identified by the race of the offender, there are, however, some trends which are disturbing. In 1987-88 of all offences of assault dealt with by the Children's Court, 38.1% were committed by Aboriginal youth, 40.5% by non-Aboriginal youth and 21.4% unknown. Those proportions remained steady in 1988-89 but in the 1989-90 figures Aboriginal offenders were involved in 47.7% of the assault cases compared with 40.2% of non-Aboriginal youth and 12% unknown.

14.3.43 Given the substantial number of unknown cases in the previous two years it may be that there has not, in fact, been any increase in the respective rates at which Aboriginal youth and non-Aboriginal youth have been charged with assault, but there is, however, some cause for concern that there may have been an increase in 1989-90 in the extent to which Aboriginal youth have been appearing before the courts charged with the offence of assault.

14.3.44 Similarly, an apparently increasing percentage of Aboriginal juveniles appearing before the courts charged with the offences of robbery and sexual offences also emerges over the three-year period. Once again, however, caution must be exercised for similar reasons. What can be said, however, is that the relative numbers of Aboriginal juveniles charged in each of those three years with offences relating to robbery and sexual matters have been extremely low (jointly comprising less than 1% of the total number of offences involving Aboriginal youth dealt with by the court in each year) and the numbers of charges involving assault are also relatively low, as noted earlier.

14.3.45 My investigations have not revealed that there is as yet significant evidence that the 'traditional' offences for which juveniles (both Aboriginal and non-Aboriginal) have come before the courts over many years, namely illegal use of motor vehicles and property offences, have ceased to be the major areas of

concern. Nor is there any evidence of an upsurge in crimes of violence involving Aboriginal juveniles.

A JUSTICE OR A WELFARE MODEL.'?

14.3.46 The juvenile justice systems in each of the Australian States and the Northern Territory are remarkable for their diversity, and to some extent they reflect the distinction which has been drawn between what are known as the 'welfare' model and the 'justice' model of juvenile justice systems. In broad terms, the welfare model assumes that the behaviour of an individual juvenile is a product of factors external to him or her. The emphasis is on the long-term rehabilitation of the individual, who is seen to be the responsibility both of his or her family and of the State. The welfare model is concerned less with punishment and responsibility than with identification of needs and responses to those needs. The welfare model assumes that to achieve the desired objectives a criminal justice approach is less effective than a welfare approach. This latter approach is characterised by the intervention and guidance of experts in the welfare field.

14.3.47 The justice model, on the other hand, assumes that the actions of the juvenile are matters of free choice and that the actions should be dealt with by imposing a penalty commensurate with the gravity of the offence. The authors of the Law Reform Commission's Sentencing Research Paper state, with respect to the 'justice' model: 'The focus in the criminal jurisdiction is on the offence and not the offender, rehabilitation being a subsidiary goal'.[43] In the 'justice' model the emphasis is on providing appropriate and determinate sentences proportionate to the of fence.

14.3.48 The differences between the two models are reflected not only in the substantive laws which apply, but also in the procedures which are adopted to deal with juveniles who appear under the respective systems. The justice model de-emphasises the use of indeterminate sentences, and, in its concern to ensure that appropriate and proportional sentences are given for offences, attempts to avoid the paternalistic and often long-term orders for detention and guardianship of children which were frequently imposed under the welfare model.

14.3.49 Whilst there is considerable overlap between the two models, and aspects of both are found in all systems in Australia, the relative significance of the different approaches is still observable with respect to non-custodial sanctions which may be imposed on juveniles. For example, a research paper written for the Royal Commission by Dr Ian O'Connor points to the practical difference which adoption of one approach has meant in Queensland.

14.3.50 Dr O'Connor has submitted to the Commission that over the past ten years the Queensland Department of Corrective Services devoted most of its community resources to protection matters, i.e. the welfare model and placed lower priority on juvenile justice. The consequence of this, Dr O'Connor submits, has been that the department failed to develop community based corrections programs. It is this failure, coupled with a failure to provide adequate supervising staff, which led to an over-usage of orders placing a child in correctional institutions.

14.3.51 In Western Australia the approach was similar to Queensland, as frankly admitted by witnesses from the Department of Community Services. Mr Budiselic told Commissioner Dodson that there was a tendency throughout the 1970s to emphasise the welfare role of the department rather than the criminal justice response. 44

14.3.52 In an article tendered to the Royal Commission, Mr Des Semple, the Director-General of the Department of Community Services, stated:

> *During the 1970s and early 1980s juvenile justice in Western Australia was characterised by an over-emphasis on welfare discretion...[D]uring this era Western Australia had by far the highest juvenile incarceration rate per person of all of the States of Australia. There was complete blurring of welfare and State justice issues with children often being admitted to maximum security institutions for reasons of their considered well-being rather than normal principles of justice. 45*

14.3.53 Semple went on to say that the department now argued strongly for a separation of the welfare and justice elements of the system. The fights of the child should not be subordinate to notions of welfare, he argued. 'Children are entitled to due process of the law and a sentence should be determined on the basis of a deed and not a perceived need. '46

14.3.54 This notion of the separation of the juvenile justice system from the welfare system has been discussed on a number of occasions. In the Geraldton inquiries Dr McCotter said the Department of Corrective Services in Western Australia was of the view that juvenile justice would be more appropriately controlled by Corrective Services. At present this was not the case.[47] Even where legislation has been passed to separate young offenders from child welfare cases, there needs to be an administrative rejoinder to this given the long history of committing and remanding wards and young offenders in the same institutions. As Dr Kerry Carrington in her 1990 Submission to the Inquiry into Juvenile Justice has pointed out, the current practice of erecting security fences around ward establishments in New South Wales indicates that this separation .has not occurred at an administrative level. However, it is now recognised that institutionalisation as a response to child abuse and neglect, or to juvenile offending, is to a large extent inappropriate. Most Australian jurisdictions are now exploring means of diverting most children and adolescents from the system or, for those incapable of diversion, into a range of community-based accommodation and other service options.'[48]

14.3.55 Although, in principle, the justice model should, if coupled with a firm acceptance of imprisonment as a last resort, lead to less detentions and imprisonments of juveniles, this is not necessarily the case, as commentators have observed.

14.3.56 A recent report on the justice system in New South Wales by The Youth Justice Project titled 'Kids in Justice--A Blueprint for the Nineties' noted the extraordinarily high rate of detention of Aboriginal juveniles in that State and commented upon the difference between the two models in their practical impact. The authors said of policies which stressed the welfare model that they

> *have tended to increase the regulation of individuals in the name of rehabilitation and to increase powers to intervene in young people's lives in the interests of 'care'. Diversion programs which intend to reduce the contact of young offenders with court often have the opposite effect, bringing to official notice those who would otherwise have been dealt with informally, thus producing a net-widening effect. 49*

The authors continued:

> *In Australia 'welfare' has also been an important policy justification for*

the regulation of Aboriginal communities. Policies developed to 'protect' and assimilate Aboriginal communities provided police and welfare authorities with enormous discretion to control people' s behaviour and to take children away from their homes and place them in institutions or with foster and adoptive parents .50

14.3.57 Notwithstanding their expressed concern about the dangers of the welfare model, especially for Aboriginal people, the authors suggest that the justice model also has its weaknesses, in particular that there has been a trend towards the concept of greater punishment and restraining of offenders in New South Wales. The authors identify a shift towards the justice approach in the New South Wales system which, allied to the concept of greater punishment, produces a consequent increase in detentions. As an alternative the authors suggest adopting a new model, that of 'social justice': a model which implicitly recognises that 'justice' and 'welfare' issues are located in the broader social milieu. In particular, social inequalities deny equitable access to the distribution of economic resources and essential services, civil, legal and industrial rights and the opportunity for community participation and decision making. 51

14.3.58 The authors Gale, Bailey-Harris and Wundersitz say of the South Australian system that from the 1940s through to the 1970s the legislation 'demonstrated an increasing adherence to the welfare model of juvenile justice ,.52 The welfare model, the authors say, was entrenched by *the Juvenile Courts Act 1971.* It is this Act which created Juvenile Aid Panels, designed to reduce youth offences by providing an opportunity for intervention in the lives of young offenders. As the authors describe it, the panels were designed to provide an early warning to both children and parents of the consequences of further offending.

14.3.59 A Royal Commission in 1976 provided the opportunity to reconsider the appropriate model for South Australia. The legislation which resulted from the Commissioner's Report, the *Children's Protection and Young Offenders Act 1979,* represents, the authors say, 'a reaction in South Australia against the extremes of a welfare model of juvenile justice' but still does not constitute an example of the pure justice model. The authors say that elements of the welfare approach remain integral to the current system, in particular by the continuing commitment to the Aid Panels. Furthermore, the sentencing principles applicable in South Australia are quite distinct from those which would apply to adults, notably because there is no fixed proportionality between the crime and the punishment. The interests of the child and the needs of the child remain paramount in determining what measure will best effect his or her rehabilitation.[53] Recent amendments in the *Children's Protection and Young Offenders Act* now allow deterrence to be a factor where a child is dealt with in an adult court. Apart from hearings in an adult court, there is no concept of general deterrence involved in the South Australian legislation. The 1979 amendments did, however, re-emphasise the importance of protection of the individual rights to justice of each child.

14.3.60 The South Australian study by Gale and her co-authors showed conclusively that the significant legislative reform which occurred in South Australia in 1965, 1971 and 1979 not only failed to reduce the disproportionate involvement of Aboriginals in the criminal justice system but possibly increased that involvement by a net-widening process. 54

14.3.61 The authors observed that Aboriginal children who had previously been filtered out of the criminal justice system, altogether, by means of police cautions and other informal processes were drawn into the system with the introduction of the welfare oriented legislation in 1965 and were further drawn in by the introduction of aid panels in 1971. In practical terms the aid panels produced the

result that children who would otherwise have been diverted from the system by cautions were referred by police to the aid panels, a process which continued in 1979 with the introduction of screening panels. The authors concluded:

> *It seems then, that a firm legislative commitment to the welfare of the child, together with subsequent attempts to refine the system by adding diversionary and pre-trial sieving structures, had unforeseen negative consequences. Each new piece of legislation, rather than reducing the numbers of young people being formally processed, apparently contributed to a further increase.*[55]

14.3.62 In the Northern Territory, unlike the States of Australia, juvenile justice functions and institutions are under the control of the Department of Correctional Services. This has been the case since January 1986. As a result, the justice functions are completely separated from welfare services. Mr Doug Owston said in his statement to the Royal Commission that

> *this move was seen as a realistic way of ensuring that young offenders were held accountable for their actions. There is little doubt that the majority of adults who end up under the corrections umbrella are merely juvenile offenders who have graduated to the adult scene. Therefore, it is reasonable to assume that efforts to divert offenders from further conflict with the criminal justice system should start at the beginning of the spectrum, that is to say, when a person first penetrates the system.*[56]

14.3.63 Mr Owston said that the separation of the welfare and correction departments did not cause a problem or overlap of responsibilities in the Northern Territory. The courts determined whether a case was more properly a welfare case or a juvenile justice case and areas of conflict were reduced as a result of good relationships between the departments. Children could be at the same time both under the care of the Director of the Department of Corrections and also the Director of Child Welfare. 57

14.3.64 One commentator, Dr Paul Wilson of the Australian Institute of Criminology, has remarked as to the different approaches which have been adopted across the country to date:

> *Partly as a result of the failure of rehabilitation, sentencing policies have reacted against 'treatment' and emphasised instead, firm and severe punishment. The problem here is that, like other approaches, policies based on punishment have not lowered recidivism or youth offending rates. Also, severe punishment policies are highly expensive and singularly out of favour with most experts who regard institutionalisation of youthful offenders as dehumanising and perhaps, criminogenic. 58*

14.3.65 The recently passed legislation *Children, Young Persons and their Families Act 1989* (NZ) makes a clear distinction between care and protection and youth justice issues, with separate treatment and jurisdictions. The implementation of the Act, even in its early stages, has shown promise. It is principally concerned with diversion procedures, with the use of the court system in only the most serious of offences. The authors of a submission to the Royal Commission detailing the Act sum up the advantages of the Act by noting that it 'broadly accommodates the needs of young offenders and victims'; it empowers families to take responsibility for offending--it also enhances community-based responses to offending by young people through family group conferences. Even in the early stages of implementation there appears to be a significant change in the manner in

which children and young offenders are dealt with.[59]

14.3.66 My position regarding the welfare and justice models, for reasons that are partly outlined above, is that neither model offers the ideal path for the treatment of juveniles who find themselves in the juvenile justice system. The welfare model has had detrimental effects on young people who have not committed offences or those juveniles who have committed minor offences only. Through no fault of their own these juveniles find themselves in custodial-type institutions along with juveniles held in detention for serious offences because they have been neglected by those who would properly care for them. It is apparent that jurisdictions are recognising the limitations of the welfare model and are making moves to change their orientation towards this model.

14.3.67 It appears to me, however, that the justice model is also quite inadequate. Obviously it is true that the juvenile justice process should not be put in motion until the juvenile has committed an offence and, indeed, until all diversionary procedures have been exhausted. Although I concede there may be some cases where the consequence of the offending is such that detention is dictated as a last resort, in the overwhelming number of cases the endeavours of the system should be directed towards rehabilitation, not towards punishment. This rehabilitative approach should not be confused with the welfare model. Although it is true that this approach enhances the welfare of the juvenile, as policy it is dictated by commonsense and the welfare of the society as a whole which has a very great interest in the welfare of young people and their development.

14.4 THE REASONS FOR OFFENDING

14.4.1 Behind the statistics of over-representation of Aboriginal juveniles offenders lies a complexity of reasons for offending. It is obvious that crime statistics alone will not reveal the motivation for the crime nor the social or cultural context in which the crime takes place. Certainly, it would be a superficial analysis that viewed crime rates as a 'true' indication of crime rates or merely as indicators of Aboriginal youths' greater propensity for crime.

14.4.2 The reasons for offending among Aboriginal youth will be as diverse as the experience of youth generally. 60 It should be kept in mind that whilst Aboriginal juveniles experience the passage to adulthood from the unique historical and cultural perspective of Aboriginal society and the relationship of Aboriginal people with the non-Aboriginal society, there will be many aspects of their experience as juveniles which will be not dissimilar to the experience of non-Aboriginal juveniles in any society. In all societies the teenage years can be times of confusion, uncertainty and of apparent estrangement between parents and children. Values held dear by parents will not necessarily receive ready acceptance by the children of any society.

14.4.3 The severe constraints on time which all Commissioners faced in completing their investigations into the individual cases limited the extent to which we were able to consult directly with Aboriginal youth. The great majority of the consultations conducted both by Commissioners and the Aboriginal Issues Units were with Aboriginal adults rather than with youth. Accordingly, one must exercise some caution lest the views of Aboriginal adults be assumed to necessarily reflect the views of the children. It is clear that on some occasions the views expressed, and reported in this report, may reflect as much upon the generation gap which is common between parents and children in all societies as they reflect aspects of life experience which are unique to Aboriginal juveniles. Given, though, the disproportion of Aboriginal youth offending compared with non-Aboriginal youth

offending, there will be reasons distinct to the experience of being Aboriginal in Australian society which contribute significantly towards how one explains Aboriginal juvenile offending. Hence the 'reasons for offending' enumerated below are part of the wider underlying issues dealt with in this report. The experience of disadvantage in Aboriginal society, for instance, is critical to understanding the reasons for offending. There are important questions to be asked here; for instance, how much is racial discrimination operative and/or how far should explanation be sought in legal and socioeconomic terms? A central issue is the undermining of cultural and social controls within the Aboriginal community and family. What is apparent is that the reasons for Aboriginal youth offending, **as** with youth offending generally, are not explained by a single cause and more often are explained by a complex interrelationship of factors.

14.4.4 There is a diversity of opinion among Aboriginal and non-Aboriginal individuals and groups about what is the leading cause of juvenile crime; however, there seems to be broad consensus about what the different reasons are for Aboriginal youth offending. In this chapter I refer to a number of 'reasons' which are implicated in offending for Aboriginal youth. These include the nature of the criminal justice system which defines criminality, socioeconomic disadvantage, the role of the family and home life, cultural factors, the experience of racism, the role of alcohol, boredom, the more general experience of growing up and the role of peer group pressure. As I have mentioned at the outset of this chapter, these reasons must be set against the background of underlying issues that face all Aboriginal people.

14.4.5 What we find the reasons to be in Aboriginal juvenile offending is critical in determining the solutions.

THE CRIMINAL JUSTICE SYSTEM--CONSTRUCTIONS OF CRIMINALITY

14.4.6 One cannot begin to examine the reasons for offending without first addressing the context in which the offence takes place--the criminal justice system. This system is not neutral. The exercising of the ideal of impartial justice is necessarily accompanied by the values of those who enforce the 'rule of law'.

The Nature of the Criminal Justice System

14.4.7 The differential treatment of Aboriginal youth offenders in the juvenile justice system has already been discussed in some detail in section 14.3 of this chapter. It is clearly apparent that the reasons for offending must be located within the broader picture of the criminal justice system.

14.4.8 The cases investigated by the Commission illustrate how the juvenile justice system prejudices the Aboriginal youth offender. The case of Thomas Carr illustrates, for instance, how the decision to charge can have dire long-ten consequences, as Commissioner Wootten points out:

> *The complaint has frequently been made that young Aboriginals are unnecessarily or deliberately made the subject of trivial charges or multiple charges, with the result that the appearance of a serious criminal record is built up at an early age. This follows them through life, is a handicap against defending themselves or seeking mitigation if they are charged again, and also handicaps them in relation to employment and in other ways. 61*

14.4.9 The severity of sentencing, may not only be for so-called repeat Aboriginal youth offenders, but also for fist-time offenders. The man who died in Sir

Charles Gairdner Hospital is a case in point. At the age of 16 years he was first imprisoned for stealing two blocks of chocolate. He appeared in court subsequently on other trivial offences, including drunkenness. Commission O'Dea comments on this latter charge that:

> *It can only be a matter of grave concern that even as late as 1974, a juvenile could be imprisoned for almost three months for drunkenness. Such a practice not only reveals an appalling misunderstanding of sentencing principles on the part of those responsible, but it also illustrates the use of the criminal justice system in a completely insensitive way to deal with what is, in effect, a social and health problem. It also demonstrates recourse to the judicial and corrective systems as a means of social control.*[62]

14.4.10 There are other instances where the sentencing appears unduly harsh. As a juvenile Steven Michael received fines of $720 which he was not in a position to pay. Paul Farmer was placed on two years of juvenile probation for allegedly taking a tricycle from a disused garage and removing $4.00 from a teacher's bag at school. Malcolm Buzzacott's contact with the criminal justice system shows the harshness of the system in his treatment. While still a juvenile, his Fast five convictions were recorded as being in an adult court. On his Fast offence he was sentenced to 14 days in prison for receiving stolen property, and a little later he was ordered three months imprisonment for disorderly behaviour. As I point out in my report of this case, Malcolm Buzzacott was a juvenile and should have been dealt with in a Juvenile Court. A Juvenile Court could not have ordered imprisonment.

The Implications of a Welfare Model in the Criminal Justice System

14.4.11 There is a strong sense emerging from the cases, research associated with the Commission and current non-Commission research, that the welfare model is heavily implicated in the juvenile justice system.

14.4.12 Ian O'Connor, in a Paper written for the Queensland Royal Commission, sees that both the 'child welfare and juvenile justice system have, and continue to play, an important role in the dynamics which have given rise to the over-representation of Aboriginal and Torres Strait Islander people in custody'.[63] He writes that both these systems have facilitated State intervention which, in the long term, has had dire consequences for Aboriginal communities. In a submission to the Royal Commission, Suzi Hutchings, an anthropologist, points out that the interconnections between the welfare and legal systems need to be critically reviewed as it has important implications for the incorporation of Aboriginal people within the different stages of the legal apparatus.[64]

14.4.13 Many of the cases illustrate the way, as Commissioner O 'Dea puts it, the criminal justice system is used as a means of social control. It is apparent that those who preside over the criminal justice system reflect in their sentencing the values of a system in which Aboriginal youth may be marginalised. A model of justice which is based on welfare and rehabilitation must necessarily emphasise the personal circumstances and perceived needs of the individual. Within this model those from low socioeconomic groups are inevitably compromised. This group includes many Aboriginal people. As Gale and her co-authors point out, the statistics of Aboriginal over-representation in the criminal justice system 'does not mean that Aboriginal families are more criminal; merely, that they are poor and often have different values and lifestyles ,.65 As David Alcock, a lawyer formerly with the Aboriginal Legal rights Movement in South Australia, has pointed out in a

background paper submitted to the Royal Commission in South Australia:

> *Essentially it seems to me that once a child finds him or herself in the system and without any form of dramatic intervention that is, the continuation of the existing social circumstances and life style-then such a child is likely to remain in the system for a long time to come.*[66]

Police--the Front Line

> *For a variety of reasons which have been documented in studies... young Aboriginal people--particularly those living in urban situations--seem far more likely to find themselves in situations where they are at risk of an adverse contact with Police.*[67]

14.4.14 Aboriginal relations with police have been discussed at length in Chapter 13. In this section I wish to emphasise Aboriginal youth's particular relations with police. While recognising that many of the issues facing Aboriginal people in general also face Aboriginal youth in particular, I wish to make the point here that police and Aboriginal youth relations are a critical juncture in the entry of Aboriginal youth into the juvenile justice system and often, consequently, into the criminal justice system.

4.4.15 Inspector C.S. Ireland from the New South Wales Police Service and Mr J. McDonald, the Client Group Adviser on Youth for the New South Wales Police have pointed out in their submission that:

> *Police perform a pivotal role as 'gatekeepers' in the general Criminal Justice System and in the Juvenile Justice system. Decisions made, discretion exercised or diversions made at the individual police officer and institutional level, have a critical influence on what happens 'downstream' in the general Criminal Justice or Juvenile Justice System. 68*

14.4.16 The police decision to arrest a juvenile marks the point of entry into the juvenile justice system from whence it is often difficult to disentangle oneself. As David Alcock pointed out in his background paper:

> *The 'necessity' to arrest is the first stage in what can often be a particularly difficult situation. One need only mention the consequent charges of assault police, resist arrest, escape lawful custody that can flow simply from the police decision to arrest.*[69]

14.4.17 There are a number of significant underlying factors that are operative in this decision-making process, not least of which is the police attitude and relationship to Aboriginal youth and vice versa. The knowledge and experience of the officers concerned is one vital issue. David Alcock says:

> *More mature officers (with experience) are able to defuse inflammatory situations avoiding the necessity of arrest and consequent offences that may flow from it.*[70]

14.4.18 The experience of a negative relationship between police and Aboriginal youth has been discussed by Aboriginal Issues Units (AIUs). The AIU in Western Australia points out that:

> *It was widely agreed that Aboriginal juveniles are particularly influenced by observing inappropriate behaviour' by, and attitudes of,*

police officers towards Aboriginal people. It was felt that this created within the youngsters a negative reaction towards police which would influence their dealings with police officers in the future. Often the only time juveniles saw police was when someone was being arrested and this fostered feelings of distrust. 71

14.4.19 A telling example of how, potentially, relationships between Aboriginal youth and police are undermined is given in the National Inquiry into Racist Violence carried out by the Human rights and Equal Opportunity Commission in Townsville. The speaker, in this example, allegedly describes the confrontational nature of a meeting between Aboriginal youth and police outside the disco.

[T]he chaps that pull up there, they just grab the blokes and start talking to them on the side and they start asking them things like, you know, 'There was a break-in and entering over the road'--'There was a smash in a building there, you know'--'You were involved in it'. This sort of thing. They sort of put it on them. And then these young fellows get a little bit uptight and there is a struggle, they are swearing, and all this sort of business. Next minute we know there is a couple of young blokes getting taken away and, you know, they know that they are going to be locked up so they retaliate, and they start throwing punches and whatever.[72]

14.4.20 In Queensland the AIU pointed out that distrust of police dissuaded Aboriginal and Torres Strait Islander youth from assisting or co-operating with police. In one instance, negative attitudes on the part of Aboriginal youth were exacerbated by confrontationist attitudes of police and the refusal of police to involve the community through liaison activity.[73]

14.4.21 Dr Edmunds, in a paper for the Commission on social relations and social control, locates the police-Aboriginal youth interaction within a broader cultural milieu. Over-policing is the noticeable product of this interaction. As Dr Edmunds points out:

The police are interacting with, arresting and imprisoning, not just individual 'troublemakers' but are interacting with a social process which is invisible to them.[74]

As Dr Edmunds goes on to point out:

Ways of breaking what so quickly becomes a vicious cycle must be sought. This may well involve a rethinking of the role of welfare agencies. It certainly requires a change in the unnecessary over-surveillance of all Aboriginal activities by outsiders.[75]

14.4.22 The general finding of the Queensland AIU that Aboriginal youth are 'policed' more than non-Aboriginal youth confirms the need to address the issue of 'over-policing'. As the South Australian AIU pointed out, 'Aboriginal youths get questioned more often for small things as compared to white kids ,.76

14.4.23 Although there is a widely reported incidence of conflict between youth and the law and justice system, police interactions are not always negative. There are positive examples of efforts being made towards the establishment of good relations. In Queensland, the AIU has reported that informal, spontaneous gestures are particularly valued. Barbeques organised by police in Kuranda for children there have played a considerable role in restoring good will and trust between residents and police after a lengthy period of turbulent relations. In Toowoomba the police liaison officer system is reported to be working well, and

this has resulted in productive community meetings and an improvement in the handling of Aboriginal and Tortes Strait Islander youth.[77] In Adelaide, some police officers are going to schools in the northern suburbs and interacting with children out of school with very positive results.

14.4.24 While, at the present time, positive police and Aboriginal youth relations seem the exception rather than the rule, Chapter 30 (see 'Better Relations with Police') examines some ways in which positive police and Aboriginal youth relations are being encouraged in many places and with some success.

Racial Discrimination

> *There was considerable perception of discrimination in policing on the part of Aboriginals. A story was told of an Aboriginal boy being picked up for drinking in the street when he was with two white boys who were not picked up. When the [Western Aboriginal Legal Service] WALS Field Officer questioned the police on the matter they said that the white boys didn't know the rule.*[78]

14.4.25 The issue of racial discrimination has been examined in Chapter 12 and Chapter 13. I will not repeat myself in this section. I will, however, concentrate here on the potential for racism to inhibit positive police and Aboriginal youth relations. Aboriginal youth frequently assert that the extent of police monitoring of their behaviour and the frequently hostile interaction which often results are products of the racism of many police officers. Racist behaviour is sometimes manifest in the words and actions of persons, but at other times it is the routine adherence to .discriminatory practices which is the real cause of the problem. Elsewhere in this report I refer to a submission from the Police Federation of Australia and New Zealand which acknowledges that since police officers are drawn from the broader community it is inevitable that some police officers will hold racist attitudes and that their work will be influenced by those attitudes. But many police officers would deny that conduct, which is to Aboriginal youth patently racist, is indeed motivated by racism or any ill will towards Aboriginal youth. It is not always easy for police officers to recognise the extent to which routine police practices may have a discriminatory basis to them; and it probably is just as difficult for an Aboriginal youth (because of fixed social attitudes and inexperience) to understand that what an officer does is routine and would be done irrespective of the race of the juvenile. At all stages in the process of policing in the community situations arise in which decisions taken by police officers can, in fact, be discriminatory (and just as importantly, may be seen to be so), and can therefore exacerbate the hostility felt by many Aboriginal youth towards police. Police officers are called upon to exercise their discretion **at** many different stages in the normal process of their duty. The decision to arrest, for example, is one critical point where the discretion of the police officer may be influenced by assumptions and prejudices of a subtle kind.

14.4.26 To be noticed by police is to be visible--Aboriginal youth are highly visible in what is largely a white non-Aboriginal population, and as a consequence are likely to be more frequently noticed by the police. Moreover, with the high number of Aboriginal children who find themselves placed in 'care' in the welfare system there is increased likelihood that any, so-called, deviant behaviour will be reported and acted upon.

14.4.27 Submissions received from the A1Us has highlighted police harassment of Aboriginal youths as an issue. The Western Australian AIU reported regular questioning of Aboriginal youths in the street as one form of harassment.[79] An AIU report to the Queensland Royal Commission documents police harassment of

Aboriginal youths as a key issue in poor Aboriginal-police relations.

> *Reports from various centres in the north of the State have emphasised perceptions that police adopt a confrontationist approach to youth, that Aboriginal youth are harassed to a greater extent and treated more severely by police than White offenders, that Aboriginals are observed to be routinely taken into custody in circumstances where non-Aboriginals are not and that Aboriginal youngsters are not protected by police from harassment by non-Aboriginal trouble makers.*[80]

14.4.28 The National Inquiry into Racist Violence held by the Human rights and Equal Opportunity Commission prepared a report on *Aboriginal Juveniles and Allegations of Police Violence. The* author, Dr Cuneen, found an extremely high number (171 in all) of Aboriginal juveniles interviewed in youth detention centres in New South Wales, Queensland and Western Australia claiming to have been assaulted by police at some time during their lives. The report concludes that the

> *most disturbing point in relation to the juveniles' perceptions of police violence was that it was something which was to be expected and, indeed, tolerated. There was a sense of resignation in the face of any effective controls on police behaviour. 81*

14.4.29 A number of surveys in recent times have document the high level of claimed police violence in relation to youth generally. The recently released Youth Justice Report in New South Wales documents what it terms as 'very high and unjustifiable levels of violence and abuse' and suggests that violence is more frequent in relation to Aboriginal youth, or, at the very least, there is a structural racism in operation in the attitudes of police towards Aboriginal youth.[82]

14.4.30 These reports do *not prove* that the police violence claimed by Aboriginal juveniles in fact occurred. The reports of assault were not the subject of judicial investigation and it is probable that in most, if not all, instances police would have denied the allegations had they been the subject of inquiry. The difficulty of determining where truth lies in these situations is dealt with elsewhere in my report. What, however, is significant for present purposes is the fact that the allegations are made by Aboriginal youth. This demonstrates, at the very least, an Aboriginal juvenile perception about the processes of the criminal justice system which is inimical to rehabilitation and the avoidance of involvement in the system. It demonstrates, too, a strong underlying sense of injustice that Aboriginal youth are targeted and victimised by the system.

Prison as a Deterrent

14.4.31 One of the central premises of the criminal justice system is that prison will act as a deterrent to potential offenders. Commissioner Dodson makes the point that 'Incarceration as a deterrent has been shown to be an ineffective means of dealing with the issue of Aboriginal juvenile offending'.[83] Bud Hammond, a friend of the deceased, Thomas Carr, describes the long-term effects of institutionalisation:

> *I guess the institutions taught me how to commit more serious crimes, to go from cars to break and enters to robberies. They also make you disrespect and hate people. They don't teach you nothing, it is all 'stand over'. I think if they tried to help you would be better. But, when they try to stand over you, you just renege on them.*[84]

14.4.32 Information arising from the Royal Commission has shown that, for the most part, prison does not act as a deterrent and may, on occasion, have the opposite effect, as in the experience of Bud Hammond. This finding is supported for juveniles generally. The Law Reform Commission concluded that experience of prison itself does not deter repeat offenders. it may even be that the inference that the legal concept of general deterrence might not be valid in respect of juvenile delinquency. 85 There is, for example, the potential for the institution point is the life of Daniel Lacey, whose experience partly reflects the experience of all juveniles who are institutionalised. As Commissioner Wyvill writes:

> *Prison became a way of life for Daniel Lacey. Except for the twelve months from August 1984, he was never out of a correctional institution for more than a few months from the time he was 14 until his death at age 40. The consummate tragedy of Lacey' s life was that he found a place, a reputation and a degree of status in prison that he never found in freedom.*[86]

14.4.33 However, Lacey's frequent history of absconding from institutions suggests that, at times, Lacey endeavoured to escape this experience of institutionalisation, as did many other Aboriginal youth whose lives are detailed in the cases.

14.4.34 Daniel Lacey's experience reflects how prison may inadvertently become a symbol of status. Similarly, the Tasmanian AIU has reported that 'There is some indication that imprisonment is seen as a way of establishing credibility among some young (17-19) Aborigines who might be described as 'street kids.'[87]

14.4.35 In Chapter 11 (Some Aspects of Aboriginal Society Today), I discuss some of the particular problems of young Aboriginal males arising from the breakdown of culture and social life and which leads some young men to adopt other means of asserting themselves. Some people maintain that offending and going to prison is for some young men such an alternative method of seeking status.

14.4.36 The AIUs put forward that viewing prison or institutional life merely as an alternative symbol of status may be only a partial and, at times, insufficient answer. It is apparent that, for the Aboriginal youths concerned, the achievement of status via prison may be an ad hoc secondary attainment. Information from the AIUs points to a complex number of reasons for 'going to prison'. For instance, two young Aboriginal men interviewed by the Tasmanian AIU reported that they did not want to be in prison---they did feel however that there was some pride and camaraderie to be gained from mixing with older inmates. 88 The Northern Territory AIU found no Aboriginal person to whom they spoke who agreed that prison was viewed as a symbol of status. The AIU has pointed out that it is likely that Aboriginal youth expressed bravado in front of their peers about their experience in prison in order to avoid shame. Significantly, some male respondents to the Northern Territory AIU inquiries pointed out that some young men deliberately sought to be imprisoned to avoid advanced Aboriginal initiation rites. This also pointed out that many offenders were not aware of the consequences of their actions, particularly where offenders were under the influence of petrol or alcohol at the time of the offence.[89]

14.4.37 If prison is perceived as a status symbol, an explanation for this viewpoint may be that it allows access to experiences not normally available to Aboriginal youth. For Aboriginal youth (traditional and non-traditional), institutions provide goods and services that they do not have in their own living situation. The Queensland Aboriginal Co-ordinating Council sums up this situation well:

Aboriginal youth freely admit that they commit offences such as break and enter and stealing and wrecking Council vehicles so that they can have a 'holiday' in Brisbane with three meals a day, recreational facilities and videos.[90]

14.4.38 Kevin Kitchener from the AIU in New South Wales presents a similar picture when he points out that Aboriginal youth appear to regard the Riverina Youth Centre as a holiday camp.[91] A bleaker explanation for the attraction of institutions for particular Aboriginal youth, pointed out by the Queensland AIU, is that it offers them a respite from disruptive home life.[92]

THE ABORIGINAL FAMILY AND THE UNDERMINING OF SOCIAL AND CULTURAL CONTROLS

The history of disruption, intervention and institutionalisation to which Aboriginal and Torres Strait Island families and children have been subject has left many of those families confronting severe difficulties in securing the adequate care and control of their children; has seen juvenile crime develop into a major social problem; and has seen Aboriginal and Torres Strait Island juveniles grossly over represented at all levels of the child welfare and juvenile justice systems in Queensland. The experiences of those who have died in custody is testimony to the tragedy of that historical legacy.[93]

14.4.39 The 'history of disruption, intervention and institutionalisation' which the Queensland Regional Report describes above has profoundly effected the family and kinship networks which are so central to Aboriginal society. This has resulted in the undermining of social controls. As the AIU in the Northern Territory stresses:

For Aboriginal people the family is really important. Today many family structures are breaking down. Without the guidance of the family, Aboriginal kids are becoming despondent, committing crimes and taking up substance abuse.[94]

14.4.40 A lack of parental control is inevitably set against a background of complex social forces. The AIU in Western Australia has pointed out that many factors come into play in supervising children. In particular, the AIU points to poor educational background and social and economic circumstances as contributing to the poor self-esteem. Against this background, parental authority is undermined as the children observe their parents being placed in an inferior position.[95]

14.4.41 It must also be recognised, however, that positive culturally based social controls operate in Aboriginal families. These cultural differences in socialising children are examined in Chapter 11.

14.4.42 Information received by the Commission points to an overwhelming perception that many Aboriginal families are in crisis. This critical situation has, in part, its antecedents in the historical contact between Aboriginal people and the welfare and criminal justice systems whereby external controls of the justice system have undermined the internal controls of Aboriginal and Torres Strait Islander societies. As one witness in the cases forcefully makes the point:

Well, the people telling them, 'Don't do this and don't do that' .' Then the welfare comes in and says, 'You' re not allowed to listen to your elder', or 'You're not allowed to listen to this and you've got to do what you want to do' This is what I find is the breakdown in our community.

"Do what you want to do. Don't listen to anybody". 96

14.4.43 The cases reflect the undermining of the traditional responsibility of the Aboriginal family. Chapter 11 examines how significant family disruption by intervention of the authorities was a characteristic of many of the early life experiences of those who died in custody. The legacy of the welfare system's effect on Aboriginal communities is illustrated in the case of Thomas Carr. Commissioner Wootten discusses how:

> *There is a very strong belief which I have found widespread in Aboriginal communities in south-eastern Australia, that parents are forbidden by law to chastise their children, and that if they do they will be prosecuted or the children taken away... It may in part be a legacy of the feelings of powerlessness built up by the oppressive supervision and control of Aboriginal families in the past.*[97]

14.4.44 Many submissions received from the AIUs express the view that many Aboriginal people and communities feel that the undermining of cultural and social controls in the Aboriginal community has resulted in an inability of communities to adequately supervise and control their children. As the Queensland Coring Council sums up:

> *Erosion of the traditional authority of elders through white domination has meant that Aboriginal Youth can behave in very destructive ways while some Aboriginal Councils feel powerless to deal with them.*[98]

14.4.45 AIUs expressed the view that the children would no longer listen to or respect their elders. The Katherine Regional Aboriginal Legal Aid Service submission stated that juvenile crime arises in part from 'a separation of many Aboriginal juveniles from their traditional cultural associations'.[99] A reply from a Queensland respondent illustrates this point:

> *Today is very cruel to my people. They have TV and they live like American way [sic] Maybe our children have too much whiteman's thinking. Too much TV, too much video.*[100]

14.4.46 At this cultural interface, and as the Submission from the Secretariat, National Aboriginal Islander Child Care, points out, Aboriginal children do play European law and the Aboriginal community's methods of disciplining and rehabilitation 'one against the other'.[101] In some communities, as AIUs have reported, it has reached the situation where older people are frightened of their youth who may terrorise them to obtain money for alcohol and other goods.

14.4.47 For the Aboriginal youth who may come home to parents who are drinking or to a situation where there is no one at home and no food in the cupboard as AIUs have reported--the likelihood of offending is significantly increased. The Queensland AIU has observed the critical modelling role parents perform. As the AIU reports:

> *Youth behaviour of alcohol abuse, violence and depression are often seen to reflect the norms of adults around them. A Malanda informant felt that many ATSI [Aboriginal and Torres Strait Islander] parents could not provide a positive model to emulate. The advice of such parents who were 'failures' in the children' s eyes simply lacked credibility or authority.*[102]

SOCIOECONOMIC FACTORS

14.4.48 Socioeconomic factors are a critical determinant in crime. The Youth Justice Project pointed out that criminal statistics consistently show an over-representation of the poor, the unemployed, those living in particular socioeconomic areas, in property, street crime and public order offences, 'as perpetrators and as victims'. As can be seen from the section on social indicators (Chapter 11), a significant proportion of Aboriginal people including youth are in the lower socioeconomic bracket As Gale, Bailey-Harris and Wundersitz point out: 'Poverty seems to be an inevitable correlate of police notice, with high apprehension rates the world over coinciding with poor economic conditions'.[103] The significant number of .property offences committed by Aboriginal youth would seem to indicate, m part, that economic factors are a significant motivation in crime.[104] The case of Graham Walley shows how economic conditions are implicated in juvenile offending. Commissioner O'Dea writes of Graham Walley that:

> *His juvenile offence history needs to be seen in the context of severe family poverty and hardship, instability in the family as a unit, partly as a result of institutional care orders. For most of the period of his upbringing Vera was, in effect, a sole parent. In addition to these matters, Walley had a hearing defect which went unrecognised for years... In retrospect, it appears much of his behaviour that was considered antisocial was possibly related to his defective hearing.[105]*

14.4.49 Craig Karpany also suffered from a hearing disorder, and, while efforts were made by the educational authorities to address his disability, 'subsequent contacts with the juvenile justice system and welfare authorities appeared to focus little attention on this difficulty'.[106] Dr Bashir commented, during the Juvenile Justice Conference held by the New South Wales Royal Commission, that very little is done in the way of decent medical appraisal or psychological understanding of children who get into difficulties and who come either before Family and Community Services or who find themselves on custody or on remand. Dr Bashir points out that many children who have learning difficulties often have problems of nutrition and problems with their hearing and their ears.[107] Hearing impairment afflicts many Aboriginal children.

14.4.50 The Northern Territory AIU stated in its report that 'Some offences are committed because of the need to get food'.[108] Hunger is the base-line condition socioeconomically that Aboriginal children and youth contend with in their day-to-day lives in many communities. The AIU in the Northern Territory has pointed out the stark contrast of Aboriginal lives faced with hunger and poverty with the apparent plentitude of a material European culture.

> *Kids do not experience a normal childhood, but live with violence and family fighting; poverty, housing and unhygienic conditions; poor food and very little of it, and long periods of hunger. They see the contrast everyday in non-Aboriginal Australian life styles where the children have new clothes, plenty of good food, apparently loving happy families, bikes, computer games, and toys. Consequently many Aboriginal children reject Aboriginal ways that they see contrast to the material benefits of a dominant European culture.[109]*

14.4.51 There are more pragmatic consequences to 'economic' crime. One of the more common crimes committed by Aboriginal youth is the illegal use of, or interference with, a motor vehicle. Gale and her co-authors have pointed out that in

remote locations where there is a lack of cars and, consequently mobility, there is an enticement to go for a ride. There are then social factors that come into play when stealing a motor vehicle. The study by Morice and Brady in 1982 has shown that, for instance, in the case of car stealing there is 'practical and utilitarian worth' in getting from a to b.

ALCOHOL/PETROL SNIFFING

14.4.52 Evidence before the Commission shows that harmful use of substances, noticeably alcohol, is considered a significant factor in juvenile crime, particularly in certain Aboriginal communities and particularly in the Northern Territory and Western Australia. I make a distinction here between alcohol as a facilitator or mediating substance in crime, as opposed to behaviour such as underage drinking which is considered a criminal offence. Furthermore, evidence received by the Commission has shown that juvenile drinking can potentially lead to juvenile crime. 110 In addition, the influence of alcohol and other drugs can be a stressful factor for the police to deal with in any encounters with youth. The AIU in the Northern Territory describes how:

> *The advent of grog and petrol sniffing threatens the family in crucial ways. It is destroying the health, not just of the 'users', but of the other members of family and community who are affected. It leads us to arrest and jail...*[111]

14.4.53 The relationship between petrol sniffing and offending has been discussed in Chapter 15. Petrol sniffing is an activity confined noticeably to adolescent and young, adult Aboriginal individuals and certain groups usually between the ages of ten and twenty-five and who live particularly in part of Western Australia, South Australia and the Northern Territory. Among some Aboriginal youths the act of petrol sniffing would seem to be intimately bound up with offending. As a respondent to the South Australian AIU remarked: 'Some kids sniff petrol and cause a lot of trouble, break into the store and take the old people's car'.[112]

14.4.54 Maggie Brady, an anthropologist, has pointed out, in her recent study into petrol sniffing among Aboriginal youth in Australia, that 'it is difficult to assess the extent to which petrol sniffers commit other offences and come to the attention of the judicial system'.[113] One can conclude that there is a likely association between petrol sniffing and offending given the numbers of observers who have noted this. The relationship between sniffing and offending is not always clear cut. A study by Morice and Brady in 1982 of a remote Aboriginal community found that there was no significant relationship between blood lead level and offending for male adolescents.[114] The relationship between drug use, including petrol sniffing, warrants a more complex examination. As Maggie Brady describes, 'Petrol sniffing by young people, often in groups, constitutes a threat both physically and metaphorically to the social order'. [115]

PEER GROUP PRESSURE

> *So it' s peer pressure?*
>
> *Yeah, like the other kids are saying 'Why don' t you do it, you' re boring'.*[116]

14.4.55 It should be pointed out that peer group pressure is a feature not only of Aboriginal youth communities but youth generally. Submissions received by the

Commission confirm the significance of the peer group. Commissioner Dodson in his report makes the point that in his view 'peer group influence needs to be acknowledged as one of the major contributing factors to juvenile offending amongst Aboriginal youth'.[117]

14.4.56 The peer group would appear to have particular significance in Aboriginal culture given the significance of extended familial relationships and the concept of 'shame' as a socialising influence. In Groote Eylandt, the sergeant at the time mentioned that the 'biggest excuse for offending was that someone else "tempted" them, meaning that they could not refuse to join in, thereby losing face and friendship'.[118] Information arising from the AIU in the Northern Territory and earlier studies by Morice and Brady has shown that specific behaviour such as breaking and entering, defiance of adults and travelling in stolen cars was the domain of adolescent Aboriginal males and not of adult Aboriginal males.

14.4.57 It may also be the case that 'peer group pressure' is a particularly western concept, as it implies pressure on individuals to conform to the group. In Aboriginal communities the 'peer group' is already a 'given'.

BOREDOM

Youths often give their reasons for offending as being bored.[119]

14.4.58 The South Australian AIU reports that there are particular problems for young Aboriginal people living in remote communities where they have no employment and no social activity. 'They don't listen to the old man's law and they don't listen to the white man's law, this makes them feel lost in their own society.' The AIU describes how this lack of activity leads to the youth travelling to places such as Alice Springs and Port Augusta 'looking for something to do'. The Victorian AIU has pointed out that 'having nothing to do' increases the chances of young people coming into contact with the police.

14.4.59 In a number of case reports by Commissioners boredom is indicated as a factor in juvenile crime. This factor is not unique to Aboriginal youth; however, it is given prominence in Aboriginal communities. It would seem that boredom is the personal expression of structural problems. In fact 'boredom' is a term that youth themselves use to describe a range of feelings of, for instance, alienation and lack of access to services they may experience. These problems may, in pan, reflect the poor servicing of communities; for instance, in the provision of recreation facilities, youth services and inappropriate educational facilities. At a more local level these problems may embrace families where there is a lack of supervision of children's activities. As the AIU in the Northern Territory points out, a lack of supervision and 'boredom' creates a volatile mix for Aboriginal youth that may end in them finding trouble, with the police and courts. Robert Anderson, one of the deceased, grew up in the town of Wiluna in Western Australia where recreation facilities were described as almost 'non-existent'. A sergeant in that township describes the situation: 'In the evening when boredom is mixed up with the grog, they go and damage something or smash a window in a motor car'.[120] The experience of Aboriginal youth in Wiluna is one example of the critical need to address the contribution that boredom makes to their disruptive behaviour.

OTHER REASONS

14.4.60 As I have indicated, there are undoubtedly many factors which lead Aboriginal juveniles into contact with the criminal justice system. Plainly education, employment and training, or the lack of opportunities in those areas, are all

important factors. These and other factors are dealt with in detail throughout this report. The failure to address these specific matters in this chapter should not be taken to suggest that their importance has been overlooked.

Chapter 15 THE HARMFUL USE OF ALCOHOL AND OTHER DRUGS

The theme of this chapter is how, and in what ways, the use of alcohol and other drugs is involved in contemporary Aboriginal life and contributes to the over-representation of Aboriginal people in custody and to their deaths there. I focus here on alcohol, in particular, as it is a widely used drug and its use too often has serious consequences at the individual, family and community levels. The first main section of the chapter provides information on alcohol use, including the history of its use by Aboriginal people, the extent and nature of contemporary use, and its consequences. I go on to discuss why alcoholic beverages are so often used by Aboriginal people in a harmful manner, and then consider petrol sniffing and the use of the currently illicit drugs, again pointing to the prevalence of use by Aboriginal people and the consequences of that use.

This chapter is essentially descriptive. Attention is drawn to Chapter 32 in Part F, below, in which I discuss what is being done about the problems identified, and what further action can be taken to redress them.

15.1 INTRODUCTION

15.1.1 In this chapter, perhaps more starkly than in some others, the issue of the relative powerlessness of Aboriginal people is very much to the fore. So much of their current situation *vis-a-vis* alcohol use can be understood in these terms. Dispossession from their lands, interference with kinship systems, destruction of economic resources, weakening of social control mechanisms: all are signs of disempowerment. Alcohol and other drugs do not play an essentially causal role in these processes; the causes are essentially political, economic and historical in nature. Alcohol (in particular) is involved, however, in the destructive downward spiral so often seen: the synergistic relationship between the disempowerment of Aboriginal people in general and self-destructive drinking behaviour reflecting the individual's response to, and expression of, this disempowerment.

15.1.2 From the earliest point in the Royal Commission's activities, it became apparent that alcohol and other drugs would be among the dominant issues to be considered. Indeed, in each of the first three case reports, presented by Commissioner Muirhead on 25 January 1989, alcohol and other drugs featured prominently. Eddie Murray was apprehended as an intoxicated person and caused his own death by hanging in the Wee Waa (New South Wales) police cells: his blood alcohol concentration at death was 0.30g%. Kingsley Dixon's death in the Adelaide gaol was also self-inflicted and by hanging: he had been smoking marijuana and taking the sedative Rohypnol (Flunitrazapam). John Highfold died from epilepsy in the Adelaide gaol: his heavy alcohol consumption prior to imprisonment interfered with the pharmacological control of his epilepsy. These and related cases led Commissioner Muirhead to emphasise the importance of the alcohol issues in the *Interim Report* of the Commission.

15.1.3 Readers will not be surprised to see this emphasis in my report. Dysfunctional, hazardous and, indeed, harmful use of alcoholic beverages and other drugs is such a feature of Australian society that the report of an influential Parliamentary inquiry into this area is entitled *Drug Problems in Australia--An Intoxicated Society.* With at least 35% of the people placed in police cells in Australia being there for public drunkenness, and 22% of each year's deaths in

Australia being caused by alcohol and other drugs, it should not be surprising that alcohol and other drugs feature so strongly among the 99 eases investigated by the Royal Commission and among the underlying issues relating to Aboriginal deaths in custody.

15.1.4 The early case of Kingsley Dixon referred to above, one where a young man hanged himself in prison after unlawfully ingesting cannabis and a sedative, suggested to the original Commissioner that the illicit use of drugs among prisoners may become a common theme in the Royal Commission cases. Because of this concern, the Royal Commission's Research Unit prepared a Research Paper on the topic *Drug Testing in Prison.* As it eventuated, however, alcohol has proven to be far more significant a factor underlying the detentions and deaths in custody of Aboriginal people than has the use of other drugs, an interesting parallel to the relative harmfulness of alcohol and illicit drugs in Australian society as a whole. For this reason, I place considerable emphasis here on the drug alcohol, rather than on the currently illicit drugs.

15.1.5 In the balance of this chapter, I will review alcohol use, petrol sniffing and other drug use as underlying issues which help to explain the disproportionate detention rates of Aboriginal people. Most emphasis will be placed on alcohol for the reasons given above.

15.1.6 In discussing alcohol, I draw heavily on a report prepared for the Royal Commission by an Expert Working Group convened for this purpose by the Alcohol and Drug Foundation, Australia (ADFA--now known as the Australian Council of Alcohol and Other Drug Associations). The ADFA report, which is available in the records of the Commission and bears the title *Aboriginal Alcohol Use and Related Problems,* was commissioned because of the importance of alcohol to this enquiry. All Commissioners had received extensive evidence, in the context of the investigations into the individual cases and their broader underlying issues enquiries, about the impact of alcohol at both the community and individual levels. We became well aware of Aboriginal views on the matter and developed views from our own observations. We felt, however, that it was important to have before us, 'for consideration along with information from other sources, the views of researchers and scholars concerning Aboriginal society and alcohol. Accordingly, the ADFA Expert Group was convened to prepare a report that would bring together current research findings and expert opinion from a number of disciplines. The terms of reference and proposed membership of the Expert Group were circulated to each of the Commission's Aboriginal Issues Units (AIUs), and received their support. Furthermore, one of the positive features of the process supported by the Commission in the development of the report was that, while in draft, the report was studied at a meeting convened for that purpose by ADFA's Aboriginal and Tones Strait Islander Working Party. As a result of this process, the ADFA Expert Working Group's report, when read alongside the Commission's AIU reports, case reports, submissions, etc., provides a valuable expert perspective on the complex issue of alcohol in Aboriginal society. The material contained in the ADFA report is consistent with the information provided to Commissioners by our Aboriginal Issues Units.

15.2 ALCOHOL USE

15.2.1 Alcohol is having a devastating effect on the Aboriginal people of Australia. From the urban areas of South-eastern Australia, where the greatest concentration of Aboriginal people are found, through the country towns and into the more remote areas of Australia, my fellow Commissioners and I have observed its impact at first hand. Sickness and death, violence and despair, exclusion from

education and meaningful employment, families and communities in disarray; we have observed all of this and have heard many Aboriginal people, those most affected, attributing this tragic state to alcohol. On the other hand, throughout our travels and inquiries into the underlying issues, all of us have been impressed with the way that some individuals, families and communities have been able to confront the problems attributed elsewhere to alcohol, and how many others are attempting to do so. Nevertheless, the negative side of the balance sheet is considerable.

15.2.2 The Commission's Aboriginal Issues Units staff have emphasised the central role that alcohol plays in the poor circumstances that so many Aboriginal people live in today. Their views are perhaps summed up best in the Northern Territory AIU's report, the first chapter of which is titled 'White Poison: Aboriginal Alcohol Abuse'. As one Alice Springs informant put it:

> *Every meeting we say 'Grog is the number one problem. We know what grog is doing. It' s killing our culture, people... we' re sick of talking'. 1*

15.2.3 In Part C of this Report I have detailed how heavily alcohol contributes to the reasons for Aboriginal people being apprehended by police and being placed in the police cells. Alcohol is clearly involved in many of the offences that lead to Aboriginal people being placed in gaol, either directly by a judicial decision or indirectly by the Aboriginal person's failure to pay a fine or comply with other conditions set by a court. I have also pointed out that large numbers of Aboriginal people are apprehended by police and held in custody in police cells owing to drunkenness, even in those jurisdictions where public drunkenness has been decriminalised but where no facilities, other than the police cells, have been established for the care of intoxicated people.

15.2.4 I have also indicated, in Chapter 2, how deeply and frequently alcohol has been involved in the 99 cases which have been investigated under the Letters Patent issued to the Royal Commission. It is clear that alcohol features as a central and negative part of the lifestyle of many of the Aboriginal people who died in custody. It was involved, frequently causally, in their being in custody and, especially sadly, was a direct or indirect cause of their deaths in custody. These facts make it imperative that alcohol, as an underlying issue, receive close attention. This is not just my view and that of my fellow Commissioners but has been urged upon us by Aboriginal people. The Northern-Territory Aboriginal Issues Unit, for example, argued that, from *an Aboriginal perspective,* and from *the Aboriginal experience,* alcohol plays a primary role in both the reasons for detention, and for the subsequent chances of deaths occurring.[2]

HISTORICAL ASPECTS

15.2.5 I have often heard it argued by both Aboriginal and non-Aboriginal people that alcohol and other drugs were unknown to Aboriginal people prior to European colonisation of Australia, and that this provides an explanation of the current dysfunctional use of the drug. This line of argument goes on to suggest that, in the absence of mood altering substances, social controls over their use did not exist and do not exist today. This view is often used as a means of explaining harmful use of alcohol by Aboriginal people today as well as the barriers that they confront in establishing methods of controlling its use.

15.2.6 The Expert Working Group, which has reported to the Royal Commission in this area, has pointed out that evidence exists that alcohol was used by some Aboriginal people prior to contact with Europeans. It should be noted, however,

that traditional use of alcoholic beverages may not have been widespread, quantities consumed may have been very small and the beverages could well have contained a very low alcohol content. In such circumstances, elaborate social controls over their production and use may not have developed.[3]

15.2.7 A second historical aspect is that the legal right to drink and the equality of Aboriginal and non-Aboriginal people have come to be related in the perceptions of some Aboriginal people. In 1838, in New South Wales, it became an offence to supply alcoholic beverages to an Aboriginal person. Similar legislation eventually covered all of Australia, and remained in force until the decade which ended with the 1967 Referendum. During this decade the legislative prohibitions were lifted, first in Victoria in 1957 and finally in the Eastern Goldfields Region of Western Australia in 1967. In addition, the by-laws under which many missions and reserves operated included provisions that made it an offence for Aboriginal people to consume alcoholic beverages, in addition to the State legislation prohibiting the supply of liquor to Aboriginal people.

15.2.8 The Expert Working Group discusses the Aboriginal perception of the link between the right to drink and equality in the following terms:

> *As Brady (1990b) has pointed out, these legally imposed restrictions on Aboriginal access to alcohol have persisted until comparatively recently, and their influence on Aboriginal uses of, and attitudes towards drinking should not he underestimated. Indeed, some Aboriginal people equated citizenship with the 'right' to drink, even to the point of consuming alcohol to validate their newly acquired status (Bain, 1974). For some, however, the proclaimed 'right' meant merely that their previously illicit drinking ('sly grogging') was legitimised by the state.*
>
> *Through a combination of social legislation in the form of prohibition (no doubt seen as a means of protecting Aboriginal people from the perceived ravages of alcohol abuse), repeal of prohibition around the time of the 1967 referendum and the symbolic value of alcohol as a highly prized commodity of the dominant culture, the situation is such that:*
>
> *Drinking alcohol has thus become inextricably associated with equality and status among Aboriginal people, as it has for many other minorities and indigenous groups (Heath, 1987: 81).*
>
> *The fact that discriminatory laws existed for so long and in such a complex variety of forms has meant that the right to drink has a high premium among Aboriginal people.*[4]

15.2.9 A third historical perspective, presented by the Expert Working Group, involves Aboriginal people's learning about alcohol. The Group has pointed out that modelling and imitation occurred:

> *Freely-available, commercially-produced alcohol was introduced to Aboriginals (and some other indigenous cultures) by Europeans and Americans who were*
>
> *predominantly whalers, traders, explorers and later immigrants to North America, Australia and the Pacific.*
>
> *When confronted with this powerful psychoactive substance, those who were relatively inexperienced looked to those who gave them alcohol for guidance in interpreting and reacting to the drug*

experience. As a result, their comportment under the influence of the drug mirrored the examples of behaviour established for them by the providers. As MacAndrew and Edgerton (1969:88) stated:

Over the course of socialisation people learn about drunkenness what their society 'knows' about drunkenness; and, accepting and acting upon their understanding thus imparted to them, they become the living confirmation of their society' s teachings.

The indigenous people of North America, Australia and the Pacific not only modelled their drunken comportment after those early visitors to their shores, but have also taken on many of these attitudes and beliefs as well. In examining the drinking patterns in these cultures, it must be emphasised that these patterns mirror those of a certain segment of the colonising culture.

In early Australia (and up to the present time in rural Australia), the models of drunken comportment were miners, stockmen, shooters and drifters. They were hard drinking characters whose drunken comportment included loud, boisterous interactions, brawling and

sexual escapades. Powell (1988) notes that in our colonial (gold) fields men drank heavily, committed suicide, indulged in violence and participated in lynchings. In the outback where alcohol was not so accessible, bushmen drank when they had the opportunity in town. The pattern of drinking was the binge followed by a period of hard work and sobriety back on the station or in the mine. Interestingly, Aboriginal women would have been exposed to female models of sobriety in the wives of property owners and ministers, along with the strongly held belief that it would be unseemly for wives and mothers to consume alcohol.[5]

15.2.10 While I am not suggesting that current patterns of alcohol use by Aboriginal people (nor by other groups in Australian society) can be fully explained by an historical perspective, the matters mentioned may assist in understanding current circumstances.

THE PREVALENCE OF ALCOHOL USE AMONG ABORIGINAL PEOPLE

15.2.11 The Royal Commission has been disturbed to find how little quantitative information is available on the extent and nature of Aboriginal alcohol use, and of its consequences. This is in direct contrast to the position with the broader society: alcohol use and its consequences have been extensively researched by many disciplines. I am not sure to what degree this reflects methodological difficulties in working in this area, the small number of researchers interested in Aboriginal people and alcohol, or other reasons.

15.2.12 It is well known that alcohol is a problem in most sectors of Australian society and a variety of reasons exist for this. It is the view of the Commission, however, that it is particularly problematic for Aboriginal people owing to their long-term disadvantaged position, their changed status with regard to their land, the destruction of the economic bases of their societies, and the resulting reduction in their self-esteem. While some people may consider that it is not appropriate to treat Aboriginal people as a special group for study in the area of alcohol use and related problems, no doubt advantages exist in the conducting of such studies when they are requested by Aboriginal people and Aboriginal organisations.

15.2.13 On this basis, I consider that action could be taken to fill gaps in

knowledge in this area, with the aim of assisting Aboriginal people and those working with them to better understand Aboriginal drinking and to therefore develop appropriate responses. I note that the National Campaign Against Drug Abuse (NCADA), a joint Commonwealth/ State/Territory initiative, identifies Aboriginal people as being a high priority target group for action. Under the Campaign the Commonwealth has allocated funds for both the establishment and operation of a national drug abuse data system and for a research grants program.

15.2.14 The application of those and other research funds to deepen knowledge of Aboriginal alcohol concerns and to develop solutions to problems should, in my view, be guided by the understanding that (a) Aboriginal people have been disempowered by the actions of external agencies; (b) Aboriginal people themselves have many of the solutions to their own problems; and (c) non-Aboriginal people and organisations, including governments, researchers, employees of Aboriginal organisations, etc. can assist Aboriginal people to achieve those solutions.

15.2.15 Accordingly, I recommend that, if Aboriginal people and organisations request such assistance, the Ministerial Council on Drug Strategy, the body which manages the NCADA act in conjunction with Aboriginal people and organisations to develop and implement an ongoing program of data collection and research to fill the many gaps which exist in knowledge about Aboriginal alcohol and other drug use and the consequences of such use. The usefulness of conducting action research, rather than research for its own sake, needs emphasis.

15.2.16 The Expert Working Group has provided a useful summary of the state of knowledge in the area of Aboriginal alcohol and other drug use, as follows.

Proportions of Drinkers and Abstainers

15.2.17 Four major themes emerge from research which has quantified the proportion of Aboriginal drinkers and non-drinkers:

- A large proportion of Aboriginal people *do not drink* alcohol. Estimates of the proportion of abstainers range from 10 to 35 per cent of men and 39 to 80 per cent of women. By comparison, national surveys of alcohol consumption in Australia estimate that approximately 12 per cent of men and 19 to 25 per cent of women do not drink alcohol.[6]
- The prevalence of drinking appears to be related to community type. Watson and others reported that, in the Northern Territory, higher proportions of drinkers, particularly female drinkers, were found in towns and fringe camps than in remote communities.[7] This pattern was also noticeable in the studies which interviewed homeless people in rural Western Australian towns.[8] On the other hand, Hunter and others did not find a higher proportion of drinkers in towns in the Kimberley region of Western Australia. 9 Drinkers did, however, report a greater frequency of drinking and drinking greater quantities of alcohol if they lived in towns.
- Patterns related to age are masked by aggregate data. The proportion of drinkers among both sexes grows steadily from adolescence to about age 40, declining thereafter**.**
- It is important to note that a sizeable proportion of drinkers have 'given up' to become abstainers. Estimates of the proportion of people who have stopped drinking are surprisingly consistent at 16% to 18%.[10] Smith and others, in Wiluna, report a smaller proportion of ex-drinkers (6.7% of males and 18% of females), a finding which is probably indicative of the population

studied.[11]

Hazardous and Harmful Levels of Drinking

15.2.18 In most alcohol education and research work, current practice **is** to use the National Health and Medical Research Council (NH&MRC) Guidelines for Responsible Drinking (1987). These state that 'responsible drinking' is less than four standard drinks per day for men and less than two for women. 'Hazardous drinking' is defined as four to six drinks per day among men and two to four among women. Daily consumption levels

15.2.19 The ADFA report states that:

It should be noted that the guidelines are general in nature and individual differences in personal vulnerability, context and exacerbating factors should be taken into account. The guidelines refer to daily drinking and it cannot be considered responsible to 'save up' by abstaining for periods of time and then drinking to higher levels.

> *Studies of Aboriginal alcohol consumption indicate that few drinkers drink at responsible levels while most [drinkers] greatly exceed the harmful daily drinking limit.*
>
> *[Research indicates] that about one half of all Aboriginal men drink at harmful levels. Estimates for women vary from 'three per cent w 50 per cent, depending on their age and living conditions.*
>
> *The reporting of figures as a proportion of the total study sample tends to disguise the issue that the majority of Aboriginal drinkers drink at harmful levels. For instance, Watson et al. (1988) reported that almost 70 per cent of both male and female drinkers in the Northern Territory consumed alcohol at harmful levels, while approximately one sixth of drinkers or five per cent of the population studied drank responsibly. Similarly, Hunter et al. (1990) estimated that only four per cent of the Kimberley population studied were drinking within safe limits as recommended by the NH&MRC.*
>
> *By comparison, general population studies of alcohol consumption levels in New South Wales, Western Australia, South Australia and the Northern Territory indicate that one fifth to one quarter of males drink in excess of four standard drinks per day while only two or three per cent of females do so.*[12]

15.2.20 This presentation of available information on Aboriginal alcohol consumption is summarised by the Expert Working Party in the following terms:

> *Despite differences in methodological approach and gaps in coverage, the available research on Aboriginal alcohol consumption provides a consistent picture:*
>
> *1. A substantial proportion of Aboriginal people, particularly women, do not drink alcohol. Estimates of the proportion of Aboriginal non-drinkers range from 10 to 35 percent of men and 39 to 80 percent of women. The proportion of Aboriginal non-drinkers is considerably higher than in the wider Australian population [12 percent of men and 19 to 25 percent of women].*
>
> *2. Of those Aboriginal people who do consume alcohol, the majority drink at levels which are considerably higher than the wider*

population and which are considered hazardous or harmful to health, according to guidelines released by the National Health and Medical Research Council.

3. The frequency of alcohol consumption among Aboriginal people is related to where they live. Aboriginal people living in towns and fringe camps drink most frequently while those in remote areas are more likely to drink episodically or intermittently. These drinking patterns are strongly linked to the availability of alcohol and financial resources.

4. Alcohol use is widespread among young Aboriginal people. Although regional differences occur, drinking almost becomes normative for young adult Aboriginal males.

5. Surveys have consistently found that a sizeable proportion of Aboriginal people (approximately 17 per cent) give up drinking, generally in their forties.

6. Similar patterns of alcohol consumption are found among other indigenous populations including Pacific Islanders, Maori and North American indians.[13]

ALCOHOL AND CRIME

15.2.21 The relationship between alcohol and crime is complex, but it is one on which many people have firm views. Does alcohol use cause crime? If so, to what extent? What types of crimes? What is the nature of the link, if any?

15.2.22 In an attempt to tease out these and related questions, the Australian Institute of Criminology conducted a national conference on the topic in Perth, Western Australia, in 1989. A paper by Dr Don Weatherburn entitled 'Sources of Confusion in the Alcohol and Crime Debate' highlights the difficulties in this area:

> *The question of [whether] alcohol causes violent crime is easily stated but the debate about its answer is endlessly confusing. Statistics on the percentage of people who commit serious offences while under the influence of alcohol are thrown like confetti into the public arena. They are seized on by a media ever hungry for quick-fix solutions to major social problems. But the sort of methodological rigor normally considered appropriate to the investigation of epidemiological problems is very hard to find among the published research studies on alcohol and violent crime. [I]t is hard to find an area of criminology marked by such comprehensive but unenlightening debate.*[14]

15.2.23 The 1990 report of the National Committee on Violence presents a useful view of theories and research concerning the purported alcohol/crime link. The Committee concluded that the disinhibition of drunken behaviour provides only a partial explanation of the link between alcohol consumption, violence and other criminal behaviour. Psychological studies of the relationship between alcohol and aggression are inconclusive. It seems clear that complex inter-relationships of social, psychological and biochemical elements operate to shape human behaviour m the presence of alcohol. Nonetheless, my inquires have shown the heavy involvement of alcohol use in violent and other criminal behaviour among Aboriginal people and others, and also in behaviour (such as public drunkenness) which many would not consider criminal behaviour but which nevertheless leads to criminal sanctions.

15.2.24 Over and over again I have been struck by the involvement of alcohol in violent crime. The work of Judy Atkinson in recent years has drawn well-deserved praise from many sectors as she has graphically documented the tragic extent and pattern of violence in Aboriginal communities, particularly violence directed against women and children, and has pointed to the involvement of alcohol in many of these incidents.

15.2.25 The ADFA's Expert Working Group has surveyed key research on alcohol consumption and violent crime in its report to the Royal Commission, as follows:

> *Alcohol has been associated with both the perpetration of violent crime and also with the likelihood of being a victim of violent crime. Estimates of the proportion of violent crimes in which the offender was affected by alcohol range from 30 to 70 per cent, with proportions among Aboriginal people considerably higher (60 to 80 per cent). However as Weatherburn (1990) has argued, the reported association between alcohol and violent crime is often based upon questionable methodologies. The nature of the association is frequently unclear, causal inferences should not be drawn from associations without strong supporting evidence. In particular, it is not possible to evaluate the relationship between alcohol use and violent crime without knowledge of violent crime which is not alcohol-related and about alcohol use which is not associated with violent crime.*
>
> *Nevertheless, a substantial quantity of data are available which purport to describe the involvement of alcohol in violent offences. For example, Australian epidemiologists have concluded that 'on average alcohol was a cause of 51 per cent of assaults [causing deaths]' (Holman, et al., 1988: 173). The National Committee on Violence (1990:37,46,86) records that in a 1986 New South Wales study 'over one-third of homicide suspects were known to have consumed alcohol prior to the killing, in many cases to excess. In the cases of homicides involving Aboriginals, this figure rose to 60 per cent'. The report goes on to point out that 'overseas and Australian studies report that alcohol has been consumed by 30-50 per cent of rapists shortly before . their assaults', and that a spokesperson for the Women' s Community House in Alice Springs 'told the Committee that in the twelve months to March 1987, 75 per cent of the women seeking help from her organisation were Aboriginal, and that of those, over 60 per cent had experienced alcohol-related violence' .*[15]

15.2.26 Information from Aboriginal communities and localities containing large proportions of Aboriginal people show the concentration of alcohol-related crimes there. Barber and others provide such data for Palm Island, Queensland:

> *A 1988 study published under the title 'Alcohol and Power on Palm Island' reviewed offences data and concluded that, on Palm Island (Queensland) 'over 70 per cent of assaults were committed on females and most of these involved boyfriends or husbands who were said to be drunk at the time' (Barber et at., 1988: 87,97). The authors summarise their findings as follows:*
>
> *It is clear that with the possible exception of break and enter, alcohol is involved either directly or indirectly with almost all forms of crime on the Island. More importantly, however, the records reveal an extraordinary rate of violence and abusiveness (e.g. disorderly*

behaviour, assault, offensive language, etc.) occurring under the influence of alcohol. The mere fact that alcohol is somehow implicated in this violence does not, of course, explain the behaviour---alcohol may disinhibit certain social behaviours bat it can not make them happen.[16]

15.2.27 D'Abbs and Brady have described the position in the Northern Territory:

He [D 'Abbs] reports that 70 per cent of the Aboriginal people arrested or summonsed for violent offences in the Northern Territory during the period 1985 to 1988 were recorded by police as having been affected by alcohol. The corresponding proportion for non-Aboriginal people was 46 per cent. Brady collated offences data from Tennant Creek. During the period January 1981 to September 1983 the police reported a total of 1479 offences in the town, of which 69 per cent involved alcohol-affected offenders. Among the Aboriginal offenders, 82 per cent were shown to be alcohol-affected, compared with 56 per cent of the non-Aboriginal offenders (Brady, 1988).

Intoxication and Police Custody

The data on offences presented above parallel that from the August 1988 National Police Custody Survey. That survey revealed that, in Australia as a whole, some 35 per cent of all occasions in which a person was held in the police cells during the month were for drunkenness: either arrests for the offence of drunkenness or protective custody detentions where public intoxication has been decriminalised. Some 57 per cent of the Aboriginal custodies were for drunkenness, compared with approximately 27 per cent of the non-Aboriginal custodies (McDonald, 1990b). These figures do not include a large number of other offences which resulted in police custody, particularly street offences, which are believed to be alcohol related.[17]

Intoxication and Criminal Responsibility

15.2.28 An additional factor worthy of mention is the relationship, in law, between intoxication and criminal responsibility. In a number of instances, courts have held that drunkenness can be a mitigating circumstance when sentencing an Aboriginal person, whereas it is not generally regarded as such for non-Aboriginal people. (Indeed, in Northern Territory legislation, drunkenness can be found to be an aggravating circumstance.) It has been put to me, and I note, that to some people this presents a message that intoxication provides an 'excuse' for violent and other unlawful behaviour. Tangentyere Council in Alice Springs has recommended to the Commission, and the recommendation has been supported by our Northern Territory AIU, that 'a way be found to lessen the attractiveness of using drunkenness as a "mitigating factor" in sentencing of alcohol-affected offenders'.[18]

REACTIONS TO ABORIGINAL ALCOHOL USE

15.2.29 For many non-Aboriginal people the stereotype of Aboriginal people is as being drunk. This is despite the fact that the misuse of alcohol, including drunkenness, is common-place throughout Australian society. Indeed, as I indicated earlier in this chapter, among some of the groups of Aboriginal people whose drinking patterns have been studied the rate of abstinence is higher than in

the non-Aboriginal society. But these facts are not well known.

15.2.30 Nevertheless, the fact remains that very large numbers of Aboriginal people drink in a harmful manner and that much of this drinking occurs in the public eye. Aboriginal people are seen in many parts of Australia drinking in parks and reserves and doing so in groups. Sometimes these groups are boisterous, drawing attention to themselves through brawling and/or noise. The large number of Aboriginal people who do not drink, or drink in a manner seen by the non-Aboriginal society as 'responsible', are not noticed.

15.2.31 The community's response to Aboriginal drinking in public is frequently racist, by which I mean, in this instance, a response to the drinking by *Aboriginal people, rather than to* excessive and disruptive drinking practices themselves.

15.2.32 Perhaps the best known of these initiatives are the limitations placed on drinking in public places in the Northern Territory: the so-called 'two kilometre law'. In 1983 the Northern *Territory Summary Offences Act* was amended to make it an offence to consume alcoholic beverages in a public place within two kilometres of licensed premises or on unoccupied private land without the owner's permission. The effect of the legislation and its enforcement has been to push Aboriginal drinkers from public view into such places as town camps, simply a 'street cleaning' operation, not one aimed to prevent or minimise problem drinking. I had evidence that bears on this subject. I was told by Inspector Godwin of the Northern Territory Police that Aboriginal people, or at least camp dwellers, were welcome in only one hotel in Alice Springs (other information suggested two). The 'two kilometre law' operates to make it an offence to drink in any public place other than licensed premises *anywhere* in Alice Springs. That leaves only the camps themselves. Pamela Lyon, a consultant to Tangentyere Council in Alice Springs, describes the 'two-kilometre law' as being a contributing factor to drunkenness and violence in the Alice Springs town camps. Similar arguments have been put to me in respect of other dry areas legislation.

15.2.33 In Western Australia, the *Liquor Licensing Act* prohibits drinking in parks and streets, whereas in other jurisdictions, local government by-laws are used to control public drinking. In South Australia, for example, regulations under the SA *Liquor Licensing Act* were gazetted in 1986 giving power to local government authorities to apply to the State Liquor Licensing Commission for particular places to be declared areas in which it would be an offence to possess or consume alcoholic beverages. Under these powers, a number of public places in which Aboriginal people have, for many years, met and drunk in Ceduna and Port Augusta have been declared dry areas. The ADFA Expert Working Group has pointed out that:

> *The South Australian measure has been condemned by Aboriginal organisations as well as the South Australian Council for Civil Liberties as a discriminatory measure which does nothing to address the social and cultural problems underlying Aboriginal alcohol abuse.*[19]

15.2.34 New South Wales has followed a similar approach, legislating some time ago to give power to local authorities to create an offence of drinking alcoholic beverages in public places. The amendment to the legislation was subsequently repealed following claims that the legislation was particularly aimed at Aboriginal people in the North-western part of the State. In November 1990, however, the New South Wales Minister for Local Government was reported in the press to have announced that legislation would be presented to the State Parliament giving power to local government authorities in that State to declare certain roads and

footpaths alcohol-free zones for periods up to twelve months. According to media reports, once these zones are declared, police will have the authority to confiscate alcoholic beverages from people who, after a warning, continue drinking in the zone, and to issue on-the-spot fines. Considering the fact that many Aboriginal people are unable and/or unwilling to pay fines, this will inevitably result in more unnecessary incarceration of Aboriginal people in areas where non-custodial fine default options are not available. The Bill is before the New South Wales Parliament at the time of writing.

15.2.35 A similar position exists with regard to public drunkenness. In Chapter 32 and elsewhere I discuss the decriminalisation of public drunkenness and the establishment of sobering-up facilities. While not suggesting that these programs have been implemented simply or primarily as a response to Aboriginal drinking, the fact is that Aboriginal people are grossly over-represented in apprehensions for public drunkenness in both the jurisdictions where it remains an offence to be drunk in public and those where drunkenness has been decriminalised. Legislative initiatives like these could lead one to conclude that discriminatory motives underly a substantial amount of policy making and program implementation with regard to Aboriginal people and alcohol; certainly Aboriginal people hold this view.

OTHER ADVERSE EFFECTS OF ALCOHOL

15.2.36 I turn now to discuss other adverse effects of alcohol use, including its impact on community well-being and individual and community economic status. In Chapter 23, below, I discuss its heavy adverse impact on the health of Aboriginal people.

Community Well-being

15.2.37 While it is not my intention to overemphasise the negative aspects of contemporary Aboriginal life, one of the themes of this chapter has been the features of contemporary Aboriginal family and community life, in their interaction with the broader society, which assist us to understand the disproportionate rates of incarceration of Aboriginal people and consequent levels of deaths in custody. It is quite clear to anybody with experience of Aboriginal communities that alcohol is one of the factors which reduces a community's well-being. This relationship has been summarised by the ADFA Expert Working Group in the following terms:

> 1. *Aboriginal alcohol misuse has a devastating effect on family life by precipitating domestic violence and sexual abuse.*
>
> 2. *Widespread alcohol misuse by parents and other Aboriginal adults provides strong negative role models of drinking and parenting behaviour for children.*
>
> 3. *The misuse of alcohol has damaging effects on Aboriginal life in the social and cultural spheres. For example, heavy drinking has been linked to the neglect of important ceremonies in traditional communities.*
>
> 4. *Although alcohol is not the only cause of family and community disruption, it is seen as a primary cause by many Aboriginal people.*[20]

15.2.38 A number of the people whose deaths in custody were investigated by the Commission came from communities which appear to be dominated by alcohol, and in which alcohol-related problems are epidemic. Aurukun, on the west

coast of Cape York Peninsula in Queensland, is one of these. Commissioner Wyvill's report on his enquiries into the death of a young man (name suppressed) who died in police custody there on 11 April 1987 describes the impact of alcohol on Aurukun:

> *Alcohol consumption dominates social life at Aurukun and is of major social, political and economic importance. Regular and heavy drinking becomes the norm for the overwhelming majority of men. Social life is focussed on the beer canteen where 12% of the community's income is spent. It has been suggested that, together with expenditure on 'sly-grog', up to a quarter of the community' s income is spent on alcohol.*
>
> *Binge drinking accompanied by drunken fighting characterises most sessions [at the Aurukun Shire Council' s beer canteen]. As a result there is a social control problem with high crime rates, especially among juveniles. More than half the injuries treated at the hospital are alcohol-related. In many instances, spending on alcohol leaves little money for food. The statistical information acquired by the Commission projects a dismal image of Aurukun.* [21]

15.2.39 As I indicated in the introduction to this chapter, however, one should not overplay the causal status of alcohol as a factor reducing the quality of life at the family and community levels. Atkinson has argued, for example, that domestic violence is not explainable simply in terms of heavy alcohol consumption. Her point is that violence is, in essence, a response to the colonisation of Aboriginal lands and Aboriginal communities by Europeans and the resulting failure of Aboriginal people to observe the rules governing traditional kinship systems and the weakening of methods of social control.

15.2.40 Widespread harmful alcohol use within a community provides negative role models for young Aboriginal people growing up within those communities. This is illustrated in a very direct manner by a statement made by an Aboriginal person in Roebourne, Western Australia to the Royal Commission:

> *All the Aborigine peoples spoiled. Even the new generation coming on, when they finish school they've got nothing to do because they haven't got work to go for... all the Aborigine people have got nothing to doyou know, for the day, every day. All they do is go drinking with their Mum and Dad down the street getting drunk and some of them getting killed. It's the young people we are losing; alcohol is bad for the Aboriginal people. There are fights, people kill each other not fighting with the white people, fighting amongst themselves, wives and husbands killing one another.*[22]

With alcohol filling such a dominant role in the negative aspects of life, as described here, it is little wonder that informants consistently point to alcohol as a major component of social breakdown and of incarceration of Aboriginal people.

Economic Impact

15.2.4 1 The use of alcoholic beverages has an impact on the economic circumstances of individual Aboriginal people, their families and communities. This impact is generally negative, as the economic benefits derived in this area accrue primarily to those involved in the manufacture .and marketing of alcoholic beverages (few Aboriginal people are involved m these sectors of the economy), and to governments. The economic impact is complex and variable, but is

frequently seen through the diversion of family financial resources to drinking, through debt and, as discussed in Chapter 22, through incarceration for fine default

15.2.42 The ADFA Expert Working Group has presented to me the following review of the economic impact of alcohol use by Aboriginal people, based on the limited literature available on this topic.

> *The alcoholic beverage industry generates revenue to governments in the form of taxes, excise and customs duty and to the broader community via employment in manufacturing, advertising and hospitality services. Conversely, alcohol consumption costs the economy through direct costs such as provision of health and welfare services and indirectly through huge losses to industry (Richardson, 1989).*
>
> *As Langton et al. (1990) point out, Aboriginal people are generally paying the costs but not reaping the benefits from the alcohol economy. While this discussion accordingly focuses on the direct economic costs to Aboriginal communities, the indirect economic costs in terms of the diversion of funds resulting from alcohol-related damage to property and services, are also substantial (Lyon, 1990). For those at the poorest end of the socio-economic spectrum the interrelatedness of economic and other consequences of heavy drinking is particularly evident, not only as a result of circumstances predisposing heavy drinking, but because*
>
> *a poor alcoholic tends to spend a particularly high proportion of his income on alcohol, so that he and his family suffer not only the direct effects of excessive alcohol consumption, but in addition, are afflicted with indirect effects such as malnutrition, inadequate heating and shelter, and bad hygiene. The living standard of a poor alcoholic and his family is very much lower than the level of income would suggest (Fisk, 1985: 111).*
>
> *It must be recognised that the role of alcohol as an economic commodity and resource in Aboriginal societies may be substantially different from that expected in non-Aboriginal groups. For instance, Collmann (1979) suggested that among pastoral workers of Central Australia, alcohol functioned as a means of establishing credit, and legitimating access to the domestic welfare economy. Regardless, commonsense suggests that the more money is spent on alcohol the less there will be available to spend on staple items such as food and clothing.*[23]

15.2.43 Little factual information is available on the levels of expenditure by Aboriginal people on alcoholic beverages. It does appear, however, that many Aboriginal people spend large proportions of their income on alcohol, and that this is likely to be especially the case with heavy drinkers. Clearly, the availability of alcohol will be directly related to the proportion of a person' s income that is spent upon it.

15.2.44 The ADFA report points to certain features of Aboriginal economic life that assist one in understanding the economic impact of alcohol use. It reminds us that, although regional and other differences exist, Aboriginal people are, in general, poor:

> *In such an economy of limited resources, patterns of sharing are*

important, however, it must be emphasised that this sharing occurs among a group who, at the best of times, have little to share.

Thus Aborigines living in a primarily welfare economy are poor, and generally do not have access to either inherited wealth, or the credit resources of the wider society that form the basis for economic independence. Their limited disposable income is compromised by high costs for basic items, and very high ongoing costs for technical consumer goods.

In this context, the purchase of alcohol diverts money from sustenance expenditure. In town settings where there are many drinkers (both from town and visiting from the hinterland) the costs of alcohol, and for feeding those constant drinkers whose income is rapidly converted into alcohol extend widely over the community. Reciprocity and obligation underlying traditional patterns of sharing protect heavy drinkers from the economic consequences of their activities at the cost of compromising the minimal sustenance income of the group as a whole. This drain on resources further reinforces patterns of immediate expenditure. While more remote communities may not be subject to the regular drain of resources due to the depredations of drinkers following payday, there are other consequences. When the decision to drink has been made by a group of drinkers in such locations, the urgency of the task at hand frequently results in great pressure being brought to bear on others to fund the expedition. The costs for petrol alone are often substantial. In many settings (at least within the Kimberley) an enterprising group of entrepreneurs ensures that a supply of alcohol is available at communities up to 200 km from town on payday. Drinkers (and others) must absorb the $200 transportation costs as well as pay grossly inflated costs for the alcohol itself. In remote Australia taxi-drivers, and some airlines, are major financial beneficiaries of Aboriginal drinking, again at the expense of a group wider than the drinking circle.[24]

15.2.45 The report then turns to an aspect of Aboriginal economic life which has received a degree of media attention during the life of the Royal Commission, namely, the methods of payment of social security entitlements:

Certain other features of the economy are of note. It has been suggested that the payment of welfare income through split cheques protects the income of women and dependent children from the ravages of a drinking spouse (usually male) who might otherwise have total control of the family's income. While this may in certain situations be the case, it may in addition contribute to the vulnerability of women as victims of family violence. Some Aborigines in receipt of social security are required to go to town to cash their cheques, bringing them into the area of drinking action. The earlier mentioned entrepreneurs (and some involved with alcohol sales) may cash social security cheques and extend a small line of credit on that basis, thus allowing some Aborigines to accrue debt in the service of their continuing drinking.[25]

15.2.46 There can be no doubt, then, that the consumption of alcoholic beverages by Aboriginal people (and by many others) brings to them a range of adverse economic consequences. It is tragic that, in a nation as wealthy as ours,

we are unable to distribute wealth more equitably than we do. Poor people--and this includes far too many Aboriginal people--are especially prone to suffer when problems with alcohol use compound the hardships they face from having inadequate economic resources.

CAUSES OF PROBLEMATIC ALCOHOL USE

15.2.47 Before concluding this presentation of my concerns about alcohol use as an underlying issue relevant to understanding the disproportionate number of Aboriginal people in custody, I wish to discuss current understandings of the causes of problematic alcohol use. I asked the ADFA Expert Working Group to review for me the current state of knowledge in this area, focusing separately on causes at the individual level and at the community level. Its summary follows:

Theories of Individual Alcohol Use, Misuse and Dependence

1. *Current thinking suggests that a continuum of dysfunctional alcohol use exists which culminates in the alcohol dependence syndrome. This view contrasts with the traditional dichotomous view which states that individuals either do or do not suffer from 'alcoholism'.*

2. *The alcohol dependence syndrome is characterised by a cluster of symptoms which include physiological tolerance and withdrawal as well as psychological components such as compulsion to drink and loss of control over drinking.*

3. *The majority of individuals who experience problems relating to the consumption of alcohol are not alcohol dependent.*

4. *Many different models of alcohol dependency and misuse exist and these underlie the various approaches to treatment. Although some models conflict, many are not mutually exclusive and may well complement each other.*

5. *The disease model has been one of the most influential conceptualisation's of the nature of alcohol dependence and is the model most commonly used by treatment agencies today. Its basic tenet is that the 'alcoholic' is suffering from the disease of 'alcoholism' which cannot be cured but can be arrested by complete abstinence. This view is now under question by professionals and academics.* <hotword "v2chap15-26">[26]

6. *Biological models emphasize genetic and physiological processes as causes of alcohol dependence. It has been suggested that genetic factors may predispose Aborigines to develop problems related to alcohol. However, a recent review has concluded that no evidence exists to support this proposition at present [Greeley & Gladstone,1989].*

7. *Other influential models have postulated that alcohol dependence and misuse occur as a result of individual psychological or personality deficits, social,*

environmental or cultural influences and learning processes such as peer influence, role modelling or rewarding consequences of drinking.

Social and learning explanations, in particular, have considerable currency as explanations of Aboriginal drinking behaviour. It is important to note that each of these views is compatible with other models and may be integrated into treatment approaches.

8. *The public health model is currently enjoying considerable support . It states that alcohol problems arise as a consequence of the interaction between alcohol, the drinker and the environment. Consequently, all three components may be addressed by attempts to prevent or manage alcohol-related problems.*

9 *It is now generally agreed that there is not one single cause for the development of alcohol problems among individuals. The increasing recognition of the multi-casual nature of alcohol dependence has lead to the development of more integrated models. It is agreed that some models of individual alcohol dependence and misuse are more suited to certain types of people and in certain circumstance.*[27]

Causes of Alcohol Misuse and Related Problems at the Community Level

15.2.48 The Expert Working Group then went on to the perhaps more complex task of describing contemporary perceptions of the causes of alcohol misuse and related problems at the community level. Some of these approaches have been mentioned earlier in this report, but will be summarised here, in the words of the ADFA report, for completeness:

Various social, cultural and historical explanations account for the misuse of alcohol among Aboriginal and other indigenous populations. These views are not mutually exclusive. but cqn be used concurrently to explain the emergence of alcohol problems among groups of people.

1. *The major historical view is based on the premise that the dysfunctional use of alcohol by Aboriginal people occurred because they had no traditional knowledge or use of alcoholic beverages. In fact, Aborigines did prepare and use a variety of mood altering substances, including fermented beverages. However, access to these substances was limited and regional and many may only have been mildly intoxicating.*

2. *One of the most pervasive explanations of Aboriginal drinking has been the association of the right to drink with equality. For almost 100 years, Aborigines were legally prohibited from drinking alcohol, except under exceptional circumstances. Repeal of prohibition occurred around the time at which Aborigines were granted citizenship rights: this meant that many Aborigines have equated the right to drink with*

citizenship and have been keen to exercise this right.

3. *Learning theories have been influential in explaining patterns of alcohol use by Aboriginal people. The underlying assumption is that people learn about alcohol use by absorbing the beliefs and behaviours presented to them during socialisation.*

It is argued that in early Australia (and up to the present time in rural Australia) the models of drunken comportment for Aboriginal people were miners and stockmen who engaged in excessive drinking binges when in town followed by periods of sobriety back at work on the station or in the mine. Aboriginal women would have been exposed to female models of sobriety in the wives of ministers and property owners.

4. *The acculturation/anomie hypothesis has been very popular. This view asserts that Aborigines misuse alcohol as a reaction to the breakdown of their culture and their marginalisation in Australian society. Although these arguments have popular support they fail to explain within group differences in drinking practices, in particular the low prevalence of drinking among Aboriginal women.*

5. *Cultural factors have been proposed to under lie the maintenance of dysfunctional alcohol use by Aboriginal people. For example it has been argued that in communities where drinking is normative, it is necessary to drink in order to belong. Alcohol is also said to play a role in reciprocal gift giving.*

A further cultural view of drinking is based on the importance of autonomy to Aboriginal people. This belief in autonomy enables individuals to assert the right to drink to excess and also serves to impede intervention by others.

These views have been criticised as providing 'excuses' rather than explaining dysfunctional drinking. [I elaborate on these criticisms below.]

6. *Socio-economic explanations of the cause of alcohol misuse by Aboriginal people include loss of land and an economic base, poverty, unemployment, discrimination and boredom. In this way heavy alcohol use has been described as a way of life for poor and powerless people all around the world.*

7. *Despite the powerful factors which precipitate and maintain dysfunctional alcohol use by Aboriginal people, a number of Aboriginal communities have managed to overcome these problems. It appears that the ability of a group to take action is determined by a number of interlocking factors which include: consensus that a problem with alcohol exists; political and social will; the presence of spokespersons ; an economic base ; and the existence of legislative or other institutional*

backing (Alexander 1990:59-61).

15.2.49 Point 5 in the summary presented above deserves further comment. It introduces what is known as the socio-cultural interpretation of drinking behaviour, that is, seeing drinking as one of a complex of behaviours, all of which are understandable in their social and cultural contexts. Anthropologists and other researchers have pointed out how drinking, even apparently problematic drinking, can be understood in its cultural context. Particularly in earlier years this was presented from a 'functionalist' viewpoint, i.e. one that 'accounts for a social activity by referring to its consequences for the operation of some other social activity, institution, or society as a whole'.[28] In such an interpretation, problems caused by alcohol consumption would generally be downplayed ('problem deflation') and the social function, especially functionally beneficial aspects of the behaviour under consideration, would be emphasised.

15.2.50 This issue is receiving a considerable degree of attention in the anthropological and alcohol literature. As a result, some anthropologists are re-thinking their previous stances on the issue, and have decided that they did, in fact, place too much emphasis on the functional role of drinking and too little on the problems caused by alcohol. As Robin Room, who has led this re-examination of emphases and interpretations, has pointed out, an alcohol-related 'casualty death or a case of cirrhosis is to some extent unwelcome in most cultures and most circumstances'.[29]

15.2.51 Merv Gibson, an Aboriginal man from Hope Vale, Queensland, presents a complementary view. He has forcefully argued that some Aboriginal drinkers now use the socio-cultural line of thinking---developed by anthropologists--to absolve themselves of responsibility for their destructive (and self-destructive) drinking behaviour. Some drinkers now argue, for example, that giving all of one's money to a kinsperson to spend on alcoholic beverages, rather than spending it on the family's food or housing needs, is part of the Aboriginal way of doing things.[30] He deplores such an interpretation as being a travesty of the true Aboriginal concept of social responsibility. Other perceptive Aboriginal researchers, including Marcia Langton [31] and Judy Atkinson,[32] also oppose any suggestion that alcohol-related violence and other destructive behaviour be condoned, in each case emphasising that Aboriginal people must accept that alcohol provides no excuse for such behaviour and that they must exercise individual and collective action against it.

15.2.52 My position is straightforward. It is essential that drinking behaviour and the promotion of drinking be seen and understood in its social and cultural context. It is a fact that something seen as problematic by one person or group may not be seen as problematic by another. Nevertheless, this in no way validates or justifies dangerous drinking, alcohol-related violence, sexual abuse, or similar behaviour, either in the eyes of concerned Aboriginal people or in the perceptions of the broader society. I fully agree with those Aboriginal people who insist that Aboriginal people, both as individuals and in groups and organisations, have a deep responsibility to accept that they are accountable for their own actions and to work to overcome abuses. It is not valid to totally externalise responsibility to the broader non-Aboriginal society. On the other hand, whatever view one takes as to the model of causation, the background to dangerous drinking in the Aboriginal community is the history of 200 years. The non-Aboriginal community is under a strong obligation to provide the utmost assistance to those Aboriginal people who are struggling to overcome the problem.

15.3 PETROL SNIFFING

15.3.1 The inhalation of petrol fumes is a dangerous practice. Undertaken intentionally for its mood altering effects, the practice is found in many parts of the world. (The term 'petrol sniffing' is, in fact, an inaccurate description, as the fumes are usually inhaled deeply, with more serious consequences than sniffing, as such, would produce. The term 'petrol sniffing' will be used here, however, for consistency with most writing on this topic.)

15.3.2 I will discuss briefly the adverse health consequences of petrol sniffing, the history of this behaviour in Australia, its prevalence and its role in offending and incarceration. Although I make the point that only a relatively small number of Aboriginal young people engage in petrol sniffing, compared with the total number of Aboriginal youths in Australia, the other Commissioners and I are acutely aware of the massive, destructive impact that this behaviour can have on community life where it does occur. In fact, it can dominate many aspects of community life, leaving Aboriginal people with an increased sense of powerlessness: **a** feeling of inability to cope with introduced influences. Commissioner Dodson has advised me, for example, of instances where flying doctor service personnel have been reluctant to carry sick or injured Aboriginal youths who were intoxicated from petrol sniffing, owing to what was perceived to be the youths' uncontrollable behaviour. He has stressed the immense anxiety and inter-personal and inter-group tensions related to petrol sniffing in a number of Central and Northern Australian Aboriginal communities.

HEALTH CONSEQUENCES

15.3.3 Inhaling petrol fumes produces an immediate mild euphoria and excitation. Hallucinations and delusions are also sometimes experienced, accompanying an overall pleasant sensation.[33] These positive responses are more likely to occur in experienced sniffers than among novices who often find sniffing to be unpleasant. Unfortunately, however, adverse consequences are frequently observed. Indeed, one authority is cited as 'rating volatile substance abuse as the most intrinsically hazardous form of drug abuse, being more dangerous than amphetamines, alcohol, tobacco, barbiturates and heroin'.[34] Acute intoxication occurs and longer term use causes damage to the nervous system from the toxic effects of lead in petrol. Other organs of the body can also be affected by the lead. Petrol's hydrocarbon components, when inhaled, can contribute to heart failure and sudden death.[35]

15.3.4 Some information is available on the number of petrol sniffing deaths. The figures available from different sources are inconsistent reflecting, perhaps, the under-reporting of petrol sniffing deaths in official data collections. Too often such data systems record the ultimate cause of death (e.g. lobar pneumonia) without identifying petrol sniffing as an underlying cause. The first source of data is the National Drug Abuse Information Centre, a component of the NCADA, which monitors deaths from volatile substance inhalation, including petrol sniffing. It has advised the Commission that 20 deaths from petrol sniffing have been reported to it, covering the nine-year period 1980 to 1988. Sixteen of these 20 deaths were of Aboriginal people. Of them, nine were aged 15-19 years, six were aged 20-29 years and the other case was older than 29 years. Secondly, using different data collection methods, Brady identified 35 Aboriginal petrol sniffing deaths over the same period; 20 were aged 19 years or younger.[36]

15.3.5 None of the Aboriginal deaths in custody investigated by the Royal Commission was caused by petrol sniffing, although one was caused by the

intentional inhalation of BCF fumes from a fire extinguisher, a closely related drug-using behaviour. Furthermore, none of the persons whose deaths were investigated was in custody because of petrol sniffing. Nevertheless, I draw attention to this matter here as it has been frequently mentioned in the Commission's investigation of underlying issues, especially with regard to relatively remote Aboriginal communities in Central and Northern Australia. In many of these communities petrol sniffing appears to be endemic and a source of major tensions, as well as morbidity, social disruption and occasionally deaths.

HISTORY AND PREVALENCE

15.3.6 It is often stated that petrol sniffing began in northern Australian Aboriginal communities during World War Two when the behaviour was learned from American service personnel stationed there. This is possible but has not been documented. Brady, in her outstanding research into the social meaning of petrol sniffing in Australia, has concluded that the practice was probably discovered by Aboriginal people in the 1940s and 1950s in the 'Top End': 'this was purely sporadic and experimental substance use; a small number of individuals dared to experiment with a substance that was not easily come by'.[37] She reports an hiatus in use between 1950 and 1960, followed by increasing use particularly in the 1970s when experimental sniffing had become widespread, but was not so intense as to frequently result in serious illness or death. A third phase, she suggests, extended from the mid- 1970s to the present, a period:

> *in which the practice has become an intense preoccupation of core groups of individuals in some communities. The use of petrol continuously (that is, with little or no break) and chronically (that is, persisting over a long period of time) has been notable during these years, with the consequent rise in serious physical ramifications including death.*[38]

15.3.7 How widespread is petrol sniffing? Again, I am indebted to Ms Brady for providing up-to-date estimates of prevalence in her report *Heavy Metal: The Social Meaning of Petrol Sniffing in Australia,* as follows:

> *The practice is engaged in by young adults and adolescent Aborigines usually between the ages of 10 and 25 living predominantly in two Australian States (Western Australia and South Australia) and the Northern Territory. The total Aboriginal population in these three States and Territory, between the ages of 10 and 24, is 30,548, according to the 1986 Census. By making a very approximate estimation of the number of users of petrol in S.A., W.A. and N.T. which emphasises known and thus habitual, rather than occasional, users, a figure of 600 is feasible. This means that approximately 1.96% of Aborigines aged between 10 and 24 in the N.T., W.A. and S.A. use petrol at present. I stress that these are extremely loose figures; even if moderately accurate at any one time, fluctuations are constantly occurring. Nevertheless this estimated prevalence shows that a very small proportion of this age group engages in the practice, an important fact to bear in mind in what follows.*[39]

15.3.8 Although not many Aboriginal young people as a percentage of the total number of youth in Western Australia, Northern Territory or South Australia sniff petrol this statement needs some qualification. In certain regions of these States petrol sniffing appears to be endemic and in some communities petrol sniffing is considered to be so widespread that it is epidemic. I have been advised that, in

South Australia, all of the large Pitjantjatjara communities have experienced petrol sniffing on a massive scale. This is the case in many of the Western Desert communities of Western Australia and this is also the case in the Northern Territory. It is heartening to see the efforts made by communities to initiate ameliorative and preventive programs. The continued support of concerned agencies is necessary to further mitigate the negative personal and social costs of this activity and the not inconsiderable number of deaths that have occurred as a result of petrol sniffing. The impact of petrol sniffing on health and education on those communities is severe. The national figure of six hundred hard core sniffers does not portray the effect unless it is related to the number and population size of the communities affected. Indeed, I am advised that the effect is so serious that educators have argued that whole generations of youth have been rendered unsuitable for formal school education by the activity and the youth culture that surrounds petrol sniffing.

PETROL SNIFFING AND OFFENDING

15.3.9 Although not many Aboriginal young people sniff petrol on a regular or frequent basis, the practice has serious social, as well as health, consequences m many remote communities. In this way, it contributes to the disproportionate number of Aboriginal people in custody.

15.3.10 Vandalism is frequently associated with petrol sniffing. Sometimes vandalism occurs when sniffers are trying to obtain petrol: bowsers and vehicles are tampered with. On other occasions, young people, having inhaled petrol fumes, are wantonly destructive, or alternatively, break into stores, homes or other buildings to obtain food. Accidental damage occurs from the combination of petrol and naked flames from fares, cigarettes or matches.

15.3.11 Petrol sniffing and offending are clearly related but, as in the case of alcohol discussed above, one must be cautious in ascribing causality. While it is obvious that many offences such as breaking, entering and stealing, damaging property, etc., are intimately related to petrol sniffing, the Senate Select Committee on Volatile Substance fumes argued in 1985 that some children first develop delinquent behaviour and then take up petrol sniffing, after which the two become interwoven. Much of the offending occurs in remote communities where there is no or only minimal police presence, with the result that most of it does not result in legal intervention. Nevertheless, it is clear that petrol sniffing is one of the drug using behaviours that contributes to the over-representation of Aboriginal people, especially Aboriginal youths, in contact with the police and the courts, and in custody. As with alcohol, the long-term adverse health consequences of petrol sniffing increase the vulnerability of sniffers to deaths in custody, highlighting again the need for custodial officers to be alert to drug use as a risk factor for custodial deaths.

15.4 OTHER DRUGS

15.4.1 As indicated in the introduction to this chapter, my primary focus is on the drug alcohol. Nevertheless, other drugs need to receive consideration as their marketing and use, when illegal, can be a cause of incarceration and their use can be a cause of death.

15.4.2 None of the deaths investigated by the Royal Commission was the death of a person placed in custody owing to an offence related to drugs other than alcohol. In a number of the cases, however, drugs other than alcohol were involved in the circumstances of the death and in five of these cases drugs have

been determined to be causally related to the death:

- Joyce Egan died in the Mount Gambier, South Australia, police watch-house of heart failure as a result of an overdose of a mixture of prescribed drugs (Mogadon, Serapax and Doxepin), along with alcohol.
- Paul Kearney died in the Darlinghurst, New South Wales, police watch-house from sleep apnea contributed to by an excessive intake of alcohol and Doxepin which he had received on prescription.
- Thomas Murray died from an overdose of Doxepin which had been prescribed by the prison medical service and which he had accumulated.
- The young man who died at the Beatrice Hill, Northern Territory, Prison Farm on 2 September 1988 (name suppressed) died from intentionally inhaling BCF fumes from a fire extinguisher.
- Kingsley Dixon died by hanging soon after illegally ingesting marijuana and Rohypnol in the Adelaide Gaol.
- Maxwell Saunders died at the Goulburn Training Centre from a heart attack, complicated by methadone poisoning and possibly by the effects of a stroke. The methadone was obtained illegally from another prisoner who was on a methadone course of treatment.

These cases highlight the fact that drug use is one of the factors to which custodians need to be alert if they are to effectively minimise the exposure to risk of deaths in custody of both Aboriginal and non-Aboriginal prisoners.

CONSEQUENCES OF DRUG USE

15.4.3 The drugs being considered in this section, that is drugs other than alcohol, do not contribute substantially to the numbers of Aboriginal people being placed in custody. The 30 June 1989 National Prison Census revealed that only 25 of the 1,825 Aboriginal people in Australian prisons on that day (1.4%) had a drug offence as the person's most serious offence on conviction or charge. On the other hand, 1,260 of the 10,967 non-Aboriginal prisoners (11.5%) were in prison because of drug offences.[40] A similar position exists with regard to people in police custody. This low level of incarceration of Aboriginal people compared with non-Aboriginal people for drug offences undoubtedly reflects the fact that few Aboriginal people are involved in the serious drug offences, such as the manufacture and trafficking in illicit drugs, but does not tell us anything about the actual prevalence of drug use in society. Furthermore, it is clear that a number of the people who are taken into custody having committed property and violence offences are motivated, in committing those offences, by a desire to obtain money to purchase drugs. Again, the degrees to which this may apply in the case of Aboriginal people cannot be identified from the available information.

15.4.4 It should be noted that drug use, both licit and illicit, is commonplace in Australian society. According to data from the NCADA, it is calculated from a 1988 national survey that some 28% of the Australian population have tried marijuana at some stage in their lives, with the proportion increasing to 56% among the 20 to 39-year-old males. Over 6% stated that they had used marijuana in the 12 months before the survey, with the proportion increasing to 12.6% among the people aged 14 to 29 years. The use of other illegal drugs is rare.[41]

15.4.5 Drugs other than alcohol and tobacco accounted for less than 3% of the drug caused deaths in 1987.[42] (This general pattern in the community is reflected in the deaths in custody, with alcohol and tobacco being by far the main drugs contributing to the deaths which have been investigated, followed by prescribed drugs, illicit drug use being relatively insignificant.) Given these facts, which are

well known in the Australian society, it is not surprising to note that many informed commentators deplore the amount of attention being given to the currently illegal drugs by both politicians and law enforcement agencies. I note the pressure being placed on Governments to undertake a systematic review of Australian drug policy on the basis that current Australian policy does not realistically reflect the relative dangers of particular drugs, and the relative levels of damage that they cause to society. In other words, authoritative commentators argue that a disjunction exists in the drugs field between facts and policy. I mention this point simply to emphasise my concern that policies in these areas should reflect the realities of Australian society.

ILLICIT DRUG USE BY ABORIGINAL PEOPLE

15.4.6 Before leaving this section I wish to make additional comments relating to illicit drug use among the Aboriginal community. Considering that a quarter of Australia' s Aboriginal people live in our big cities, particularly Sydney and Brisbane, one would expect that their patterns of drug use would be similar to the patterns found throughout the populations of those areas. No data are available to assess the accuracy of this assumption. Nevertheless, it has been suggested in recent years that particular problems have arisen with regard to the use of heroin by some Aboriginal people, particularly in inner city areas in Sydney. The Royal Commission has had the opportunity to peruse a confidential report prepared by the Aboriginal Medical Services Co-operative Limited in Sydney. This report pointed to a substantial involvement of heroin among Aboriginal offenders appearing before Sydney courts and to levels of heroin use in the Sydney Aboriginal community in general that appear to be substantially higher than those found in Australia as a whole.

15.4.7 Illicit drug use by Aboriginal people is reported from many parts of Australia. For example, the New South Wales AIU advises that illicit drugs, especially cannabis, are available and are used by Aboriginal people in a number of country towns, as well as in Sydney. During the period of the Commission's enquiries, the media reported the cases of three teenage Aboriginal girls who died from heroin and Rohypnol use in the inner city of Sydney. Furthermore, both Commissioner Dodson and I am aware of a number of tragic cases of young Aboriginal people dying in Adelaide, over the last year, from the effects of illicit drug use, including heroin overdoses. Like petrol sniffing, the dangerous use of illicit drugs is not common, but has a devastating effect on some of the individuals and families involved. These tragic deaths illustrate the inter-relationship, among some drug users, between powerlessness, low social status, inadequate social supports and unsafe drug use. They provide a further illustration of the impact on Aboriginal society of disempowerment.

15.4.8 While I argued at the commencement of this chapter that the primary emphasis in addressing drug-related problems should lie in the area of alcohol and tobacco being the drugs that have the most serious effects on the well-being of the largest numbers of Aboriginal people--it is a fact that dangerous drug use involving pharmaceutical products and the currently illicit drugs, particularly narcotics and stimulants, is not uncommon. The Royal Commission's cases of Egan and Kearney, in particular, emphasise the fact that drug use is a factor leading to people being in custody and, more particularly, to increasing their vulnerability to death in custody.

15.5 CONCLUSION

15.5.1 I conclude this chapter by pointing out that, in Chapter 32, I make a

number of detailed recommendations on action necessary to redress many of the problems identified in this chapter. I am aware that their implementation will require the application of a substantially increased level of financial resources. This should not be considered to be just another increase in allocations. Rather, it will be money very well spent. It should always be kept in mind that money spent on programs that reduce the level of problems caused by alcohol and other drugs, and that concurrently increase the power of Aboriginal people to shape their own futures, will result in lower demands for expensive remedial services at later stages.

Recommendation 63:

That having regard to the desirability of Aboriginal people deciding for themselves what courses of action should be pursued to advance their well-being, ATSIC consider, in the light of the implementation of the National Aboriginal Health Strategy, the establishment of a National Task Force to focus on:

a. The examination of the social and health problems which Aboriginal people experience as a consequence of alcohol use;

b. The assessment of the needs in this area and the means to fulfil these needs; and

c. The representation of Aboriginal Health Services and other medical resources in such a project.

Research into the patterns, causes and consequences of Aboriginal alcohol use should not be conducted for its own sake. Such research is only justified if it is accepted by Aboriginal people as necessary and as being implemented appropriately. Action research of the type that produces solutions to problems is likely to be seen by Aboriginal people as being most appropriate.

Recommendation 64:

That Aboriginal people be involved at every level in the development, implementation and interpretation of research into the patterns, causes and consequences of Aboriginal alcohol use and in the application of the results of that research.

Recommendation 65:

That if Aboriginal people identify it as a priority (and ATSIC is well placed to make such a judgement) the Ministerial Council on Drug Strategy, as the body which manages the NCADA, act to develop and implement, in conjunction with Aboriginal people and organisations, an ongoing program of data collection and research to fill the many gaps which exist in knowledge about Aboriginal alcohol and other drug use and the consequences of such use. Particular areas of need are:

a. Information about alcohol consumption among urban Aboriginal groups;

b. Information about alcohol consumption among Aboriginal youth;

c. Longitudinal data in all areas;

d. An emphasis on good quality data utilising standard methodology and definitions; and

e. Evaluation research which assists in developing improved Aboriginal prevention, intervention and treatment initiatives

in the alcohol and other drugs field.

Recommendation 66:

That if Aboriginal people identify it as a priority, organisations which support research into Aboriginal issues, including the NCADA and the Australian Institute of Aboriginal and Torres Strait Islander Studies, encourage more comprehensive and diverse research into the extent, causes and consequences of alcohol use among Aboriginal people. In particular, that appropriate steps be taken to ensure that the NCADA national research and training centres at the University of New South Wales, Curtin University and the Flinders University of South Australia establish mechanisms to encourage new graduates, researchers from other fields and Aboriginal people to conduct research in this area and identify research priorities and methods to implement them.

Recommendation 67:

That the National Drug Abuse Data System of the NCADA institute a regular research program to establish baseline data and monitor changes over time in relation to the health, social and economic consequences of alcohol use among Aboriginal people.

Recommendation 68:

That responsible authorities accurately identify Aboriginal people in administrative data sets such as those covering mortality, morbidity and other social indicators, where such action will provide basic information which will assist Aboriginal organisations to achieve their research and service development goals. While it is acknowledged that primary responsibility for the management of such data sets lies with the States and Territories, Commonwealth agencies such as ATSIC, the AIH and the AIC should be involved in this exercise in a co-ordinating role.

Recommendation 69:

***That with the aim of assisting Aboriginal organisations to develop effective programs aimed at minimising the harm arising from alcohol and other drug use, priority be given by research. funding bodies to research investigating the causal relationships between alcohol and other drugs, including their availability, and consequences on community well-being and criminal activity*.**

Recommendation 70:

That organisations developing policies and programs addressing Aboriginal alcohol issues:

a. Recognise the inadequacy of single factor explanations (such as the disease model of problematic alcohol use) of the causes of alcohol dependence and misuse among individuals; and

b . Take into account the fact that multiple explanations are necessary to explain the causes of alcohol misuse and related problems at the community level It is therefore

inappropriate to focus too strongly on any one explanation to the exclusion of others.

Recommendation 71:

That research funding bodies consider commissioning or otherwise sponsoring research investigating Aboriginal conceptualisation's of the nature and causes of alcohol dependence and misuse and the prevention, intervention and treatment approaches which stem from these.

Chapter 16 SCHOOLING

The failure of schooling to provide a meaningful and useful experience for many Aboriginal people interacts with, and is a reflection of, their failure to achieve desired levels of participation in Australian society generally, and to command a level of services in respect of education, health and social justice which is commensurate with the rest of the Australian population. In many of the cases investigated, in hearings conducted into underlying issues, and in numerous submissions, this Commission has heard of the inextricable links between the formal education system, child welfare practices, juvenile justice, health and employment opportunity as factors contributing to the disproportionate representation of Aboriginal people in police and custodial facilities.

16.1 EDUCATION AS AN UNDERLYING ISSUE

16.1.1 Education is one of the principal means by which culture and knowledge are transmitted from one generation to the next. Aboriginal societies always had a means of transmitting knowledge about the land, history, kinship, religion, and the means of survival, even if this knowledge was never written in books or stored in libraries as non-Aboriginal people have done. Younger generations learn from older generations by participation, observation and imitation. Much learning is unstructured and takes place in social contexts amongst kin. Certain types of knowledge, such as religious and ritual knowledge, are imparted at specific times and in an organised and managed way, often as part of initiation ceremonies. Many of these processes of instruction and learning operate throughout Aboriginal Australia. A lot of educating continues to go on within Aboriginal homes, through Aboriginal families and relations, through social interaction with other Aboriginal and non-Aboriginal groups, and through the public presentation of issues that affect Aboriginal people generally.

16.1.2 In addition to these Aboriginal forums and forms of education, Aboriginal people have been required—at different times in different States, but overall fairly recently—to enter the education systems set up by the various States and Churches. In contrast to the education which has always been available to Aboriginal people within their families and communities, they are now also required, under Australian law, to attend institutions dedicated to the transmission of specific sons of knowledge and values. In non-Aboriginal society, it is largely—but by no means wholly—the body of knowledge transmitted by schools which is valued as 'education'.

16.1.3 The knowledge and skills which are reproduced through schooling are those which our society considers to be important and valuable. Education is therefore a social resource, but one to which access is neither unlimited or undifferentiated. Not everyone has the same access to schooling, and there is an unequal transmission of this valued knowledge as a result. Moreover,

school-based education systems in Australia have historically been unable or unwilling to accommodate many of the values, attitudes, codes and institutions of Aboriginal society. This has hampered Aboriginal participation and achievement in education as defined by the wider Australian society.

16.1.4 The present chapter examines some of the dimensions and consequences of this exclusion. It examines, in broad outline, some of the inhibitions to Aboriginal participation in schooling which have been brought to the attention of this Commission. Issues of participation, itinerancy, relevance, expectation and prejudice are perhaps exemplified in the case of Malcolm Smith:

> *Although Malcolm was enrolled in Dareton school it is doubtful that he was ever a regular attender. It was difficult for the children to settle in to a routine life after the roving life in the bush for which they hankered. The curriculum and atmosphere at the predominantly white school probably had little relevance to Malcolm coming from a community of intinerant bush-labourers with no expectations of advancement. His brother recalls that there was sufficient racial prejudice amongst the students to make attendance an unpleasant experience.*[1]

16.1.5 Other cases reveal the effect of cultural and linguistic difference, poverty and specific health problems—particularly hearing impairment—on educational participation and achievement.

16.1.6 Poor educational participation and achievement in turn limit the capacity of Aboriginal people to make real choices about their participation in the economy more generally. A diminished educational opportunity effectively denies Aboriginal people access to the full range of resources which could help them shape their lives and communities according to their own vision and aspirations.

16.1.7 I cannot doubt the many Aboriginal people who have expressed their strong desire for a better education for their children. I wish to acknowledge the thousands of Aboriginal mothers and fathers who are battling to keep their children in school because they want them to have a 'proper education '. I applaud the many teachers who are trying to make classrooms more culturally sensitive, as well as the administrators who are fighting for changes to the curriculum and service delivery. I am encouraged by the development of innovative programs and schools such as Kaurna Plains in Adelaide and Yipirinya in Alice Springs which are creating new and responsive educational environments for Aboriginal children. I discuss these innovations in Chapter 33.

16.1.8 Also in Chapter 33 I discuss what improvements have flowed from the development of consultative mechanisms, greater Aboriginal input to curriculum design, employment of Aboriginal people in schools, and the design of more culturally sensitive programs. Such changes are examples of Aboriginal people regaining some level of control over the education of their children. I suggest that the principles of equity and Aboriginal involvement which are set out in the National Aboriginal Education Policy (NAEP) form the essential basis for re-designing education systems for the greater benefit of Aboriginal people.

16.1.9 Nonetheless, the evidence of the cases investigated by this Commission and of other material presented to me indicates that Aboriginal people have not been well served by the education systems of the various States. This evidence is set out in the present chapter. Educational opportunity and performance have been revealed by my investigations as significant underlying issues which diminish the potential for Aboriginal people to create fulfilling lives for themselves. Reduced

access to education—an access which is shaped by a variety of social and cultural, as well as geographic, factors increases the likelihood of contact with the judicial and custodial systems, in which contexts a number of Aboriginal people have died.

SCHOOLING AS AN INTERACTION WITH OTHER INSTITUTIONS

16.1.10 For many Aboriginal children, school provides their first significant contact with white society unprotected by their own kin and a known set of social relations. In such circumstances, children can be extremely vulnerable; their sense of themselves as individuals, and as members of a social group, can be easily challenged and undermined. The cases investigated by the Royal Commission suggest that there are at least two possible outcomes to this situation:

- a sense of powerlessness and inferiority leading to an undermining of self-esteem; or
- resistance, opposition and alienation from the formal processes of schooling.

16.1.11 A third possible outcome is a positive one. The benefits of schooling for Aboriginal people—including a knowledge of the processes and structures of non-Aboriginal society—have often been used subsequently to improve the chances of their own people. Evidence presented in the case of Nikira Mau, the Torres Strait Island man who died m the Brisbane City Watch-house in 1981, suggests that he received an above average level of education.[2] After the Second World War he worked for about five years as a teacher on Yam Island, Rennell Island and Coconut Island in the Tortes Strait. The tragedy of Nikira Mau's death, and the circumstances which had led to him becoming homeless and alcohol dependant, are timely reminders that education does not of itself provide straightforward solutions for Aboriginal and Islander people, and that education must be viewed within the broader history and context of community relations.

16.1.12 School-based education is essentially a service provided for and funded by the state. Participation is compulsory, at least up to a certain age. Non-attendance as a result of alienation and failure in the schooling system can bring young Aboriginal people into direct contact with the courts, another of the state's institutions. Aboriginal youths who are legally required to be at school, but who refuse to participate in the system—by way of non-attendance or poor performance resulting in their early leaving—are more likely to be subject to police surveillance and intervention by welfare and justice agencies. They are more likely to be perceived as a threat to the norms and property of non-Aboriginal people, and to be subject to a process of criminalisation as a result. Section 16.6 looks at the role of school non-attendance in introducing Aboriginal youth to the juvenile justice system.

16.2 THE EDUCATIONAL EXPERIENCE OF THOSE WHO DIED IN CUSTODY

16.2.1 Commissioner Wootten has identified 'lack of education, to the point of illiteracy and innumeracy, and deprivation of opportunity to acquire alternative skills of a practical nature' as amongst the factors which contributed to Malcolm Smith's institutionalisation, repeat offending and long periods of incarceration.[3] Paul Farmer had lost all interest in school by the time he was thirteen years old. He had a low reading age, low maths ability and little interest in European culture. After coming to the attention of the Child Welfare Department over non-attendance, Farmer obtained an exemption from attending school. His lack of

success in the education system was seen by Commissioner Muirhead as a reflection of living conditions and 'the inadequacy of a European education system to cater to the needs of Aboriginal children', rather than of intellectual ability.[4] This is confirmed by the fact that there were books in Paul Farmer's cell at the time of his death, and he was enrolled to study through the prison education system. The fact that Farmer was trying to gain a belated education in prison highlights the importance of such 'second chance' educational opportunities see Chapter 25. These two cases, so widely separated geographically—from western New South Wales and southern Western Australia respectfully—indicate a common failure of education systems in many settings across Australia.

16.2.2 The highest level of education attained by those who died in custody is presented in Table 16.1. Most of the people had received at least some secondary education, although a sizable minority—40 out of 99 cases had not proceeded beyond primary school. Three persons had received some tertiary education, but only one had completed studies at that level.

TABLE 16.1: HIGHEST EDUCATION LEVEL ATTAINED BY THOSE WHO DIED IN CUSTODY.

Education Level	*NSW*	*VIC*	*QLD*	*WA*	*SA*	*Tas*	*NT*	*Total*
No Schooling	-	-	2	3	1	-	2	8
Some Primary	1	1	9	2	4	-	3	20
Completed Primary	1	I	6	2	1	-	1	12
Some Secondary	10	-	9	23	5	-	3	50
Completed Secondary	1	-	1	-	-	-	-	2
Some TAFE	1	-	-	-	-	1	-	2
Completed TAFE	1	-	-	-	-	-	-	1
Not Known	-	1	-	2	1	-	-	4
TOTAL	15	3	27	32	12	1	9	99

Source: Biles, McDonald & Draper, The Royal Commission Cases, p. 10

16.2.3 The conclusions reached by Commissioner Dodson in reviewing the cases of people who died in Western Australia are applicable Australia-wide:

> *Very few achieved high levels at school and even fewer would seem to have found education something of value which could help their lives. For most of those who died in custody, if not all, education was not an experience which provided them much confidence, hope or belief in themselves or a future with meaning* [5]

The poor levels of educational achievement recorded in the cases is an apt reflection of the level of education participation by Aboriginal people generally.

16.3 HISTORICAL PERSPECTIVES

16.3.1 Until well into this century, Aboriginal people were largely excluded from schools, either by law, or by the opposition of non-Aboriginal parents. In many areas across Australia, governments delegated responsibility for schooling Aboriginal children to missions. As a consequence of these policies and practices, the real educational needs and aspirations of Aboriginal people have long gone unaddressed. When it has been available, schooling has often acted as another means of dislocating Aboriginal children from Aboriginal culture.

16.3.2 Pat Swan, quoted by Justice Muirhead in his *Interim Report,* has identified the separation of children from their parents, and of denying Aboriginal adults access and influence over Aboriginal children, as 'another way of destroying

culture'.[6] Several cases heard by the Commission have demonstrated how institutionalisation, including removal of children to missions, served to increase family dislocation and cultural breakdown. At Wujal Wujal, Commissioner Wyvill found the 'largely irrelevant or inadequate education and training opportunities' to be a legacy of the 'paternalistic, authoritarian and non-Aboriginal administration' of the reserve.[7]

16.3.3 Christine Jones spent ten years on the Church of Christ Mission at Carnarvon. The mission operated as an isolated community approximately eight kilometres from the township, and children were taken to and from the local primary school by mission bus. They had no other opportunity to visit the town or mix with its residents. On the mission, brothers and sisters were separated. 8 What was most damaging about this situation was the intrusion of mission practices into the normal processes of cultural transmission within the Aboriginal family. Robert Anderson, Nita Blankett, Stephen Michael and Kim Polak are amongst those who died in Western Australia who spent a considerable part of their childhoods in mission schools.

16.3.4 For many Aboriginal people, schools were just another intervention by which white Australian society sought to control their lives. Schools themselves were sometimes identified as places from which Aboriginal children could be taken. After five of her brothers and sisters were removed by the authorities, Malcolm Smith' s sister Rhonda was too afraid to go to school, lest she also be taken by 'the welfare'.[9]

16.3.5 Education or its lack—has itself been perceived as a means by which the policies of protection, assimilation and integration have been put into effect.[10] The legacy of this history is that many Aboriginal children continue to experience school negatively. The consequences of that rejection form part of the complex underlying issues investigated by this Commission:

> *The phenomena of children 'opting out', truanting or leaving school at an early age provides a sense of 'failure' and the felt inadequacy to change the environment which people are facing. This has the effect of both lowering their self esteem and also preventing them from being able to deal with the pressures and values of mainstream society.11*

16.3.6 It must be recognised that 'opting out' may sometimes be a political act and an expression of Aboriginal identity in the face of an alienating and non-responsive system. It must also be acknowledged that the power of the state over educational participation is such that school-refusers can be further marginalised and criminalised.

16.4 PARTICIPATION

16.4.1 An analysis of the limited statistical data available on Aboriginal participation, Year 12 retention, attrition and performance was conducted on behalf of the Royal Commission[12]. This Section, except where otherwise noted, forms a summary of that analysis.

PARTICIPATION RATES

16.4.2 The participation of Aboriginal people in all levels of education has increased significantly over the last two decades, although in 1986 it was still lower

than that of the total Australian population. The difference was most striking in the 16 to 24 age group.

16.4.3 While almost all Australian children aged 5 to 15 years were participating in education, only 88.2% of Aboriginal children aged 5 to 9 years were in pre-school or school in 1986, and only 83.1% of Aboriginal children aged 10 to 15 years were at school in that year. The Aboriginal Education Policy Task Force found that, in 1986, 13% of the compulsory school age group were not enrolled in a school.[13]

School Attendance

16.4.4 There has been a steady decline in the proportion of Aboriginals in the 15+ age group who have never attended school, from 14.3% in 1976 to 12.5% in 1981 and 7.5% in 1986. Younger Aboriginal people are more likely to have had some formal education than those in older generations.

16.4.5 Despite this overall statistical improvement, school non-attendance is high in many Aboriginal communities. North-west New South Wales, which has a high Aboriginal population, also has the highest truancy rates and the lowest retention rates in that State.[14] In response to questions put to it by the Royal Commission, the South Australian Education Department reported a 40% absentee rate in its Northern Area, a rate of 38% in the Yorke District, and 23% absenteeism in Anangu (Pitjantjatjara) Schools.

Secondary School Participation

16.4.6 Figures on Aboriginal Secondary Assistance Scheme (ABSEC)[15] allowance recipients indicate that the number of Aboriginal students attending secondary school rose from 12,469 in 1976 to 26,183 in 1987. There have also been substantial increases in the age participation rates of Aboriginal youth. For 15-year-olds, participation has increased from 48% in 1976 to 56% in 1981 and 65.7% in 1986. For 16-year-olds, participation has increased from 17.6% in 1976 to 40.5% in 1986. For 17-year-olds, participation has increased from 5% in 1976 to 18.3% in 1986. These rates are still well below the rate for all students aged 15 to 17 in Australia (90.1%, 67% and 39.6% respectively in 1986).

Year 12 Retention Rate

16.4.7 The proportion of those Aboriginal students staying to Year 12—known as a retention rate-has improved from 7.5% in 1979 to 17% in 1986 and 19.4% in 1987.[16] The total retention rate for all Australian students in 1986 was 48.7%, and 53.1% in 1987.

16.4.8 There are significant regional variations in the Aboriginal Year 12 retention rate. Queensland has the highest percentage of Aboriginal and Islander students staying on to Year 12 (35.8% in 1987). A slightly higher figure of 39.06% in 1987 was supplied by the Queensland Department of Education, which also noted that retention over Years 8-12 had improved from 39.76% in 1988 to 45.76% in 1989.[17] Retention rates in Western Australian government schools have improved from 2.8% in 1982 to 9.9% in 1989. If non-government schools are taken into account, the percentage of those reaching Year 12 is again slightly improved (at 10.7% in 1989).

16.4.9 Western Australia (at 9.5% in 1987) and the Northern Territory (at 10.8% in 1987) had the lowest retention rates in Australia, reproducing the findings of the

Miller Report in 1985.[18]

16.4.10 Retention rates vary markedly not only from State to State or Territory, but also from region to region and school to school. Figures from New South Wales showed that four of the five schools with the lowest Year 12 retention rates in 1986 had a significant Aboriginal enrolment. Dr Gillian Cowlishaw notes that no Aboriginal student has completed high school in the far north-west New South Wales town which is the focus of her study.[19] In 1988, only thirteen Nyoongah students from throughout the south-west of Western Australian reached Year 12; in some schools no Aboriginal students attempted Year 12.[20]

Year 12 Attrition Rates

16.4.11 Although there has been a marked improvement in the Year 12 retention rate for Aboriginal students, there is evidence from New South Wales and Western Australia that many students who enrol in Year 12 fail to complete the year. In New South Wales this attrition rate has varied enormously by year. In 1978 it was 22.22%, climbing to 25.97% in 1979. By 1982 it had reached a low of 2.29%. It peaked in 1986 at 28.34%, and was 12.82% in 1987.

16.4.12 In Western Australia, in 1987, 92 students were enrolled, but only 68 completed Year 12. This represents an attrition rate of 26.1%. Commissioner Dodson noted that in southern Western Australia, only four Aboriginal students had passed Year 12 in the past seven years.[21] Evidence presented to me in Alice Springs suggests that not one Aboriginal student is known to have successfully completed Year 12 at Alice Springs High School.[22]

Achievement in Secondary School

16.4.13 Evidence of Aboriginal achievement in secondary school in the form of Year 12 results is not readily available in processed form. In the absence of a national overview the following data are offered as a non-representative sample. It should be noted, however, that New South Wales, Queensland and Western Australia are the States with the largest Aboriginal populations and therefore the data are able to provide some indication of the level of Aboriginal success in Year 12.

- *New South Wales*

  Data available on Year 12 average aggregate scores in 1985 reveal that Aboriginal candidates were approximately one hundred points behind their non-Aboriginal peers. Results for English and Mathematics showed that Aboriginal students were continuing to under-perform in comparison with non-Aboriginal students. Whereas 51.5% of Aboriginal students obtained less than 50% in the English 2 Unit, 19.4% of the total number of students got less than 50%. In the Maths 2 Unit, 47.9% of Aboriginal students failed to achieve 50% or more, compared with 19% of the total number of students.

- *Western Australia*

  Of the 68 Aboriginal students who completed Year 12 in 1987, 48 or 70.6% qualified for Secondary graduation.

- *Queensland*

  Figures are available for Grade 12 results in the Brisbane region for 1987. In subjects such as Accounting, Biology, Chemistry, Economics, Geography, Maths 1, Maths In Society, Modern History and Multi Strand

Science, the marks of at least 50% of Aboriginal students taking these subjects were in the low or very low categories. In the subject of English, 49.3% of the Aboriginal enrolment obtained low or very low marks.

16.4.14 Although limited, these indicators of Aboriginal achievement in Year 12 are well below the level of the total Australian population. This evidence reinforces the concern expressed by the House of Representatives Select Committee on Aboriginal Education that

> *in spite of ABSEG, few Aboriginals are matriculating, many Aboriginal students in secondary schools have low levels of academic achievement and are emerging from the secondary school system without the qualifications to pursue further studies, to enter other forms of vocational training or to obtain jobs in the community.*[23]

16.4.15 The statistics can, of course, only indicate gross rates. They tell us nothing of the causes or consequences of school failure. One obvious consequence is that the adult Aboriginal population hold fewer qualifications—-and arc therefore less likely to be employed—-than the rest of the Australian population.

Formal Qualifications

16.4.16 Between 1971 and 1981 the percentage of Aboriginal people with qualifications rose from 1.2% to 4.8%. In 1987, 10.7% of Aboriginal people had some form of qualifications compared with 33.3% of the total population.

16.4.17 'Qualification' here means any course of study which leads to the award of a degree, diploma or certificate, or which attracts support under the Aboriginal Study Assistance Scheme (ABSTUDY). The types of post-school courses undertaken by Aboriginal people are set out in Table 16.2.

TABLE 16.2 TYPES OF POST-SCHOOL COURSES IN WHICH ABORIGINAL PEOPLE PARTICIPATE, 1986 CENSUS.

Type of Course	*Number of Participants*	*Proportion of Participants*
	(' 000s)	*(%)*
Higher Degree, Bachelors	1.3	6.5
Associate Diploma.	0.7	3.5
Trade Certificate.	1.3	6.5
TAFE Secondary Quals.	1.6	8.0
Other Vocational.	5.5	27.3
Personal Development.	9.7	48.2
Total	20.1	100.0

Source: Smyth, *Aboriginal Education Indicators.*

16.4.18 A feature of the Aboriginal participation in post-compulsory education and training with implications for future employment is that Aboriginal people tend to enrol in shorter courses. The majority of Aboriginal students participate in courses of less than one year duration, and in courses that do not lead to recognised awards or qualifications. In this respect, the 48.2% of Aboriginal people enrolled in personal development courses is significant. However, I also acknowledge—and discuss the issue further in Section 33.3-the enormous value of such courses in helping to rebuild peoples' self-esteem and in preparing them for further study at a higher level.

Technical and Further Education

16.4.19 The Technical and Further Education (TAFE) system is the primary

source of a wide range of trade, technical, para-professional and other vocational courses leading to employment qualifications, as well as the provider of a diverse range of general education courses. One way of addressing the identified lack of qualifications in the Aboriginal population may be the provision of TAFE courses for adults. Significant developments in technical and further education, and the linking of this provision to programs of community development and self-determination, are reviewed in Section 33.3 of this Report.

16.4.20 Only 1.4% of the total Aboriginal population were participating in TAFE courses in 1986 compared with 4% of all Australians. On a national aggregate basis, 4.8% of Aboriginal people aged 16 to 17 years were in TAFE, compared with 19.4% of all Australians in the same age group. In the 18 to 20 year age range, 4% of Aboriginal people were in TAFE, compared with 22.7% of all Australians. In the 21 to 24 years age range, 2.6% of Aboriginal people were in TAFE compared with a national rate of almost 12% for the same age group.

16.4.21 The Aboriginal Education Policy Task Force identified the Northern Territory and Queensland as having the lowest Aboriginal participation in TAFE in 1986.[24] Northern Territory participation rates were 1.8%, 2.1%, and 1.1% at ages 16 to 17, 18 to 20 and 21 to 24 respectively. In Queensland, at ages 16 to 17 years, 2.2% of Aboriginal and Islander people were in TAFE. This is less than half the national aggregate of 4.8%. At ages 18 to 20 years, 2.3% of Queensland Aboriginal and Islander people were in TAFE, compared with 4% nationally and 22.7% for all Australians. At ages 21 to 24 years, 1.4% of Queensland Aboriginal and Islander people were in TAFE, compared with a national aggregate of 2.6% and participation by 11.8% of all Australians in that age group.[25]

Higher Education

16.4.22 In 1986, 0.6% of the Aboriginal population were studying in universities and Colleges of Advanced Education, compared with a rate for all Australians of around 2.5%. The disproportion in participation rates for non-Aboriginal and Aboriginal people varies from a figure 5.5 times down to parity, depending on age group see Table 16.3.

TABLE 16.3 ABORIGINAL PARTICIPATION IN HIGHER EDUCATION IN 1988 BY AGE GROUP

Age Group	*Aboriginal Students(a)*	*All Students(b)*
17 - 19 years	*24*	*131*
20 - 24 years	*24*	*103*
25 - 29 years	*21*	*40*
30 - 64 years	*17*	*17*

(a) & (b) per 1 000 of relevant population cohort
Source: Australia. parent of Employment, Education and Training, *A Fair Chance for All,* p. 69

16.4.23 In my opinion these figures are extremely interesting, and say a good deal about policies which must be pursued in the future.

16.4.24 The figures show that at age 17 to 19 the percentage of the Aboriginal population studying at the most advanced level, compared with the whole population, is 18%. That undoubtably reflects the comparatively poor Aboriginal performance at school. At age 20 to 24 years the percentage is improved, but is still only 23%. At 25 to 29 years that percentage has increased dramatically to 50%. The latter figure no doubt reflects the fact that at 20+ years many of the non-Aboriginal students have completed their courses, but it also reflects the fact that many young but post-school Aboriginal people have begun to turn to study, qualified for and embarked on their courses. The figures demonstrate:

- The need to make such changes in the school system and in other social areas as will allow Aboriginal students to realise their potential.
- The need which exists, at least in the medium term, for adult education courses which will allow Aboriginal people who have come to realise the importance of skilling or other learning, to build their self-confidence, improve basic literacy and numeracy skills, bridge the gap and prepare themselves for more advanced study.

16.4.25 Aboriginal higher education students are under-represented in fields such as medicine, science and engineering. According to the Aboriginal Education Policy Task Force, over 70% of Aboriginal higher education students are enrolled in arts, humanities, social sciences and teacher education courses.[26] In contrast, 40% of the total student enrolments are in these fields of study.[27]

16.4.26 Developments in the design and delivery of higher education programs for Aboriginal people are reviewed in Chapter 33 of this report.

GENDER ISSUES AND EDUCATION

16.4.27 At Wujal Wujal Commissioner Wyvill heard of differential education outcomes for Aboriginal men and women, and the consequences these might have for management of the community. Greater literacy skills have combined with steady incomes (mainly family allowances) and control of household expenditure to give young women at Wujal Wujal an apparently higher status and a greater role in running the community Council:

> *[T]he leadership role of young men has been indirectly marginalised through the vast improvement, relatively, in the educational standards of young women in the community. Council affairs, the new area of important decision making, have increasingly come under the control of women.*[28]

16.4.28 In Casino the New South Wales Aboriginal Issues Unit heard that more female Aboriginal students were staying on at school than were males. The female Aboriginal Education Assistant (AEA) in the school suggested that the employment of a male Alia may help to offset this situation.[29]

16.4.29 A feature of the national Aboriginal higher education profile is that the majority of Aboriginal participants are female. Of the identified 1,933 Aboriginal and Torres Strait Islanders in post-secondary education in 1987, 1,166 (60.3%) were women and 767 (39.7%) were men.[30]

Figures for 1988 record 1,614 women and 951 men enrolled in higher education. This represents a proportion of 62.9% Aboriginal and Islander women to 37.1% men. Thus, while the absolute numbers of Aboriginal people enrolled in higher education are increasing, the participation of Aboriginal women may be rising at a greater rate than that of Aboriginal men.[31]

16.4.30 In a survey of TAFE and industry access in seven Local Government Areas south of Perth, Joy Eichhorn found that 16 to 20-year-old females were the most accessible, interested and educated to an employable level amongst the Aboriginal population.[32] This group had the highest participation at Year 10 level. Their principal educational interests were in English, Mathematics, Clerical/Office Studies and Child Care. Major inhibitions to their participation in post-school education were perceived to be inadequate transport and child-minding facilities.[33] This group remained amongst the most disadvantaged in employment.

16.4.31 The Miller Report identified fewer Aboriginal women possessing accredited qualifications than Aboriginal men—3.4% compared with 4.9% in 1981.[34] This disproportion was attributed to Aboriginal women possessing fewer trade qualifications. The discrepancy with Australian women generally, however, was extremely large: 'Australian women generally were ten times as likely to have degrees and diplomas, six times as likely to have trade certificates and more than three times as likely to have non-trade certificates than were Aboriginal women 35

16.4.32 Differential educational outcomes for Aboriginal men and women are significant in so far as they interact with the higher incidence of young Aboriginal men dying in custody. The relationship of education to status, self-esteem, and the potential for employment was made explicit by Commissioner Wyvill in the case of the young man who died at Wujal Wujal[36]

SUMMARY

16.4.33 Although there has been significant improvement in Aboriginal education indicators in the last two decades, Aboriginal people are still identifiable as the most poorly educated group in Australia. Poor educational achievements are linked to employment and income as 'both the causes and consequences of the continuing poverty of Aboriginal children'.[37] Given the nexus between educational achievement and employment,[38] and the high levels of unemployment experienced by those who died in custody, it is of particular concern to the Royal Commission that the participation of Aboriginal youth in the senior secondary and tertiary sectors remains at a level considerably lower than that of the total Australian population. It is also of concern that non-participation and non-attendance during the compulsory school years may act as a point of introduction to the juvenile justice system for Aboriginal youth.

16.4.34 Equally important, and indeed more so, is the actual educational outcome. Over a period of many years in South Australia, Aboriginal people consistently spoke to me of the fact that young people started off their schooling quite well, but gradually became disinterested in higher primary classes and particularly at secondary level. I believe that it was an appreciation of this fact which led the South Australian Education Department to undertake the experiment of an Aboriginal school at Kaurna Plains which I twice visited during my enquiry and which I believe is worthy of the closest study by all parties interested in this question.

16.4.35 I have already mentioned that I was told that in Alice Springs no Aboriginal child had successfully completed Year 12 at the local High School. In Katherine I took evidence about various matters from a very responsible group which included a school teacher with many years experience in the town. No member of the group could remember an Aboriginal child at Katherine achieving a Year 10 certificate.

16.4.36 Finally, at a hearing in Darwin a very senior officer of the Northern Territory Education Department told me that it was not feasible to establish high schools in the larger remote communities because the Aboriginal children coming out of the remote area primary schools simply lacked the basic requirements to proceed to secondary education.

16.4.37 I have mentioned South Australia and the Northern Territory because my enquiries were concentrated there—and at Roebourne in Western Australia. I do not think that they are unique in this respect. Such outcomes are simply

unacceptable. I am confident that very substantial improvements are to hand in both areas as a result of important initiatives by Aboriginal people and organisations and by government.

16.5 INHIBITING FACTORS

16.5.1 Several substantial government reports on Aboriginal education appeared during the 1980s.[39] These reports have covered in depth the various historical, philosophical and political dimensions of Aboriginal schooling, including prospects for change in the areas of teaching practice, curriculum, funding, program design and service delivery. All have pointed to the consistent failure of formal education systems to achieve equitable participation and desired outcomes for Aboriginal people. This section summarises those factors which inhibited the educational experiences of those who died in custody. It deals only with those issues which have been brought to the attention of this Commission in cases and hearings.

CULTURAL DIFFERENCE

16.5.2 Schooling reflects and transmits the values and styles of our society, and it has to be acknowledged that these are very complex and far from uniform. More importantly, it is historically the case that schooling has failed to reflect Aboriginal values and learning styles. As a consequence, Aboriginal children enter an institution

- of which they have limited or no experience and of which their parents may have limited or no experience-and if any experience, usually a very negative one;
- where their own system of values and style are not reflected;
- where the language spoken is in many cases not their own everyday language; and
- which often does not take account of their home experience-and this experience is one which has prepared them less than is the case for most non-Aboriginal children.

16.5.3 Numerous research and government reports have noted some of the specific cultural differences which attend Aboriginal learning processes.[40] They have suggested that these differences reside in the links between culture and cognitive style, the relationship between culture and intellectual performance, the forms of culturally preferred knowledge, cross-cultural communication processes, and culturally relevant teaching and learning strategies.

16.5.4 Studies of cultural differences in relation to learning styles and teaching strategies have often focused on the role of language. Variations between the language of the child, the language of the teacher and the language of the school have been identified as a source of cross-cultural communication breakdown and a barrier to effective teaching and learning.[41] Many migrant children experience language-based problems on entering Australian schools. It is my observation that our society has generally been more willing to respond to these problems when experienced by migrant children than it has when they are experienced by Aboriginal children.

16.5.5 Kim Polak—as but one example amongst those who died—experienced the dislocation of using an Aboriginal language at home whilst having to use English in the various mission schools he attended.[42] His literacy skills at age fourteen were assessed to be those of a seven year old. Attempts to overcome

some of these difficulties underlie much of the development of bilingual and bicultural educational programs in the past decade.[43]

16.5.6 It would be inappropriate for me to comment further on this topic of cultural difference. It is obviously a difficult and important one, and is made even more difficult by the differences in outlook and experience of Aboriginal people in different pans of the country. The problem is one to be tackled by teachers—including Aboriginal teachers—and with the advice of Aboriginal people.

16.5.7 If cultural differences do attend Aboriginal learning, then they are clearly a 'problem' for teachers and curriculum designers rather than for Aboriginal children, at least in the first instance. Once they become the basis of a child's school experience, however, inappropriate curriculum and methods can lead to feelings of inadequacy and failure on the student's part, and an alienation from the whole project of schooling. In part the fault may lie with Australian education systems; but overwhelmingly it lies with the whole community which, as I said earlier, has historically regarded Aboriginal people as inferior and their culture as not a matter to be seriously taken into account, at least in a positive way, whether in the field of education or any other field.

HEALTH

16.5.8 The effects of hearing impairment on educational achievement is commented on in several of the cases including Graham Walley, Clarence Nean, Craig Karpany and the young man who died at Elliott.

16.5.9 The young man who died at Elliott was congenitally deaf and speechless, although it is uncertain at what stage this was discovered. He attended school on Banka Banka Station for a time, and, in 1962, the Townsend House School for the Deaf in Adelaide. He ran away from the latter and returned to Banka Banka 'where the children were used to him and refrained from teasing him'.[44]

16.5.10 At Cherbourg the Commission heard that 'a good percentage' of school children had hearing problems.[45] In the majority of cases such problems are the result of middle ear infections caused by poor living conditions.

16.5.11 Ear diseases such as Otitis Media can have a significant effect on educational performance, and therefore on a child' s self-esteem, as was found to be the case with Graham Walley. Walley's hearing impairment

> *would have added to his problems because it has a compounding effect ... of reducing self-esteem and seeing himself very negatively... certainly it would have been a factor in poor behaviour.*[46]

16.5.12 According to file minutes presented to the Commission: 'His ability to be able to express himself very ably in written language and his inability to express himself in spoken language can be directly attributed to his hearing problem'.[47]

16.5.13 Clarence Nean similarly had a lifelong problem with his ears, a situation which, as Commissioner Wootten reports, was widespread amongst the Aboriginal population of New South Wales:

> *The experience of Clarrie Nean is a reminder of how much many young Aboriginals have been handicapped by health problems. All his life he suffered from ear problems which are notorious as possible reasons for poor performance of children at school. The Superintendent of the Aborigines Welfare Board wrote in 1958 that*

> *many children were brought to Sydney repeatedly for treatment of a similar condition and very little if any success had been achieved in any of the cases .*[48]

16.5.14 Craig Karpany suffered hearing problems from age three after his mother contracted rubella during pregnancy. Audiology tests, conducted as a result of poor school performance, revealed a profound hearing loss in one ear and loss of high tones in the other. He was reluctant to wear the prescribed hearing aid. His acquisition of literacy skills was hampered by his hearing disability. It is thought that he learnt his school lessons by rote.[49]

16.5.15 Hearing problems may account for some of the classroom social activity which has been identified as specifically Aboriginal—such as peer-teaching—and which also has the potential to be interpreted as disruptive and punishable. Cathy Evermore notes

> *the use that hearing impaired children make of other children (often seated adjacent) to 'translate'. In a conventionally structured class situation, such translation is likely to be interpreted by teachers as disruptive behaviour, but the removal of this resource can disadvantage a child's progress.*[50]

16.5.16 It is estimated that between 25% and 50% of the 7,500 Aboriginal school children in Northern Territory Aboriginal Schools have a hearing loss caused by chronic Otitis Media.[51] Up to half of the children in any classroom cannot hear their teacher properly. Such impairments result in significant delays in the development of speech, language and cognitive skills, to reduced learning abilities, and subsequently to poor educational achievement. Amplification is or has been used at Nguiu, Pularumpi, Yuendumu, Yipirinya and Lajamanu Aboriginal Schools, where the reported effects have included:

- improved listening skills;
- faster, more confident and more appropriate responses to verbal instructions;
- improvement in spoken English;
- greater participation in classroom activities;
- improved speech discrimination skills.[52]

Auditory discrimination ability is associated with the development of the basic skills that are essential to success at school.

16.5.17 Various other aspects of the overall poor health status of Aboriginal children, such as undernutrition, hepatitis B and anaemia significantly affect the level of their educational participation and performance. Dr Neil Thomson reported in 1984 that 32% of Aboriginal children aged 0 to 9 years had some form of trachoma, compared with 1.6% of non-Aboriginal children.[53] Pre-school and school-aged children are the most susceptible to ocular infections with chlamydia trachomatis, and represent the major reservoir or 'infectious pool' in the community.[54] The National Aboriginal Health Strategy Working Party found that Aboriginal children are less likely to be immunised against the vaccine preventable diseases of childhood.[55] They suffer more cases of these diseases and frequently have more severe diseases than non-Aboriginal children.

PARENTAL ROLE

16.5.18 Attitudes and values expounded by 'significant others' such as parents,

teachers and friends have a strong impact on learning, and can have dysfunctional effects if contradictory.[56] Value disparities, as when Aboriginal parents do not share the values embodied in schooling, can negatively affect the scholastic achievement of Aboriginal children. Parents promote student learning through encouragement, expending resources, imparting their own knowledge of how schooling works, and making decisions on what educational options should be pursued. Many Aboriginal parents are hampered in their desire to aid and direct the schooling of their children by a lack of experience, knowledge and resources. Parents' participation in their childrens' learning is dependent on their sharing in the culture, values and attitudes conveyed by schooling, and in the formal structures, policies and delivery of education in their community.

16.5.19 Parents' own experiences of schooling are often limited, if not emotionally distressing. Lack of participation in schooling leads parents to assume they lack the knowledge appropriate to schooling. As one speaker told a Commission hearing: 'if your mum and dad don't know too much told a Commission hearing: 'if your mum and dad don't know too much ... they can't teach the kiddies'.[57] Commissioner Dodson notes that:

> *Aboriginal adults are often conscious of the difficulties associated with being able to say and get what they want from schools. And Aboriginal students talk of the importance of being supported in school by their parents.[58]*

16.5.20 The Select Committee on Aboriginal Education identified hostility, rejection, shyness and a lack of self-esteem as amongst the factors inhibiting the involvement of Aboriginal parents in schooling.[59]

16.5.2 1 Greater parental involvement in their childrens' education has been advocated in a number of reports, and is a principle of the National Aboriginal and Torres Strait Islander Education Policy.[60] There is, however, a danger in making assumptions about the structure and cultural milieu of Aboriginal families. Many of the cases heard by the Royal Commission contain evidence of family disintegration often perpetrated by Welfare agencies—and parental separation. The Western Australian Aboriginal Issues Unit warns that mothers are often not supported in their child-rearing efforts by husbands or partners.[61] There are also differences of cultural expectation about the role of parents or other child rearers in Aboriginal and non-Aboriginal society. It has been reported that amongst Pitjantjatjara people, for example, a husband's most compelling obligation is to share with his parents and wife's parents. Women and children may not benefit from a service delivery which fails to take account of such cultural concepts of extended family responsibility, and assumes that a nuclear family is operating in the same way that it is assumed to work in non-Aboriginal society.[62] Pitjantjatjara mothers must avoid any action that would cause their children distress-a cultural constraint which clearly affects the type of reinforcement which the discipline of schooling can achieve in a student's home. It might be difficult for mothers to enforce certain restrictions on their children's behaviour, or insist that they do their homework rather than play with their friends, because this would go against the Pitjantjatjara understanding of a mother's role. A Pitjantjatjara child is surrounded by a large network of kin who feel responsible for him/her, but who may be ignored by agencies such as schools. The crucial nurturing role of extended families is also a feature of south eastern Aboriginal cultures, as was heard in the Harrison Day case.[63]

16.5.22 The role of Aboriginal parents in education is shaped by varying regional, cultural, sociological and gender factors. These factors shape both their perceptions of education and the types of roles parents might reasonably be expected to play in respect of the organised structure of schools and education departments.

MOBILITY OF FAMILIES

16.5.23 Mobility for the purposes of work, maintaining contact with relatives, or as a consequence of a parent dying or marital breakdown, is prominent in the family histories of several cases. Whilst functioning to increase employment options or maintain contact between geographically dispersed kin, such mobility has frequently had a detrimental effect on education outcomes for Aboriginal children—as indeed it has for many non-Aboriginal children.

16.5.24 James Moore's schooling was intermittent because his parents moved along both sides of the Murray working on stations.[64] Stanley Gollan's parents moved from the mission at Point McLeay (Raukkan) to Coomandook in order to obtain work. Stanley and his elder brother Richard returned regularly to Raukkan to visit family and friends, and in particular, their sister Jean. Stanley's habitual truanting from school and regular absconding from home during this period brought him and his family to the attention of the police and the Department of Social Welfare. He left school at Grade 6 and within a year was committed to a boys reformatory in Adelaide.[65]

16.5.25 The young man who died at Beatrice Hill Prison Farm experienced severe learning difficulties and never learned to read and write properly as a consequence of being moved from school to school. By the time he attended high school he had become 'too embarrassed by his own lack of skills' to gain anything from the experience.[66] Mark Revell attended at least three different primary schools between 1961 and 1966, remaining at each school for no longer than three years at any one time. During the first two months of 1967 he attended six different high schools. His family 'did a lot of moving around'.[67] He left school after completing 3rd year high school.

16.5.26 The mobility of Aboriginal people in central Australia has been constrained by, but has also influenced, the provision of education services, without producing a clearly advantageous result. On the one hand, the location of educational services in settlements and in towns have tended to reduce Aboriginal mobility, including placing a constraint on attempts to establish outstations. On the other hand, the homelands movement has, to a limited extent, forced the decentralisation of some—particularly primary—-education services:

> *In some cases people stay in large communities rather than outstations so that their children can attend school. In other cases children commute daily to school. And in still other cases people do not consider school as a priority and move away to remote areas regardless of the facilities. This usually means that their children will never attend school. Although things may improve with better communications, through the operation of AUSSAT for transmission of educational programs, the difficulties appear likely to remain into the foreseeable future.[68] Whole generations of primary age Aboriginal children are educationally disadvantaged.[69]*

SOCIAL CONFLICT

16.5.27 Cases and hearings before the Commission have revealed significant levels of trauma, violence and conflict in contemporary Aboriginal communities throughout Australia. The prevalence of this social conflict can be traced to the historical processes of dispossession, forced movement and concentration by which different groups of Aboriginal people have been brought together, often at some remove from their traditional lands.[70] Added to this is the pervasive hostility and racism which Aboriginal people have endured, but which have also adversely affected their images of themselves and their cultures. The destructiveness which is manifest in many Aboriginal communities, as well as in many individual Aboriginal lives, is often reflected in a community's response to schooling and an Aboriginal student's response to the classroom.

16.5.28 Commissioner Wyvill notes that: 'An awareness of the state of enforced co-existence of the various Kuku-Yanlanji and Kuku-Nyungkul mobs at Wujal Wujal is essential for any understanding of the conflict and tension present in the modern community'.[71] A former Aboriginal teaching aide at Yarrabah State School reported in her statement to the Royal Commission that fighting amongst the students was occasioned by them bringing family disputes into the school.[72]

16.5.29 Ralph Folds[73] suggests that the nature of European-style schooling and Anangu (Pitjantjatjara) resistances to it are mutually conducive to high levels of conflict within Anangu communities, and makes self-determination a problematic and contradictory goal:

> *[C]oercion leads to a deepening of the already considerable distrust of school by Anangu, yet in the midst of this conflict children must still attend school. The imposition of education generates enormous cultural stress in communities. But the more the communities resist school the more they are seen as in need of 'help' and ' education' 74*

16.5.30 Writing of north-west New South Wales, Dr Gillian Cowlishaw likewise points to the conflict between compulsory school attendance and a social environment in which an Aboriginal presence at school is discouraged and unwanted by non-Aboriginal parents.[75]

POVERTY AND LIVING CONDITIONS

16.5.31 The Commission has also heard how low achievement can be linked to a student's home environment. An Aboriginal speaker at an Underlying Issues hearing commented on problems of overcrowding, when two or three families may be living in the one house: 'Kiddies can't get down and learn to read and write while you've got a great mob of people in the house'.[76] Similarly, in Perth the Commission heard how Aboriginal students couldn't do their homework because of 'overcrowding, lack of furniture and suitable lighting'.[77]

16.5.32 Overcrowding was conspicuous in the case heard at Aurukun: 900 residents live in 118 houses, and, although the average occupancy rate is 7.5 people per dwelling, in more recently constructed dwellings it may be as high as 20.[78] Mobility between houses is also high, particularly for youngsters. In one four-month period in 1986, 46% of males between the ages of 15 and 24 years had moved at least once.[79] At the 1986 census an estimated 6% of Aboriginal households lived in impoverished or substandard accommodation, compared with

1.4% of all Australians.[80] The extent of housing need and the effects of overcrowding are issues I discuss further in Chapter 18.

16.5.33 Poverty is both a cause and consequence of poor educational achievement and is reflected in other social indicators such as health, housing employment and income levels. The link is made explicit by an Aboriginal speaker at a Commission conference who left school

> *because [he] couldn't afford books. At the age of 15 [he] was put on a station for 3 pound a week... and that was in 1963.*[81]

ROLE MODELS

16.5.34 As the attitudes, values and behaviour of parents in the home can have a significant impact on Aboriginal students' perceptions of education, so the presence of Aboriginal teachers and education workers in both the school and the community can be beneficial in developing positive images of substantive Aboriginal participation in education. The value of Aboriginal people as role models in schools has been advocated in a number of reports.[82] The possibility of culturally appropriate schooling being facilitated by direct Aboriginal participation has now been realised in a number of education programs—see Section 33.1.

16.5.35 In hearings before the Commission at Yarrabah a witness outlined attempts at Aurukun to have school leavers in the community play a continuing role in formal school classes: 'the idea being that if models in the community are actually making use of education, then it shouldn't be any problem with the smaller children seeing it as a natural, normal, and desirable thing'.[83]

16.5.36 Aboriginal Education Workers and Teaching Aides have been employed in most States for several decades. It is clear that their mere presence is not enough in itself to significantly affect participation in the education system as a whole. Commissioner Dodson has pointed to the urgent need to go beyond having Aboriginal assistants in schools to having Aboriginal people taking greater responsibility for, and having more authority over, what goes on in schools—see also Section 33.1.[84] Effective changes in Aboriginal education are more likely to come about when Aboriginal people are involved in decision making and in developing educational policy and curriculum.

CURRICULUM

16.5.37 Numerous reports have commented on the inadequacy of curricula to fulfil Aboriginal expectations of schooling and have made recommendations for their improvement.[85]

16.5.38 The House of Representatives Select Committee found that secondary curricula were not providing Aboriginal students with skills that would enable them to pursue further education or obtain employment, nor were they equipping students with the practical skills which would allow them to take up positions within communities and thereby facilitate self-management.[86] This same situation was found by Commissioner Wyvill at Wujal Wujal:

> *Presently, education standards are low, school curriculums are commonly regarded by both parents and pupils as irrelevant, especially given employment prospects. Few opportunities for useful training exist, particularly in the crucial area of administration and*

management.[87]

16.5.39 The inquiry into the death of Paul Farmer heard how inappropriate Aboriginal Studies curriculum materials can be a source of shame, embarrassment and low self-esteem amongst Aboriginal students:

> *Nyungar kids stayed away because they were too embarrassed because here was a white teacher who was saying something about them... [O]ur children felt embarrassed about sitting there and listening to something that didn't relate to them or it wasn't true.*[88]

I further discuss the possibility of modifying school curricula in Section 33.1.

PEER GROUP PRESSURE

16.5.40 As a consequence of being committed to the care of the Director of Children's Services, the young man who died at Aurukun spent a total of nine months at the Petford Training Farm south-west of Cairns. There his literacy improved and he gained some valuable work skills. A problem arose when he was due to return to Aurukun:

> *[T]he deceased expressed fears that he might be ostracised by his friends because of his newly acquired skills. He was frightened that they might think he had become 'too flash' because he could ride a horse and had acquired basic stockman' s skills.*[89]

His skills were never used back in the community and he took up drinking with other young men. A speaker told the Commission:

> *cohesiveness and group style, normally there is a pressure Because of group from the peer group for high flyers to be brought back into place. This doesn't mean of course that high flyers don't exist.*[90]

The Commission heard also that

> *the peer group in boys is stronger and probably lasts longer than it does among girls. It usually forms ... at the age of about 4, 5, 6. It's very strong and it seems to start to lose its cohesive power at about age 19, 20, 21, and that' s usually when boys are starting to form stable relationships and settle back into a more family type group rather than a peer.*[91]

16.5.41 Andrews and Hughes note the strength of Aboriginal group cohesiveness: an individual's sense of worth is largely shaped by relations and responsibilities within a group of kinsmen and mentors.[92] Cooperation is more highly valued than competition. They suggest, as a consequence, that group learning methods are the key to learning by Aboriginal students. Aboriginal students are often alienated by classrooms in which the value of individual assertiveness is predominant. Strategies of avoidance and resistance which have their own bases of group expression and support are a favoured alternative.[93]

ATTITUDES

16.5.42 The House of Representatives Select Committee on Aboriginal Education identified the existence of prejudicial attitudes, the expectation of failure,

and the ridiculing of different values as important factors in the lack of Aboriginal academic success.[94] In the Tim Murray case, Commissioner Wootten noted that:

> *In discussions with Aboriginal parents about the disappointing progress of Aboriginal education, I have been told again and again of the difficulty in keeping Aboriginal children even attending school, much less identifying with its aims, in face of the hurtful comments of their white peers, and the lack of understanding displayed by many teachers.*[95]

16.5.43 The effect of prejudicial and discriminatory attitudes on the part of both students and teachers was commented on by the Aboriginal Issues Units from throughout Australia.

16.5.44 In Brewarrina many parents claimed that young male students who act in a boisterous manner both within and outside the classroom are singled out for special discipline and are made examples of to show the rest of the Aboriginal students that such behaviour will not be tolerated. It is further claimed that similar behaviour by non-Aboriginal students is treated differently, without those students being subject to discipline or made examples of for the benefit of their peers. Many parents in Brewarrina claim that their children are disciplined because they will not accept racist or other derogatory remarks made by other students. The parents also feel that complaints made about this situation are dealt with inadequately—and in some cases are completely ignored by the teaching and administrative staff of the school. They claim that when such incidents lead to violence it is invariably the Aboriginal student who is brought to task, and rarely, if ever, would the non-Aboriginal student face any disciplinary action or be threatened with suspension as is often the case with Aboriginal students.

16.5.45 In Batemans Bay it was claimed by Aboriginal community members and parents that the attitudes of other students cause the majority of their children to leave school at the ages of fifteen and sixteen. According to these parents, senior non-Aboriginal students at the high school are continually harassing the Aboriginal students. As a result, many Aboriginal students react by getting involved in altercations which in turn lead to disciplinary action against them—action which it is claimed is not taken against non-Aboriginal students. In some cases, Aboriginal students are suspended from the school. Those who are not suspended are either not continuing school past Year 10 or are transferring to Moruya

High School.[96]

16.5.46 In some schools it is claimed that teachers actively encourage Aboriginal students to leave as soon as they reach the legal exemption age:

> *Such comments as 'it is no good trying to go through school, you'll never do any good,' or 'what' s the point of you getting a school certificate, you'll never get a job' are allegedly made by some teachers in the schools.*[97]

16.5.47 In Griffith the New South Wales Aboriginal Issues Unit heard claims that, when Aboriginal students reach the legal exemption age, teachers would often go around and supply them with the necessary forms so that they could leave school prior to completing Year 10.[98]

16.5.48 In her study of urban Aboriginal children in one Reception/Year One classroom, Merridy Malin discovered a cycle of marginalisation in which the

attitudes and expectations of both teachers and students directly contributed to poor social and *academic* participation. Elements of this cycle include:

- skills and characteristics valued at home are rendered irrelevant in the classroom;
- a mis-match in communication styles between teacher and students;
- low expectations about the students' academic and social potential creating a lack of rapport between students and teacher;,
- social and academic marginalisation of Aboriginal students, with non-Aboriginal students tending to follow the teacher's lead in attitudes expressed towards them;
- successes by Aboriginal students remaining invisible, unacknowledged and unreinforced by the teacher; 'problem behaviour' was more quickly noticed and responded to than was enthusiasm, resourcefulness or ingenuity.[99]

16.5.49 Malin identified several racial processes in an urban classroom which effectively hampered participation on the part of Aboriginal students. Micro-political processes operated to target and ostracise these students. The teacher expressed negative feelings towards those students who were not members of her 'special group', who were therefore not recipients of such reinforcements as joking and humour, personal conversations and special tasks. This exclusion was also reflected in the way she allocated resources amongst the students.[100] The Queensland Aboriginal Issues Unit reported similarly from Atherton that Aboriginal and Torres Strait Island children were often disadvantaged in terms of opportunities to be active participants in the classroom. They were seen to be 'kept down' while non-Aboriginal children were favoured by teachers in learning activities such as hands-on science experiments.[101] Malin concluded that such teaching strategies were used as a means of social control, but resulted in Aboriginal students spending less 'time on task' in each lesson for a major part of the year.[102]

16.5.50 Aboriginal student assistance schemes have also been identified as a source of prejudicial attitudes in the Australian community. ABSTUDY has acted as a major redistributive scheme by which Aboriginal Affairs funding has been channelled directly to individual beneficiaries rather than organisations. It has been seen as responsible for significant improvements in Aboriginal participation and success rates. [103] ABSTUDY has also been perceived as a major cause of prejudice and 'backlash', especially in country areas where many non-Aboriginal people perceive it as discriminatory. Writing of Walgett in north-west New South Wales, Commissioner Wootten noted:

> *There is... strong 'backlash' against Abstudy grants for children attending school. Some members of a white community that agitated to have Aboriginals excluded from schools in 1917 and for many years thereafter now regard it as objectionably discriminatory to make any redress of grants to Aboriginal children who carry the burden of that history in attending school today. On the other hand schooling subsidies to the families of graziers who now occupy the land taken from Aboriginals are seen as legitimate.*[104]

16.5.51 This view has been taken up by some members of the government, resulting in a 1987 decision to phase out the separate income support element of ABSTUDY, with Aboriginal students henceforth to receive such assistance through AUSTUDY, the scheme for the general population. Aboriginal objections to this decision disrupted consultations about the Aboriginal and Torres Strait Islander

Commission (ATSIC) and resulted in a May 1988 reversal of the earlier decision, leaving a modified incomes test and a separate scheme for tutorial support, excursions support and advice from Aboriginal Education liaison officers.[105]

UNWILLINGNESS TO LEAVE HOME

16.5.52 Leaving home to attend school in a capital city or regional centre can be a traumatic experience. It has been estimated that as many as 10,000 to 12,000 Aboriginal children aged twelve to fifteen years in remote areas do not attend school because of a lack of post-primary schooling facilities within a reasonable distance of their home.[106] Remoteness is, however, a measure of emotional and social, as well as physical, distance. The Commission was told in hearings at Swan Hill of the reluctance of Aboriginal students to pursue tertiary education because of the financial and emotional difficulties occasioned by their having to leave their home town:

> *[T]hey have to go down to Melbourne or Sydney or other places like that. They' re alone, they' re broke, so they end up coming back home anyway. At least they' re with their family being broke.*[107]

16.5.53 In rural New South Wales the physical distance between communities and education facilities was seen as a major inhibition to Aboriginal participation in high school at the senior level:

> *The high school at Brewarrina is a junior high school which means that students wishing to continue on to senior high school must either travel to Bourke daily, which is a trip of around 200 kilometres per day or as most do, attend boarding schools in other centres. Within the current structure of funds available for Aboriginal students to attend high school, it is becoming more difficult for parents to send their children to other centres to attend school and, in addition to this, many of the Aboriginal students are loath to travel to other centres to attend both Year 11 and 12.*[108]

16.5.54 In a statement to the Commission, Matthew Joseph O'Riley, District Inspector of Schools in north Queensland, noted that students must leave Bloomfield river, Lockhart river, Jessica Point, Burketown and all the outer islands of the Torres Strait at Year 8, Hopevale at Year 9, and the remaining schools at Year 11 if they are to continue secondary education. Many such students must board in centres away from family or other relatives. He cites arguments for and against students leaving communities. Some parents wish their children to stay at home to complete Years 11 and 12. Others favour their children gaining broader experiences through boarding. He also notes a 'long-standing problem of students becoming homesick and running away from boarding schools'.[109] The pain and conflict of separation for schooling was also brought to the attention of the Commission by a former principal of Lajamanu School:

> *Lajamanu is about 900 kilometres from Darwin and roughly equidistant from Alice Springs. You can therefore imagine how traumatic it is for children to go away to either Alice Springs or to Darwin. On some occasions they went as far away as Slade School in Warwick in Queensland... [T]hey used to ring me up on my radio ... in tears often because of being homesick and traumatised by their experiences of going away from home, however Lajamanu parents and adults were adamant that they wanted their kids to get proper*

secondary education and they've been consistent about that.[110]

16.5.55 The House of Representatives Standing Committee points to the 'clear constitutional responsibility of State and Territory governments ... to provide a reasonable access to schooling for all children regardless of where they live and [to] endeavour to ensure that children under compulsory schooling age attend'. 111 It recommends use of the Commonwealth Government's Capital Grants Program to assist funding the construction of schooling facilities in remote communities as an adjunct to the efforts of State and Territory governments.[112]

16.6 SCHOOL NON-ATTENDANCE

16.6.1 Non-attendance features in the educational history of many of those who died in custody. The young man who died at Aurukun had 'a very high truancy rate'.[113] Tim Murray often truanted.114 Karen O'Rourke was an habitual absconder from remand homes.[115] Graham Walley was a 'heavy truant'.[116] In the court case in 1965 in which Malcolm Smith—together with his brother Robert—were committed to the care of the Aborigines Welfare Board, there was criticism of his father's lack of control evidenced by the fact that the boy had attended school on only two out of a possible thirty-five days.[117] Commissioner Wootten concludes that the only matters of substance leading to Smith's institutionalisation were 'the need to improve his education and to overcome the lack of control which led him to joy riding on other children's bikes'. Eight years later he could neither read nor write.

16.6.2 Non-attendance at school is clearly related to a number of social and environmental factors. A witness before the Commission, describing Alice Springs camps in the mid 1970s, noted that the incentives to non-attendance at school included lack of washing facilities, inadequate transport, inappropriate school timetabling, and insufficient parental supervision due to alcohol abuse.[118] Evidence in the Wayne Dooler case also links non-attendance with perceived inadequacies in clothing and hygiene, as well as mobility:

> *[B]eing mobile, the children didn't always feel at home in the school environment. They were often rejected because of poor clothing and a standard of hygiene that was [not] acceptable.*[119]

16.6.3 Commissioner Dodson notes the following reasons for non-attendance: not being able to hear or understand what a teacher is saying; not understanding the subject; being homesick or ill; not being able to keep up with other students; and inappropriate punishments[120] .Both Dr Gillian Cowlishaw and Dr Kerry Carrington argue that non-attendance is often perceived by Aboriginal students and parents as a legitimate response to the racism perpetuated by schools.[121] From an Aboriginal point of view, non-attendance at school may be a positive reaction to a hostile social environment and a purposeful assertion of Aboriginal identity in the face of an institution which often denies this identity,

16.6.4 In the Paul Farmer case there was a noted failure of parental involvement in truancy proceedings which could involve a warning leading to a court appearance and committal to an institution:

> *Most warnings to parents about absenteeism from school were by letter. Often the parents did not receive letters and most children kept the notes in their hags. A lot of parents did not have the reading skills,*

so didn't understand the warnings in the letters. A number of parents didn't realise the seriousness of the warnings.[122]

16.6.5 In noting that enforcement strategies in Victoria were not working, speakers at an Underlying Issues hearing in Swan Hill stressed that the involvement of families was crucial in dealing with school non-attendance.[123] The importance of families in dealing with school non-attendance was also stressed by the Aboriginal community of Brewarrina:

> *Many Aboriginal parents are also concerned about the high rate of truancy amongst their children. They claim often they are not aware of this until such time as the child has been absent for a number of days in any one period. These parents believe that information should be given to them in relation to their childrens' truancy, and that there should be better services provided by [the Department of] Family and Community Services, in supervising and overseeing truancy.*[124]

16.6.6 The value of community-based officers who can deal directly with problems of non-attendance has been demonstrated in the far west of New South Wales:

> *The Department of Education has created a position of an Education Officer attached to the Aboriginal Community Support section, to deal with the problem of truancy in Broken Hill and Wilcannia. This officer stated that when he started in the position, he had 100 students in Wilcannia who were regularly absent from school. He said that in the time he has been employed (6 months), that number had dropped by around half. He stated that as far as he knew, there were only three people in similar positions in the State.*[125]

16.6.7 This officer reported that he dealt with both the students and their parents and guardians in attempting to have the children regularly attend school.

16.6.8 The Commission heard of a funded school support program administered by the Geraldton Community Education Centre which targets children who are school refusers or have truanted or are in danger of being suspended: 'So before kids become ... school drop-outs, therefore at risk, therefore potential offenders, we're trying to get them back in the system'.[126] In combating truancy, such schemes are therefore also addressing participation and retention rates at the local level.

16.6.9 It is of concern to this Commission that truancy—that is, non-attendance which is considered to be an offence—has sometimes acted as a point of introduction to the welfare and juvenile justice systems. Referring to juveniles who consistently refuse to attend school, a speaker at a Commission hearing summed up their prospects thus: 'they end up in trouble and they end up inside'.

16.6.10 In New South Wales, Dr Kerry Carrington found that some girls committed to Special Schools for Truants, such as Ormond and Anglewood, were actually placed in juvenile detention centres like Reiby, where they received little or no education and were subsequently released with school exemptions.[127] Of forty-three cases presented to the Children 's Court in which truancy was a major component of 'delinquent' behaviours, twenty-four had their first encounter with the juvenile justice system initiated by a school. In a further sixteen cases, in which the first recorded contact with juvenile justice was triggered by agencies outside of school, the girls' behaviour at, or absences from, school became the basis for

further court action or 'normalising' intervention by welfare agencies. Carrington is particularly critical of the corroboration which takes place between educational, judicial and extra-judicial agencies, which she says 'renders ... school a fertile source of potential recruits to the State's delinquent population'. She found that a variety of extra-judicial agencies had access to school records, information about educational progress, school attendance and a client's general behaviour at school. This evidence was then presented to the Children's Court to justify the disciplinary action recommended by a supervising district officer.[128] Court action, either for truancy under Section 72 (o) of the New South Wales *Child Welfare Act 1939,* or for behaviour involving truancy under other sections of the Act, was proceeded with in the case of five of the six Aboriginal girls in Carrington's sample.[129]

16.6.11 In a similar vein, Dr Gillian Cowlishaw has documented the attempts by a Shire Council in far west New South Wales to obtain information on school attendance to aid its surveillance of young people suspected of thieving:

> *Another form of monitoring by the council was the attempt to obtain from the school information on truancy, particularly the names of absent students, to help catch thieves. They also had discussions with the truant officer at [the Department of] Y[outh and] C[ommunity] S[ervices] but reported; 'Unfortunately when parents are confronted the story is almost invariably "sickness", "no shoes", etc, etc'. The councillors are outraged that the parents refuse to assist the truant officer and the council to control the children.*[130]

16.6.12 These examples show that truancy can sometimes be used to bring children before the courts. A cycle of involvement with the criminal justice system may be thus started. They also demonstrate how fatally easy it is to try to solve a problem by administrative means rather than by trying to get to its roots.

16.6.13 Under the New South Wales *Child Welfare Act 1939,* a school non-attender could be dealt with as a neglected or uncontrollable child and made subject to a wide range of court orders including probation, wardship and committal to an institution. This was the experience of Malcolm Charles Smith.[131] The legislative package which replaced this Act in 1988 removed truancy as sufficient legal grounds for juvenile justice intervention, and Part 5 of the New South Wales *Education Reform Act* 1990 directs responsibility for school attendance much more firmly at the parents of students. One of the consequences of this shift in responsibility has been a debate on procedures for making parents more accountable, including the possibility of their incurring fines. The Education Reform Bill made provision for frees of up to $2,000 for parents who fall to send their children to school.[132] Parents in New South Wales are already liable to prosecution under the *Public Instruction and Education Act 1987* for the non-attendance of their children.[133]

16.6.14 The Northern Territory has legislative provisions for fining parents of school non-attenders, although their use has been uncoordinated and they tend not to be brought against Aboriginal parents:

> *While these regulations have never been imposed on parents in an Aboriginal community, there is anecdotal evidence to suggest that some system of fines is being imposed in some locations, and that it is up to the school council or the community council to decide whether or not to introduce such a system.*

At W., when kids miss out a day, the parents pay $20 ... That's why at W., the kids, they all up there at school in the morning.[134]

16.6.15 In Western Australia, parents can be freed up to $200 for keeping their children out of school under Section 16 of *the Education Act.* Section 17(a) of the Act states that the Children's Court can take action against children for truancy, including placing them on probation. Sections 17(b) of the Western Australian *Education Act* contains provisions for making a child a ward of the State. School Attendance Panels have been set up to deal with absences and expulsions from school.[135]

16.6.16 The move to impose fines on parents of school non-attenders will have its greatest impact on the most impoverished and welfare-dependent sectors of the population, a sector in which Aboriginal people are already over-represented. To impose fines on the parents of Aboriginal children will only exacerbate their poverty and extent of social disadvantage. Punitive responses to the truancy of Aboriginal children effectively blame, punish and locate the source of 'difficulty' with Aboriginal children and their families. They avoid the issues of teaching style, service delivery and social environment which often make schools an unpleasant place for Aboriginal children.

Recommendation 72:

That in responding to truancy the primary principle to be followed by government agencies be to provide support, in collaboration with appropriate Aboriginal individuals and organisations, to the juvenile and to those responsible for the care of the juvenile; such support to include addressing the cultural and social factors identified by the juvenile and by those responsible for the care of the juvenile as being relevant to the truancy.

16.7 SUMMARY

16.7.1 Commissioner Dodson in his report records widespread disaffection with the education which is presently being offered to Aboriginal people:

They spoke ... of it 'failing' them, of being 'wrong', unable to cope with their needs, being 'irrelevant', like a 'conveyor belt' which provides a final unhealthy and hopeless situation.[136]

16.7.2 To engender a feeling of failure at school places children at risk of taking from school a sense of failure for life. Commenting on the inseparable effects of racism, education and self-esteem in the case of Tim Murray, Commissioner Wootten has written:

We should learn from Tim' s sad story the importance of educational and other steps on the one hand to encourage in Aboriginal children self-esteem and pride in their inheritance, and on the other hand to break down the ignorant and prejudiced stereotypes so commonly and often unconsciously adopted by their white peers.[137]

16.7.3 Despite some notable improvements in participation and outcomes, Aboriginal youth, in particular, remain poorly served by the various education systems available in Australia. Evidence drawn from the cases and hearings conducted by this Commission repeat and amplify many of the findings of previous investigations into Aboriginal education. This evidence suggests that low

self-esteem, diminished educational opportunities, and a consequential lack of employment prospects, are significant factors in the disproportionately high rate of Aboriginal imprisonment.

16.7.4 Evidence also suggests that Aboriginal resistance to school, as displayed in high levels of non-attendance, operates to increase the chance of Aboriginal youth entering the juvenile justice system by way of welfare intervention and court appearances. Commissioner Dodson has commented on the fact that Aboriginal people, having been denied participation for so long, are now faced with schooling as an imposed obligation.[138] Non-compliance with this obligation is likely to cause further intervention by the state' s welfare and justice systems. This is not the way to go, particularly given that the schooling offered has often been far from satisfactory, the school atmosphere not congenial and the child often being subject to many of the inhibiting factors discussed above. Rather than penalise the child in the justice or welfare system we must try to understand and solve the problem.

Chapter 17 EMPLOYMENT, UNEMPLOYMENT AND POVERTY

In Chapter 17, the relevance of low economic status of Aboriginal people to their disproportionate rate of custody is explored. It is clear from available information that by nearly every economic measure, Aboriginal people are significantly poorer than any other sector of Australian society. High levels of unemployment, particularly amongst Aboriginal youth, low income and occupational status levels are continuing features of Aboriginal life. The resulting effect is that for many Aboriginal people, dependency on welfare payments is an inescapable conclusion. I point out that this situation is part of the historical legacy of the dispossession of Aboriginal people and their continuing exclusion from economic power structures rather than the making of Aboriginal people themselves.

I examine the particular problems of those people living in rural communities where employment prospects are low and unlikely to improve given the suppressed rural labour market. It is in these communities, in particular, that innovative policies and programs which are suited to the particular local needs, must be devised. In some locations, programs to redress the economic disadvantage suffered by Aboriginal people have been implemented. I discuss these programs in more detail in Chapter 34, in Part F. The limited opportunities for economic independence is considered by Aboriginal people as a matter of serious concern and is an area which must be addressed.

17.1 THE RELEVANCE OF ECONOMIC FACTORS TO THE CUSTODY RATE

17.1.1 Since the colonisation of Australia, Aboriginal people have been progressively denied access to the means by which they traditionally supported themselves, yet they have not been able to share equitably in the benefits of the contemporary economy which was imposed upon them. Their semi-nomadic hunting and gathering economy has been largely destroyed. Through much of the last 200 years, Aboriginal people were prevented by discrimination and government policy from the opportunities to sell their labour, or to receive equitable wages for their work. Aboriginal people became entitled to receive equal wages in several States only twenty-five years ago, just as contractions in the rural economy extinguished many of the jobs which had previously been their only access to wage employment. Restrictions on their access to the cash economy, restrictions on their places of residence and mobility, and discrimination in employment and education have led to the marginal economic status of Aboriginal people in Australian society today.

17.1.2 Some Aboriginal people, in particular those resident on outstations, have

chosen to adopt a lifestyle which gives priority to social, rather than material, concerns. However, the majority of Aboriginal people in Australia today do seek to share in the mainstream economy, and for many, the opportunities to do so are limited. In recent years Aboriginal people have become increasingly dependant on welfare payments as employment opportunities have declined. By every measure of formal economic status, Aboriginal people today are significantly poorer than any other discrete group in Australian society.

17.1.3 The poverty which the majority of Aboriginal people experience today is unacceptable both to them and to the Australian community generally. Without ameliorating this poverty, there is little hope that the other social disadvantages which Aboriginal people experience can be overcome.

ECONOMIC STATUS OF THOSE WHO DIED

17.1.4 Eighty-three of the 99 people whose deaths were examined by the Royal Commission were unemployed at the time of their deaths. Although the majority of the deceased had been in employment at some periods during their lives, 27 of the deceased were usually unemployed and a further 8 were pensioners. Like many other Aboriginal people, for a large majority of those who died in custody employment was an intermittent, rather than a constant, factor in their lives.

17.1.5 Analysis of the employment histories of those who died reveals an almost universal involvement of those who died, or their parents, in rural industries. They also reflect the limited occupational status of the Aboriginal population generally. Of the 68 that had a usual occupation the majority were employed as labourers (23) or as stockmen (14) or rural labourers (12), and one was employed as a shearer. Only 12 of the deceased worked in other occupations, and of them only three had semi-skilled occupations: one was a supervisor (on a Community Development Employment Project), one a tradesman and one was in a clerical position.

17.1.6 As is highlighted in subsequent discussion, although many Aboriginal people are able to get employment at some times, employment is often on an intermittent, rather than a regular basis. Despite a significant degree of work experience amongst most of the deceased, only fifteen of those who died were employed immediately prior to the apprehension which led to their death. Seven of them were in pan-time employment, most of them in unskilled occupations. Only two were in occupations which could be regarded as semi-skilled: Bobby Bates was employed as a works supervisor, and David Gundy was a factory hand. Seven of the fifteen came from Queensland, and of them five were employed on Community Development Employment Projects (CDEP) schemes: the young man who died at Aurukun was employed pan-time as a labourer on a CDEP scheme with the Aurukun Shire Council; Daniel Lorroway was employed full time as a labourer; Darren Wouters was employed part-time as a labourer;, Monty Salt was employed pan-time as a stockman; Alaistair Riversleigh was employed pan-time as a labourer on CDEP at Doomadgee Council; Deidre Short was employed pan-time as a cleaner on a CDEP scheme; and Bernard Johnson was employed full-time as a labourer.

17.1.7 Of the remaining people who died who were employed at the time of their apprehension one was from the Northern Territory (Jambajimba, a part-time stockman) and one was from New South Wales (Max Saunders, employed pan-time on a prison work-release program). The remaining deceased were from Western Australia. All were in full-time employment: the man who died at Sir Charles Gairdner Hospital, a stockman; Ronald Ugle, a gardener; Robert Anderson, a builder's labourer;, and Dixon Green, a stockman. None of those who

died in South Australia, Victoria or Tasmania were employed at the time of their apprehension.

17.1.8 There can be no single explanation for the incidence of deaths in custody. The employment history of those who died reveals both the variations between people from different generations and different regions, and the different significance of employment as a factor in their lives. An overview of the employment details known of the deceased suggests a number of prevailing patterns:

- A significant number of the deceased had a history of employment;
- Work was normally intermittent rather than long term;
- Occupations tended to be relatively low status with little prospect of occupational diversification or advancement;
- Occupations tended to be in industries (in particular rural industries) where jobs were often vulnerable to economic changes;
- Most of the younger deceased had never held employment—there was a correlation between juvenile incarceration and subsequent unemployment;
- Some of the deceased were older men who had been in full-time employment earlier in their lives, and who had turned to alcohol in later years when unemployed.

LINKS BETWEEN CUSTODY AND POVERTY

17.1.9 The over-representation of Aboriginal people in the criminal justice system has been highlighted throughout this Part as the single most significant factor in the high number of Aboriginal deaths in custody.

17.1.10 There is a now well-established connection between unemployment, low economic status and imprisonment. A study of deaths in non-custodial corrections undertaken for the Royal Commission found that 71% of those who died in 1987 and 1988 were unemployed at the time of their deaths. This study examined both Aboriginal and non-Aboriginal people, but the data revealed that unemployment among those Aboriginal people who died was somewhat higher (87%).[1]

17.1.11 It has been suggested that relative financial independence and security associated with regular employment can play a vital role in reducing crime. Poverty can in some cases be a major reason for the commission of an offence. At the time he died, Ricci Vicenti was being held in custody on charges of breaking and entering a supermarket and stealing cigarettes and food. He told the arresting officers he had committed the offence 'because there was no food at his auntie's house'.[2]

17.1.12 Of particular concern to the Royal Commission are the high levels of young Aboriginal people who are unable to find work. In a contracting labour market, factors such as prior imprisonment can weigh heavily against young people seeking employment. The correlation between unemployment, previous contact with the criminal justice system, and the boredom and insecurity associated with unemployment render many Aboriginal youth particularly vulnerable to the continuing cycle of unemployment and imprisonment. This is illustrated by the situation of some of those who died. Of the 99 people who died in custody, nineteen were aged 21 or under. Although all but two had some secondary education, only two were in employment at the time they died. All had previous encounters with the criminal justice system, and all but one had previous convictions. Of the nineteen, fourteen had spent time in juvenile institutions.

17.1.13 It should be remembered that experience of juvenile detention indicates

a considerable and serious involvement with the criminal justice system; in all Australian jurisdictions juvenile detention should be imposed only where a child has a long history of offending or where the offence is of a particularly serious nature. Although some jurisdictions prohibit the publication of information about juvenile convictions for this reason, there are more subtle ways in which prior juvenile offending can affect employment chances. In particular, long periods of detention can interfere with schooling and lead to a state of institutionalisation that inhibits the serf-reliance and reliability which are important in employment.

17.1.14 A long criminal history as a child will predispose most judicial authorities towards further terms of imprisonment in adult courts. Additionally, in small country towns particular individuals with long offending histories become renowned for offending and are unable to escape the cycle of official scrutiny, rejection by the respectable elements of the community and rebellious behaviour which characterises their lives. Without intensive and appropriate intervention, there is little hope for young people like this to escape their situation. Several of those who died had very long criminal histories; for example, Michael Gollan, who died aged 17 years, had sixty previous convictions; Graham Walley, who died aged 21, had 146 previous convictions, and Perry Noble, who died aged 20, had 63 previous convictions.

17.1.15 Gale's study of Aboriginal youth in South Australia provides substantial evidence to support the hypothesis that Aboriginal youth in that State tend to be given the harshest options in their encounters with the criminal justice system. This over-representation increases as Aboriginal people move through successive stages of the system.[3] Although this study is limited to South Australia, it showed that two critical socioeconomic factors impinged on the decision making by discretionary agents within the criminal justice system unemployment and household structure. Employment status was seen to be crucial in making decisions over arrests (on the assumption that unemployed people were more likely to abscond, they were more likely to be arrested than summonsed); in decisions over court appearances (on the assumption that employed people were in danger of losing their jobs, they were less likely to be taken to court); and over detention (employed people were better able to pay fines, and so were less likely to be detained).

The Social and Psychological Consequences of Poverty

17.1.16 There have been many studies linking poverty and low social well-being of people in Western countries. They tend to correlate the fact of poverty and the consequent social disorders which often result in contact with the criminal justice system. These analyses generally focus on non-Aboriginal people, for whom regular formal employment is very important. Their application to Aboriginal people, who may have different definitions of and attitudes to employment, may well be inappropriate in some cases. Certainly for Aboriginal people living in urban areas, whose lives are closely related to mainstream society, are likely to experience the consequences of poverty in much the same way as poor non-Aboriginal people.

17.1.17 Although Aboriginal views of what constitutes 'employment' vary considerably in different parts of Australia, it is reasonable to assume that for all people a sense of productive accomplishment (not necessary in the form of formal employment) is an important part of serf-worth. In a study of stress and ill-health among rural New South Wales Aboriginal people, Sibthorpe notes:

The psychological meaning of unemployment to Aborigines remains

to be investigated, as do the meaning of concepts of work and leisure. However, productive activity is the mainstay of daily life in all societies and there is no reason to suppose that it is any different for Aborigines.4

17.1.18 The effects of living with long-term chronic unemployment can be tremendously destructive for Aboriginal people who live within non-Aboriginal communities where self-worth is closely tied to regular, permanent and productive employment. The symbols of comfortable living are harder to display because of the low incomes flowing to families. The consequent feeling of inequity contribute to low serf-esteem.

17.1.19 Poverty has important consequences for health. Access to a range of nutritional foods, medical assistance, health advice and education and facilities conducive to good health are constrained by financial hardship. Ultimately, poverty adversely affects the access of Aboriginal people to very many social goods and services; those available only from the mainstream market are more accessible to those in secure employment than to the financially marginalised.

17.1.20 In a number of the cases examined by the Royal Commission, periods of excessive alcohol use correlated closely with periods of unemployment. In many of the discussions which I held with Aboriginal people, the need to provide employment as an alternative to the boredom and alcohol use associated with it was mentioned often.

Aboriginal Views

17.1.21 It is apparent to me that although some Aboriginal people (most notably those living in small remote communities) expressed ambivalence about full-time employment, what most Aboriginal people want is jobs for themselves and for their children. Commissioner Dodson reported to me that the Aboriginal people he consulted during the course of his commission wanted access to employment opportunities.[5]

17.1.22 The Report of the Aboriginal Women's Task Force, *Women's Business,* reported in 1986 that Aboriginal women everywhere in Australia

voiced concern for their young peoples' unemployment, their lack of economic independence, and the social problems connected with it. Unable to get jobs, the young people have a lot of time to fill in. All too often they turn to alcohol, commit petty crimes and, perhaps the most destructive of all, in some areas, to petrol sniffing .[6]

17.1.23 Amongst the difficulties associated with unemployment and with employment reported to the task force were the stresses associated with travelling away from home for employment, and the consequent effect upon children's education, the short-term nature of jobs created through training schemes, and the discrimination experienced by many, particularly in country areas.

17.1.24 The views of the very many Aboriginal people who gave evidence before this Commission strongly indicate the effects that long-term unemployment can have: a lack of self-confidence, a sense of permanent and inescapable marginalisation, a feeling of powerlessness. The next section of this chapter considers the statistical indicators of the extent to which Aboriginal people are unable to benefit from the economy. It is important to balance the perspective of contemporary Aboriginal involvement in the economy with the contributions they have made through employment. The inequities which characterise this

involvement are all the more marked when one considers the profound importance of Aboriginal labour in building Australia's primary industries-cattle, sheep, agriculture and fishing. Aboriginal workers in the Pilbara looked forward to gaining employment in the iron ore boom after the Wittenoon mine closed. Regrettably, they were not able to get employment and have returned to the poverty associated with fringe-dwelling camp life.

17.1.25 The employment status of Aboriginal people appears prominent in their involvement with the criminal justice system and is identified by many Aboriginal people as a source of considerable concern. The characteristically low employment status of many Aboriginal people is part of the marginalised economic status of Aboriginal people generally. Not only is participation in the formal labour market restricted, but alternative means to economic security and status have been denied Aboriginal people and continue to be inaccessible to them. An examination of the status of Aboriginal people in the economy generally must consider a history of marginalisation, measurable dimensions of disadvantage and the particular patterns of disadvantage under which specific gender, age and regional groups of Aboriginal people labour.

17.2 ABORIGINAL PEOPLE IN THE ECONOMY

17.2.1 Economic relations are those in which we engage for the purpose of reproducing ourselves, at a most basic level through the production of food and shelter. Economic status refers to the relative material well-being of individuals, households, or groups within our society. This status reflects the social and economic relations between individuals, and as such it is somewhat artificial to consider the status of individuals, or groups of individuals, independently of the economic system as a whole.

17.2.2 The purpose of this section is to focus upon the ways in which Aboriginal people participate in the formal economy, and the extent to which they benefit from it. The discussion draws on available quantitative data concerning standard measures of formal participation in the mainstream economy. Section 17.3 then examines the interrelationships between these factors of participation and status.

MEASURES OF ECONOMIC STATUS

17.2.3 Aboriginal economic status can be measured in two ways. Firstly, Australian censuses of population and housing can be used to identify Aboriginal and Torres Strait Islander people as a sub-set of the Australian population. Secondly, specific studies of Aboriginal people in particular areas shed light on the economic activity undertaken by Aboriginal people in those places. Geographically discrete studies show that there are marked differences between Aboriginal people in different locations which may be obscured by the breadth of census data.

17.2.4 In Chapter 11 I discussed some of the limitations of social indicators. Economic indicators as normally employed by researchers and administrators in the analysis and evaluation of processes and programs measure quantifiable material resources. These indicators, based as they are on characteristically non-Aboriginal assumptions and value judgments as to the priority of material wealth and the value of particular resources, might be prone to misrepresent quality of life issues such as family and community cohesiveness which are particularly relevant to Aboriginal people. Nevertheless, such indicators, if interpreted with these qualifications in mind, can illustrate the dimensions of disadvantage endured by Aboriginal people.

17.2.5 The fact that this section presents primarily statistical data drawn from

the 1986 census reflects the paucity of recent data about Aboriginal economic status, rather than a preference for statistical information. The broad picture which is provided by this information, particularly as it is (with some limitations which have been noted earlier in this report) comparable with previous census data, helps to identify those sections of the Aboriginal population which are most disadvantaged. While local information is crucial for accurate planning of strategies by Aboriginal people, this broad national picture shows that in 1986, despite significant efforts by governments at both State and Commonwealth levels, the economic position of Aboriginal people was worse in relative terms than in 1971. While this data cannot realistically be used to evaluate the current Commonwealth policy, the Aboriginal Economic Development Policy, it shows a trend which indicates previous policies had little impact. Whether the Aboriginal Economic Development Policy has been successful in improving economic equality between Aboriginal and non-Aboriginal Australians is a question which will not be answered until data is released from the 1991 census.

17.2.6 The following subsections summarise the status of Aboriginal people today in terms of indicators such as employment, labour force participation, occupation and income. Where appropriate, comparisons with the whole Australian population are made. The special context of young people and women in the Aboriginal population is also discussed briefly. I have been greatly assisted in the preparation of this chapter by referring to two research papers prepared for the Royal Commission; one by Dr Alan Gray of the National Centre for Epidemiology and Population Health and Dr Habtemariam Tesfaghiorghis of the Centre for Aboriginal Economic Policy Research at the Australian National University, and one by Associate Professor Paul Boreham of the Department of Government at the University of Queensland. Dr Jon Altman from the Centre for Aboriginal Economic Policy Research at the Australian National University also provided a number of drafts of papers currently in preparation which have been of invaluable assistance.

17.2.7 Much of the information which has been provided to me includes cross-tabulations and analysis which is unavailable in published literature. For the sake of brevity, I have not included the large number of detailed tables in the text. These are included as an appendix to the chapter.

EMPLOYMENT

17.2.8 Participation in employment is one important measure of the economic status of adults. In societies, such as Australia, where some income support is available from government for people who do not work, it is not the only measure of economic well-being. Nevertheless, in the absence of the ownership of considerable capital wealth, employment, in its provision of a level of income normally higher than that available from welfare payments, is important to economic security and well-being. Both Aboriginal Australians and non-Aboriginal Australians share negative perceptions of reliance on government welfare, even though the nature of these negative perceptions might not be the same for all people.

TABLE 17.1 COMPARISONS OF SELECTED INDICATORS BETWEEN ABORIGINAL AND NON-ABORIGINAL POPULATION BY STATE: 1986 CENSUS.

	NON-ABORIGINAL POPULATION				
Slate	Percentage employed	Percentage unemployed	Labour force (%)	Median individual	Income ratio

				income ($) [x]	State/Aust (%)
NSW	61.7	6.8	68.5	9 650	99.9
VIC	63.9	4.8	68.7	10 210	105.7
QLD	60.7	7.4	68.1	8 780	90.9
SA	63.1	6.6	69.7	8 820	91.3
WA	63.9	6.3	70.2	9 720	100.6
TAS	61.0	6.7	67.7	8 650	89.5
NT	68.4	5.7	74.1	15 270	158.1
ACT	72.4	3.5	75.9	15 470	160.1
Australia	62.6	6.2	68.8	9 660	100.0

ABORIGINAL POPULATION

	Percentage employed	Percentage unemployed	Labour force (%)	Median individual income ($)	Income ratio [Y]/[X] (%)
NSW	32.4	21.7	54.1	6 310	65.4
VIC	44.6	14.1	58.7	7 620	74.6
QLD	34.3	17.7	52.0	6 270	71.4
SA	34.2	18.1	52.3	6 270	71.1
WA	27.5	17.5	45.0	5 830	60.0
TAS	49.1	13.2	62.3	7 540	87.2
NT	26.0	14.0	40.0	5 920	38.8
ACT	59.3	9.9	69.2	12 340	79.8
Australia	32.6	17.8	50.4	6 210	64.3

Definitions:

Percentage employed and unemployed refer respectively to the number employed and unemployed aged 15-64 years out of population aged 15-64 years, and the labour force is the sum of these two categories.

Income ratio State/Austr. is the ratio of non-Aboriginal State individual annual incomes to overall Australia income, Australia equals 100.0; and

Income ratio Ab/non-Ab is the ratio of Aboriginal to non-Aboriginal median annual income expressed as a percentage.

Source: Compiled from Australian Bureau of Statistics, 1986 Census tabulations

17.2.9 While the demands of regular employment present difficulties for many Aboriginal people, employment rates and labour force participation rates are also social indicators that suggest the social roles that people play in their communities. The process of earning income is regarded as a valued social role which confers status on the person engaged in that activity. While communities of people might also value other social roles as highly or more highly, it is in this sense that labour force data function as very useful social indicators.

17.2.10 Table 17.1 shows (along with other indicators) the levels of employment and unemployment for Aboriginal and non-Aboriginal people in Australia in 1986. Aboriginal employment rates in most States were only half those for non-Aboriginal people. It is also apparent that employment rates fell during the fifteen year period from 1971 to 1986 (see Table 17.2 in the supplementary tables of this chapter). Between 1971 and 1986 the proportion of Aboriginal men over 15 who are employed fell from 60% in 1971 to 40% in 1986, a drop of 20%. During the same period, male employment in Australia generally fell from 79% to 66%, a drop of 13%. Employment rates for Aboriginal women rose slightly—from 21% to 22%, but not as much as those for women in the population generally—from 36% to 42%.

17.2.11 There are many problems in arriving at measures of unemployment within remote Aboriginal communities, particularly as people may be engaged in varying degrees of subsistence work. One of the major problems in estimating employment and unemployment rates in the communities is the prevalence of CDEP schemes which provide minimal employment but remove large numbers of

people from the lists of unemployed. Altman has calculated that around 80% of the Aboriginal population over 15 years of age in communities were not formally employed.[7]

LABOUR FORCE PARTICIPATION

17.2.12 Many of those who are not part of recorded unemployment may be not actively looking for work because of an assumption that there is no work to be found. Others may for various reasons not be in receipt of unemployment benefits (UB), and therefore not recorded as seeking work. Numbers in this latter category are likely to increase in times of economic recession when jobs become more difficult to acquire. The discrepancy between recorded and hidden unemployment is likely to be greater for marginal groups in the labour market. The problem of hidden unemployment is particularly relevant to Aboriginal people given their frequent geographic and cultural isolation. One way of assessing the extent of hidden unemployment is to examine labour force participation rates.

17.2.13 Labour force participation rates measure the number of people who are 'economically active'—either in employment or seeking employment.[8] People who are in receipt of pensions or supporting parents benefits, or who are in full-time study, or who are not registered for UBs, are excluded from this category.

17.2.14 There is a much higher proportion of Aboriginal people not in the labour force than is the case for the whole population. Almost half the Aboriginal population in not in the labour force, compared with 38% for the Australian population as a whole (see Table 17.2 in the supplementary tables of this chapter). Reluctance to register for unemployment due to suspicion, hostility or isolation, or through a lack of awareness of rights, as well as increased mobility may explain this high level of hidden unemployment.

17.2.15 The labour force participation rates for men are particularly significant. In 1986, 36.9% of the Aboriginal male population was not in the labour force. Because of the shorter life expectancy of Aboriginal men, it is unlikely that many of these people are aged pensioners. In 1986, less than 1.5% of the Aboriginal male population was aged over 65. Similarly, it is unlikely that many of them are supporting parents. As Chapter 11 described, few Aboriginal families are headed by single men. It must be presumed that these figures indicate that a large number of Aboriginal men are, at least periodically, not in receipt of any income and are dependant on family members for support. This stretches the limited income of Aboriginal families even further.

OCCUPATION

17.2.16 The occupational status of the Aboriginal population who are in employment sheds some light on the reasons for the decline in Aboriginal employment rates. It also reinforces the picture of disadvantage; Aboriginal people are clustered at the bottom of occupational ladders, and in particular occupations which later discussion will show have been particularly hard hit by recent changes in the economic climate in Australia. The major growth in Aboriginal employment has been in the public sector, but this has been more than counterbalanced by a decline in private sector employment.

17.2.17 A major difference between Aboriginal and non-Aboriginal employment is the comparatively high level of public sector employment among Aboriginal people (see Table 17.3 in the supplementary tables of this chapter). While Aboriginal employment at all levels of government has increased from 31% in 1976 to 40% in

1986, for the total population public sector employment has remained stable at 25% over the period. It may be the case that Aboriginal employment in the private sector is even lower than that suggested by the Census data; much or even most of the 'private' employment (in Aboriginal organisations and on CDEP schemes, for example) is actually government funded.

17.2.18 Not only are Aboriginal people under-represented in private sector employment, suggesting the operation of discriminatory practices amongst private sector employers, but they generally have very little control over capital wealth. The percentage of Aboriginal people in self-employment or employee in 1986 was 3.8% compared to 16.2% for the total population.[9] A much lower percentage of Aboriginal people occupy managerial and professional occupations, which are likely to be better paid, likely to involve opportunities for promotion, long-term security, skill development and control and supervisory responsibilities; a higher proportion of Aboriginal people are found in labouring and unskilled or semi-skilled occupations which are usually lower paid (see Table 17. in the supplementary tables of this chapter).

17.2.19 The decline of rural industries has affected the employment rates of Aboriginal men in particular. Between 1971 and 1986 there was a substantial drop in the numbers of Aboriginal people employed in agriculture, forestry, fishing and hunting. In 1971, 28.1% of employed Aboriginal men worked in these areas. By 1986 the proportion had fallen to 9.4%. Coupled with increasing unemployment overall, these figures show the significant effect which the decline in rural industries has had on Aboriginal people.

17.2.20 The concentration of Aboriginal workers in the most vulnerable sectors of the economy reinforces the notion that public sector employment may be a very important avenue for change. Aboriginal organisations in particular constitute a significant proportion of public sector employers. A study undertaken recently for the Combined Aboriginal Organisations of Central Australia showed that Aboriginal organisations represented the largest employer of Aboriginal people in the region.[10]

17.2.21 It is important to recognise, however, that within the public sector occupational segregation is very marked. Aboriginal people tend to be concentrated in the delivery of services like education, health and welfare to Aboriginal communities, and women are frequently employed as assistants to European staff.<hotword "v2chap17-11">[11] While these jobs may be less vulnerable than many in the private sector, they frequently offer little opportunity for entering mainstream public service career paths.

INCOME

17.2.22 Whilst employment fulfils more social goals than simply the generation of income, measures of income are in a Western sense the most common, if crude, measure of economic status. In a 1989 study of methods of poverty measurement in Australia, the Economic Planning Advisory Council noted that poverty has re-emerged as a major social problem, accompanied by changing patterns associated with long-term unemployment, family breakdown and homelessness. Measurement of poverty in Australia has been dominated by the use of the Henderson Poverty Line, an income-based measurement. Alternatives to the measurement of poverty in purely income terms include: measurement of relative deprivation in terms of outcomes in standards of consumption and consequences for living standards; determining the poverty line through measures derived from surveys of the population's judgements as to what constitutes a minimum

necessary income; and analysis of the persistence and variability of poverty status (i.e. do individual people remain poor for much of their lives or do people move in and out of the 'poor' class).

17.2.23 The objective of poverty research must be to aid the understanding of the problem of poverty and guide actions to combat it. Three organisations currently involved in research into poverty are: the Institute for Applied Economic and Social Research (IAESR), the National Institute for Economic and Industry Research (NIEIR) and the Australian Institute of Family Studies (AIFS). A study is also being conducted at Flinders University and Adelaide University in South Australia, entitled the *Australian Standard of Living Study.* The study focuses on developing accurate indicators of the standard of living actually achieved, in terms of housing, consumer durables, social participation, transport, etc., rather than indirect measures which use a proxy such as income to indicate a capacity to achieve a specific standard of living. It is imperative that measures of poverty should adequately reflect cultural priorities, which may differ between different groups, and between people in different locations.

17.2.24 Measures of cash income do, however, provide an indication of the capacity of Aboriginal people to access the goods and services which are considered to enhance the quality of life. It is clear that the incomes of Aboriginal people have not appreciably improved in comparison with those of the general community since 1971.

17.2.25 Data from the 1976 census indicated that the per capita income of Aboriginal people was about half that of the Australian population as a whole.[12] Although some analyses[13] have concluded that there has been no appreciable increase in Aboriginal incomes, others suggest that there have been improvements between 1976 and 1986. It appears that during this period, the ratio of Aboriginal median annual individual income to total population individual annual income rose from 59.7% in 1976 to 64.8% in 1986. The most significant increases were in women's incomes.[14] Aboriginal incomes are still significantly less than non-Aboriginal incomes (see Table 17.6 in the supplementary tables of this chapter).

17.2.26 It is also apparent that the distribution of income between different household types is also very significant. An analysis of income data from the 1986 Census is given in Table 17.7 (in the supplementary tables of this chapter). As noted earlier, incomes of Aboriginal households are often the incomes of recipients of government social security payments, which tend to equalise incomes in households where people are employed and those where people are not.

17.2.27 Most Aboriginal income earners other than male household heads in 1986 had incomes of less than $9,001, except in the Australian Capital Territory. The median incomes of male household heads range fairly close to the overall median of $12,200, from $10,200 in the Northern Territory to about $15,000 in Victoria and Tasmania, except for the Australian Capital Territory, which had a high median of $20,000. The Australian Capital Territory stands out with higher than usual income levels owing to the employment of many Aboriginal people in Australian Government public service positions.

17.2.28 The variation between the States evident for individual income levels is less prominent in the case of family incomes. Most of the States have median incomes for single-parent families close to the overall median of $9,400, and the only States with median incomes for other types of families far from the overall median are the Northern Territory, at $17,000 well below, and Victoria, at $22,800 well above.

17.2.29 While almost half of single-parent families had incomes less than $9,000, and in some States more than half, other families seem relatively well off; only in the Northern Territory did more than 10% of Aboriginal families apart from single-parent families have these low incomes. This is a very interesting finding, because individual incomes, even of household heads, had been low indeed. It demonstrates that the combination of earnings and social welfare payments from family members which goes towards the constitution of family incomes works effectively in many Aboriginal households towards producing reasonable income levels. The major exception is the case of single-parent families, which stand a great distance below other families in median income levels: in all States except the Northern Territory the median income for single-parent families is half or less than half the median income of other families.

17.2.30 The pattern found suggests a levelling of family incomes through contributions from different members of families. This levelling effect is evident again at the level of household incomes, median values of which are close to the overall median level for one-family households in all States except the Capital Territory. However, for multi-family households there is considerable variation between the States. Single-person households generally have very low incomes.

17.2.31 This analysis shows in a very clear way that poverty in the sense of low incomes is associated more with particular family and household structures than with geographical location in the different Australian States.

DEPENDENCE ON SOCIAL SECURITY PAYMENTS

17.2.32 Not only is the income of members of the Aboriginal population low relative to that of other Australians, the source of income for Aboriginal people is largely through social security. Fisk estimated that 53% of Aboriginal income derives from social security payments, compared with 11% being derived from government welfare payments for average Australian household income.[15] This emphasises the problems of income distribution outlined above, and reinforces the perception of .vulnerability of the Aboriginal population, particularly as it is a population m which the combination of low employment and high numbers of young dependents means that there is a great deal of pressure on the wages of those in employment.

17.2.33 The potential advantages of welfare benefits for some Aboriginal people should not be overlooked. Welfare can provide a means of basic income support for those who pursue a subsistence life style. It should also be noted that whereas social security benefits are adjusted for dependants, wages are not. In the case of poorly paid labouring or station jobs, the income of a household head from welfare may in fact be higher than income from wages.

THE INFORMAL ECONOMY

17.2.34 Aboriginal people in many parts of Australia are still able to supplement their cash income with subsistence hunting, gathering, fishing and gardening. In areas where Aboriginal people have access to land and native species have not been destroyed, subsistence production can significantly improve real incomes.[16]

17.2.35 One study of the economy of an outstation in Arnhem Land found that primary subsistence production accounted for 64% of total cash and imputed income. A time allocation study revealed that 72% of productive labour time was spent on subsistence activities.[17] Fisk estimated that in 1981 non-monetary income was significant for about 5% of the Aboriginal population. Since that study,

a large number of people have returned to their country to establish outstations; so an increase from 5% is to be expected. He concluded that the imputed income from subsistence activities at outstations raised incomes of outstation residents above those of towns and Aboriginal settlements to almost the level of those living in capital cities.[18]

17.2.36 The ability to pursue subsistence activities also reinforces the cultural ties to land and social exchange obligations which are of vital importance to Aboriginal people. However, subsistence production is only possible where a relatively large area of land supports a small population, and where clearing, enclosure and grazing of land have not reduced the local game and vegetation. In other areas where European occupation has affected the productivity of the land Aboriginal people still supplement their diets with hunting, but expensively because of the high cost transport.

REGIONAL VARIATION

17.2.37 Elsewhere, this report has emphasised the heterogeneity of the Aboriginal population. Whilst the variations from town to town and region to region are significant, it is not possible to canvass those comprehensively. In the following discussion, some areas where the economic position of Aboriginal people appear markedly worse are highlighted.

17.2.38 Overall, some considerable differences emerge between people living in different States. This appears to reflect generally the economic status of non-Aboriginal people in those areas. Aboriginal people in the Australian Capital Territory, Tasmania and Victoria showed higher employment levels and lower unemployment levels than in other States, and this is matched by the levels in the non-Aboriginal population. There are, however, two exceptions to this. The Northern Territory which had the highest non-Aboriginal incomes and employment (comparable only to the Australian Capital Territory) is not reflected in corresponding status for the Aboriginal people of the Territory. In contrast, Tasmania which only fared average on the indicators for non-Aboriginal people is one of the States (along with the Australian Capital Territory and Victoria) where Aboriginal people had more equality. The ratio of Aboriginal individual median annual incomes to that of non-Aboriginal people ranged from a relatively low ratio of 39% in the Northern Territory to 60% in Western Australia, and 65% in New South Wales, and to a relatively high level of 75% in Victoria, 80% in the Australian Capital Territory, and 87% in Tasmania. In Queensland and South Australia, this ratio was 71%.

17.2.39 As is discussed later in this chapter, the distribution of Aboriginal people between urban and rural areas is also a significant determinant of economic status. Fisk's study showed higher levels of employment and income in major urban areas, declining to lower levels in large towns and small non-Aboriginal settlements. He also showed higher and rising levels of income at outstations and small communities where subsistence activities supplemented cash income.[19] However, caution needs to be applied in generalising about the effects of geographic distribution. The status of some Aboriginal people, for example those living in fringe camps near larger rural towns, may be very much lower than that of the other Aboriginal residents.

YOUTH

17.2.40 The Aboriginal population is a young population compared with the rest of Australia. In 1986, for example, 40% of the Aboriginal population was under 15

years of age, compared with 23% of the total population. This is due only partly to the comparative longevity of non-Aboriginal Australians compared with Aboriginal people. In itself, this demographic structure implies that Aboriginal youth unemployment will continue to be a significant problem.

17.2.41 In rural New South Wales, one study found unemployment among teenagers was generally over 50%, and in some areas as much as 90%.[20] Aboriginal youth unemployment is about three times that of the non-Aboriginal labour force. In 1985 the unemployment rate for male Aboriginal youth was 44.7% compared with 15.7% for non-Aboriginal people. Unemployment for female Aboriginal youth was 41.7% compared with 13.8% for non-Aboriginal people. Furthermore, Aboriginal people were likely to be unemployed for longer periods than other Australians. Miller also found that only a small fraction of the unemployment differential between Aboriginal people and non-Aboriginal people could be explained by differences in the marketable skills of the two groups, and thus suggested that active discrimination and/or cultural differences may be decisive factors.[21]

GENDER

17.2.42 Historically, Aboriginal women have found employment as privately employed domestic workers, outside formal labour market arrangements.[22] Young Aboriginal women were taken from reserves for these tasks which were considered fitting vocations for them. They were not expected to pursue any higher occupational status which might bring them into conflict with non-Aboriginal workers.[23]

17.2.43 Figures from the 1986 census show that far fewer Aboriginal women than Aboriginal men are actually in the labour force indicating that their lower unemployment rate is rather misleading. Occupational segregation is also marked, and many more Aboriginal women than Aboriginal men are concentrated in the lowest income categories (see Table 17.6 in the supplementary tables of this chapter). In terms of median income, however, Aboriginal women have improved their position relative to Australian women as a whole. Treadgold used data from successive censuses to show that the median income of Aboriginal males as a proportion of the median income of all males had consistently been much lower than the median income of Aboriginal females as a proportion of the median income of all females.[24] Again, however, the relatively high proportion of Aboriginal women not receiving an income must be recalled.

By 1986, the average income of Aboriginal women was approximately 80% of that for all women in Australia.

17.2.44 It would appear that Aboriginal women are subject to the structural disadvantages that affect Aboriginal people as well as to the structural disadvantages that affect women generally. Recent improvements in employment status have been limited to increasing participation and some increase in income, but low occupational status, relative to men, continues to characterise the employment status of Aboriginal women in Australia.

17.3 CAUSES OF ABORIGINAL POVERTY

HISTORICAL PERSPECTIVES

17.3.1 In order to understand the position of Aboriginal people in the economy

today, it is necessary to see the connections between how Aboriginal people have historically been involved in the mainstream economy, and their situation today. The history of Aboriginal involvement in economic development in Australia shows that the economic position of Aboriginal people today is the continuing legacy of ongoing dispossession and exclusion from access to economic power. In Chapter 34 some of the government policies designed to ameliorate this disadvantage are discussed. However, the formal economic system in Australia is not something for which only government is responsible. It is the actions of the whole Australian community which have ensured, until .recently, that Aboriginal people were unable to share equally, or equitably, m the benefits of society.

17.3.2 Differences between Aboriginal people and the Europeans who came to Australia were most marked in relation to their respective economic systems.[25] It was features of the Aboriginal economy, in particular the simplicity of its technology, and the absence of the techniques of English farming and animal husbandry, which led early theorists to place Aboriginal people at the lowest levels of their evolutionary scales.[26]

17.3.3 It is only recently that the complexities of the traditional Aboriginal economic system are beginning to be appreciated by non-Aboriginal social science.[27] Studies by anthropologists, particularly in the last twenty-five years, have concluded that Aboriginal religious and ceremonial life was (and in many places, still is) integrally bound up in activities of daily life, of which food production formed a major part. Aboriginal people, perhaps because of their semi-nomadic life style, placed little emphasis on accumulating material wealth. Cultivation of land, for example, was oriented to the production of food and other items for direct use, rather than for production for sale and profit.

17.3.4 European economic life in the late eighteenth century, by contrast, emphasised production and accumulation of material goods, industrialisation, and growth.[28] The British brought with them a system of law in which the private ownership of land and personal property was of paramount importance and formed the basis for a large measure of the sanctions imposed by its criminal and civil laws. The British were unable to comprehend the complex nature of Aboriginal inter-relationships with land in the context of their own highly individualised view of ownership, and regarded the land which they took as vacant.

Dispossession

17.3.5 The first part of the eighteenth century was a period of significant expansion along the east coast of Australia. The arrival of white pastoralists saw the traditional food gathering activities of Aboriginal people curtailed as access to their land was denied them. Aboriginal people who attempted to hunt and gather food after they had been refused access to their land met the 'righteous indignation of men who had dispossessed without leave or compensation the title holders of tens of thousands of years' .[29]

17.3.6 The rapidly expanding pastoral industry occupied much of what is now south-eastern Australia during this period. A common pattern followed: malnutrition and introduced diseases decimated the population. Aboriginal people were left with no land on which to find food and live, and they resorted to camping near stations, which provided rations in return for labour. Pastoralists were in some places initially very optimistic about the potential of the land, and failed to realise the endemic nature of drought in inland areas.[30] The pressures of drought and increased settlement forced many Aboriginal people to leave stations. Missions

began to be established and many people were moved to them from different pans of the country. Some drifted to the fringes of towns and moved around the rural areas in search of work.

17.3.7 Dispossession from land continued until the 1960s, as the nature of the non-Aboriginal economy in Australia and its demands for land changed. Some of the cases heard by the Royal Commission illuminated particular examples of recent dispossession. In South Australia, the Southern Pitjantjatjara were refused access to their lands in the 1950s as they were intended for use in the British atomic tests.[31] Paul Kearney's family were dispossessed of the beach and sandhills near Wollongong where they had attempted to maintain an economically independent life style by fishing; first by the construction of the Port Kembla steelworks in the 1920s and then by the reclamation of the lagoon in which they had fished to construct a strip mill and tin plate plant after the second world war.[32]

17.3.8 With the mineral boom of the 1960s vast areas of previously unused land, mostly in the more remote regions, were exploited for minerals.[33] These were the areas in which Aboriginal people had managed to retain the most independent life style on lands which they had regarded as their own. Now these areas, too, came under the control of government agencies or developers. During the inquiry into the death of Donald Harris in Western Australia, a former superintendent of the Norseman mission described how the church had obtained a 99-year lease for an area of 33,000 acres. In the 1960s and 1970s that area was whittled down to 6,800 after the discovery of nickel and copper in the region.[34]

Impact of Economic Change on Culture and Life Style

17.3.9 Contact with the European economic system wrought many changes in the traditional economic life of Aboriginal people, and with them corresponding cultural changes. The changed roles of individuals altered the balance of power between members of the group. In pre-contact society, Aboriginal women usually participated jointly with men in food production. After the coming of European pastoralism, Aboriginal people were encouraged with gifts of tea, flour and sugar to remain at the stations to provide labour. Station life brought many changes—a taste for alien products, and a division of labour between men, who did 'outside' work, and women who worked in the house, which was forbidden to the menfolk. Housegirls acquired a new status as a conduit to the highly desired Western goods, as the reason for their family remaining on the station, and in some cases as the subject of the favours of the male employer. Many bore their employers' children, although they were not always acknowledged as such.

17.3.10 The imposed economic order of non-Aboriginal Australian rural capitalism transformed the *economic* relations between Aboriginal people and it transformed also the *social* relations that were central to the culture and experience of everyday Aboriginal life.

Involvement in Pastoralism and Agriculture

17.3.11 As the stations in some areas no longer supported Aboriginal families, many took on work in the pastoral industry and in other agricultural industries. The seasonal nature of this work forced many to move constantly in search of work. As noted above, many of the deceased or their parents worked in seasonal pastoral or agricultural industries. The pastoral, agricultural and (in some cases) marine industries have had a profound influence in shaping the way in which Aboriginal people have interacted, and continue to interact with the mainstream economy.

17.3.12 In the early years of development of the cattle industry in northern Australia, stations were dependent on cheap Aboriginal labour, because non-Aboriginal labour was either unavailable or too expensive. The Aboriginal inhabitants' knowledge of geography and water supply was of critical importance in assisting white pastoralists in an environment in which they were ill-equipped to survive.[35]

17.3.13 Aboriginal employment in the pastoral industry was significant, not just in the development of that industry, but also in shaping the interactions between Aboriginal people and the mainstream economy. In 1967 the Department of Territories estimated that about 10,000 Aboriginal people were involved in the pastoral industry.[36] A proportion of these were 'assisted', meaning that their wages were subsidised by the government.

17.3.14 While this type of work was often underpaid and exploitative and conditions on stations were often appalling, many Aboriginal people recall their involvement in these industries and the contribution they made to them with dignity and pride. Robert Anderson's parents lived on stations near Wiluna in northern Western Australia, engaged in seasonal work. Anderson's sister described station life in a statement to the Commission:

I lived on stations before living in Wiluna. Life on stations is better than life in Wiluna; in town, Bondini Reserve or in the village.

> *On the stations there was work to do. I worked as a cook and helped with the mustering sometimes. At the end of mustering season or at the finish of a job on a station, we would come into town. When we were living on the stations the children went to Karalundi Mission and at holiday time they would come oat to the station and everyone would be together.*
>
> *After citizenship we did not go back to work on the stations.*[37]

17.3.15 Pastoral life provided many Aboriginal people with the means to retain some significant aspects of their ceremonial and cultural life. For many people, it meant that they could remain on their own country. The seasonal and mobile nature of pastoral work provided the opportunity to continue important religious activities and to retain links with nearby kin. Aboriginal people on pastoral stations were generally healthier than those on missions and government settlements, because they had more access to fresh meat which had traditionally been an important part of Aboriginal diets[38] and because they were able to retain access to bush food and medicine.[39]

17.3.16 Although it is impossible to draw a direct correlation between the two, it is worth noting that cattle station activity seems to be related to the absence of petrol sniffing in remote areas, A research report to the Research into Drug Abuse Grants Advisory Committee in 1989 noted one anomaly in the regional distribution of petrol sniffing:

> *That anomaly suggests that the regions where petrol sniffing is <u>not</u> a serious problem, indeed rarely occurs at all, extend from north-east of Alice Springs across the Barkly Tablelands to the Arnhem Land border, west of Tennant Creek through the Victoria river district and across into the Kimberley and Pilbara regions of Western Australia. The issue that links all these areas containing a variety of Aboriginal populations, is the cattle industry.*[40]

17.3.17 Brady suggests that the cattle industry experience was significant for the Aboriginal people involved in it firstly, and most importantly, because the people who were involved in it were engaged in productive activity.

> *The cattle industry was significant, not because it was 'work' (there are countless menial, repetitive and mundane opportunities for Aborigines to work) but because it was productive—an economic enterprise. It was, in a sense, a transformation of traditional economic activity: marshalling, capturing and killing edible meat animals. In the course of the actual labours associated with cattle, people were engaged in productive activity of other kinds: having access to bush food; tending sites and performing ceremonies (both associated with caring for the land and making it productive); and increasing and extending their range of ritual knowledge through contact with other language groups. These factors contribute to a sense of pride and self-esteem which, I submit, has been communicated to the present generation.*[41]

17.3.18 Perhaps the most significant effect of incorporation into mission and station economic life was the substitution of dependency for economic independence. Many Aboriginal people on stations were not paid in cash, they received goods and food as payment for their labour.[42] Those who were paid did not receive the same wages as their non-Aboriginal workmates until relatively recently, and many were not permitted free access to the money they did earn. Thus they were effectively denied access to the cash economy. In the Northern Territory, the administration required earnings of Aboriginal workers were required to be paid into a trust account. This was supposed to deter them from sharing along kin lines, and protect them from unscrupulous salesmen. Many Aboriginal people missed out on what they were owed either because pastoralists refused to pay up or because they did not understand the system.[43]

17.3.19 Commissioner Dodson described to me how this system engendered a relationship of meter and servant between pastoralists and their Aboriginal employees:

> *Now in those days (the 1940s and 1950s), to our experience there was no such thing as money. We didn't see any money at all in the old days. All that the stockmen got as pay was perhaps two shirts and two pairs of trousers a year, while they were working. Boots, hat, canvas swag, and a couple of blankets were supplied too. That' s about all. No money! The swags would usually last for two or three years. Anyone who owned a swag used to share it with those who didn't... The government used to give the station owners or managers some sort of permit to work blackfellas such as myself and all the others here. The permit gave them the status of a 'protector'. It gave them the same authority as the policemen, who were also protectors. If there was any trouble with the blackfellas, then the police used to sort it out. But, because he was the permit holder and as such a protector, the station manager could do pretty much as he liked.*[44]

17.3.20 Even where some access to earnings was permitted the expenditure of money always incurred the scrutiny and required the permission of non-Aboriginal authorities. Such paternalism applied even to the most trifling sums and reasonable requests. Files from the then Department of Native Affairs tendered during the hearing into the death of Gregory Dunrobin revealed numerous letters

between the deceased's father Daniel Dunrobin, the office of the Chief Protector, and Daniel's station employer concerning the purchase of such minor items as a coat for his mother, and a wrist watch. Permission to purchase the former was eventually refused.

17.3.21 The granting of equal wages to Aboriginal pastoral workers co-incided with increasing economic pressure on the cattle industry, along with many other rural industries. Increased mechanisation and improved fencing meant that stations no longer required, or were able to support, the large numbers of Aboriginal workers and their families. As Aboriginal people were no longer able to find the employment on stations which had supported them for two to three generations, many moved into missions and government reserves, and to the fringes of towns where they were usually unwelcome. No government training schemes operated to re-train Aboriginal people for other work (as they had done for the returned soldiers), and the resultant poverty was addressed by expanding the social security net to incorporate Aboriginal people.

Welfare Dependence

17.3.22 The Aboriginal welfare system which operated in most of Australia for the first half of this century excluded Aboriginal people from entitlement to unemployment benefit (UB). In 1959, the Social Security legislation was amended to remove the provision which had specifically excluded Aboriginal people from UB, but even by the late 1960s there was no attempt to incorporate Aboriginal people in remote areas into the social security system. The dominant view at the time was that most Aboriginal people in remote areas were outside the workforce and therefore not eligible for unemployment benefits. The Department of Social Security also regarded those Aboriginal people who were being offered 'training allowance' wages on pastoral stations as being ineligible for unemployment benefit, which is not open to those who have been offered work but refuse it. When some of the workers who had walked off Wave Hill applied for UB, they were assessed as ineligible. Even as recently as 1972, the Northern Territory Welfare Branch was adamant that Aboriginal people on communities should be paid through their training allowance scheme rather than be entitled to receive UB.[45]

17.3.23 In 1973 the newly elected Labor Government directed that all Aboriginal people living on missions and settlements should receive UB, and that they should not be required to leave their communities to seek work. The new policy overlooked the tremendous difficulties involved in transforming economies in which many Aboriginal people lived, as many of the projects in which Aboriginal people were employed relied upon the under-award wage training allowance schemes operated by state welfare authorities:

> *The marginalisation of Aborigines within local low-cost economies had been many years in the making. The welfare communities and the pastoral industry in northern and central Australia had been built on low wage and income structures and, to some extent, their viability in their established form depended on it ... The change from marginalised low cost local economies existing within the auspices of an Aboriginal welfare system to a mainstream award wage and UB economy was going to render unviable many of the established projects in which Aborigines were employed. There would be Aborigines in these areas left unemployed. The transition to an award wage and UB economy was inevitably going to be a contentious and drawn out affair, whenever it occurred and whatever the political 'will' of the government in power ... The historical processes of Aboriginal*

economic marginalisation were not to be reversed simply by a couple of cabinet declarations.[46]

17.3.24 During the last twenty years the social security system has gradually incorporated most of the Aboriginal population. This was seen as the rightful extension of citizenship entitlements to Aboriginal people, but there was little recognition of the tremendous handicaps which Aboriginal people who had lived in a state of paternalistic dependency faced in dealing with the cash economy. Greater exposure to the mainstream cash economy left Aboriginal people—without skills and training, without capital and without jobs—in a position of enormous vulnerability. In the course of the hearing into the death of the man who died at the Sir Charles Gairdner Hospital in Perth, a member of Parliament in Western Australia told the Royal Commission of his views on the historical bases for dependency and the social costs associated with it:

> *Dependency on the pastoralists, tea, sugar and rations was substituted by a new found dependency on the social security system. Their dependency was brought into the cash economy, which in turn brought benefits for the public service bureaucracy and for local traders. They could also buy liquor to anaesthetise their pain. The combination of liquor, reserve life and tension, social and economic apartheid, destruction of their own internal social and cultural systems, and the hopelessness and depression that pervaded all completed the process of alienation. They were now alienated from their past, there was no future and their present lay in squalid tatters around them. Powerless, they turned to drink en masse; drunk, they violated each other and themselves. They were now alienated from even themselves.*[47]

17.3.25 His perspective is a painful and familiar reality to Aboriginal people across Australia. A significant number of Aboriginal people still lack the literacy and numeracy skills which axe an essential prerequisite to domestic budgeting. Commissioner Dodson heard evidence of the way in which Aboriginal people axe dependent on the local taxi industry in many rural towns. Aboriginal people become reliant upon taxis where no system of public transport exists and they are unable to afford cars. Taxi drivers offer credit against an unreceived 'pension' cheque, not only for taxi fares, but for the purchase of food and alcohol and other services:

> *By the time they get their cheque from Social Security whether it be sole parent or a single person money—they go to pay their bill they find that they do not have any money because they still owe this guy more money ... they are still in that system where they have got to book up again to him until the next time they get money and the next time they get money, they do not have any money because they have still got them in that system. And it is on and on and on. And I used to work for him so I know...*[48]

17.3.26 In many country towns in Australia Aboriginal people are similarly dependent on unscrupulous local businessmen in local retail outlets. in some areas the exploitation inherent in such relationships has been ameliorated by the establishment of Aboriginal controlled resource agencies who provide cheque-cashing facilities and assistance with domestic budgeting. However, much more profound change is required to remove the underlying structural dependency which poverty combined with powerlessness engenders.

Horticulture

17.3.27 Small-scale farming has been one of the few ways in which some Aboriginal people were able to remain economically independent. From early in Australia's history, Aboriginal people have expressed the desire to have land for fanning. The first farming ventures, which followed Governor Macquarie's attempts to dissuade Aboriginal people from traditional hunting by offering parcels of land, were unsuccessful. Later in the latter part of the nineteenth century farming efforts in New South Wales and Western Australia were highly successful, but the government acceded to demands of neighbouring non-Aboriginal farmers, and much of the good land which Aboriginal people had worked successfully was resumed and handed over to them.[49] Commissioner Dodson describes in his report the system of land tenure under which Aboriginal people in the south-west of Western Australia attempted to secure an independent economic base for themselves:

> *Aboriginal people in the south-west were among those who were granted land to work for themselves. However by 1914 almost all of their grants had been cancelled. Most of the land occupied by Aboriginal farmers was granted under a special provision first introduced in 1887 (under a piece of legislation termed 'Land Regulations'). However, that land could be resumed at any time by the colonial government. Hodson (1989:79) states that, unlike non-Aboriginal people, the Aboriginal farmers 'had no title against which to borrow the finance needed to carry out the improvements required by the terms of occupancy. Their only option was to hire themselves out as seasonal and contract workers, but since they also had to support their families, they were able to accumulate very little capital. The outcome of this measure was that without assistance from the 'Aborigines Department' (which was not forthcoming) Aboriginal people were unable to meet the terms of their occupancy and therefore had their blocks resumed by government authorities.* [50]

17.3.28 The changing nature of rural capitalism in Australia had a profound impact on a large proportion of Aboriginal people. After several generations of close involvement in rural industries, economic circumstances left many Aboriginal people without work and without a livelihood. The few opportunities to create an independent economic base were repressed by the operation of discriminatory practices by governments. The shift to welfare dependence in the last twenty years has brought with it many social problems, as well as an increasing recognition that such dependence will be difficult to alleviate.

FACTORS AFFECTING INEQUALITY

17.3.29 Section 17.2 has outlined the conventional indicators of economic well-being. On any assessment, most Aboriginal people fare worse than most Australians. The different indicators are clearly inter-related: low occupational status and high unemployment explain low incomes. The conditions under which Aboriginal people have lived during the last two hundred years to a large extent determine their position in the economic system today, and many of the barriers to equitable and equal participation will not be easy to remove.

17.3.30 In this section the interrelationship between different indicators of economic status are discussed. It is apparent that a number of factors affect the economic position of Aboriginal people, and that these factors vary from location to

location. These variations are crucial to understanding how different strategies might affect Aboriginal economic status.

17.3.31 Specific factors which render Aboriginal people particularly vulnerable to poverty are discussed below. These can be divided into three areas: structural, labour-market and cultural factors.[51] Briefly, they can be explained as follows:

Structural factors

- Aboriginal people are more likely to live in rural and remote areas where unemployment is higher and job opportunities more
- The downturn in the rural economy generally therefore has a marked effect on Aboriginal people.
- The Aboriginal population is younger, and there are more people in age groups which in all sectors of Australian society experience higher unemployment. In addition, because of the high ratio of children to adults, there are more dependants to be supported.
- Overall economic status is worse where Aboriginal people form a substantial or a major part of the population in the localities in which they live.
- Land and capital are important elements in material advancement, to which many Aboriginal people do not have access.

Labor market factors

- Aboriginal people have a low educational status compared with the whole population.
- Poor health, and consequent absenteeism, may also affect the ability of Aboriginal people to secure and retain employment.
- Discrimination in employment, particularly in the private sector, and particularly in rural areas, means Aboriginal people do not compete equally with non-Aboriginal people for job opportunities.
- Aboriginal employment has traditionally been concentrated in a narrow range of mainly seasonal rural occupations. These industries have contracted and rationalised in response to technological change and economic recession, and no longer employ as many people as they once did. Transport and construction industries, also once consistent employers of Aboriginal people, have also been affected by the economic recession.
- Proficiency in English may also constrain some Aboriginal people from access to jobs in the mainstream labour market

Cultural factors

- The desire to remain close to traditional lands may for many Aboriginal people restrict access to jobs in the formal labour market.
- Aboriginal people may feel uncomfortable working in situations where they are in a racial minority, and where non-Aboriginal values dominate.
- Some Aboriginal people may prefer to pursue traditional religious and cultural rather than material objectives.
- Many Aboriginal people move their residence regularly for cultural reasons. Mobility may affect both job opportunities and the benefits flowing from longevity of employment.

THE MACRO ECONOMIC ENVIRONMENT

17.3.32 The economic position of Aboriginal people is dependant not only on factors which specifically affect Aboriginal people, but on the conditions of the

regions in which those people live, and on the economic climate of the nation as a whole. These two matters were highlighted in a submission by the National Aboriginal and Islander Legal Services Secretariat (NAILSS) which concerned an economic survey of the Far West Coast of South Australia.[52]

17.3.33 A significant factor in the economic position of Aboriginal people today is the depressed rural economy. Approximately three-quarters of the Aboriginal population of Australia live outside the main urban centres of more than 100,000 people. One-third of the Aboriginal population live in centres of less than 1,000 people. Most, if not all, of these small towns, and many of the larger country towns, have been severely hit by the economic recession, and their future looks bleak. If Aboriginal people are to continue to reside in these locations, which offer important connections with kin and country for many, then future improvement in their economic situation will lie for the most part outside the regular labour market. While main stream labour market opportunities must continue to be enhanced, the point is clear that these will not by themselves alleviate the conditions of rural dwelling Aboriginal people.

17.3.34 It is also clear that economic inequality between Aboriginal and non-Aboriginal Australians will not be wholly resolved in isolation from the broader context of inequality within Australian society generally. A significant recent examination of the distribution of wealth in Australia concluded that 'the wealthiest 1% of the population hold almost 20%, and the wealthiest 10% holding more than half the wealth'.[53] The study also found that the least wealthy 30% of Australians hold no wealth at all, with the poorest of them actually having negative wealth, reflecting a small number of households that have housing loans in excess of the stated value of their homes.

GEOGRAPHIC LOCATION

17.3.35 As is discussed above, geographic location is an important factor in determining Aboriginal economic status, most particularly because of the macro-economic factors discussed above. Census data from 1986 shows that Australia-wide, 33.5% of Aboriginal people live in rural areas (clusters of less than 1,000), 42.1% in other urban centres (clusters of between 1,000 and 100,000) and only 24.4% live in major urban centres (clusters of more than 100,000 people). This last figure contrasts markedly with the non-Aboriginal population, of whom almost 63% live in major urban centres.

17.3.36 It is clear that even for Australians not already disadvantaged by race, employment opportunities are more limited in rural areas than they are in major urban centres. That this fact is recognised by the Commonwealth Government is evidenced by the recent restructuring of the unemployment benefit. Under the new arrangements, people who are unemployed may be offered relocation allowances to move to a location where work is available. If they do not accept the offer, their entitlement may be discontinued.

Rural Towns

17.3.37 Evidence to the Royal Commission suggests that small rural towns with large, but not dominant, Aboriginal populations present the most difficult problems for addressing Aboriginal economic disadvantage. Research studies consistently reinforce the relative disadvantage for the Aboriginal population of small towns. A study of Newcastle, for example, while emphasising the particular problems of that city, provides employment data for a range of towns showing that the worst unemployment rates are frequently recorded in small towns.[54] The data also

indicate the extent to which regional variation detracts from attempts to generalise about Aboriginal unemployment rates.

17.3.38 In rural New South Wales, where several of the deaths occurred, unemployment rates are particularly high. According to a study of unemployment in Bourke based on 1981 census figures and Department of Aboriginal Affairs community profiles, only 67 out of a total Aboriginal population of 1,005 were employed in 1985, with 13 of the 67 employed on Community Employment Projects. Since those figures were recorded, the abattoir in Bourke, previously one of the major employers, closed. The study concluded that employment prospects in Bourke were gloomy, with most private sector jobs in small, mainly family-run businesses being filled by informal processes.[55]

17.3.39 A study prepared for the New South Wales Government based on 1986 census figures found the disparity in unemployment rates between Aboriginal and non-Aboriginal people was highest in the NorthWest Regional Aboriginal Land Council (RALC) area where Aboriginal unemployment was 56.5%, compared with 10.2% for non-Aboriginal people. This area also had the highest proportion of Aboriginal residents (14.3% of the area's total population). The study found that in order to redress the imbalance between non-Aboriginal and Aboriginal employment in that area would have required the creation of 901 new jobs. In addition to the North West region, very high rates occurred in the Wiradjuri, Central Coast, North Coast, Northern Tablelands and Western RALC areas, where unemployment rates were all in excess of 55%. Non-Aboriginal unemployment in those areas varied between 11% (Northern Tablelands) and 18.2% (North Coast). Lowest unemployment rates for Aboriginal people were in Sydney and Newcastle RALC area (27.7%) and in the Western Metropolitan RALC area (29.5%). Overall, the State Aboriginal unemployment rate was 40% compared with 9.8% for non-Aboriginal people. 56

17.3.40 A paper prepared for the Royal Commission in South Australia indicates that in that State in 1986 unemployment rates in some of the rural areas with a high proportion of Aboriginal people were very high. At Coober Pedy the unemployment rate was 62.7%, and 55.2% on the Central Yorke Peninsula.[57]

17.3.41 Employment prospects in small country towns across Australia are in general very poor for the Aboriginal population. Not only has the agricultural employment base significantly diminished, but within the towns most appointments are dependent on personal contacts, and the lack of government infrastructure limits the opportunities for agencies such as the Commonwealth Employment Service to intervene.

Remote Communities

17.3.42 A significant proportion of the Aboriginal population, particularly in Western Australia (34.6% of total State Aboriginal population), Queensland (34.9%) and the Northern Territory (69.2%), live in townships of less than 1,000 people (Smyth 1989:17). A significant proportion of these towns are comprised mostly of Aboriginal residents. For the inhabitants of most of these towns the only employment opportunities lie either in servicing the local community (comprised principally of recipients of social security benefits, who have limited disposable income) or in artificially generated enterprise projects which compete in a market in which they are severely disadvantaged by their geographic isolation.

17.3.43 Although it is popularly believed that Aboriginal people have been migrating toward major urban areas during the last part of this century, studies of Aboriginal migration patterns have shown little change during the period from 1976

to 1986, and major urban centres in New South Wales and Victoria appear to have lost Aboriginal population throughout this period. The disadvantage many Aboriginal people experience by reason of the geographical location in which they live shows no sign of changing in the immediate future.

AGE STRUCTURE

17.3.44 Another important structural feature of the Aboriginal population is its age distribution. Chapter 11 has also discussed the age structure of the Aboriginal population, and the extent to which that age structure can be expected to change over time. The age structure of a population has a considerable bearing on the sharing of wealth between individuals, because those in the age group which is normally in the workforce are expected to support the younger (and older) members of the population. In 1986 there were 69 children per 100 Aboriginal persons of working age, a level almost twice as high as the non-Aboriginal population.[58]

17.3.45 The impact of high unemployment coupled with the high ratio of young dependants has placed great demands on the resources of Aboriginal people who are employed. Figures set out above indicate that less than 20% of the total Aboriginal population is employed. For each 100 Aboriginal people who are employed, there are 351 who are under fifteen or economically inactive. The corresponding ratio for the non-Aboriginal population is 143.[59]

17.3.46 The youthful age structure of the Aboriginal population is also a factor contributing to overall high levels of unemployment. Unemployment is highest among the very young, particularly those in the 15-19 year age group. In New South Wales unemployment among this age group is 21.3% for non-Aboriginal people, and 59% for Aboriginal young people 60. It can confidently be assumed that the structural disadvantages that affect young non-Aboriginal people also affect young Aboriginal people.

ACCESS TO LAND AND CAPITAL

17.3.47 In the second report of the Northern Territory Aboriginal Land rights Commission, Justice Woodward stressed that the granting of land rights would be 'the first step on a long road towards self-sufficiency and eventual social and economic equality for Aborigines'.[61] The Miller Report also stressed the importance of land as a first step to economic independence.[62] The extent to which Aboriginal people enjoy rights to land in different States is discussed in Chapters 19 and 37 of this report.

17.3.48 Access to land can provide some opportunities for economic development, in pastoral industries, in tourism and in participation in mining ventures. Ownership of land is a necessary prerequisite to obtaining capital for many of these types of enterprises. As noted above, land is also crucial to increasing real income through subsistence activities. As yet these alternatives are open to only 20% to 30% of the Aboriginal population who have traditional ownership or residence status on Aboriginal land.[63] However, the majority of land allocated to or purchased by Aboriginal people has been in economically marginal areas, and much of it has suffered serious land degradation. Aboriginal people need not only land, but economically viable land.

17.3.49 The resources within most Aboriginal communities and families are inadequate to enable Aboriginal people to start their own businesses. People living on low incomes devote the bulk of them to satisfying immediate needs. In addition,

Aboriginal people have a low level of inherited wealth. At present, the source of most capital for the development of Aboriginal enterprises is the Commonwealth Government. Proposals for enterprise development are screened for commercial viability, and under increasing pressure from Parliament and restraint in government expenditure, agencies which lend money are cautious. Additionally, the capital available is constrained by the overall budget ceilings as much as by the viability of projects under consideration.

LABOUR MARKET FACTORS

Contraction in the Rural Economy

17.3.50 It is very evident from the data provided in Section 17.2 that Aboriginal people have fared very badly in the contractions of employment opportunities during the last two decades in Australia. Part of the reason for this has been the disappearance of employment in industries in which Aboriginal people participated greatly in the past. Aboriginal employment has consistently been concentrated in a narrow range of mainly seasonal occupations.[64] Employers in pastoral and fruit growing industries needed a cheap work force that was easy to hire and fire—and Aboriginal labour had these very characteristics. In 1971, 24% of Aboriginal people in employment were employed in primary industries (agriculture, forestry, fishing and hunting in the census classification) but this proportion had already fallen to 12% in 1976 and declined further to only 7% in 1986, only marginally higher than in the total Australian population—most of whom were city-dwellers.

17.3.51 These figures reflect the well-known story of displacement of Aboriginal stockmen from the pastoral industry, and in many cases from their homes on cattle stations, during the period after the mid- 1960s. This process has often been ascribed to equal-pay decisions of the period, but it also occurred in States such as South Australia in which Aboriginal people had long had equal pay, and it occurred in other rural industries as well, such as the picking industries in eastern Australia. It appears, more than anything else, to have been a result of *micro-economic* changes in rural industries which discouraged expenditure on labour and motivated mechanisation where possible. Furthermore, the impact of these two factors extended to most urban employment, as Gale and Wundersitz show in their study of Adelaide.[65] Employment in areas such as transport and construction, for example, was affected greatly by the economic recession.

17.3.52 Overall it is clear that the high levels of Aboriginal unemployment are associated with concentration of employment in vulnerable rural labour markets, coupled with low levels of education and marketable skills. The comparatively large number of Aboriginal people who leave school earlier than non-Aboriginal people and who are less likely to have post-secondary qualifications are placed at a significant disadvantage on entry to the labour market.

Low Levels of Formal Education and Job-Related Skills

17.3.53 Ross, in a 1986 survey of Aboriginal residents from five New South Wales Aboriginal Land Council Regions, concluded that 'the most successful Aborigines are those with the highest educational backgrounds, and the best job skills'. He suggested that experience in labour market programs was possibly a more effective strategy than educational opportunities for promoting the development of those skills. However, he warned that

> *there is no point in providing more resources to this end if there is a lack of employment opportunities. In this scenario all that would be*

achieved is a more educated pool of unemployed people .66

17.3.54 While training will not alone ensure full Aboriginal employment, it appears likely that, even when jobs are scarce, improved educational and training credentials can enhance the competitiveness of Aboriginal job-seekers.

Proficiency in English

17.3.55 Lack of proficiency in English (usually associated with poor formal educational qualifications) may prevent some Aboriginal people from securing jobs in the mainstream labour market. In the 1986 census, 9,507 Aboriginal people indicated they could speak English 'not well', a further 2, 166 people indicated they could not speak English at all.[67] In other words, almost 6% of the Aboriginal population aged five and over had limited English proficiency. These people were concentrated predominantly in older age groups, and in small rural towns or settlements. It is likely that a further proportion have English speaking skills which limit their access to a large number of occupations.

Discrimination in Employment

17.3.56 The Aboriginal Women's Task Force reported concern on the part of women in Australia about the discrimination they experienced in seeking employment. One woman told the task force it was the people 'with the lightest coloured skin who would get the position'. Another woman reported being diverted away from a position in a public service department to the Department of Aboriginal Affairs because 'they had more jobs for Aboriginal people and she would be really happy there' .[68]

17.3.57 Commissioner Dodson told me that Aboriginal people had reported to him their experience of discrimination in employment:

> *This is one of the most racist areas I have lived in. The Nyungar people were generally treated as second-rate citizens, and were never really given the opportunity, the equal opportunities, alongside their white counterparts in regards to employment and general acceptance of being a human being.[69]*

17.3.58 Despite the operation of anti-discrimination legislation it is apparent that considerable discrimination, both oven and subtle, continues to hinder Aboriginal aspirations for employment.

CULTURAL FACTORS

Attitudes to Employment

17.3.59 The East Kimberley Impact Assessment Study concluded that, as least as far as the population of the East Kimberleys is concerned:

> *Aborigines do not face the general Australian economy with their time fully available for employment or divided simply between 'work' and 'leisure'. Rather they come with their time significantly allocated to distinctly Aboriginal purposes and activities. Employment or involvement in the Australian economy involves a trade-off between the potential to earn cash and a range of other activities. In some instances the strength of obligations dictated by Aboriginal custom, for*

example attendance at ceremonies, are in principle absolute, in many powerful and in almost all at least persuasive.[70]

17.3.60 Dr H.C.Coombs, in a submission to the Royal Commission, has expanded upon this. He argues that the nature of the relationship between employer and employee under contract for wage employment conditions is fundamentally at odds with Aboriginal perceptions of the reciprocal obligations implicit in Aboriginal transactions. Cultural obligations are not confined to Aboriginal people living in remote areas. 'Urbanised' Aboriginal people consider attendance at funerals, for example, particularly important in maintaining kinship networks. Many employers, in both the private and public sectors, find absences from work for the pursuit of social obligations unacceptable.

17.3.61 Aboriginal people may also be dissuaded from regular employment by the nature of the work. It can be argued that the nature and conditions of employment are as important as the employment itself. Aboriginal people may react to inappropriate employment by simply opting out.[71] Indeed, with the likelihood of possessing limited skills and a negative assessment of the opportunities for advancement or diversification the chances of opting out are probably increased. Programs which focus only on the economic outcomes of employment and ignore the social dimensions of employment are very likely to fail.

Economic Motivation

17.3.62 Edmunds has argued that economic motivation is not universal, and many Aboriginal people in remote areas 'do not consider the accumulation of money as a valuable end in itself, stressing instead the small scale social aspects of its use'.[72] She cites writers who have argued that Aboriginal people value money for its relative value in the system of social relations.

Mobility

17.3.63 While the Aboriginal population is highly mobile, mobility may be linked more to social objectives than to economic ones. In some areas, mobility is a response to the need to maintain social networks, to access social security and purchase food, and to reinforce links to the land.[73] However, in areas where cultural objectives are paramount, people may be unwilling to travel even relatively short distances to obtain employment.

SUMMARY

17.3.64 The policies of discrimination and control which restricted and disempowered Aboriginal people have had a profound effect on the manner in which they have been able to participate in the Australian economy. Despite their preparedness to make expensive cultural adjustments to adapt to the economic system of the new nation, the labour which so many Aboriginal people contributed to the economic development of Australia has not been realised in access to economic wealth.

17.3.65 The current economic situation of Aboriginal people is closely related to economic changes in the rural economy, and to worsening employment levels generally, but there are some specific factors which render Aboriginal people particularly vulnerable to poverty. It is clear that rural areas present the most difficulties to policy makers in tackling the issue of Aboriginal inequality in economic participation. While not all the residents of these communities do seek

full and equal participation, many do, and it is clear that there are simply insufficient openings to provide them with employment in the regular labour market

17.3.66 While the measures of individual economic status reflect the particularly disadvantaged position of Aboriginal people in Australian society, the overall impact of these individual measures should also be recognised. In particular, the youth of the Aboriginal population places enormous burdens on working Aboriginal adults—they must support many more people than the average non-Aboriginal Australian, often on a lower income. The manifestations of Aboriginal poverty in the degraded conditions of town camps and the homeless life of alcohol-dependent persons reflects a deeper and more widespread, but not so obvious poverty, among a majority of the Aboriginal population. Measures designed to ameliorate this disadvantage need to cater both for the individual rights to formal equality in the labour market, but they should also address the collective economic rights of Aboriginal people to enjoy, in an equitable way, the fruits of economic production.

17.3.67 Chapter 34 examines some of the programs which might provide Aboriginal people with options for increased economic development.

SUPPLEMENTARY TABLES

TABLE 17.2: ECONOMIC ACTIVITY OF PEOPLE AGED 15 AND OVER, 1971-1986

Year	*Employed*	*Unemployed*	*Labour force*	*Not in labour force*[(a)]	*Population*
	%	*%*	*%*	*%*	
ABORIGINAL AND TORRES STRAIT ISLANDER MALES					
1971	60.4	6.5	66.9	33.1	28 943
1976	56.2	12.6	68.8	31.2	45 649
1981	47.0	16.4	63.4	36.6	44 919
1986	40.4	22.7	63.1	36.9	66 419
ABORIGINAL AND TORRES STRAIT ISLANDER FEMALES					
1971	21.7	1.9	23.6	76.4	28 005
1976	25.1	5.1	30.2	69.8	45 677
1981	24.8	7.1	31.9	68.1	46 901
1986	22.7	11.8	34.5	65.5	70 714
TOTAL AUSTRALIAN MALES					
1971	79.1	1.2	80.3	19.7	4 532 154
1976	76.1	3.2	79.3	20.7	4 884 460
1981	73.1	4.2	77.3	22.7	5 394 929
1986	66.9	6.6	73.5	26.5	5 904 292
TOTAL AUSTRALIAN FEMALES					
1971	36.3	0.8	37.1	62.9	4 553 432
1976	41.6	2.2	43.8	56.2	4 973 640
1981	42.5	3.1	45.6	54.4	5 524 497
1986	42.3	4.5	46.8	53.2	6 061 019

(a) Includes people whose labour force status was not stated in 1986

Source: Compiled from Australian Bureau of Statistics, 1986 Census tabulations

Table 17.2 shows changes in economic activity of Aboriginal and non-Aboriginal Australians during the period 1971 to 1986. The table gives information on the percentage of people over 15 years of age who were in each category. The standard way of presenting labour force data is to calculate a *participation rate,* which is the proportion of a population group who are either employed or unemployed, and an *employment rate* and an *unemployment rate,* each of which is calculated as a proportion of those people participating in employment. This approach is not adopted here, because it is in some ways misleading.

TABLE 17.3 EMPLOYMENT/INDUSTRY SECTOR BY GENDER: ABORIGINAL AND TOTAL POPULATION: 1976-1986 CENSUS.

Industry sector	*1976(')*	*1986*
ABORIGINAL PEOPLE: MALES		
Federal Govt.	6.8	8.5
State Govt.	18.0	20.9
Local Govt	6.9	9.3
Private sector	68.3	54.7
Not stated	NA	6.6
Total	100.0	100.0
ABORIGINAL PEOPLE: FEMALES		
Federal Govt.	8.4	11.0
State Govt.	20.2	27.3
Local Govt	1.4	2.9
Private sector	70.0	51.3
Not stated	NA	7.5
Total	100.0	100.0
ABORIGINAL PEOPLE: TOTAL		
Federal Govt.	7.3	9.4
State Govt.	18.7	23.3
Local Govt	5.2	6.9
Private sector	68.8	53.5
Not stated	NA	6.9
Total	100.0	100.0
TOTAL POPULATION: MALES		
Federal Govt.	8.5	8.5
State Govt.	14.4	14.2
Local Govt	2.3	2.7
Private sector	74.8	72.7
Not stated	NA	1.9
Total	100.0	100.0
TOTAL POPULATION: FEMALES		
Federal Govt.	5.8	6.5
State Govt.	16.8	18.0
Local Govt	0.8	1.4
Private sector	76.6	71.7
Not stated	NA	2.4
Total	100.0	100.0
TOTAL POPULATION		
Federal Govt.	7.6	7.7
State Govt.	15.3	15.7
Local Govt	1.7	2.2
Private sector	75.4	72.3
Not stated	NA	2.1
Total	100.0	100.0

(a) the not stated in 1976 were included with the private sector.

Source: Australian Bureau of Statistics, 1976 and 1986 Census tabulations

TABLE 17.4 DISTRIBUTION AND NUMBERS IN OCCUPATIONS OF EMPLOYED[(a)] POPULATION, BY GENDER: ABORIGINAL AND TOTAL POPULATION: 1986 CENSUS

	Aboriginal and TSI Population[(a)]			*All Australians*		
	Male	Female	**Total**	Male	Female	**Total**
DISTRIBUTION OF OCCUPATIONS (%)						
Managers and Administrators	3.8	2.5	**5.3**	14.5	7.4	**11.7**
Professionals	3.9	6.7	**5.0**	11.7	12.0	**11.8**
Para professionals	5.2	7.2	**3.3**	6.1	7.0	**6.5**
Tradespersons	18.9	5.2	**13.8**	22.8	3.8	**15.3**
Clerks	5.7	31.7	**15.5**	7.4	32.0	**17.1**

Sales and Personal Services	3.3	15.9	**8.0**	8.0	19.2	**12.4**
Plant and Machine Operators	15.0	2.4	**10.3**	11.4	3.3	**8.2**
Labourers and Related Workers	38.1	22.4	**32.2**	15.4	12.8	**14.4**
Inadequately Described	3.5	2.9	**3.3**	1.7	1.2	**1.5**
Not Stated	2.6	3.0	**2.8**	1.0	1.3	**1.1**
TOTAL NUMBER (THOUSANDS)						
	26.8	16.1	**42.9**	3951.9	2561.6	**6513.5**

(a) Percentages are based on the employed population.
Source: ABS Census of Population and Housing, 1986

TABLE 17.5 INDUSTRY OF EMPLOYED ABORIGINAL POPULATION, BY GENDER: 1971-86

Major Industry	*1971*	*1976*	*1981*	*1986*
MALES				
Agriculture, forestry, fishing & hunting	28.1	14.6	13.9	9.4
Mining	3.3	2.2	2.8	2.8
Manufacturing	12.3	16.1	10.4	10. 6
Electricity, gas, water	1.0	1.8	2.0	2.3
Construction	13.1	15.5	7.6	8.8
Wholesale & retail trade	5.4	8.4	6.0	8.4
Transport & storage	3.8	6.5	8.1	8.9
Communication	0.6	1.1	1.2	1.7
Finance, property & business services	0.7	2.0	1.6	2.7
Public admin & defence	4.2	10.3	11.7	12.9
Community services	20.1	9.4	15.5	19.6
Recreation, personal & other services	1.5	2.5	2.2	4.0
Non-classifiable, not stated	6.0	9.6	17.0	7.9
Total	100.0	100.0	100.0	100.0
FEMALES				
Agriculture, forestry, fishing & hunting	13.3	5.0	3.4	3.1
Mining	0.5	0.3	0.4	0.4
Manufacturing	10.1	10.9	5.5	5.8
Electricity, gas, water	0.0	0.1	0.2	0.4
Construction	0.3	1.0	0.8	1.3
Wholesale & retail trade	8.2	12.7	7.6	11.3
Transport & storage	0.6	1.3	1.0	1.6
Communication	1.0	1.0	1.1	1.3
Finance, property & business services	2.5	5.1	3.1	5.7
Public admin & defence	2.4	7.9	8.2	10.7
Community services	42.4	28.7	33.7	43.3
Recreation, personal & other services	10.5	7.7	6.2	7.9
Non-classifiable, not stated	8.1	18.2	28.8	7.0
Total	100.0	100.0	100.0	100.0

Source: H. Tesfaghiorghis and J. Altman, Aboriginal socioeconomic status: are there any evident changes?, Centre for Aboriginal Economic Policy Research Discussion Paper No.3/1991, p. 19; based on ABS Census of Population and Housing data

Table 17.5 shows the industries in which Aboriginal people are employed and the percentage of Aboriginal people employed in each over the fifteen year period from the 1971 census to the 1986 census.

TABLE 17.6 DISTRIBUTION AND NUMBER OF INCOME EARNERS('), BY GENDER, AUSTRALIA 1986

	Aboriginal and TSI Population			*All Australians*		
	Males	Females	**Total**	Males	Females	**Total**
DISTRIBUTION OF INCOME EARNERS (%)						
$0 - $ 900	48.7	63.7	**56.4**	30.3	59.3	**45.0**
$9001 - $15000	21.7	15.6	**18.6**	16.7	16.1	**16.4**
$15001 - $22000	13.0	5.7	**9.2**	244	11.5	**17.9**
$22001 - $32000	3.8	1.1	**2.4**	15.1	4.3	**9.6**

$32001 - $40000	0.5	0. 1	**0.4**	4.3	0.6	**2.4**
$40001 and over	0.4	0. 1	**0.2**	3.5	0.4	**1.9**
Not stated	11.8	13.7	**12.8**	5.8	7.7	**6.8**
NUMBER OF INCOME EARNERS (THOUSANDS)						
	66.4	70.7	**137.1**	5904.3	6061.0	**11965.3**

(a) Percentages are based on the total number of wage earners. Source: ABS Census of Population and housing, 1986.

TABLE 17.7 INCOMES OF ABORIGINAL INDIVIDUALS, FAMILIES AND HOUSEHOLDS, BY STATES AND TYPES OF INCOME UNITS, 1986 CENSUS

(A) Incomes of Aboriginal persons (aged 15+)

	Household Heads				*Other persons*			
	Males		*Females*		*Males*		*Females*	
	Median	*%*	Median	*%*	Median	*%*	Median	*%*
		<$9 000		*<$9 000*		*<$9 000*		*<$9 000*
New South Wales	12 900	29	<9 001	65	<9 001	68	<9 001	76
Victoria	14 900	22	<9 001	62	<9 001	57	<9 001	70
Queensland	12 600	27	<9 001	62	<9 001	64	<9 001	78
South Australia	12 000	34	<9 001	65	<9 001	69	<9 001	75
Western Australia	10 444	42	<9 001	66	<9 001	74	<9 001	80
Tasmania	15 200	20	<9 001	68	<9 001	58	<9 001	76
Northern Territory	10 200	44	<9 001	56	<9 001	70	<9 001	77
Aust Capital Territory	20 000	9	9 800	47	10 800	43	<9 001	52
Australia	12 200	32	<9 001	63	<9 001	67	<9 001	77
NUMBER OF PERSONS								
	21 329		15 375		45 091		55 339	

(B) Aboriginal Family Incomes

	Single Parent		*Other*		*All Families*	
	Median	*%*	*Median*	*%*	*Median*	*%*
		<$9 000		*<$9 000*		*<$9 000*
New South Wales	9 300	49	20 000	6	16 700	17
Victoria	9 300	49	22 800	5	19 200	15
Queensland	10 000	46	20 000	7	15 900	20
South Australia	<9 001	51	19 200	7	15 900	20
Western Australia	9 100	50	18 700	9	14 900	21
Tasmania	<9 001	5 6	20 800	5	19 000	12
Northern Territory	9 600	47	17 000	11	14 600	20
Aust Capital Territory	12 200	34	32 400	4	28 200	9
Australia	9 400	48	19 700	7	16 400	18
NUMBER OF FAMILIES						
	13 399		40 735		54 134	

(C) Aboriginal Household Incomes

	1 Family		*2 + Families*		*Lone Persons*	
	Median	*%*	*Median*	*%*	*Median*	*%*
		<$9 000		*<$9 000*		*<$9 000*
New South Wales	18 600	12	28 700	1	<9 001	56
Victoria	20 900	11	30 300		10 100	46
Queensland	18 900	11	33 300	3	<9 001	50
South Australia	18 100	14	29 400	3	<9 001	58
Western Australia	18 500	12	31 400	2	<9 001	63
Tasmania	19 800	9	27 400		<9 001	58
Northern Territory	19 200	11	36 400	1	<9 001	56
Aust Capital Territory	30 500	6	>40 000		15 900	26
Australia	19 000	12	32 000	2	<9 001	54
NUMBER OF HOUSEHOLDS						
	41 923		5 402		4 207	

Source: Compiled from Australian Bureau of Statistics, 1986 Census tabulations

Two descriptive summary measures of income are shown in the Table 17.7: (a) the *median* income for a category of people, families or households, which the level above or below which 50% of incomes fall; and (b) the *percentage of the category* earning incomes of less than $9,001 in 1986. This is an arbitrary point set by the

Australian Bureau of Statistics in its tabulations, but it is also near the point where tax exemption operated in 1986 and a little above the level of many welfare payments at that time.

The data have been split into meaningful categories. For example, individual incomes are shown for household heads and other people aged fifteen or more separately, with a further split into men and women.

Chapter 18 HOUSING AND INFRASTRUCTURE

The adverse consequences of the enforced dependency of Aboriginal people on the non-Aboriginal society, discussed in the previous chapter, are starkly demonstrated in this chapter' s consideration of housing and the infrastructure which complements housing. The chapter commences by pointing out the relationships that exist between poor and inappropriate housing, poor health, and the over-representation of Aboriginal people in custody. A central theme of the chapter is that Aboriginal people have lost control over the location, design and functions of their living spaces, with serious adverse consequences.
I argue that housing for Aboriginal people must be designed taking into account their cultural perceptions and their patterns of use of housing, since these differ in many ways from those of the non-Aboriginal society. I review the failed experiment of 'transitional housing', a component of the assimilation policies of earlier decades, set out information on the amount of housing needed by Aboriginal people and the problems they face owing to inadequate infrastructure, including electric power, clean water, waste disposal and roadways. Towards the end of the chapter, the relationships between poor housing, overcrowding, stress, violence and ill-health are discussed. Chapter 35 in Part F of the report takes the topic of housing and infrastructure development further, examining how Aboriginal people can gain an increased degree of control in this area.

18.1 HOUSING AS AN UNDERLYING ISSUE

18.1.1 Living conditions continue to effect both custodial rates and the health status of many Aboriginal people for a number of reasons.

18.1.2 Welfare presumptions of what constitutes a good home served to undermine family structures and identity. A recurring theme in the individual case reports that have been published by the Royal Commission is childhood separation of the deceased, largely as a result of 'care and protection' orders made in response to housing conditions. In Chapter 11, I have examined the extent to which separation from family is destructive of Aboriginal identity and gives rise to a cycle of institutionalisation.

18.1.3 Not only do poor living conditions perpetuate welfare intervention in the name of child protection, but they give rise to health risks for all members of communities living in those conditions. Lack of essential services such as water and sewerage create environmental health risks that would not be tolerated in urban centres.

18.1.4 Grossly overcrowded housing—particularly when associated with excessive drinking—creates a context for domestic violence. Women and children are primarily the subjects of this violence, and men are arrested. Other consequences that may follow include children being unable to sleep or eat properly. This situation in turn contributes to child malnutrition and high truancy rates which I discuss in Section 16.6.

18.1.5 Forms of Aboriginal social organisation find frequent expression in the apportioning and use of space—the association of people with 'country', the siting

of dwellings and shelters, patterns of visiting and gathering for religious, ceremonial, social and recreational purposes are all fundamental aspects of Aboriginal sociability. Mobility and avoidance have great significance as a means of coping with adverse circumstances. The close settlement of different groups of Aboriginal people in 'communities' may lead to conflict not contemplated by those outsiders funding and planning new housing and infrastructure development.

18.1.6 But the appalling conditions in which many Aboriginal people live have long been a concern to government. The problems confronting Aboriginal communities in their quest for adequate housing were summarised in a report commissioned by the Commonwealth Department of Housing and Construction in 1985.[1] They included:

- *·Insufficient consultation*

  There has been insufficient consultation, misunderstanding and limited involvement of tenants and local Aboriginal communities in providing housing. Lack of communication has lead to housing which many communities consider unsuitable because of design, location or materials used. Aboriginal communities may not learn about options until after standard houses have been built.

- *· Low incomes and discrimination*

  Aboriginal people living in urban areas and seeking access to the private rental market are inhibited by low incomes and discrimination from obtaining housing suitable for their needs.

- *·Providing accommodation for visitors and kin*

  Providing accommodation to temporary visitors can place a strain on the resources of an Aboriginal household. This is particularly the case in urban centres which people must visit for a variety of medical, legal and personal reasons. The disruptive effect of visitors with drug and alcohol problems is not confined to Aboriginal households, but is exacerbated by kinship ties.

- *·Insufficient housing stock*

  Insufficient permanent housing in areas preferred by Aboriginal people can lead to town camping and associated problems of inadequate facilities. Suitably designed housing in town camps may often be preferred to public housing authority dwellings, especially since camps are often small, independent communities based on ties of kinship, friendship and territory.

- *·Bureaucratic control*

  Aboriginal housing programs in cities, in town camps and on reserves have all been subject to a large component of bureaucratic control because funds have generally been provided from outside. As a result, the programming of consultations and design have frequently got out of step with the annual budget cycles of government, or else poorly designed projects have been pushed through to completion to conform with these cycles.

- *·Variety of housing schemes and agencies*

  There are an enormous variety of Aboriginal housing schemes throughout Australia, and a multiplicity of agencies. This can hamper the development of projects and deny Aboriginal people a knowledge of relevant procedures and processes.

- *·Changing expectations and needs*

The expectations and needs of various urban, rural and remote Aboriginal communities are diverse and rapidly changing. Some find standard architecture and services suitable, while others require specially designed structures. Some change their preferences after experiencing living in a new type of space or environment. Similarly, some Aboriginal communities have all the skills necessary to obtain and manage their own housing and simply need a secure title and income; others need more intensive support.

18.1.7 The provision of housing and infrastructural support services to Aboriginal people has been identified as a major underlying cause of diminished opportunity and well-being, particularly in rural and remote communities. This chapter examines the historical and cultural dimensions of these attempts to shape the everyday living environments of Aboriginal people.

18.1.8 Chapter 35 outlines in more detail the recent history of government policies and expenditures, and explores the possibility of Aboriginal control of housing and infrastructure through the development of Aboriginal housing companies and consultative mechanisms.

18.2 DISPOSSESSION: THE HISTORICAL CONTEXT OF A 'PROBLEM'

18.2.1 The collective historical experience of Aboriginal people has been one of exclusion from the lands which traditionally they occupied and used. As a consequence of that exclusion, Aboriginal people lost control over the location, design and function of their living spaces. As non-Aboriginal settlement spread across the Australian continent and the traditional economic base of Aboriginal society was eroded by the seizure of land, Aboriginal people were forced to accommodate themselves in relation to pastoral stations, ration depots, and the developing towns and cities. Lack of resources and racism effectively denied them access to European-style housing. Many were forced onto reserves and missions where they were subject to far-reaching controls, invasions of privacy, and where they were not free to come and go without fear of eviction.

18.2.2 The housing that was available to Aboriginal people under these circumstances ranged from humpies made from discarded materials, to basic cottages and European houses of various designs. Aboriginal creativity has produced infinite innovation in material and design adapted to the basic human need for shelter, and has taken into account various traditional social considerations within the limitations imposed by the changed circumstances of European settlement.

18.2.3 The forced movement of Aboriginal people into camps, stations, missions, settlements and towns has entailed the need for an infrastructure which is unprecedented in Aboriginal experience. Previous knowledge of, and access to, energy sources, water supply, waste management, building materials and structures was rendered obsolete by the conditions of life imposed by a non-Aboriginal presence in Australia. Moreover, since settlement, Aboriginal people have rarely gained any level of control over the infrastructure which would support a sedentary lifestyle.

18.2.4 All sedentary communities have basic infrastructural requirements, including a reliable supply of fresh water, the removal of waste and access to a supply of goods and services which the community cannot supply for itself—including food and health care. In cities and most small rural towns these infrastructural needs are met by municipal councils or other local government bodies, or by the State and Commonwealth Governments. Most Australians take

these services for granted.

18.2.5 The Aboriginal need for housing cannot be separated from the Aboriginal desire for land expressed through the land rights movement. The Victorian Aboriginal Issues Unit reported that housing is commonly viewed as a land rights issue by Victorian Koories. A statement made by one Koorie woman about her mother's land expressed a feeling which was widespread in the communities visited by the Aboriginal Issues Unit:

> *All the families [in this area] are squatters and yet my mother is one of the original owners and she can' t even be given this little block with this old [Housing] Commission house on it. She is on a pension and when she gets behind in rent, even for one week, they are right on her back for it. This is my mother' s land and it makes me angry.*[2]

18.2.6 Others said that, 'Cheap, adequate housing should be compensation for our loss of land and our way of life'.[3] The injustice of having to pay to live on what Aboriginal people consider to be their own land, the exclusion from the means to ever purchase it back, the oppressive dependency on the government for housing, the poor design of houses and lack of choice are all characteristics of the present situation in the area of housing in Victoria as Koories see it.

18.2.7 'Homelessness' is a direct result of the loss of Aboriginal land. Through the loss of any form of secure tenure, Aboriginal people have been denied the right to live in the locations of their choice or under terms within their control. Pursuant to Land rights legislation, some Aboriginal people have managed to regain a level of control over those places of traditional or historical significance with which they feel most 'at home'.

18.2.8 The inadequacies of housing and infrastructure available to Aboriginal people impacted on the lives of the deceased in a number of ways. Not only were a high proportion of those who died 'homeless', but many were removed in the name of welfare as result of family living conditions.

18.2.9 Wayne Dooler was born at Carnarvon in Western Australia in October 1960. The social conditions at the Carnarvon Reserve where Dooler spent part of his childhood were described to Commissioner O'Dea by Dr John Williams, a medical practitioner, who, upon his arrival in 1968 observed:

> *There were about 200 people living at the reserve and because of gross overcrowding, they lived in tents, car bodies, bowers and two or three bedroomed shacks. There were communal toilets and only one tap outside each standard reserve dwelling for water supplies. There were also 150-200 people living at fringe dwellings. They had pit toilets and no water at those fringe dwellings. Water was carted in tins and human waste was disposed of in the bush which was in no way fly-proof or hygienic... Trachoma was a real problem in 1968 but it was virtually non-existent in 1980. People suffered from malnutrition. We could not believe there was such poverty. Pneumonia and gastro were also a major problem, particularly with children.*[4]

RECOGNITION OF AN EVOLVING 'PROBLEM' AND THE QUEST FOR 'BETTER HOMES': THE EXPERIENCE OF THOSE WHO DIED IN CUSTODY

18.2.10 Shane Atkinson was born at a time when the Victorian Aborigines Welfare Board was pursuing a policy of assimilation, the object being to assist each

Aboriginal person to obtain the status of 'a fully accepted member of the general community'. Commissioner Wootten observes that:

> *One of the first steps taken by the new Board was a survey of the Aboriginal population, which concluded that Victoria has a population of 1,400 of whom less than 20 were full-blood. One finding was that they lived in appalling housing conditions. In its report for the year 1959-1960 the Board noted that in country areas there were 77 families with 385 persons who lived in 'appalling shanty town conditions'; 145 families with 771 persons who lived in substandard dwellings; and 110 families with 500 persons who were considered to have satisfactory housing. In the metropolitan area 30 families were in very substandard houses and 30 were considered to be in satisfactory houses. The Atkinson family were at that time amongst the 77 families living in appalling shanty town conditions. Indeed for much of the time they lived in a tent. 5*

18.2.11 As Commissioner Wootten notes, however, 'shanty town conditions' was a description of the buildings informed by the standards of the white community, and reflected the poverty of Aboriginal people. Within many of these shanties Aboriginal people maintained spotless homes and cared well for their children.

18.2.12 In his *Report of the Inquiry into the Death of Barbara Denise Yarrie,* Commissioner Wyvill refers to the conditions in which both Barbara and her sister Fay lived. Fay's death has also been the subject of Commission inquiries.

> *When Barbara was one year old the family was granted exemption from the legislative provisions which had controlled their lives on the settlement and the family moved to Mr Yarrie's home country in south-east Queensland. For the next eight years the family battled with difficult living conditions and inadequate accommodation, with limited financial resources and prospects and with health problems.[6]*

18.2.13 In 1968, the police constable at Clermont was requested to examine the family's living conditions at the insistence of the District Officer of the Department of Native Affairs. He reported:

> *This family resides in a roughly constructed humpy made from scraps of iron and leaves and has a dirt floor. This humpy is located on Sandy Creek, about one and a half miles from Clermont. It is very poor accommodation and no doubt it would not be fully weatherproof.[7]*

18.2.14 The family moved houses, until eventually in 1970, at Hillview, they came to the attention of the Department of Children's Services. Following a Children's Court care and protection order, the six surviving children were placed in homes. Barbara and Fay, then aged thirteen and twelve years, began their experience of institutionalisation.

18.2.15 Donald Harris was the eighth of nine children born between February 1944 and May 1961. Three and a half years before his birth, five of his siblings were committed to the care of the Child Welfare Department after being proved to be destitute and neglected. The family home was described in a departmental report at the time as a 'bush humpy freehold'. 8

18.2.16 There were, however, some cruel ironies. Some Aboriginal children escaped the discretionary powers granted to welfare officers. In November 1958,

all of the siblings of Steven Glenn Michael were committed to the Children's Court at Beverley, Western Australia for being 'destitute and neglected'. The Community Welfare Department explained that:

> *This action was taken in the interest of the children to provide more stable living conditions with better food, shelter and training. With father doing a two-year term of imprisonment, family circumstances are particularly poor... Since father imprisoned, mother has no fixed abode and moves from place to place camping with friends and relatives.*[9]

18.2.17 No order was sought in respect of Steven, then aged eleven months, as Mrs Michael's 'widow's' pension would have stopped if she had no children under sixteen years.

18.2.18 The young man who died at Geraldton was born in March 1960 in Kalgoorlie and suffered from similar welfare intervention at the age of 11 months. At the time, the family were living in a one-roomed house with no furniture and only blankets on the floor.[10]

18.2.19 The conditions in which Jimmy Njanji lived are testimony to the continued existence of appalling social conditions. A Community Development Officer from South Hedland in Western Australia explained where Jimmy lived in 1985 in these terms:

> *The ditch is on the low lying area around the shopping*
>
> *centre. It is the drainage area for the whole of South Hedland. There*
> *are a series of ditches. The Aboriginals live, sleep, eat in the ditch. They are known as 'd*

18.3 HOUSING AND CULTURAL VALUES

18.3.1 As well as prescribing a complex set of behaviours and duties, a house embodies an elaborate set of ideas and values. The ideas of what a house is and does are very much a function of geographic, cultural and socio-economic background. Aboriginal conceptions of how a living space should be used may differ considerably from those of most non-Aboriginal people. In camps and outstations, dwellings are usually spread over a wide area. A traditional shelter can be infinitely modified or extended, and it is far more likely that people sleep and utilise spaces which are separate and distinct from the dwelling proper. This allows for maximum freedom of choice with respect to activities and interpersonal contact. In a European-style settlement, the minimal living areas between houses ensures that there is a real erosion of options with respect to location of fires, shades, and sleeping places, and a far greater concentration of people in a delimited space.

18.3.2 Housing policies in Australia have operated on the assumption that it is the nuclear family which is the basic unit to be accommodated in a single dwelling. A parallel assumption of house design is that family members require private spaces within the dwelling, and that private and communal spaces must be clearly demarcated. In turn, the relationship between inside spaces, and between inside and outside spaces, is defined by usages deemed appropriate to each. The average Australian house—a dwelling of internally divided spaces set in a demarcated front and back yard, each with a set of appropriate behaviours—represents one set of possibilities for the organisation of a living space. Its assumptions are shaped by both history and culture. Aboriginal assumptions about the needs and organisation of domiciliary space are frequently

quite different.

18.3.3 For example, in a survey of living conditions on the Anangu Pitjantjatjara homelands, the Nganampa Health Council found that 80% of Anangu people spent on average 70% of their time outside. People *live* outside their house; the areas around a house are used far more consistently than the house itself.[12]

18.3.4 Aboriginal people do not necessarily equate 'home' with the built structure of a house:

> *Aborigines have repeatedly stressed that, for them, home is wherever a family member extends sustenance, whether emotional or physical... Moreover, the extended family network and family obligations and expectations mean that a person even temporarily living with relatives is not 'homeless' 13*

18.3.5 Dr Paul Memmott has summarised the following cultural factors shaping Aboriginal use of living spaces *(inter alia):*

- Many Aboriginal groups lack an emphasis on personal possessions. This appears to explain why housing does not necessarily have a high value for many Aboriginal groups and the consequent lack of concern about damage or disuse of housing.
- The retention of traditional kinship behaviour, even amongst urban households, can lead to high numbers of visitors and consequent severe strain on servicing. Kinship obligations entail the sharing of objects, food and house facilities.
- Aboriginal models of privacy and crowding remain culturally distinct. Norms related to these concepts shape the external orientation of households and a tendency for Aboriginal people to spend much of their time outside their houses, maintaining communication with and surveillance of their neighbours. Sleeping behaviours can involve substantial numbers in a single room.
- The custom of abandoning a house-or an entire housing sector—upon the death of a resident remains a formidable problem for housing authorities in many parts of Australia.[14]

18.3.6 Differences in the perception of living spaces is forcefully pointed out by the architect Peter Myers who has explored the way these differing cultural conceptions are mapped onto the created spaces of houses:

> *In Wilcannia, one is immediately struck by the extreme difference between black and white concepts of privacy. In our [white] society the need for close privacy has... become one of the strongest influences on the way that the immediate environment is manipulated, and as such becomes fundamental to the design process of architects. The compulsion to separate privacy and communality within the house form may seem a perfectly natural condition to us—a high degree of acoustic and visual isolation, a sophisticated nesting of individual compartments which, in the standard detached bungalow, reveals a set of spatial complexities with predetermined psychological roles. This particular formal composition has little to do with the mechanical function of shelter, but is much more a reflection of intrinsic cultural and symbolic values held by the occupants.*
>
> *On moving into the Aboriginal world, our own criteria of privacy are immediately challenged. The basic difference is that whereas in our culture privacy really does demand a high degree of visual and aural*

isolation, in Aboriginal society it can exist without such structural supports... We simply refuse to accept that members of an Aboriginal family group need to sleep in a single undivided space, rather than in our suburban ideal of one' s own bedroom. All sorts of experts condemn the 'shocking overcrowding' in camp shelters, without bothering to consider that such a notion is a purely subjective response.[15]

Recommendation 73:

That the provision of housing and infrastructure to Aboriginal people in remote and discrete communities, including the design and location of houses, take account of their cultural perceptions of the use of living space, and that budgetary allocations include provision for appropriate architectural and town planning advice to, and consultation with, the serviced community.

HOUSING AS LOSS OF CONTROL AND A SOURCE OF STRESS

18.3.7 Policies of assimilation denied Aboriginal people legitimate control over their lives and communities. Dr Joseph Reser has produced a parallel formulation of how a European-style house can itself deny Aboriginal people control over various domestic, social and economic aspects of their lives.[16] According to Dr Reser, this loss of control over one's immediate environment elicits anxiety and stress, and detrimentally affects a person's competence to deal with other problems associated with a changing situation.

18.3.8 An Aboriginal person moving into a European house has far less control over where he or she lives. The site is often pre-determined and the house cannot be moved. There is no control over who the neighbours are. Doors and windows are perhaps the only features of the dwelling itself which can be manipulated. Specific spaces and rooms are functionally defined in such a way as to resist or frustrate multiple or non-standard uses.

18.3.9 In addition, living in a European house can entail a loss of control over one's social environment. There may be less control over which kin stay in the house. The presence of a number of people may gravely compromise proscribed avoidance relationships and other elements of social organisation and further infringe on a person's freedom and control. Control over toilet, shower and washing facilities, personal possessions and food under such circumstances is negligible.[17]

18.3.10 Even more importantly, living in a European house necessitates a minimal number of—and knowledge of—household items which the average Australian householder takes for granted: light bulbs, fuse wire, cooking utensils, cleaning agents and apparatus, several basic tools, etc. If these commodities are unavailable, or difficult to obtain, simple maintenance and adequate use of a house become monumental tasks. Unfamiliarity with the materials and techniques of home maintenance result in faults which cannot be remedied as they develop. Overloading and the irregularity of essential services such as power, water and sanitation compound the problem.

18.4 ASSUMPTIONS ABOUT THE NEED FOR HOUSES AND FACILITIES

18.4.1 Government policy and practice have been largely shaped by non-Aboriginal assumptions about the role of living spaces. The assumption

behind most programs related to Aboriginal housing is that the built structure of a house, and its social location, are unproblematic. Almost all ignore Aboriginal people's own uses and cultural understandings of space.

18.4.2 Many extended Aboriginal families have been fitted into houses intended for one nuclear family. The problem is not so much the number of bedrooms but rather the way houses are used. Often far more people than intended share a house. In addition to the burden of an extended family regularly in residence, visitors can also dramatically boost resident numbers for short or prolonged periods. As Katherine Winsley, Executive Director of the Kalano Association in Katherine told me:

> *It' s what happens when people are in town that puts a lot of strain on Kalano resources... relations will come in, they haven't got anywhere to stay in town, so they'll go and stay with relations that are in one of the Kalano houses. That causes overcrowding in the house, it causes a lot of wear and tear to the house. The house gets smashed up much faster than what it would normally be if there was just, say, that one family in there. 18*

18.4.3 The features of mobility and visiting are certainly not restricted to Aboriginal cultures in the north of Australia. A Medical Officer with the Central Gippsland Aboriginal Health and Housing Co-operative based in Morwell in Victoria's Latrobe Valley has submitted to me that:

> *the Latrobe Valley Aboriginal community lives by cultural and social values with behavioural ways far more similar to traditional and Mission lifestyles than to the nuclear and non-migratory existence of non-Aboriginals. The Latrobe Valley Aboriginals frequently travel and stay (for months at a time) to other areas of Victoria (e.g. Lake Tyers, Central and Western Districts) and Australia. This migration is balanced by movement to this region by Aboriginals from other areas.[19]*

18.4.4 Many Aboriginal people prefer to live part of their lives outside, and cook and eat in the open. The amenities of washing and toilet facilities, and garbage disposal are often problematic because such services are supplied for too few people. The emphasis seems to be on how many bedrooms a house has, rather than the provision of the more important facilities for however many people live in or visit the community. If houses are supplied for a quarter of the people, all of the people will use the facilities and will overburden them owing to the nature of kinship obligations and the limited emphasis on private property

18.4.5 Even the necessity for a household head—that is, someone who is legally responsible for a lease or rent—is an imposition which may contradict cultural norms. In his study of the Tangentyere Bank in Alice Springs, Tim Rowse has noted how the process of rent collection constructs the 'household' as an administrative and economic necessity, even when such a unit does not exist within Aboriginal society.[20] Housing, and particularly public rental housing, entails the economic construct of an accountable unit which 'consumes' municipal services, but is not matched by the reality of Aboriginal sociability. The Kalano Association, in acknowledgement of the difficulties of this process, have developed some mechanisms for dealing with rent collection based on a knowledge of their clients' circumstances:

> *If there' s [sic] other families that are in that house, then we*

encourage other families to help that family pay the rent so that one week one family ... might pay the rent out of their cheque and then the next week the next family will [pay] because we know who is in what houses and people quite freely help each other about paying the rent.[21]

TRANSITIONAL HOUSING AS ASSIMILATION IN REMOTE AREAS

18.4.6 Prior to the late 1960s, Commonwealth and State welfare authorities administered special bodies of law applying only to Aboriginal people. They managed 'reserves' of land specifically set aside for the purposes of Aboriginal welfare, and in the process both assumed responsibility for, and closely supervised, most aspects of Aboriginal lives. Under the policy of assimilation, these authorities saw themselves as 'training' Aboriginal people for future incorporation into the larger, non-Aboriginal community. Housing was a central mechanism by which assimilation was to be achieved:

Individual Aboriginal families were to move through a range of accommodation from a single- or two-room dwelling with few facilities to progressively more conventional two- or three-bedroom suburban types of houses. The approach was referred to as 'transitional housing' and a number of transitional dwellings, as well as some conventional ones, were built by the Aboriginal welfare authorities on reserves during the 1950s and early 1960s.[22]

18.4.7 The concept of transitional housing employed a simplistic philosophy of architectural determinism, whereby environmental design was thought to produce specific behaviours. Partially serviced transitional dwellings were provided on the supposition that Aboriginal people would begin to behave like other Australians if they occupied a house which resembled the type occupied by non-Aboriginal people.

HOUSING AS ASSIMILATION IN RURAL TOWNS AND URBAN CENTRES

18.4.8 Writing of the area surrounding the provincial town of Mt Isa in north-west Queensland, Dr Paul Memmott of the University of Queensland has noted a process by which housing was used to fragment Aboriginal sociability and identity:

Housing had slowly begun to be provided for Aboriginals in the region from 1969 as part of a State/Commonwealth housing agreement. This was administered by the Department of Aboriginal and Islander Affairs as an instrument of their assimilation policy, houses being purchased where possible to create a 'scatterisation' effect, a form of 'indirect discrimination' aimed at juxtaposing whites and blacks and breaking down Aboriginal enclaves (and hence Aboriginal identity).[23]

18.4.9 Similar attempts at using housing as a form of social engineering occurred throughout Australia. In New South Wales, for example, in the late 1960s, the Department of Housing decided not to build new Housing Commission homes in country towns where Aboriginal populations were highest, but to transfer housing planned for these populations to larger rural or urban areas. This was rationalised in terms of the greater employment prospects which were presumed to exist in these centres. In part, the Government-sponsored 'Voluntary Family Resettlement Scheme' facilitated this movement. There are examples from Bourke, Darlington Point and other towns with high Aboriginal populations in which

the relocation program targeted Aboriginal people believed to be leaders of social networks in order to stimulate chain migration. These people were encouraged to move to urban industrial areas through the offer of a house and a job, even when these individuals already held jobs in a rural town. Apart from its failure to take account of broader social issues such as dislocation and the severing of family ties, the scheme also failed to offer Aboriginal people any sort of training in the skills required to manage the new types of houses in which they found themselves. A speaker told Commissioner Wootten during a heating at Dubbo:

> *One of the things I experienced in Tamworth, with people that had been resettled there, was that people weren't introduced to the community. They were just plonked in a community and they came from some places where they never had electricity or things like that ... they weren't taught or educated about that house in any way. Then when they didn't use it properly they were criticised for it.*[24]

18.4.10 Assimilation was also attempted without moving people great physical distances, although the requirements and restrictions of living in public housing could be just as demanding. In 1967 Clarrie Nean's family had the experience of being transferred from the Walgett Aboriginal Station to a house in Walgett township as part of such an exercise in assimilation:

> *[T]welve town houses in Walgett were allotted to recommended families who, following a detailed survey, appeared to be the most worthy of selection by a general combination of general cleanliness and tidiness, apparent efforts to improve by accumulating some of the necessities of life, size of families (within reasonable limits to fit houses), apparent industry, general conduct, and domestic needs. In most cases reporting on individual applicants was done on a form headed 'Personal Report on Applicant for Exemption from Provisions of the Aborigines Protection Act and Regulations Thereunder', which is indicative of the fact that the allocation of houses had replaced exemption as an inducement to assimilate. The comments showed an expectation that successful applicants must have first demonstrated by their treatment of a shack on a reserve the qualities necessary for an acceptable tenant in the town. Great emphasis was placed on accumulation of 'furniture and possessions' and on making the shack 'clean and comfortable'.*
>
> *The twelve houses were all in a row and were allotted to families totalling 99 persons, which averaged 21 bedrooms accommodating 2 persons each and 19 bedrooms accommodating 3 persons each. The Neans were allotted a three-bedroom house.*[25]

18.4.11 Housing was also an instrument of assimilation in urban settings. In surveying the historical movement of Aboriginal people into provincial and metropolitan urban centres in South Australia, Dr Graeme Hugo notes that the major impetus to urban settlement began in the 1950s. Partly this movement was a response to encouragement by government agencies and the growing concentration of job opportunities, services and facilities in urban centres such as Port Augusta and Adelaide.[26] Dr Hugo quotes Professor Fay Gale's findings of competing forces operating to shape the spatial distribution of Aboriginal people in Adelaide. On the one hand, kinship networks and generally low incomes operated to encourage a concentration of the Aboriginal population in certain areas. On the other, the fact that a high proportion of this population rented or bought State

housing authority dwellings meant that they were dispersed throughout the

city. This was in line with an explicit policy which sought to link the separation of Aboriginal people from each other with a process of integration and acceptance by non-Aboriginal people:

> *[T]he actual procedure for selecting the sites for such houses has spread them quite extensively through the available suburbs. This attempt at dispersal was a decision taken quite consciously by those initiating the housing project [the Aboriginal Funded Housing Unit] in the early seventies. They believed that full acceptance and integration would occur only if 'ghettos' were prevented and Aborigines were scattered throughout the suburbs.*[27]

This is not unlike the 'scatterisation' effect noted by Dr Memmott.

18.5 LOCAL GOVERNMENT AND INFRASTRUCTURE

18.5.1 It is at the level of local government that many of the assumptions that underly Aboriginal housing policy are transformed into practice.

18.5.2 Local governments control the distribution of resources within boundaries, yet in many cases have consistently underestimated the number of Aboriginal people living in their areas of responsibility. Consequently, Aboriginal people and communities have tended to be under-serviced by local government authorities. The relations between Aboriginal people and local governments are discussed throughout this report. Again though, essential service delivery and the provision of infrastructure to Aboriginal populations, so often the responsibility of local authorities, is not something of which many non-Aboriginal people can be proud.

18.5.3 Aldermen and councillors often represent economic and political links amongst town people and surrounding land holders. Local government has the power and the obligation to control the use of land within its boundaries, planning, building and zoning; and to fulfil the needs of public health maintenance. It has a legitimate interest in the use of public space; and increasingly, it is called upon to administer public employment and welfare functions. Historically, these functions have been used to evict Aboriginal people from their homes, deny access to accommodation and houses in towns, deny services such as water and sanitation to permanent camps, and to demolish houses or camps **as** temporary or unhygienic.

18.5.4 In New South Wales, the widespread demand from local government authorities that the government segregate Aboriginal people resulted in amendments to the *Aborigines Protection Act* in 1936 amendments which gave the Aborigines Protection Board the power to concentrate and confine Aboriginal people. The Welfare Board .enthusiastically continued this policy, calling on local government councils m 1941 to assist in demolishing all Aboriginal 'unauthorised camps'. By 1947 in New South Wales, local government and other bodies in Coffs Harbour, Coonabarabran, Walgett, Moree, Nowra, Yass and Griffith had called on the Board to control the movement of Aborigines which had increased the size of the town camps.

18.5.5 The councils wanted control and limitation of Aboriginal residential areas. By 1947 there was much press coverage regarding the conditions of town camps and accusations of Aboriginal communities as being health and social risks. These camps were said be the sources of 'social diseases'. As part of the assimilation of

Aboriginal people in New South Wales, the Aboriginal Welfare Board took an initiative to acquire individual house lots within town limits. These were to be given to carefully selected Aboriginal families as a reward for their decisions to isolate themselves from their communities. Municipal and shire councils became the most consistent opponents of Aboriginal Welfare Board plans for town housing from 1945 to 1969.

18.5.6 As I have already noted, it was about this time that Clarrie Nean's family were allotted a three-bedroom house in Walgett, though, as Commission Wootten notes:

> *Transition to town, which took place in February 1967, did not offer much freedom from the oppressive scrutiny and pressure to conform under which the Aboriginals lived. When the Walgett branch of the Australian Labour Party wrote urging 'careful selection' of tenants because allocation to a couple of 'undesirable families ... could be detrimental to the whole project,' the Chief Secretary gave an assurance that allocation was made by an officer who was fully conversant with the Aboriginal problem in the Walgett district' and that 'the behaviour of the tenants will be kept under review to ensure that they maintain the standard of living expected from them by the Board'. The censorious scrutiny of the white townspeople was now added to the continuing official scrutiny.*[28]

18.6 PROBLEMS IN GOVERNMENT POLICY AND PRACTICE

THE FAILURE OF 'TRANSITION'

18.6.1 The concept of transitional housing was based on the assumption that Aboriginal people were incapable of adjusting to conventional European-style houses. The program assumed that Aboriginal people could only adjust gradually, whilst the measure of that adjustment was entirely at the discretion of non-Aboriginal 'welfare' officers. The program was also simplistic in that it provided one solution for a vast range of social groups with differing needs, who were undergoing differing processes of cultural change, and who possibly had differing values about shelter in the first place.

18.6.2 In reality, housing for Aboriginal people has always been in short supply, and there was insufficient housing stock to facilitate the 'transition'. The architect Michael Heppell has compiled the following statistics on the inadequacy of transitional housing provision in Western Australia and the Northern Territory alone:

> *Statistically, in terms of the number of houses provided, the assimilation policy seems to have fallen rather short of the requirements. For example, in Western Australia, according to the 1971 census, there were 9,453 full blood Aborigines (6,095 adults) and 14,939 mixed blood (6,621 adults). By 1971 the State Government had provided 1,036 houses, 414 of which were Stage 1 and had no running water. In the Northern Territory, there were 4 790 Aboriginal families and 1,006 housing units available... In the entire twenty years during which an assimilation policy had operated, about 21% of Aborigines in the Northern Territory and 16% in Western Australia had been provided with Stage 1 houses or better.*[29]

18.6.3 As Lorna Lippmann has observed: 'the chronic housing shortage would relegate a family to Stage 1 for a lifetime, regardless of their prowess as householders'.[30]

18.6.4 As is quite obvious, the funds made available for Aboriginal housing in each State and Territory were quite insufficient to make a staged approach feasible: 'There simply were not enough funds to build sufficient transitional houses to enable each Aboriginal family to take its first uncertain steps on the road to the full efflorescence of Western domestic skills'.[31]

18.6.5 Lorna Lippmann provides the following description of transitional houses built in Geraldton, Western Australia, in the late 1950s. Stage 1 houses consisted of three rooms of unlined galvanised iron with a wood-burning stove in the centre room. There were verandahs, but no bathroom or kitchen. A Stage 2 house was also of unlined galvanised iron, but had four rooms, kitchen, laundry, bathing facilities and septic toilet. Stage 3 houses were standard Housing Commission dwellings. Stage 1 and 2 houses were still in use in the late 1970s, despite being subject to flooding and sewage overflow.

18.6.6 There is evidence that these houses had a significantly debilitating effect on their inhabitants' well-being, both physical and mental. A visiting nursing sister reported that:

> *'The psychological effect on the people living in these houses ... is profound... Alcoholism, aggression and depression are made worse, living under such difficult and poor conditions.' Needless to say, such woeful living conditions give rise to equally woeful health.*[32]

18.6.7 Dr Helen Ross also notes that Stage I transitional houses built in Northern Territory settlements in the 1960s were grossly inadequate as shelters, and bore little resemblance to the conventional houses their occupants were supposed to progress towards. Lighting fires on the concrete floors and camping out between the houses were interpreted by non-Aboriginal people as evidence that Aboriginal people were unable to live in houses. This further confirmed the prejudice that Aboriginal people were not civilised enough to warrant housing parity.[33]

18.6.8 Commissioner Dodson has pointed out to me the irony of a situation in which Aboriginal people, particularly women, were forced to live in transitional housing whilst at the same time working as domestics in non-Aboriginal households. Although they were required to cook and wash and clean to exacting standards for their employers, these Aboriginal people were not deemed able to look after their own houses.

18.6.9 Transitional housing was often accompanied by a parallel failure to develop appropriate infrastructure. In addition to their lack of sheltering capacity and basic facilities, houses provided for Aboriginal people in towns and on reserves commonly had only low voltage electricity; a lack of internal water supplies; poor watering facilities and low water pressure; inadequate provision of communal facilities; and were poorly maintained by the responsible authorities. Dr Ross concludes that:

> *Transitional houses appear to have given Aboriginal people the worst of both worlds dislocation of community social life and poor climatic control, without many compensations in household facilities.*[34]

THE EXTENT OF HOUSING NEED

18.6.10 The basis for allocation of funds under the Commonwealth-State Housing Agreement has been the Housing Needs Survey conducted by the Aboriginal Development Commission (ADC) and the former Department of Aboriginal Affairs (DAA). These surveys have been conducted in September 1983, 1984, 1985 and 1987; a more limited survey was undertaken in 1989 by the DAA. The 1987 survey covered 1,339 communities and localities Australia-wide. It found that 70,000 people, or 31% of the total Aboriginal population, were homeless or living in inadequate accommodation. More than 16,000 new dwellings were estimated to be required to adequately house Aboriginal people living in substandard and overcrowded conditions. The estimated cost of meeting this need was approximately $1.3 billion.[35] A summary of the 1987 housing need findings is set out in Table 18.1.

TABLE 18.1 ADDITIONAL DWELLINGS NEEDED (EXCLUDING HOSTEL TYPE ACCOMMODATION)

State	*Number*	*% of National Total*	*Cost $m*	*% of National Total*
NSW	3 274	20.2	249.9	19.6
VIC	651	4.0	50.5	4.0
QLD	4 715	29.2	356.0	27.9
WA	2 565	15.9	222.5	17.5
SA	1 403	8.7	117.5	9.2
TAS	56	0.3	3.9	0.3
NT	3 515	21.7	273.7	21.5
Total	16 179	100.0	I 274.0	100.0

Source: Aboriginal Development Commission, Aboriginal and Torres Strait Islander Housing and Accommodation Needs Survey, p. 2.

18.6.11 The 1987 Housing Needs Survey suggested that at the then current level of Commonwealth expenditure it would take ten years to meet the backlog of needs identified. The ADC also noted that: 'Further needs are continuing to arise through new family formations, changes in aspiration for housing and the requirement to replace substandard housing'.[36] Aboriginal population growth and changes in the age profile will also continue to have an effect on housing need.

18.6.12 In Chapter 11 I have referred to the extraordinary projections

for the growth rate of the Aboriginal population. Speaking of the failure of housing programs to keep pace with housing need and population growth in north Queensland, for example, Professor Bruce Rigsby told Commissioner Wyvill:

> *If you look at any of the communities, whether they're like Yarrabah, near Cairns, or Hopevale near Cooktown, or the remoter communities, they are extremely young communities in which 65 to 70 per cent or greater of the people are less than 21 years of age and with a very high birth rate. Now that impacts very quickly. I've observed it for 17 years... at Bamaga and at Lockhart [river] and at Coen, but I don't see any speeding up in the building program, in the construction of residential housing on the communities to keep up with the number of young people attaining adulthood. [The communities] are demographic time bombs and the only way I can describe them are as massive failures of social engineering. 37*

18.6.13 Dr John Taylor and others, in material prepared for the Queensland hearings, identified overcrowding as one of the major sources of stress for people at Yarrabah:

> *At least half of the survey sample from Yarrabah indicated that*

> *crowded housing was a problem, that they had recently had new residents come to live with them, and that they themselves had been homeless at some time in the past. Moreover, a sizeable portion of them [39%] indicated that they found these conditions currently stressful.*[38]

18.6.14 The majority of dwellings at Yarrabah are built to a three-bedroom plan with sufficient room for a family of six. Dr Taylor found that 25% of houses contain more than eight persons. Fourteen houses were found to be 'grossly overcrowded', sheltering twelve or more people.[39]

18.6.15 David Martin, in a report on social and family factors prepared for the Aurukun case, notes that in October 1987, 886 people were living in 118 houses at Aurukun. These houses ranged from simple two-room structures dating from the mission period, through prefabricated homes, to new concrete block dwellings. There were on average 7.5 people per dwelling, but some of the newer houses had as many as twenty residents.[40]

18.6.16 The *Uwankara Palyanyku Kanyintjaku—known* as the UPK-review of environmental health on the Anangu Pitjantjatjara Lands included a living areas survey of ninety houses accommodating 743 people. On average there were 8.3 persons per house. The average house on the Anangu Pitjantjatjara Lands has two bedrooms and an overall area of 77 square metres. On an equivalent proportion of persons per house, the average suburban Australian house (at 130 square metres) would be accommodating fifteen people.[41] On average, nine people were using the bathroom facilities of any house. Approximately 50% of the population surveyed did not have any housing at all, so that half the population were dependent on the other half for certain basic facilities. Given that the toilet and washing facilities—and in most cases laundry facilities if they existed—were combined in the one room, the load on facilities was enormous.

18.6.17 Overcrowding is linked both to insufficient housing stock and a cultural pattern whereby—in Aboriginal cultures throughout Australia—people asking for accommodation cannot be turned away. This pattern is as prevalent in south-eastern Australia as it is in the north. The Central Gippsland Aboriginal Health and Housing Co-operative in Victoria submitted to me that:

> *The Latrobe Valley Aboriginals live communally, with few households having less than 10 individuals resident on any given night, often 15 or more individuals, in a 2 bedroom Housing Commission house. The Latrobe Valley Aboriginals have a strong sense of identity as Aboriginal people, and congregate together frequently in large groups, to discuss personal and community matters. 42*

18.6.18 An officer of the Central Australian Child Care Agency in Alice Springs told the National Inquiry into Homeless Children that

> *the extended family is prevalent as the option for accommodation. Overcrowding because of the extended family and general unwillingness to turn friends or family into the streets, is a problem.*[43]

18.6.19 However, the Inquiry puts forward evidence that the extended family system is not as effective as it was in the past and that, particularly in urban centres, it could not offer adequate physical and emotional support to young people in need.

18.6.20 The Inquiry also notes that the Aboriginal extended family is often exploited by being used as an excuse for inaction on the part of governments. The following transcript evidence is quoted in the Inquiry's report:

> *I think it is fair to say that State and Federal Governments have been hiding behind the, 'Oh, it's all right. The extended family will look after Aboriginal people; they'll look after themselves.' But it comes to a stage when ... your house is crowded, and you just cannot feed another six kids. I think the government has been hiding behind this for too long. 44*

LACK OF RELATED INFRASTRUCTURAL PROVISIONS

18.6.21 For Aboriginal people living at some remove from large service centres, inadequate housing has been accompanied by diminished access to the infrastructure which supports living in a house.

18.6.22 In material presented to a House of Representatives Standing Committee on Aboriginal Affairs in 1987, the Central Land Council submitted that of 24 homeland centres with 614 residents, 19 lacked adequate water supplies, all lacked adequate ablution blocks, 21 had inadequate sewerage or waste disposal and 22 had inadequate electricity supplies. All the homelands had some sort of shelter, but 22 of them required more or better dwellings. A more comprehensive survey of homeland centres conducted throughout central Australia in 1984 reported that 80% had substandard facilities. The Kimberley Land Council reported that 28% of homeland centres in its region had inadequate water, 76% were without electricity, 68% had only improvised housing constructed of timber beams and canvas sheets and nearly half had access roads which were impassable in the wet season. The Committee concluded:

> *These figures indicate the generally appalling standard of essential facilities and services provided to homeland centres. While it is true that in some areas homeland centres have only recently been established, in other areas well-established homeland centres remain poorly equipped. The general standard of facilities and services reveals an enormous neglect by governments of the needs of homelands people.*[45]

Water

18.6.23 A comprehensive national survey has recently indicated the extent to which small communities do not have access to adequate and reliable sources of water. The study was prepared by the New South Wales Public Works Department. On a national basis the study found that about 21,300 Aboriginal people living in 158 small communities did not have a reticulated water supply, and 90% of these communities were in the Northern Territory and Western Australia. While the average population of these communities was about 160, thirteen had a population of **more** than 500 people. Overall, some 228 communities with a population of 37,300 people had either inadequate or non-existent **reticulated water** supplies.[46]

Electricity and Power

18.6.24 Electricity, together with other forms of power, are not readily or reliably available to many rural and remote Aboriginal communities. The House of

Representatives Standing Committee found few homeland centres, or individual dwellings in homelands centres, to have electricity. Some communities had portable generators owned by individuals, but some of these were not in working order. Breakdowns and fuel shortages and problems of energy storage hamper most generator systems in remote locations.[47]

18.6.25 Tony Davies of the Pitjantjatjara Council has noted (1986) that the provision of electrical power supplies to communities on the Anangu Pitjantjatjara Lands has been *ad hoc.* Most communities started with modest sized generator sets and relatively crude reticulation systems. The increase in demand over the last two decades has outstripped the ability of governments to respond:

> *Even in the late 1970s, when the South Australian Department of Housing and Construction (then called Public Buildings Department) started visiting the area, it took several years before development started to react in any realistic way to demands. Since then it has still been difficult in some communities to predict the rate of expansion and the directions of development.*[48]

18.6.26 Mr Davies points out that the costs incurred in the supply of power to remote or discrete Aboriginal communities are closely related to the problems inherent in its operation and outside influences. Problems can often arise in the following areas:

- The state of repair of power house and reticulation facilities and the availability of maintenance services.
- Lack of qualified personnel and lack of training for power house attendants.
- The variable demands placed on power supplies; these may be cyclical, regular or intermittent.
- The availability of funding may place severe restraints on the provision and reliability of services.
- Forward planning is inhibited by a lack of information

18.6.27 The following description of the Kalka community indicates some of the additional problems which poor power services can create:

> *For five years Kalka existed with a spider's web of extension cords spread out over the ground. Apart from the obvious danger to people, the electrical inadequacies meant that often appliances would break down due to voltage drop and generator overloading.*[49]

18.6.28 Several applications of innovative solar and wind technologies have been reported.[50] Wal James of the Solar Energy Research Institute of Western Australia has described the design and construction of a mobile solar powered services system for small, remote Aboriginal communities. The services are incorporated in a six metre shipping container and include radio communication equipment, water pumping, refrigeration, outdoor lighting and power for the operation of small power tools, TV and video recorders. The system was installed for the Ngurawaana Community in Western Australia in March 1985.[51]

Waste Disposal

18.6.29 The Nganampa Health Council found that the disposal of waste from the living area was perhaps the greatest 'housing' failure.[52] Septic tanks and soakage trenches, where they existed, were a particular source of yard pollution. The failure of 57% of all waste removal installations—including drains and toilets—and the

inclusion of wet areas m the central core of houses often meant that any failure of the wet area resulted in water quickly spreading throughout the house.

18.6.30 In its investigation of homelands centres, the House of Representatives Standing Committee on Aboriginal Affairs reported a 1985 survey of 460 communities with a total population of 12,060 people. Of these, 292 communities with 6,311 people had no method of sewage disposal. The Committee noted that technologically complex waterborne systems were not appropriate in many remote communities where water is often in limited supply and where the need for regular maintenance and repairs is undesirable. It commended use of the ventilation improved pit (VIP) toilet developed by the Centre for Appropriate Technology in Alice Springs, noting evidence from the Docker river area that the toilet's introduction had led to a significant reduction in diseases related to a lack of sanitation.[53]

Recommendation 74:

That the work of the Centre for Appropriate Technology in Alice Springs in the design of items specifically for infrastructural *and technological innovations* ***appropriate to remote communities,*** *and* ***that of similar research units, be appropriately*** *encouraged and* ***supported.***

Roads

18.6.31 In 1987 the Commonwealth Department of Aboriginal Affairs formed a working party in conjunction with the Department of Transport and Communication to survey the road needs of Aboriginal and Torres Strait Islander communities. The primary findings of this joint survey w ere:

- In general, roads servicing Aboriginal and Torres Strait Islander communities were of a significantly lower standard than those servicing non-Aboriginal communities.
- There was an absence of equitable treatment of Aboriginal and Islander communities in the ultimate distribution of Commonwealth Local Roads funds through local government authorities; nor did these communities have equal access to mainstream local government road maintenance services.
- There was a clearly demonstrated need for a 'catch up' program to redress sustained neglect of the roads in and to discrete Aboriginal and Tortes Strait Islander communities.
- An estimated $200m-in 1987-88 dollars—would be required over a five-year period to upgrade Aboriginal and Torres Strait Islander community roads to a reasonable standard.
- Once Aboriginal and Torres Strait Islander community roads reached a reasonable standard, principles governing the distribution of Commonwealth road funds would need to be enforced to ensure equitable treatment for Aboriginal and Torres Strait Islander communities in the future.[54]

18.6.32 The recommendation for equitable access to ongoing road programs was accepted as joint Commonwealth and State policy in the written agreements signed by the Commonwealth Minister for Transport and Communications and his State and Territory counterparts. The Department of Aboriginal Affairs noted in 1989 that support for a road 'catch up' program had not been forthcoming.

18.6.33 The standard of transport and communications in Aboriginal communities has substantial effects on the economic and social well-being of Aboriginal people. The social justice function of transport and communication, in terms of providing access to facilities, cannot be underestimated. Dust and dangerous road

conditions can have detrimental effects on living conditions. Further, the costs imposed on communities by poor roads, high petrol costs, damage to vehicles and high transport costs harm Aboriginal economic development. The need to upgrade roads in and to Aboriginal communities is one of the largest infrastructural expenditures required for improving the quality of life in Aboriginal communities.

Recommendation 75:

That Aboriginal communities be given equitable access to ongoing expenditure by the Commonwealth, State and Territory, and local authorities on roads. In addition, where new roads or changes to existing roads are proposed, it is recommended that no development should take place until the impact on Aboriginal land and the possible impact on Aboriginal communities that public access may have are established in consultation with those communities likely to be affected by the development proposal

18.7 HOUSING, INFRASTRUCTURE AND ENVIRONMENTAL HEALTH

18.7.1 Numerous government reports have addressed the poor state of infrastructure and living conditions in Aboriginal communities throughout Australia. In many cases, the lack of facilities available to Aboriginal people in the places in which they live has been seen as a direct or indirect cause of ill health, both physical and mental.

18.7.2 In 1979 a House of Representatives Standing Committee recognised a relationship between health, infrastructure and environmental conditions:

> *It is universally accepted that the attainment of a satisfactory standard of health in any community depends on the provision of certain basic amenities including water supply, sanitation and sewerage facilities, housing and electricity. The high incidence and recurrence of many infectious diseases amongst Aboriginals ... result largely from their unsatisfactory environmental conditions.*

18.7.3 A link between the provision of basic services and physical and mental health is made explicit in the Human rights and Equal Opportunity Commission's report on Toomelah. In respect of water and sewerage provision, for example, the Commission reported:

> *Shortage of water is not just an inconvenience. It is a major crisis which Mrs Pamela Duncan, the community health worker, sees as a basic cause of many of the health problems at Toomelah. Every day between thirty and forty people visit the health clinic which is run from an old demountable schoolroom. The clinic often must function without water and there is no hot water. The Inquiry was told that the community residents most frequently complain of ailments related directly to the lack of water and poor sewage disposal: infected sores, gastroenteritis, growth failure, respiratory, ear and skin infections, and stress. Moreover: [The people] get really depressed because there is no water, and they cannot do their washing, they cannot do their cleaning up, they cannot make their gardens because there is no water, and that is frustrating and a lot of them turn to the drink, alcohol and drugs, and you have got it all over and over again. 55*

18.7.4 Similarly, in 1989 the National Aboriginal Health Strategy Working Party reported that:

Integral to health systems' infrastructure are support services such as sewerage, water supplies, communication etc. These environmental health facilities were mentioned in almost all community consultations and were common in the submissions received by the Working Party. Safe and adequate water supply, improved number and design of houses, shelter, dust control and other environmental factors are vital to sustain improvements in Aboriginal health and well-being .56

18.7.5 Dr Paul Memmott has summarised the link between housing and stress as follows:

Many groups of Aborigines suffer high levels of physical and mental stress which appear to be causally linked (either directly or indirectly) to their domiciliary environment. Stress-related factors include lack of protection from the weather, living in squalor, crowding, alcoholism, domestic violence, widespread ill-health, insecurity arising from the temporariness of living circumstances-the threat of forced eviction or migration by authorities.57

18.7.6 He also points out, however, that there are no comprehensive models that explain how stress factors are related to house design and to user behaviour and perception of houses throughout Aboriginal Australia. What is clear is that the arbitrary provision of housing does not necessarily lead to a satisfactory solution of these problems.

OVERCROWDING AND DOMESTIC VIOLENCE

18.7.7 Numerous submissions, reports and representations to hearings held by the Royal Commission have made reference to the effect overcrowding can have on living conditions and Aboriginal health. This same concern is expressed in many government reports and in the literature available to this Commission.

18.7.8 Dr Reser relates the issues of overcrowding and privacy-notions which must be understood within an Aboriginal frame of reference-to that of control. Privacy in Aboriginal culture is afforded by social convention rather than physical barriers or distance. Such cultural conventions as shame, social distance, personal space, sexual conventions, public/sacred spheres of activity, and the nature of basic personal relationships may be severely compromised in and around European-designed houses.58

18.7.9 Dr Reser also points out that European housing circumstances almost ensure that social infractions and disputes are constantly occurring. In hearings into the death of Charlie Kulla Kulla, Professor Bruce Rigsby-speaking of self-mutilation, suicide, attempted homicide and interpersonal aggression told Commissioner Wyvill:

I think those sorts of behaviours or actions arise under conditions of extreme crowding and extreme stress, where people are crowded into a fairly small number of dwellings, where they have to live together in the same community and interact every day with other families with whom they may have had feuds or grudges extending over a generation or more, and in which, because they' re interacting one with the other every day, there's the chance of behaving in some way that's going to exacerbate the situation.59

18.7.10 Similarly, in a statement tended to the inquiry into the death at Wujal

Wujal, Dr Christopher Anderson told the Commission:

> *My own research suggests that hypertension is strongly correlated with the stress brought about by previously separate and quite distinct groups being forced to live in close proximity... The kind of health problems which exist at Bloomfield [Wujal Wujal] are clearly linked to the social and physical conditions under which people have had to live in the community.*[60]

18.7.11 In a submission to the Royal Commission concerning Palm Island, the National Aboriginal and Islander Legal Services Secretariat (NAILSS) points to overcrowding as a significant problem:

> *There are presently 240 houses catering for a population of 3,000 to 3,500 with cases of up to 33 people living under the one roof... Overcrowding is directly linked to continuing and unresolved problems of child abuse, alcohol abuse and domestic violence as well as specific health problems.*[61]

18.7.12 In line with such findings, the National Inquiry into Homeless Children reported the observations of an officer of the Aboriginal Child Care Agency that in overcrowded circumstances, 'Other problems manifest—lack of food, poor hygiene, alcohol abuse, which leads to child neglect' .[62]

18.7.13 In a report to the Tangentyere Council and the Northern Territory Department of Lands and Housing in January 1989, Julie Coghlan noted that alcohol abuse and domestic violence are often raised as central issues in relation to the provision of support accommodation for Aboriginal women and children.[63] The link between alcohol abuse and domestic violence emerges through much of the literature in submissions that have been made available to the Commission. Furthermore, the interrelationship between domestic violence, housing and services and illegal prescriptions has been identified in the report. It notes:

> *The introduction of the 'two kilometre law', which restricts drinking in public places, has been reported as having a major impact on the town camp communities. Much greater quantities of alcohol are now being consumed at the town camps and within or near the family home.*[64]

I have already commented on the 'two kilometre law' in Chapter 15.

18.7.14 The survey conducted for Tangentyere Council and the Department of Lands and Housing noted that within a six-week period in the middle of 1988, 109 Aboriginal women were treated for injuries caused by assaults. This was an average of eighteen Aboriginal women per week. Further, police attended an average of eighteen disturbances each week at the town camps and from the examination of Women's Community House client records, an average of somewhere between five and six Aboriginal women sought refuge from violence each week. The physical amenities of the Women's Community House are extremely poor, consisting of a demountable structure in which bedrooms designed to accommodate one person are usually occupied by a minimum of four people. The report also identified a number of issues described by Aboriginal women as relating to the problems of domestic violence. Alcohol abuse was understandably a major concern but perhaps of even more concern was the way in which alcohol affects non-drinkers who are members of camps or households.

18.7.15 Women at the town camps identified visitors, particularly those from the bush, as contributing to problems. Such visitors placed demands on food, blankets, and the use of utilities. The report noted:

> *Women at a number of town camps were very keen to have 'inginjas' or single mens quarters established at their camps. Separate housing for single male visitors and, possibly, for some of the town camps single men, were seen as a way in which disruption to families could be reduced and as a way of encouraging men to take responsibility for themselves and for each other .*[65]

18.7.16 I would add that, in my opinion, there is considerable scope for many more imaginative solutions to housing and accommodation problems generally.

18.7.17 The survey identified a range of strategies and services necessary to improve the assistance to women and children. These included:

- alternative accommodation in town for women and children
- visiting Alice Springs from bush communities;
- alternative accommodation at town camps for single men;
- the establishment of an Aboriginal controlled women's refuge; specialist accommodation and support services for women with
- psychiatric disabilities or disturbed behaviours; and
- follow up support services for women moving to town houses.

18.7.18 The inter-relationship between Aboriginal support for accommodation services and other issues was emphasised in the report. The report noted:

> *The crisis accommodation needs of women and children escaping intolerable domestic situations are not seen by Aboriginal women as separate to the other needs of women in the community. Women have generally described the need for a 'safe place' which serves a variety of purposes and which enables emergency shelter and crisis support to be integrated with other strategies that address the problems being experienced by women.*

18.7.19 The Queensland Aboriginal Co-ordinating Council, in its submission to the Commission, also stresses the link between overcrowding, domestic violence and inadequate emergency accommodation. I note the sad irony that for some women, police watchhouses form the only secure shelter in the absence of alternative accommodation:

> *Prisons can exist in the mind. When an Aboriginal woman finds her home is not a safe place from assault and psychological violence, where does she go? Womens' Shelters do not exist on most of the communities. In fact, communities are so isolated, there's nowhere to go except to hide in the bush overnight, seek refuge with friends or relatives where she is sure to be found [because] the community is so small, or spend the night in watch-houses or hospital. Women and their babies sleep in watch-houses regularly to escape further abuse. Women are caught in a bind because they love their men and they' II usually return. With small isolated communities, with overcrowded houses, where else can they go? If they leave the community, they then are isolated from family and kin support networks and become lonely. Life is also difficult financially in the city for single mothers. In a sense, women are 'imprisoned' in their own communities in their own homes.*[66]

INTEGRATING HOUSING, INFRASTRUCTURE AND HEALTH

18.7.20 The state of housing in some communities where there have been deaths investigated by the Commission is apparently contributing to continued health risks. Lockhart river is such a community in far north Queensland. In March 1989, Deidre Short died in the Lockhart river watch-house of narrowing arteries (coronary arteriosclerosis) that were so severe that one of the arteries to her heart was completely blocked. She was only thirty years of age.

18.7.21 In Lockhart river a person is 288 times more likely to suffer from diabetes than the average Queenslander, six times more likely to die of cardiac disease, and ten times more likely to die of respiratory disease. Commissioner Wyvill describes the community environment in the following terms:

> *A survey in December 1988 showed that the average occupancy per house in Lockhart river was 9, with an average of 3 nuclear families per house. Ten of the houses were classified as 'new' or being additions to the original town dwellings constructed in the early 1960s and early 1970s. Forty-six of the houses were 'old', or original buildings. Many of these were in bad repair with some being in a very bad state, without windows or frames, with steps missing, leaking roofs, badly damaged interiors, rotten timber, etc. Electrical faults seem common. One house was entirely without electrical supply and with a derelict, burned out kitchen area. Several houses appeared to present severe health hazards, sitting in what can be best described as extensive and malodorous pools of sullage discharge, apparently caused by blocked sullage traps and pits. There is no community sewerage system: newer houses have septic tanks, while older houses have pans in outhouses. The state of older houses can only be described as ranging from poor to inadequate. 67*

18.7.22 In my report of the Inquiry into the death of the woman who died at Ceduna on 18 February 1983, I made reference to the association between her poor health and her life style and social environment. The deceased was approximately thirty years old at the time of her death and was alcohol dependent with a lifelong history of ill-health. The cause of death was cardiac arrhythmia. At the time of her death, the deceased lived with her husband at Half Way Camp, a small parcel of land to the west of Ceduna. The Camp has a predominantly transient population with a small number of permanent residents. Harmful alcohol use, high rates of assault, poor sanitation and hygiene dominate the lives of the camp dwellers.

18.7.23 Conditions at the Half Way Camp have been the subject of government reports and surveys for some years now. In November 1979, a report prepared by the Aboriginal Housing Board of South Australia Incorporated Research Team entitled *Half Way Camp: Priorities for Improvements* described the camp in the following terms:

> *The physical condition of the Camp in the areas where people sleep and prepare their food is very poor. Broken bottles, tins and other rubbish litter the camp area. Humpies made of galvanised tin, brush and assorted blankets, and tents are the main form of shelter from the weather. These are grouped closely together in the main camp area. It is worth mentioning that there are no individual or family units separated from the main camp 68*

18.7.24 Infrastructure and housing development must, however, be accorded

priorities set by those people whose lives are meant to 'benefit'. The design of many communities, their town plan and essential service infrastructure contribute to the 'artificiality' that surrounded their creation. Explaining the impact of history on the creation of some Aboriginal 'communities' in Queensland, Commissioner Wyvill notes:

> *The result of this policy of removal was a settlement of different and often traditionally antagonistic Aboriginal groups in the one place. For example, by 1934 members of 28 different linguistic groups were living on the Cherbourg Aboriginal settlement. In my Report of the Inquiry into the death of Edward Stanley West, I noted that such a policy is testimony to the government' s insensitivity to the difference between Aboriginal people and its ignorance of crucial kinship, family, language and territorial ties, and the role these factors play in the maintenance of a cohesive society.*[69]

18.7.25 The North Australia Development Unit of the Department of Social Security has noted that services, service delivery, funding, administration and decision-making processes appear to be linked to:

> *A blanket model of service provision which is intrinsically tied to the concept 'community'. This concept can, and does, dominate their lives... It would seem it was the medium through which to deliver all sorts of policies and services in a matter which would automatically be culturally appropriate, democratic, ensure equal access and at the same time be politically and socially acceptable to the majority of other Australians .70*

18.7.26 The importance of considering relationships between different Aboriginal groups of people who' may be effected by infrastructure development cannot be over emphasised. I have referred above to the problems of environmental health at Half Way Camp. In an environmental health survey conducted of Koonibba and Half Way Camp it was noted:

> *The problems and responsibilities of Half Way Camp had fallen onto Ceduna Aboriginal organisations. The Far West Aboriginal Progress Association is responsible for maintenance and cleanliness of the camp. This organisation states that it does not have the resources and skills to handle this problem in isolation. Now health problems seem to be increasing which will become the concern of the Ceduna/Koonibba Aboriginal Health Service.*
>
> *The problems need to be addressed, firstly at their major source—the originating communities with the majority of the people. The Yalata/Maralinga community should be encouraged to take responsibility in conjunction with Ceduna organisations for these people.*
>
> *There seems to be an extremely strong case to support a representative from Yalata being permanently placed in Ceduna to aid with the problems experienced by their people. The Yalata community must recognise the existence of these problems.*[71]

18.8 INTEGRATING INFRASTRUCTURE AND HOUSING

18.8.1 Whilst it is important that we acknowledge Aboriginal cultural perceptions relating to the use of domestic space, it is also clear that many Aboriginal people are experiencing difficulties as a consequence of the enormous pressures that can be caused by the inadequate space and facilities of their houses. The problem may not be overcrowding as such but inadequate provision of essential infrastructural services and equipment to support Aboriginal lifestyles.

18.8.2 The major survey of environmental health in the Anangu Pitjantjatjara homelands, undertaken by the Nganampa Health Council Inc. and already referred to, provides a model for how an integrated analysis of infrastructure, housing, essential services and health may be undertaken. The UPK study appears to be the first to systematically review the implications of an Aboriginal living environment for health status and to establish priorities and design principles for improved health standards.

18.8.3 The Council found the greatest effect of population on a house to be the demand on water and waste facilities. Whilst most houses had a mains supply of cold water, failure of water control points within the house often resulted in poor access. On average, only 50% of all hot water installations were able to supply hot water.

18.8.4 Having reviewed the environmental inadequacies of the Anangu Pitjantjatjara Lands the Council developed a list of healthy living practices which were essential for well-being in remote areas. These were prioritised in order of their likely importance to improving health status. They were:

- washing people
- washing clothes/bedding
- waste removal
- nutrition
- reduce crowding
- separation of dogs and children
- dust control
- temperature control
- reduce trauma.[72]

18.8.5 The Council's report provides a range of detailed recommendations about the design, installation and maintenance of the health hardware necessary for these practices. 'Health hardware' is a term used to refer to the infrastructure and equipment—such as water systems, taps, washing facilities, toilets, drains, cupboards, shelves, screens and tools—which are necessary for basic healthy living. The review also contains proposals for local control of infrastructure related to public health, with a regional body co-ordinating the sharing of skilled personnel and expensive equipment.[73]

18.8.6 On the basis of this integrated assessment of services required to sustain a healthy living environment, the Council concluded that a house may well be of secondary importance to the type of facilities normally—and arbitrarily—to be found within it:

> *Maximum achievable improved health with minimum social disruption will occur through provision and use of hot and cold water supply. Thus any 'house' needs to be serviced with at least hot and cold water. In fact, it could be argued that the only health benefit of housing is access to water supply.*[74]

18.8.7 Nonetheless, given that many Aboriginal people are and will continue to be housed in conventional dwellings, any discussion of health hardware must involve housing program management. The UPK review estimated the cost of housing Aboriginal people on the Anangu Pitjantjatjara Lands over the period 1986-91 at a conservative $10m. The inability of governments to contribute this amount of money was, however, only one of a number of factors which meant that Aboriginal people did not have adequate housing. Other factors identified included:

- Poor administration of funding to communities. This frequently involved inappropriate delays in provision of funds which has the inevitable consequences of loss of contractors and rising costs.
- Inappropriate design. This involves both lack of appropriate professional input as well as consultation with and input from Aboriginal people in the communities to be serviced.
- Inadequate and unprofessional documentation of design and building programs.
- The selection of contractors on the basis of lowest price rather than background experience or reputation.
- Lack of appropriate contract structures and arrangements.
- Lack of building supervision in remote areas.
- Lack of consideration of the standard and provision of mains services.
- Inadequate funding and planning attention to the yard area and, in particular, inadequate horticultural input to living space design.

18.8.8 A major obstruction to the provision of adequate health hardware is that no comprehensive plan for environmental health exists at the policy or budgetary level in government departments. In most communities there are multiple service agencies involved in essential services and housing representing various Federal, State or Territory, local and municipal levels of government. Whilst there may be specific contracts for the maintenance of community facilities such as power supply, no government agency accepts policy or funding responsibility for maintenance in and around Aboriginal houses. Crough and Pritchard cite the example of the Northern Territory Department of Lands and Housing arguing that Commonwealth-State Housing Agreement funds are not available for maintenance, whilst under the *Housing Assistance Act* there is no specific exclusion of the funds being used for maintenance purposes.[75] This obscuration of the funding situation can lead to the rapid breakdown of health hardware within houses.

18.8.9 The impoverished state of many Aboriginal communities and households ensure that maintenance services are rarely called upon. Nor do people necessarily possess either the equipment or skills to make repairs themselves. The UPK Research and Development Team has recommended a division of maintenance work and expenditure according to the priorities for improving health:

- Essential maintenance. This would attend to immediate hazards reduce future maintenance by systematic replacement, and enable washing and waste removal. It is proposed that this component be funded directly by government agencies.
- Secondary maintenance. This would attend to reducing the risk of trauma, controlling temperature and dust and providing some separation of children and dogs. Funding for this component could be provided by communities either through rent payments, Community Development and Employment Program funds or other community resources.

18.8.10 The UPK report also stresses that maintenance systems urgently need to be established. In particular, a reporting system is required to ensure that faults

are detected early so that the effects of any failure are reduced. One of the features of the UPK report is that it advocates a move away from a construction-oriented housing program to one which gives greater priority to repairs and maintenance. Such a reorientation would require significant changes in the skills base of many communities, which in turn has implications for the training and employment of Aboriginal people.

18.8.11 An integrated review of housing, infrastructure, environment and health, such as was undertaken by the Nganampa Health Council, has significant advantages in identifying a range of interconnected issues and facilitating the prioritised management of specific problems. A similar review has been initiated by the Kalano Association in Katherine, focusing on housing and infrastructural needs in all Aboriginal living areas in and around the town. In hearings I held there, the Association's executive director emphasised the necessity to consider housing in this overall context:

> *[W]e need that consultancy so that we ... can pinpoint the housing needs [and] infrastructure needs in our camps. But we've also said to government that we can't just look at housing. We've got to look at everything else that' s going on in those people' s lives because you can't just look at one thing in isolation and think that you' re going to solve that problem [that] by putting ten nice new homes there that the problems are going to be solved.*[76]

Recommendation 76:

That the integrated analysis of infrastructure, housing, essential services and health as illustrated by the Nganampa Health Council's UPK Report be considered as a model worthy of study and adaption for the development of community planning *processes* ***in other States and areas.***

Chapter 19 LAND NEEDS

As an underlying issue in the high rates of detention and deaths in custody of Aboriginal people the question of land needs may not, at first sight, appear to be of immediate significance, and yet the many dimensions of the land issue repeatedly emerge both as direct and indirect factors in the matters investigated by the Commission.

The title of this chapter is deliberately chosen—'Land Needs' not 'Land rights'. 'Land rights' has been the unifying and central demand of Aboriginal people throughout Australia in recent decades, but the phrase encompasses a wide range of expectations and differing priorities. Although all of the demands may be embraced by the words 'land rights', it is essential, in my view, that the issues related to !and needs are not obscured by use of a term which, whilst a rallying cry to some, produces an immediate hostility in others. What I am addressing in this chapter and in Chapter 37 is not an ideological concept but a very practical issue which, in my opinion, must be addressed, along with others, if deaths in custody and the disproportionate detention rates out of which they arise are to be reduced.

Aboriginal aspirations for the granting of title to land differ in kind throughout Australia reflecting the different circumstances in which Aboriginal people live and the differing nature and history of colonisation which they have experienced. This is an issue in which it is important to understand the different aspirations or the differing priorities concerning land so that the particular needs of Aboriginal people are not overlooked by being embraced in policies which, by their generality, fail to be effective in addressing the disadvantages which are apparent.

19.1 ABORIGINAL NEEDS FOR LAND

19.1.1 Whilst the particular priorities with respect to land differ as between Aboriginal people, they are united in their view that land, whether under the banner of land rights or not, is the key to their cultural and economic survival as a people. As Chapter 10 demonstrated, it was the dispossession and removal of Aboriginal people from their land which has had the most profound impact on Aboriginal society and continues to determine the economic and cultural well-being of Aboriginal people to such a significant degree as to directly relate to the rate of arrest and detention of Aboriginal people.

19.1.2 The association with, and need for, land is expressed differently or with different emphases, but the common themes as well as the differences emerge in considering submissions and evidence heard by the Commission.

THE SPIRITUAL LINK TO LAND

> *I got this place from my father ... there are many important sacred places in this country, and I must look after them. I thought and thought about my country, and about asking for it... We want to live in our own place, Aborigines only .... and look after all our places. We will stay and fight for our country, and never let it go again... This is our place. Our fathers and grandfathers hunted here. We in turn should look after these things [sacred sites, objects], then when we die our sons will get them and care for them.1*[1]

19.1.3 Caring for the country, respect for the past, and the responsibility to pass on the country to future generations of family and kinsfolk are sentiments expressed in the above statement. These are the cultural imperatives emphasised by many Aboriginal people. This is the significance of land to Aboriginal people. Caring for the land rather than its exploitation is the orientation of Aboriginal feelings for land. This represents a continuing divergency in Aboriginal and non-Aboriginal conceptions of land-people relationships and underlines one of the meanings of reconciliation. Reconciliation requires recognition of the divergencies in the philosophical differences between Aboriginal and non-Aboriginal people as much as it requires agreements in the political, economic and legal arenas. Before colonisation the demography of Aboriginal society changed in less absolute ways than it has since colonisation, yet a system of land tenure was in place that allowed for the possibility of decline in custodians for particular areas. The sharing of land through a variety of systems of descent inheritance is complex, and for the purpose of this report it is not necessary to give a detailed exposition about the principles.

19.1.4 The significance of land to Aboriginal people who have moved or been moved to other places as a result of colonisation is one that is perhaps less understood by non-Aboriginal people, yet the population of Aboriginal people who have moved away from traditional lands or experienced a complete transformation of their relationship to land, at least in the economic sphere, is a very significant proportion of the population.

Notwithstanding this break from specific traditional attachments to land that some Aboriginal groups in the more remote areas of Australia have been able to maintain, Aboriginal people in the settled areas of Australia have continued to maintain the core elements of their spiritual association with land. This association is an assertion of their Aboriginality. Their loss requires redress that is, in essence, the same, even though the form of redress may vary considerably. Mr Seamen, QC commented in the Western Australia Land Inquiry—speaking of Aboriginal

people living in the south-west of that State on the essential elements of Aboriginal peoples' association with the land. He quotes a Nyungar view put to the Inquiry:

> *'there is a sense in which Europeans do not see Nyungars as being real Aborigines because they do not have the overt trappings of what Europeans have decided is a typical Aboriginal life style. The Nyungars take a different view. Although they live in a European environment they retain a strong consciousness of their own identities as Nyungars. They draw a firm contrast between Nyungar and Wetjala (white fella) ways especially between Nyungar and Wetjala values'.*
>
> *I accept that:*
>
> *'their social relations remain focused on the facts of kinship and ties of family. Kin associations permeate most aspects of their life and they feel a great passion about their ties to land and their concern over diminishing access to lands, rivers and coast for hunting and fishing'.*
>
> *Although they cannot now identify particular areas of land as being owned in traditional law by particular ancestors, they have a lively awareness that their forefathers had all those traditional relationships with the land of the South-West which are found today in the most remote parts of the State.*[2]

19.1.5 Creativity, painting, song, and dance are expressions of the significance of the land, but they are not easily separated from other life activities: the political, legal, social and religious spheres in Aboriginal life. The use of bark paintings by the Yolngu people of Arnhem Land is representative of the importance of art as an expression of the associations between land and sacred knowledge.

19.1.6 rights in land and rights in paintings, and other manifestations · of the Ancestral World, are inextricably interwoven. According to Yolngu ideology, it was the Ancestral Beings who handed over the land to particular human groups on condition that those groups continued to perform the ceremonies and produce the paintings and ceremonial objects that commemorate their creative acts. By guarding their fights in paintings people are asserting their rights in land as well as fulfilling their obligation to the Ancestral Beings on whom those rights ultimately depend. The artistic system enables the relationship between people and land to be precisely encoded in paintings, and the production of paintings in ceremonies is an assertion of sets of rights held in land, even if the specific purpose varies according to context. As the anthropologist Howard Morphy noted:

> *In releasing paintings to Europeans and in displaying paintings in public contexts Yolngu were giving Europeans access to objects and information that from a Yolngu viewpoint demonstrated conclusively their ownership of the land and the way in which ownership was distributed among different clans in accordance with Ancestral Law. Although this did not in itself ensure their recognition as title deeds under European law, it does explain in part why they were appropriate symbols to use in their transactions with Europeans. The significance of their paintings to them is reflected in their commitment to the objective of land rights. To Yolngu continued ownership of their land is not only necessary for cultural survival, it is the fulfilment of a religious obligation. 3*

19.1.7 The significance of land to Aboriginal people varies enormously as a result of colonisation, the removal of people from their land and the removal of children from their parents. A rebuilding of family relationships is only now beginning to take place. Land that has become home to dispossessed people such as an old mission site or reserve land to which people had been removed has gained a significance in addition to, or in place of, a feeling for traditional lands now lost. There is aim the extent of urbanisation of Aboriginal people through these processes. All these aspects influence attitudes to policy with regard, not only to land rights, but also to appropriate forms of compensation that Aboriginal people feel are appropriate for survival into the future.

19.1.8 It is important to appreciate that while there has emerged a pan-Aboriginal identity, the essential cultural characteristics of Aboriginal groups are intensely local. The cultural identities of local Aboriginal groups are often established and defined by the assertion of their differences from others. Local cultural groups are characterised by their traditions, beliefs and practices which confer upon them common interests in particular tracts of land in particular regions. This is so in spite of the fact that previous government policies demanded the forced removal of Aboriginal people from their traditional lands in many pans of Australia.

Aboriginal cultural change in response to historical contact with others and the internal dynamics of Aboriginal societies has resulted in the pursuit of objectives by Aboriginal people which recognise the tremendous changes in Aboriginal life.

19.1.9 Marcia Langton, head of the Aboriginal Issues Unit (AIU) in the Northern Territory said this in the AIU submission:

> *The ability of Aboriginal people to practice traditional Law depends on them at least having access to their land, at best having title and control over their land. The core of Aboriginal Law has to do with the knowledge and ritual pertaining to sacred sites. These places which underpin Aboriginal life are best cared for and preserved by the ceremony for them. All other aspects of the welfare of Aboriginal society depend on this.*[4]

19.1.10 The necessity for Aboriginal people to retain ties to land, or 'country', in order to maintain the 'welfare' of Aboriginal society is evidenced in Langton's comment. How Aboriginal people relate to land, or 'country', is complicated in contemporary settings owing to a number of reasons which are concerned with indigenous cultural diversity and the processes of colonisation. In some settings, relationships to land more clearly resemble those which were maintained prior to contact, whereas in other settings relationships to land reflect the influence of non-Aboriginal intrusion.

19.1.11 The way in which many Aboriginal men and women continue to relate to land can well be seen purely within a religious, and cultural domain, or that which can be broadly referred to as 'traditional Law'. 5 In this regard it is important to establish that traditional relationships to land can vary. What is generally emphasised, however, are relationships primarily based upon membership of patrilineal and matrilineal descent groups, and on associations with what is known as a 'conception site', or where knowledge about one's birth first became apparent. Further, men and women who retain recognised affiliations with tracts of 'country' have the right to hunt and forage, as well as the responsibility to ceremonially nurture that country by performing land-sustaining rituals to ensure that resources are maintained for present and future Aboriginal populations. These rights and responsibilities in land are formally passed on to successive generations—-as

ordained in what is generally referred to as the Dreaming—who continue to protect and maintain the land and all it contains. Such ties are clearly shown in Aboriginal oral testimony, the work of Aboriginal Land Councils throughout the country,[6] as well as a number of published and unpublished works,[7] and submissions to this Commission.[8]

19.1.12 Other reports provided to this Commission from the AIUs also make clear the religious, cultural and economic importance of land, as well as serving to remind us that dispossession of that land must be seen as a catalyst for what we are witnessing today. For instance, Sandra Bailey,[9] head of the AIU in. Victoria, clearly states:

> *The fundamental issue is that of dispossession. All other issues stem from this in some way. Kooris have said that they want to be self-determining and have land rig his, that this is the solution.*

19.1.13 What is clear from comments such as that put forward by Bailey and others, is that the issue of land remains a critical one in the lives of Aboriginal people today. Further, as noted above, while many people retain successive and ritual links to land, it is also apparent that they sustain ties of an historical and racial kind. These ties have been forged following dispersal and relocation of Aboriginal people from their homelands to reserves, missions and government settlements.[10] At these new locations, people pursued and developed, with both cultural change and continuity, relations to land which incorporated both past and present Aboriginal rights and responsibilities.

LAND AS AN ECONOMIC BASE

19.1.14 In addition to ties such as those which are sustained within the profound demands and power of traditional Law, and those which have developed through social and historical ties, there are those which can be considered within a 'needs and aspirations' framework. Ties such as these cannot always be adequately articulated, according to traditional doctrine, because some Aboriginal people are not able to demonstrate ritual associations to particular tracts of country or sites. Such an inability is directly due to dispossession and non-Aboriginal expansion. That is, many thousands of Aboriginal people were removed in circumstances which denied them access to family associations and socio-cultural and economic knowledge with regard to traditional beliefs and practices.

19.1.15 The life histories of most of those who died—and their families—share a common theme of dispossession from land and consequent impoverishment. As noted in Chapter 17, this impoverishment represents the continuing legacy of dispossession and exclusion from access to economic power.

19.1.16 The Europeans who came to Australia had little appreciation of the Aboriginal economy. In particular, they were unable to understand the differences between their own highly individualised economic system, oriented to the accumulation of surplus, and that of Aboriginal people which was more egalitarian and closely linked to social and ceremonial life.

19.1.17 Henry Reynolds, in his book about the colonisation of Australia, has argued convincingly that it was not the difference between modes of cultivation which distinguished the Aboriginal system from the European one, so much as

> *the institution of private property. Small European farmers and gardeners remained in one place not just to nurture their crops but*

because they owned the land and all it produced and residence was required to effect and affirm that ownership .[11]

19.1.18 The difference between the two perspectives is illustrated by the fact that the British were able to come to an entirely new country and put the land to similar use as they had put English countryside, and to develop the same regard for the land they occupied as they had held for their mother country. On the other hand, the Aboriginal attachment to land is non-transferable, and relates to the particular land itself, in a way which is connected with their religious beliefs and with the renewal of social life.

19.1.19 Chapter 10 of this report has detailed the progressive expansion of the European frontier across the Australian continent over the last two hundred years. A critical factor in this expansion was land. Aboriginal people required land to support the foraging subsistence production around which their economy centred. The Europeans required land for economic development—initially for pastoralism and farming, later for mineral development. It is primarily economic growth which has driven a relatively small colonising population to inhabit almost all of Australia's land mass.

19.1.20 Aboriginal people view the economic worth of land from a traditional view point. Whilst there are various efforts at attempting to quantify the use and value of land in economic terms, in some cases the return from traditional economic activity appears to be less than the cultural significance of the activity. This is obviously true for those areas where the land has been denuded or otherwise disturbed in such a way that the availability of traditional food gained from hunting and gathering is less than it would have been. The economic significance of land remains as always interwoven with the cultural significance of the activity. The role of an and ceremony, as suggested by the use Yolngu people derive from their an with regard to defining relationships to territory and custodial authority, is important to consider.

19.1.21 Aboriginal people in settled areas, particularly, tend to stress that land as an economic base for self-sufficiency is the pressing need. The Victorian AIU reported:

> *Communities said that 'real land rights', economic independence and self-sufficiency is the solution to the problems they face. The following comments reflect what was said generally throughout the State.*
>
> *'This is the solution, an economic base, a future.' 'We need an independent, Koori controlled economic base to operate from. We can train Kooris to do the jobs.' 'We are making a deliberate attempt to live our own lives and not to be dependent or responsive to government.' 12*

19.1.22 Reflecting the different circumstances in which Aboriginal people in settled areas now live, the Victorian AIU added that 'Housing is commonly viewed as a land rights issue by Victorian Kooris'. The Victorian AIU returned again to the link between land and self-sufficiency:

> *While culture is vital in this sense, land rights is seen as an ultimate necessity which would provide an economic base to reduce financial dependency and allow for long term planning and development, allowing communities to be self-determining. It is seen as the basis for improvement in all areas. It has a direct relationship to housing and many feel that 'cheap, adequate housing should be compensation for*

the loss of land and the way of life'.[13]

19.1.23 The South Australian AIU reflected the differing priorities towards land in different parts of the State. It reported that:

> *Land rights for the people of Oodnadatta is very important. [To] gain back their traditional land would revive their identity, spirituality and culture. Land rights will raise their status as Aboriginal people.*[14]

19.1.24 Many other communities in more remote areas of South Australia also referred to the needs for land as a cultural base and as restoration of traditional lands. Other communities, however, emphasised different aspects; at Davenport it was housing needs and overcrowding and the health hazards associated with these, and at Poverty Flat, near Port Lincoln, it was the possibility of establishing a market garden.

19.1.25 Later in this chapter I detail the remarkable economic opportunities which had been gained in New South Wales as a result of the acquisition of land. In that State, whilst there remains a strong desire to gain land for its traditional and historical associations, it is the prospect of economic self-sufficiency and the improvements in housing and health which can flow with secure land title which are the primary focus of attention for Aboriginal people.

OUTSTATIONS AND THE 'EXIT OPTION'

19.1.26 In the decades before 1972 a number of forces combined which dramatically altered the life style of Aboriginal people who lived in remote parts of Australia. Government assimilation policies led to the creation of settlements into which Aboriginal people were either forcibly moved or were drawn due to drought and other factors. The missions which existed throughout the country drew people to them, also with the offer of rations.

19.1.27 The movement to centralised communities was given great impetus by the decline in employment in the pastoral industry. There were numerous factors which combined to reduce the need for Aboriginal workers in the industry: droughts, the equal pay decision of the Industrial Court, the replacement of cattle drives along stock routes by road trains, the introduction of helicopter mustering and other processes of mechanisation. In addition there was a pronounced movement of the workers and their families—often forced by station owners—to settlements and missions.

19.1.28 The drift from remote areas to the centralised communities was matched by a movement to outback towns and, thus, 'fringe camps' of Aboriginal people were created and expanded. These fringe camps often become scenes of great poverty with alcohol misuse leading to fighting and the appalling living conditions causing serious health problems for the camp dwellers. (See, for example, the reports into the deaths of Eddie Murray, Kwementyaye Price, Benjamin Morrison and Deidre Short as just some of many similar cases.)

19.1.29 As more land was alienated to non-Aboriginal interests for pastoral, mining and other industries, the opportunities for Aboriginal people to remain on their traditional country further reduced. In South Australia an enormous area of land was prohibited to Pitjantjatjara people as the British Government conducted nuclear weapons tests throughout the 1950s and 1960s.

19.1.30 As a consequence of all of these forces Aboriginal people found themselves located in artificial communities; overcrowding and the tensions which

inevitably arose from that were exacerbated by the forced association of different tribal groups who sometimes had a history of conflict. This picture is a constant theme in the reports of Commissioners on the deaths in custody. (See, for example, reports on the deaths of Barbara Yarrie and the young man who died at Wujul Wujul.) Disassociated from their traditional lands, compelled to live on the traditional land by other people, regimented and rigidly controlled by government or mission officials a torpor overcame many of the inhabitants.

19.1.31 Jeremy Long, a 'native' patrol officer in the Northern Territory from the 1950s and later to be a senior officer in the Department of Aboriginal Affairs (DAA), wrote in 1970 about the people confined on these settlements:

> *[U]nable to think of or right for changes whose need they are content merely to grumble about and unable and unwilling to leave the familiar environment where they feel safe, and to make a successful adjustment to life 'outside', their attitude has tended, or is tending, to become one of 'hostile' dependency.*[15]

19.1.32 The picture which Long painted was soon to change. The tensions and malaise created on these settlements led to many disputes and much fighting between the inhabitants, but, with the granting of the right to drink and the consequent introduction of alcohol to the communities (usually illegally in that they were still 'dry' areas requiring a permit to bring liquor into them), a new dimension of disharmony developed. After 1972, with the withdrawal of much of the administrative structures of government under the tentative rubric of self-determination, the problems were worsened rather than lessened as untrained staff grappled with the demands of administration delivered through structures which were culturally and socially inadequate for the task.

19.1.33 In response to the chaos which characterised life on so many of the settlements and missions many people, in small family groups, moved back to their traditional country and created outstations.

19.1.34 The outstation movement has been the single most tangible demonstration by Aboriginal people in remote areas of their preferred life style option. By way of illustration, in 1978 in the Northern Territory there were 95 outstations, by 1990 there were 600 in the Territory alone.[16]

19.1.35 The movement to outstations provided to Aboriginal people what some writers have called an 'exit option', a means of avoiding the strife and misery attendant on the large communities.

19.1.36 Mr David Martin noted how these principles applied in Aurukun:

> *Between February and June 1986 for example, 363% of the total population had shifted their place of residence. There are many factors behind this mobility; one is very definitely what has been termed by anthropologists the 'resolution of conflict by fission'; people moving away from situations of conflict as the only means of dealing with them. A particularly high number of those up to the age of 19, 38%, and of males between 15 and 24, 46%, had moved at least once between the two censuses I undertook in that year.*[17]

19.1.37 In those places where people were able to relocate on land to which they had title and with which they had traditional association there was the opportunity to secure funding (the fact of rifle, or at least the lack of competing title, being an important consideration to funding agencies). Equally significant was the

opportunity to develop a life style for the adults and children which was culturally satisfying and without much of the destructive effects of interaction with broader society except on terms chosen by the outstation residents. The outstations provided access to resources which, for many, had been denied in the competition for resources which characterised distribution in the larger communities.

19.1.38 If alcohol misuse is a reaction to lack of empowerment [18] then it is no surprise that outstations are generally less affected by alcohol misuse. The report by the Northern Territory AIU emphasises this feature of the outstation movement. The AIU reports:

> *The outstation, or homeland, movement has changed the face of many Aboriginal lives in northern Australia. The main reason for the move back to traditional lands has been to look after country and ceremony. Just as significantly, this action has been consciously taken to escape and avoid non-Aboriginal society and the problems it has brought to our peoples. Alcohol consumption has been one of the main reasons for wanting to 'return to country'.*
>
> *In many areas of the Northern Territory, the campaign to 'Beat the Grog', and indeed other forms of substance abuse, is directly linked to the establishment of specific outstations for people to 'dry out'.*
>
> *Outstations are not without problems. Lack of resources especially education, often make life unattractive or impossible to maintain. Nevertheless, it is a preferred option for a large proportion of our people in northern Australia.*[19]

19.1.39 Whilst the AIU recognises that alcohol can be a problem in outstations too, many of the Northern Territory outstations have been declared dry areas by the Northern Territory Liquor Commission. Many communities consulted by the AIU left no doubt about the social benefits which resulted. The Wanyunula outstation near Borraloola illustrates the possibilities: it has operated for more than five years, has a school and has banned alcohol. People who want to drink must only do so in the 'mixed' township of Borraloola and not at the outstation. The spokesperson for the outstation, Dinny McDinny, said that the rules were known and respected. He spoke of the feelings of the people at the outstation:

> *[T] hey know they can drink in town or stay in there, but they are happy here, lots of kids living out here too and go to school. Good place for them. Kids grow up better, they know what they can do, what work. Kids won' t want grog, I don' t want that for my kids. Grog, it' s only a problem in town. People don't fight much here. Payday people fight in town, we only go for shopping.*[20]

19.1.40 The leader of another outstation, Kulminminya, near Borraloola,reiterated this opinion:

> *Outstations are the only way people can get away from grog, but you have to have no grog rules. That' s why this outstation works. No grog. If you want grog you can't come here. Showing people another way of life without grog could make them have a choice. Most people in town don't have a choice. Any person is welcome at this outstation.*[21]

In other parts of the Northern Territory the AIU reported a similar reaction.

19.1.41 At Yirrkala, it is clearly recognised by the Aboriginal people (Yolngu) that having Australian title to most of their land and government commitment to homeland centres or outstations enable them to practice their traditional Law. As a consultant to the AIU, Jeannie Bell has written:

> *The establishment and use of Homeland Centres is seen by the Yolngu as one of the most important developments that have occurred in North East Arnhem Land over the past 10 years. It not only give Yolngu the chance to return to their home country to live, but it also gives them the opportunity to remove themselves and their families from the town centre where some Yolngu consider too many problems exist. Almost all the Yolngu I talked to referred to their life on the Homeland Centres as a continuance of land occupancy and cultural practices. They also referred to it as the place where traditional Law could still be practiced and the community and families involved had more control over discipline and punishment. One of the leaders I spoke to at Baniyala referred to their Homeland Centre as the 'promised land. 22*

19.1.42 As the Northern Territory AIU reports, the outstations have played an important part in efforts by Aboriginal people to keep their young people out of trouble with police. One outstation in the Daly river region (one of many such instances) has taken young offenders who were on court orders and put them to work on the outstation. The outstation leader spoke of the successes that he had had with many such young offenders and offers a glimpse of the possible contribution which outstations can make towards self-sufficiency and social well-being:

> *What I'm doing is (bringing) all the kids from there you know to their own place so that they can see for themselves their country, what we [are] doing there. Try and get these old people to teach them about their own country. I mean we all know what they are learning here at Port Keats. They [are] not learning anything, anything about their country like earlier they [are] only learning Murrinhpatha but I want to try and take as many as I can. I'm going to take them out.*
>
> *The good thing about it is that they work with the old people where they are telling them about the country about the land every thing.*
>
> *Maybe they will learn something from that who knows. But at least it' s a step in the right direction for us. I reckon it will work in time. Even if they don't do it straight away later on they will probably think back.*
>
> *See what I've got my mob doing is, old Terry, he' s got a couple of young boys and even himself, we [are] making bamboos, bark painting. The women, they make them baskets and everything so will keep all that so when the time comes when someone wants to buy them like in the dry season they'll be proud and say well I made that basket and they will be paid for it—well things like that like baskets, Aboriginal stuff, artefacts and stuff like that. Dilli bags, bark painting well they do bark painting down there. That's about twenty blokes who are occupied there all the time. Down the bottom camp [name deleted] mob, all his family. Well they're occupied they're laughing. They make money out of painting, you know. Well that's some of the*

young fellows and most of the old men.[23]

19.1.43 In the Northern Territory the outstation movement benefited by receiving sustained support from government, but, most importantly, the gaining of security of title and the availability of land to which people could move were critical. The land claim process in the Northern Territory has focused attention on outstations; the fact that people are living on their land is an important consideration which the Land Commissioner must consider and in turn land grants pursuant to the Act secured the future of many outstations. In areas where land claims could not be made, especially for those people living on pastoral properties, similar social and cultural considerations saw many people establish outstations within the station lease, a precarious tenure which has been improved substantially by legislation which now enables secure title to 'excisions', as they are called, to be granted.

19.1.44 In other parts of Australia, the compelling need to move from major communities to escape the pressures they create (and which are directly related, to high arrest and detention rates) are much more difficult to meet given lack of available land and of government policies and legislation which would support the movement.

19.1.45 Commissioner Wyvill wrote about the outstation movement in Lockhart river in his report on the death of Deidre Short. He wrote:

> *The Lockhart river Aboriginal Council and a number of people in the community see the need to create their own alternative place somewhere in their DOGIT [Deed of Grant in Trust] land or even off the DOGIT land because that land does not cover the traditional lands of the five language groups who make up the Lockhart river community. At present, work has been started on the establishment of two outstations: one of the old mission site (the Old Site) and the others on Night Island which is further to the south.*
>
> *The outstation idea provides one way of obtaining relief from the immense pressures of alcohol and fighting that unfortunately play such a significant role in the life style of community dwellers. The benefits of removal to outstations are seen in a healthier life style, better food, no alcohol, no fighting, education for children regarding their traditional countries and cultures etc.*
>
> *The movement is seen in Lockhart river as an Aboriginal initiative and a step towards re-empowerment.*[24]

19.1.46 In his report on the death of the young man at Wujal Wujal he described a situation similar to that referred to in the Northern Territory. He wrote:

> *The Kuku-Yalanji are unique among Aboriginal people in Queensland in that, until the 1960s, most lived in small camps in traditional rainforest, river and sea-based estates having their origins in traditional times. They were largely self-managing and independent. The mission centralised these groups and, as a consequence, groups of people with different territorial, language, clan, kinship and old camp residence ties, were placed together in close proximity for the first time.*[25]

SITE PROTECTION

19.1.47 Closely linked to the need for land for both cultural, social and economic reasons is the need for protection of sites of significance to Aboriginal people. Although it is beyond the scope of this report for me to provide a comprehensive review of legislation relating to the protection of sacred sites and sites of cultural or historical significance, I note that I have received submissions from Aboriginal people expressing concern about the adequacy of such legislation.

19.1.48 The impact of non-Aboriginal society in many ways cannot be avoided now and there will inevitably be competing demands for land and competing values as to the importance which should attach to land. It is quite clear that for Aboriginal people the destruction or desecration of sites of spiritual significance causes a dimension of loss and grief which far surpasses that experienced by non-Aboriginal people. For non-Aboriginal people who have interests in land, their conflict with land needs, will be invariably, and mainly, economic.

19.1.49 Underlying the significance of land in the contemporary world is a fear of intrusion into the personal realm. Desecration of sacred sites is more than a concern to maintain obligations to the land—it is also a concern to prevent damage to personal and family identity.

> *All the Whitefellows want to finish up all the Aboriginal places...[so] we will stay in them. We will stay here and fight for our fathers' important places and never let it go again, lest white people, children and everyone come poking around this place. Only we who are related to the land are staying here.*
>
> *This place, these rocks [or hills] are sacred. We want to be able to look after them properly lest White people come mining and dig them up and smash them if they do that this place will finish up and we will die.*[26]

19.1.50 Aboriginal people have a spiritual relationship to their land that has no parallel in non-Aboriginal belief systems or equivalent systems of land tenure to that existing in the Australian legal system.

19.1.51 Governments, to their credit, have attempted to give recognition of the cultural importance of land to Aboriginal people by passing legislation in all States and the Northern Territory designed to afford protection to sites of significance. But the commitment to this must be more than superficial. It is an area where Aboriginal people, particularly, object to having merely the opportunity for consultation rather than having power to determine the issue when competing interests clash.

19.1.52 The National Aboriginal and Islander Legal Services Secretariat (NAILSS), in a submission relating to the *South Australian Heritage Act* of 1988, made extensive criticisms. In particular they note that, since the Act leaves the final decision to the relevant Minister, the principle of Aboriginal self-determination is denied. The submission concludes that

> *the Act does not recognise Aboriginal ownership of their heritage and culture, instead the Government has become the custodian of Aboriginal heritage and culture.*[27]

19.1.53 The Northern Territory AIU also stressed the need for Aboriginal sites to be under the protection and control of the traditional owners, and the Western Australian AIU submitted that 'Aboriginal people must be in charge'[28] of matters relating to site protection and access.

19.1.54 As I have said, I am unable to make any evaluation of the questions which are raised. I note, however, that even in situations where those advancing competing points of view appear to be completely, and intractably, at odds, resolution and satisfactory compromise has often proved possible. I refer, for example, to the lease-back agreement which was entered with respect to the National Park at Katherine Gorge between traditional owners and National Park authorities. It is interesting to note that in reaching that agreement Aboriginal people were able to negotiate from a position of strength: they had lodged a claim to the National Park area pursuant to the Land ri*ghts (Northern Territory) Act* and had every prospect of succeeding in it. Accordingly, they were in a position to bargain, not merely to be consulted. Since that agreement has been entered many sound benefits have occurred for the whole community. Discussions I had with both Aboriginal and non-Aboriginal people involved in the management of the National Park reflected the fact that on both sides people felt they had learned more about the other and that previous hostilities were being reduced or eliminated. The agreement appears to be working well.

19.2 CURRENT POLICIES TO MEET ABORIGINAL LAND NEEDS

19.2.1 As noted in Chapter 20, attempts to have national legislation to provide land rights foundered after the 1983 election. As that review demonstrates, land rights as a matter for Federal legislation has effectively been removed from the agenda of government. The restoration of land through recognition of traditional or historical claims remains, for the most pan, with State Governments—the exception being in the Northern Territory.

19.2.2 As Dr Nic Peterson has noted, in 1966 no person owned land in Australia by virtue of being Aboriginal. Dr Jon Altman, in a very informative paper on land rights titled 'The Economic Impact of Australian Aboriginal Land rights' from which I draw extensively in this section, has noted that, as at 30 June 1989, 637,353 square kilometres of land was held by Aboriginal people under freehold title. This represents 8.3% of the total land area of Australia owned by 1.5% of its population. A further 367,939 square kilometres of land was held under leasehold or was reserved specifically for Aboriginal people. This represents a further 4.9% of the Australian land mass.

19.2.3 These are impressive statistics and suggest that governments have made a very great commitment to the principle of land rights. There is no doubt that significant advances have been made, but it needs to be borne in mind that the greatest proportion of that land is owned by Northern Territory and South Australian Aboriginal people (453,123 square kilometres and 183,649 square kilometres, respectively, at 30 June 1989). Figures in other States are rather less impressive for ownership of freehold land (5 square kilometres in Queensland, 35 square kilometres in Western Australia, 32 square kilometres in Victoria, 507 square kilometres in New South Wales and the Australian Capital Territory, and 2 square kilometres in Tasmania).

19.2.4 The Northern Territory land had mainly been former reserve land which was automatically transferred to freehold title with passage of *the Aboriginal Land rights (Northern Territory) Act 1976.* There have, however, been substantial gains of land made through the land claim process in the Northern Territory. In both the Northern Territory and South Australia most of the land under freehold tire is arid desert *country.* It was readily available for transfer of title to Aboriginal ownership largely because it had offered little economic attraction in the past to non-Aboriginal interests.

19.2.5 I will give a brief review of land rights legislation and achievement in each

of the States and the Northern Territory.

NORTHERN TERRITORY

19.2.6 *The Aboriginal Land rights (Northern Territory) Act 1976* is regarded by Aboriginal people as the benchmark of achievable land rights legislation. It applies only to the Northern Territory, although legislation was enacted by the Federal Parliament, under the Fraser Government. Because the Northern Territory was not a State and was under the constitutional control of the Federal Government it was able to enact such legislation notwithstanding the objections to it expressed by the Legislative Assembly of the Territory.

19.2.7 The Act provided for the immediate transfer to Aboriginal people by freehold title of some 258,000 sq. km of land which was formerly government reserve land set aside for Aboriginal people. In addition, it provided a mechanism for the processing of claims based on 'traditional ownership' to areas of unalienated Crown land. The land claim process involves hearings before a judge—the Aboriginal Land Commissioner. The claims were lodged by bodies created by the Act, the Land Councils. Three Land Councils were established immediately or within a short time of passage of the Act: the Northern Land Council based in Darwin, the Central Land Council in Alice Springs and the Tiwi Land Council on Bathurst Island.

19.2.8 As a result of the land claim process, between 1977 and May 1990 approximately 198,952 square kilometres of land was transferred to Aboriginal freehold ownership.[29] By 30 June 1989 approximately 33% of land in the Northern Territory was owned under freehold title by Aboriginal people who made up some 23% of the population.[30] A further 2% of land was held on leasehold as at 30 June 1989.

19.2.9 In addition to allowing claims to unalienated Crown land the Act enabled Aboriginal people who had purchased pastoral properties under leasehold title to convert that to freehold land by the land claim process. Claims to land based on need alone rather than traditional ownership (such as land requirements of fringe camps) were excluded from the Act, and were dealt with under mainstream town planning legislation.

19.2.10 The Northern Territory legislation has important provisions which enable traditional owners, in certain circumstances, to refuse consent to mining and other development on their land. The owners, through the Land Councils, may negotiate with developers on the terms upon which they will consent to development. In addition, all Aboriginal people in the Territory benefit from a statutory royalty which is paid for mining on all Aboriginal land. These royalties are paid into the Aboriginal Benefits Trust Account (ABTA) and are distributed by 30% of receipts being paid to communities directly affected by the mining, 40% to meet the administrative expenses of the Land Councils and up to 30% for the benefit of incorporated Aboriginal groups in the Northern Territory. Between 1978-79 and 1988-89 the total income thus derived by the ABTA was $159.5m of which $147.2m was distributed as above.

19.2.11 The Northern and Central Land Councils have applied funds gained from statutory royalties, or negotiated payments, to finance their own operations, but have also established investment corporations which operate in the mainstream markets. Payments made to 'affected communities' have in some cases been quickly dissipated, but in other instances have been applied to long-term investment. For example, the Gagadju Association at Kakadu National Park has invested in tourist enterprises, now owning two tourist hotels.

19.2.12 The land claim process has not been without its negative side. Opposition to land claims has come principally from the Northern Territory Government and millions of dollars have been expended in legal challenges and defences. One legacy of this has been an undercurrent of hostility between the Land Councils and the Territory Government which has tended, at times, to impede calm negotiation on issues. (I give an example of this with respect to local government issues in Chapter 27.) Notwithstanding the disputation which has, at times, accompanied land claims, it is my observations that the system and the legislation is now an accepted reality in the Northern Territory. The final decisions on whether land recommended for granting by the Land Commissioner will, in fact, be granted are left to the Federal Government, but the heating of claims enables the Commissioner to provide an objective evaluation of the competing claims to the land. The process is an orderly one which ensures that Aboriginal economic and cultural needs are given appropriate weight. In the process the Land Councils have become important and respected representatives of Aboriginal interests; a fact which, as this report demonstrates, has been of great importance in ensuring, generally, the advancement of Aboriginal people and, ultimately, the long-term betterment of community relations.

NEW SOUTH WALES

19.2.13 In New South Wales the *Aboriginal Land rights Act 1983* transferred all reserves held by the Aboriginal Land Trust to Aboriginal people. In 1983 only some 46 square kilometres was available to be so transferred. The Act also allowed Aboriginal people to both claim and purchase land. The claims process was not based on the quite rigid formula in the Northern Territory legislation which required proof of 'traditional ownership' and which placed emphasis on proof of continuing ceremonial practices, but allowed claims to be made on the basis of long term association with areas of land of significance to Aboriginal people. The Act did allow claims to be made on the basis of traditional association with land, but did not require proof of such association in terms similar to those required by the Northern Territory legislation.

19.2.14 A very significant feature of the legislation was that it provided for the equivalent of 7.5% of all New South Wales lands tax revenue to be paid into a Land Council account. Since 1986 the Act requires that 50% of annual appropriations and all interest on investments must be accumulated in a statutory investment fund until 31 December 1998. The balance of funds thus obtained are available for the purchase of land on behalf of Aboriginal people. When the Act was first passed it provided for a structure of a central Aboriginal land council (the New South Wales Aboriginal Land Council), thirteen regional land councils and 118 local land councils. The regional land councils had a significant role to play as mediator in any disputes between local land councils and as the bodies which could acquire land and establish and operate businesses. In order to maximise funds for the purchase of properties and businesses, regional land councils often pooled funds.

19.2.15 One major difference between the two Acts is that the New South Wales Act carries with it what Dr Altman describes as an implicit assumption of economic incorporation into the mainstream.[31] This is primarily because traditional economic options based on subsistence are no longer available to many Aboriginal people in New South Wales. The compensatory payments made under the Act are used for the administration of Land Councils and to fund land claims, but also to purchase land and enterprises. Since 1984 about 342 square kilometres of freehold land and 16 square kilometres of leasehold land have been successfully claimed. The rate

of success of land claims in New South Wales has been far lower than in the Northern Territory; the most recent statistics indicate that, overall, 16% of claims have been granted; 24% are still under investigation and 60% have been rejected.[32] The money allocated to the New South Wales Aboriginal Land Council under the Act was, in 1984 $15m; in 1988 $34.6m and in 1989 $29.9m. The current investment account amounts to $88m and is estimated to have risen to an investment base of between $400m and $500m in 1998. In that year allocations from the *Aboriginal Land rights Act* will cease. After that date the interest from this investment will provide the funding source by which Aboriginal people will be able to continue to purchase land and to fund enterprises and to finance other social and cultural needs relating to land. This funding arrangement, with its far sighted and effective plan for economic independence for Aboriginal people, has been the most significant change in the distribution of resources in New South Wales in the last decade.

19.2.16 Amendments to the legislation made by the New South Wales Government in 1990 provoked considerable opposition amongst sections of the Aboriginal community. Under the original legislation land purchased on the open market by land councils retained its existing title, but the land councils were prevented from disposing of the land thus, in effect, creating both inalienable leasehold as well as inalienable freehold land. The legislation provided that the New South Wales Government could neither resume Aboriginal land nor could the land be sold to pay overdue local government rates. These provisions applied whether the land was purchased in a town area or not. In the eastern and central divisions of New South Wales leases which were thus obtained could be convened to Aboriginal freehold title. The western division of New South Wales had a different system. There 'perpetual lease hold' was the only title that could be obtained, which would make the land subject to such conditions as may be set by the Lands Department pursuant to the terms of *the Western Lands Act.*

19.2.17 The 1990 amendments (not all of which have yet been proclaimed) made a number of changes to the situation. The regional land councils, which had become the key organisations in New South Wales, lost their power to purchase land. Only the New South Wales Aboriginal Land Council and the local land councils were thereafter entitled to purchase land and the latter councils could only do so with the written consent of the New South Wales Aboriginal Land Council. Any land purchased retained its title, but the amendments provided that such land could be sold or mortgaged provided that 80% of the membership of the local land council present at a special meeting voted to achieve that result. The amended legislation provides that such a vote must be to the effect that the land is not of cultural significance and thus may be sold. The legislation further provides that the New South Wales Aboriginal Land Council must approve the resolution of the local land council. Land owned by the New South Wales Aboriginal Land Council also required an 80% local vote to be sold. Land which had been purchased as leasehold was no longer able to be converted to freehold title.

19.2.18 As a result of the amendments all land which was held by the regional land councils was vested in the New South Wales Aboriginal Land Council, and the powers of the New South Wales Aboriginal Land Council were increased to provide for the dissolution of a local land council where the New South Wales Aboriginal Land Council was satisfied that the local council had failed to fulfil its functions. The legislation still provides that the government may not resume land, and, further, retains the provision preventing the sale of land for overdue local government rates.

]9.2.19 In real terms the effect of the 1990 amendments has been to centralise the

power over land rights with the New South Wales Aboriginal Land Council and to correspondingly reduce the power of the regional land councils. Programs which the regional land councils were pursuing to obtain land to provide an economic base have now been stopped, and these issues are placed effectively in the hand of the New South Wales Aboriginal Land Council.

19.2.20 In the report on the death of Lloyd Boney Commissioner Wootten wrote of the work which had been done by the North West Regional Aboriginal Land Council in Brewarrina, New South Wales. He heard evidence from Mr Tombo Winters, the State representative of the Regional Land Council and I will set out this passage in full. Commissioner Wootten expressed concern that the ambitious program of the council might be thwarted, given the demise of the regional land councils as a result of the amendments. In his report Commissioner Wootten wrote:

> *The North West Regional Aboriginal Land Council had embarked on an ambitious program of land acquisition to address the problems of unemployment, poverty and alcohol dependence. Since 1987, the Council had purchased four major sheep and agricultural properties in the area, two nearby to the west of Brewarrina, as well as a number of retail outlets and franchises. The Land Council employed 57 people, with plans for a further 40 jobs within the next 12 months. The properties and enterprises returned $1 million to the Land Council in 1989-90, which was reinvested in plant and other community determined enterprises.*
>
> *Mr Winters gave some idea of his vision for the future. He said:*
>
> > *'We anticipate that by the year 1998 every community with the North West Region will have a property that they can call their own. There will be a property bought in every location of communities within the North West Region, and those Aboriginal people will be running those properties themselves.'*
>
> *He said that money would be coming back into the community to go into better housing, better sporting facilities, and people would be able to get jobs again. He hoped that such things as supermarkets would be bought or created and would employ Aboriginals. He foresaw many opportunities for employment that would take away a lot of the idleness that was now a cause of problems. He said that on one small property they were planning to set up a shearing shed, and get the older men to train young men for the shearing industry. On one of the properties there was a farm technology course training 12 Aboriginal youths.*[33]

19.2.21 Although there have been very substantial criticisms levelled at the amendments by Aboriginal people, especially on the issue of the power to sell or mortgage Aboriginal land, it seems clear that not all Aboriginal people oppose the amendments which have been made. I am in no position to judge, and nor would it be appropriate for me to do so, the extent of the support or opposition to the amendments.

19.2.22 The history of the movement to land rights in New South Wales is in many ways similar to that in the Northern Territory, although, of course, there are substantial differences. That history gives some insight as to the strong support

which regional land councils now have. Pressure on New South Wales Aboriginal people to move from their traditional lands was able to be resisted to a substantial degree until the early years of the 20th century, where the expansion of the pastoral industry forced many Aboriginal people from the land. Nonetheless, Aboriginal people in many areas were able to use the land and to remain living in traditional areas. In many places on the coastal areas from the Burragarang Valley, west of Sydney, through the Hunter river into the McLeay and Nambucca river areas, Aboriginal people held small land holdings where they farmed maize, pumpkins and other vegetables. These farming ventures successfully supported Aboriginal communities of up to fifty people. Although many of these farms continued to support Aboriginal family groups into the 1920s, pressures of white settlement

were acute.

19.2.23 Throughout the 1930s Aboriginal reserves were being created, and, although Aboriginal people resisted enforced movement from their country, they were under pressure to move from many sources. Unemployment following the Depression lead the Aborigines Protection Board to increase the numbers of Protection Board Stations, and reserves and Aboriginal people were then moved to these centralised locations. Dr Heather Goodall, an historian and consultant to the Commission, has written about this period and noted that protests against enforced movements and the concentration of people into stations and reserves were frequent during the 1930s, and that there continued to be a demand not only for civil rights but also for land settlement and economic independence. Commissioner Wootten also refers to the history of dislocation and of the work of the Aborigines Protection Board in his report on the death of Clarrie Nean. In the 1950s the Welfare Board, as it then was, and changes in the employment situation forced many Aboriginal people to move to urban areas to seek employment. The demands for land settlement continued throughout the 1970s and were highlighted by the 'Tent Embassy' in 1972. In 1973 the Lands Trust was formed by the New South Wales Government, but the Lands Trust, as a body to hold title, was not an instrument which satisfied land rights demands. The continuing campaign for land rights led to the establishment in 1976 of the New South Wales Aboriginal Land Council. Dr Goodall comments, however, that Aboriginal political organisation during this time reflected regional cultural and historical affiliations, which in turn reflected the fact that there were different pressures facing people in different geographic and economic regions. She comments that from the time of the establishment of the New South Wales Land Council the constant meetings of that body maintained the impetus for land rights, but she puts the demand into this perspective:

> *Land was not seen as the only need of Aborigines, nor were rights to !and believed to be the immediate or total solution to the economic and other disadvantages Aborigines faced. Rather, land was a precondition for effective programs in specific areas such as housing and health.*[34]

19.2.24 Land claims made to the government by Aboriginal people in New South Wales during the 1970s reflected the importance of land as a path to economic and social independence. Additionally the claims made at this time, as detailed by Dr Goodall, focused on these matters:

- the protection of sites of religious or historical significance, in particular burial sites and sites of a secret nature;
- the securing of adequate and permanent access to residential land;
- the use of areas of land to strengthen the knowledge among young people of

traditional, cultural and social activities and to teach them about the shared historical experiences of Aboriginal people under colonialism, and

- the use of some, at least, of the land as a possible economic base with the hope of running pastoral properties or other enterprises which could generate funds to alleviate growing unemployment among Aboriginal communities.

The demand at this time was for any land transferred to Aboriginal people to be in inalienable title.

19.2.25 In western New South Wales the purchase of a cattle station illustrated the benefits which could flow under the Land ri*ghts Act.* Commissioner Wootten referred to this in his report on the death of Mark Quayle:

> *At the time of my visit Weinteriga, a pastoral property near Wilcannia, had been purchased and was providing employment and income for Aboriginals as well as a source of pride and place for enjoyment of the river and the bush. This is a small start, but a sign of considerable potential for the future.*
>
> *There is extraordinarily little employment available in the Wilcannia area. Pastoral properties no longer employ much labour, and the limited employment in shops and service industries in town go almost exclusively to white people.*
>
> *In the long run the control of resources and with it employment by Aboriginals through the operation of the land rights legislation may make considerable contribution to the restoration of Aboriginal independence and employment. In western New South Wales the Regional Land Councils appear to have had a key role in ensuring that resources of the region are brought together in a way necessary to achieve purchases of substantial assets, including pastoral properties. It is disturbing that at the time of writing there is controversy over the continuation of the power of the Regional Land Councils to continue to act in this way, and also over the bringing of the activities of Councils and the disbursement of funds under bureaucratic controls. It would be a tragedy if the promise of some degree of independence offered to communities by land rights legislation should effectively be converted into welfare funding.*[35]

19.2.26 Against this backdrop the concern about the reduction in power of the regional land councils can be appreciated. Whatever may be the outcome of the continuing controversy about the 1990 amendments, however, it must be said that the New South Wales legislation provides a very important avenue for self-sufficiency of Aboriginal people in New South Wales; if not totally, at least to a significant extent

SOUTH AUSTRALIA

19.2.27 *The Aboriginal Lands Trust Act 1966-1975* was the first land rights legislation in Australia. The legislation transferred nine Aboriginal reserves to the Aboriginal Lands Trust (ALT) which then leased those lands to communities traditionally associated with them. By 30 June 1989, 508 square kilometres had been transferred to the ALT. In 1981 the *Pitjantjatjara Land rights Act* was passed transferring 102,630 square kilometres of land in the north-west of the State to the Pitjantjatjara people. This was the fast negotiated settlement to a specific region in Australia. In 1984 the *Maralinga Tjarutja Land rights Act* transferred a further

76,420 square kilometres. The statutory body, which became the owner of that land, represented Aboriginal people who had traditional interests in land from which they had been excluded during the time of nuclear bomb testing by the British Government in the 1950s and 1960s. Excluded from the grant of land is a substantial section, being the Maralinga 'prohibited' area. A Royal Commission into British Nuclear Tests in Australia reported that as a result of some hundreds of experiments which were conducted in that area during the 1960s and 1970s a significant portion of the land was uninhabitable owing to toxic and radioactive waste. Proposals to clean up this area so that this land may also be transferred to the Aboriginal people are currently the subject of negotiation between the Australian and British Governments and the Maralinga Tjarutja community.

19.2.28 The' land held by the ALT is not available for mining or prospecting except with the approval of the Governor of the State. The Aboriginal Lands Trust Act has recently been the subject of a review conducted by a committee on behalf of the South Australian Government. The report of the review committee is under consideration by the South Australian Government, but I understand that the Committee recommended that it would be appropriate for land title to be transferred more directly (as freehold land) to Aboriginal people rather than be held by the Trust. The review also recommended the establishment of an Aboriginal Land Council. These matters will, no doubt, be the subject of continued negotiation between government and Aboriginal people and their organisations, and it would be inappropriate for me to make any comment which might interfere with that process. In any event, I have had little opportunity to give detailed consideration to the question of the ALT and its future.

19.2.29 The Pitjantjatjara Land rights Act gave inalienable freehold title to what had previously been the north-west Aboriginal reserve. Under the act, two pastoral properties (Granite Downs Station and Commonwealth Hill Station) which adjoined the reserve, but were then under lease, were transferred to the Anangu Pitjantjatjara people under freehold title. The Pitjantjatjara people gained possession of Granite Downs Station upon the expiry of the lease some time ago, whilst the proprietors of Commonwealth Hill Station surrendered their lease on 31 December 1990. The legislation gives power to the Pitjantjatjara people to control mining on their land, the only exception to that being the Mintabie Opal fields. The Pitjantjatjara people have, from time to time, entered agreements with private companies for joint projects including mineral exploration projects—and in so doing have been in a position to ensure that appropriate safeguards are provided to protect their interests as traditional owners of the land. Throughout the Pitjantjatjara Lands an extensive network of homeland or outstation communities has developed.

19.2.30 Dr Altman has described the mining royalty situation in South Australia as follows. Under the Aboriginal Lands Trust Act full royalty rights from any mining undertaking on ALT lands are payable to Aboriginal interests. Under the Pitjantjatjara and Maralinga Tjarutja Land rights Acts only two-thirds of statutory royalties are payable to Aboriginal interests with this two-thirds being divided fifty-fifty between local and state-wide Aboriginal interests-with the remainder being paid to the general revenue of the State. Under these Acts negotiated compensation payments that are explicitly differentiated from statutory royalties can be paid to Anangu Pitjantjatjaraku (the land holding body) or Maralinga Tjarutja (the other land holding body) to compensate for land disturbance and disturbance to Pitjantjatjara people.

19.2.31 As at 30 June 1989 Aboriginal land holding in South Australia comprised some 18.7% of the total land in the State.[36] The 1986 Census showed that

Aboriginal people comprised 1.1% of the South Australian population. Once again I add the qualification that the vast bulk of the land which has been granted is land which was Aboriginal reserve land on which there was little interest or activity in the past by non-Aboriginal enterprises, and that the land is substantially arid desert.

19.2.32 Maralinga Tjarutja and Anangu Pitjantjatjaraku are funded on a 60-40 basis by the Commonwealth and State Governments, respectively, to meet administrative costs.

WESTERN AUSTRALIA

19.2.33 No land rights legislation has been enacted in Western Australia, but the *Aboriginal Affairs Planning Act 1972* transferred tide to reserve land to the ALT, which is empowered to acquire, hold and manage such lands for the benefit of Aboriginal people generally. Proposed land rights legislation, the Aboriginal Lands Bill, was defeated in State Parliament in 1985. In the wake of the defeat of that legislation the State Government established a program for the granting of ninety-nine year leases over ALT land, the title of which was held by relevant communities.[37]

19.2.34 In Western Australia Commissioner Dodson notes in his report:

> *What needs to be appreciated, is that although social and cultural change has taken place in varying degrees among Aboriginal people throughout the State, and (that) in many places my Commission has had evidence put before it that suggests a move towards smaller family groupings, there still exists a system whereby people know themselves to be part of a larger family network among whom there are particular obligations and alliances to be fulfilled. In addition there (have) been indications given to this Commission of the desires of Aboriginal people in towns and cities who wish to move back out to places associated with their parents and grandparents. Often this has been put in the context of getting away from the trouble in towns with hope for a better social and cultural environment for their young people.*[38]

19.2.35 The program initiated by the Western Australian Government also included provision for the establishment of infrastructure and services to communities. Funding for this program was provided jointly by the State and Commonwealth Governments. A further program was established to increase the land base of communities. Officers from the Aboriginal and Tortes Strait Islander Commission (ATSIC) who appeared before Commissioner Dodson tendered a written submission in which it was stated:

> *Arrangements were also made at that time to facilitate the excision of community living areas from pastoral properties, and the transfer of mission lands, to relevant Aboriginal communities. Little land has actually been transferred since either program commenced. Delays in processing excisions have been due to factors such as refusal of many pastoralists to co-operate, reluctance of State authorities to press the resolution of excision disputes, and to endorse any excisions where mining/exploration tenements are current or there is mineral prospectivity.*
>
> *Applications for excisions from areas under Crown control, such as*

vacant crown land, National Parks and Nature Conservation Reserves, have also been delayed by the objections from other State Government agencies, such as the Department of Conservation and Land Management (CALM). There are legislative impediments to excisions from National Parks, but there has been reluctance to grant even leasehold tenure to Aboriginal communities living in National Parks even though exploration/mining tenements were granted for the same areas, e.g. Rudall river National Park.[39]

19.2.36 At 30 June 1989 Aboriginal people held title to 12.1% of the land in Western Australia. They comprised 2.7% of the population according to the 1986 census. With the exception of 35 square kilometres the whole of the land held (305,485 square kilometres) was held under leasehold and had formerly been Aboriginal reserves. In addition to this land there are a number of pastoral properties which have been purchased and which will be described later in this chapter.

QUEENSLAND

20.3.37 To date, no land rights legislation has been enacted in Queensland, although in February 1991 the Premier, Mr Goss, announced that his government was committed to the introduction of land rights legislation and expressed his government's willingness to negotiate with all interested parties as to the terms of such legislation. The Premier's announcement attracted praise in many quarters, both in Queensland and nationally. The Melbourne *Age* editorial of 22 February 1991 commented that Queensland Aboriginal people had been worse off than those in most other States and added:

[T]he aspirations of Aborigines to regain the ownership

of some of their traditional lands should be no threat to non-Aboriginal Australians. Queensland's decision means that every Australian State (the Tasmanian Government also has land rights legislation in progress) is now committed to granting a measure of land justice to the first owners of this country.[40]

19.2.38 At the moment the closest that land grants come to what could be described as 'land rights' is what is known as the 'Deeds of Grant in Trust' (or DOGIT) lands which provide title to reserve land pursuant to the *Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982.* It is well recognised that this form of title provides little real security of tenure and does not purport to be a recognition of indigenous rights or to provide any protection against exploration or mining intrusion. All major Queensland Aboriginal and Torres Strait Islander reserves, except for Murray Island in the Tones Strait, have received Deeds of Grant in Trust. Murray Islanders have pursued a case in the High Court of Australia based on traditional land title which seeks to gain exclusive land and fishing rights over Murray Island. These proceedings are due to be heard in the High Court of Australia this year. This action will require the High Court to reconsider the judgment of Justice Blackburn in the Cove Land rights Case, *Milirrpum v. Nabalco* (1971). That judgment, which has been a subject of controversy since it was delivered, held that Australia was 'settled' rather than 'acquired by conquest' and that the indigenous peoples' rights to land, if they existed at all, had been extinguished.

19.2.39 At 30 June 1989, 32,085 square kilometres were held under leasehold in

Queensland which, with the additional five square kilometres held under freehold, meant that Aboriginal interests held 1.9% of Queensland land. Aboriginal and Tones Strait Islander people comprised 2.4% of the population of Queensland, according to the 1986 census.

VICTORIA

19.2.40 *The Aboriginal Land Act 1970* transferred the two remaining reserves in Victoria, at Lake Tyers and Framlingham, to Aboriginal communities. These totalled 20 square kilometres. In 1987 the Federal Government passed the *Aboriginal land (Lake Condah and Framlingham Forest) Act* which transferred two further small pieces of land to Aboriginal people. As at 30 June 1989, Victorian Aboriginal people therefore held 32 square kilometres of land under freehold title and none under leasehold title to former reserves. Aboriginal people comprising a third of 1% of the population have land holdings of substantially less than 1% of the total land of Victoria.

TASMANIA

19.2.41 To date there has been no land rights legislation in Tasmania, but in July 1989 the government, upon its election, announced a policy of introducing land rights in that State. In February 1990 the Commonwealth Minister for Aboriginal Affairs approved a grant of $40,000 to the newly established Tasmanian Aboriginal Land Council as a contribution towards the consultative process in relation to the return of certain areas of Crown land to the Tasmanian Aboriginal community. The State Government has distributed a discussion paper on land rights and has announced that in the first instance, two areas of land, namely at Oyster Cove and at Wybalenna, had been identified as appropriate areas of land for transfer of title.[41]

19.2.42 The Royal Commission was advised by the Director, Social Justice Division, Department of Premier and Cabinet, Tasmania, that the Tasmanian Government was 'presently in the process of preparing land rights legislation and intends to introduce it in the first session of parliament (in 1991)'.[42] At present, Tasmanian Aboriginal people who comprise 1.5% of that State's population hold two square kilometres of freehold title and no leasehold land to former reserves.

AUSTRALIAN CAPITAL TERRITORY

19.2.43 In 1986 the Federal Government passed the *Aboriginal Land Grant (Jervis Bay Territory) Act* transferring four square kilometres to the Wreck Bay Aboriginal Community Council.

LEASEHOLD LAND

19.2.44 In the review of land granted throughout Australia I have referred to holdings of leasehold land of Aboriginal people. Whilst, generally speaking, Aboriginal people seek the greatest security of title to land, wherever and whatever nature of land that may be, and whilst this has invariably led to requests for land to be granted as freehold, much land has been granted throughout Australia under tides other than freehold. The Aboriginal Development Commission and its predecessor, the Aboriginal Land Fund Commission, between 1975 and March 1990 had purchased 148 properties for Aboriginal communities. These properties range from pastoral leases, new homes for hundreds of people and houses which had become community centres.[43]

19.2.45 Purchases of land and the granting of land title under leasehold has been an important aspect related to improvement of Aboriginal living standards. The groups which had missed out under land rights legislation in the Northern Territory and South Australia tended to be those people living on cattle stations which were under non-Aboriginal ownership and those people living in fringe camps on the borders of townships. For these people significant improvements in infrastructure could only occur if the funding bodies were satisfied that there was security of title. Very substantial improvements in living conditions have frequently followed the granting of rifle. The advances of the fringe camps in Alice Springs, Tennant Creek and Elliott illustrate this point.

19.2.46 Although Aboriginal people in Western Australia have consistently argued for grants of freehold title, there have, nonetheless, been a significant number of grants of land through the purchase of pastoral leases. As at 20 September 1990, twenty-two pastoral leases had been secured and placed under Aboriginal ownership with a further twenty-eight properties in the process of negotiation, twelve of which were well advanced. Also in Western Australia tide to living areas of land had been secured in twenty cases with a further thirty applications for land title for living areas being in the process of negotiation or finalisation.[44]

19.2.47 Progress in obtaining excisions of living areas to pastoral properties has, however, been slow in Western Australia. As reported by Commission Dodson in his Regional Report, the Commonwealth was prepared to provide funding for infrastructure on outstation communities on pastoral properties providing title to land excised had been first acquired. By 23 August 1990 only sixteen such excisions had been concluded. Forty-seven applications for excision were outstanding at that time.[45]

19.2.48 In the Northern Territory progress on excisions was improved by the signing of a Memorandum of Agreement on 7 September 1989 between the Chief Minister of the Northern Territory and the Prime Minister. This agreement allowed for the accelerated provision of Aboriginal living areas on pastoral properties in the Northern Territory. Land was also to be granted on portions of stock routes and reserves. Land claims to some other areas of stock routes and reserves were, however, expressly excluded by amendments to the Land rights Act. By virtue of the Memorandum of Agreement these pastoral lease excisions will be granted under a special freehold title provided under Northern Territory legislation.

19.2.49 In discussion of land needs under the all-embracing title of 'Land rights' it can be easily overlooked that the provision of leasehold tire can provide very substantial security. This title can also allow for rapid improvement in the infrastructure on communities in which improvement might otherwise be substantially delayed because of the political objection to the granting of freehold rifle. This is not to say that the granting of freehold title is not appropriate and should not be recognised as such by government. Aboriginal people find it difficult to understand why it might seem appropriate that a cattle station purchased in the Northern Territory may become freehold title, but a cattle station purchased in Western Australia may not.

19.3 CONCLUSION

19.3.1 The nexus between inadequate or insufficient land provision for Aboriginal people and behaviour which leads to a high rate of arrests and detention of Aboriginal people is repeatedly and directly observed in the reports of the deaths which were investigated. Alcohol misuse, fighting and other behaviour are directly linked to living conditions, both in environmental terms and in terms of

the pressures under which Aboriginal people live and from which alcohol offers a respite for some.

19.3.2 The indirect links between separation from traditional land and the cultural supports which title to such land brings are more clearly evident in the positive benefits which have come with the outstation movement.

19.3.3 In Chapter 37 I will consider what needs to be done to meet the needs for land which have been identified as critical to the reduction in the disproportionate rate of arrest and imprisonment of Aboriginal people throughout Australia.

Chapter 20 SELF-DETERMINATION

A continuing theme in the preceding chapters is the limited amount of control that Aboriginal people have over the forces that determine how they live. One of the deepest legacies of history for Aboriginal people, and one that has contributed to deaths in custody, is that their lives have been controlled, and in many cases still are controlled, by people who share neither their culture nor their perspectives, because they have not shared their history. Self-determination the gaining by Aboriginal people of control over the decision-making processes affecting themselves, and gaining the power to make the ultimate decisions wherever possible—is, therefore, a key underlying issue considered by the Commission.

The chapter seeks to pose the question 'what is self-determination?'. There is no clear cut definition which is universally agreed. But there is a wide area of agreement that what is involved is empowering Aboriginal people to make many of the decisions affecting their lives and to bring parties to meaningful negotiation about others.

The chapter canvasses the history of the development, by governments, of the self-determination concept, from the 'assimilation' policy adopted by the Commonwealth and States in 1937, through 'integration' to current policies of 'self-determination'. The role of the former Department of Aboriginal Affairs is highlighted. The approaches used in the last two decades in the name of the self-determination policy, such as a variety of consultative mechanisms, are reviewed. Towards the end of the chapter, some emphasis is placed on the role of local government, since Aboriginal people are particularly poorly served at this level as a result of legislative and administrative arrangements determining the provision of services by local government. In Chapter 27, I discuss the path to self-determination.

20.1 THE REALITY OF CONTROL

20.1.1 Throughout this report my discussion of each of the issues addressed in its chapters, and in the recommendations, constantly relates to a central theme—that substantial change in the situation of Aboriginal people in Australia will not occur unless government and non-Aboriginal society accept the necessity for Aboriginal people to be empowered to identify, effect and direct the changes which are required. The process of empowerment is at the same time the process of self-determination.

20.1.2 In Chapter 10 I have detailed the impact of colonisation on Aboriginal people. From a situation where Aboriginal people had complete autonomy and self-reliance living on and from their lands, which gave both spiritual and economic sustenance, they were subjected to the total domination of people whose notions of the use of land and whose culture were totally alien to them. This domination, first commencing on what were to become the Eastern States, was accompanied by extreme violence and the dispossession of Aboriginal people from their land.

Those who were not killed by violent confrontation or as a result of the ravages of introduced diseases were drawn under the control of the colonisers. The control, which eventually embraced almost the entire Aboriginal population, was total and remained so at least until 1967 when a referendum gave belated recognition to the Aboriginal people as part of the national polity.

20.1.3 Many Aboriginal people would argue that the control remains just as effective today whatever may be the rhetoric of government. They would say that economic dependence upon government and the restrictions placed upon them by discriminatory practices achieve the same result—their lives are controlled by others who share neither their culture nor their perspective on any issues because they have not shared their history.

20.1.4 It is difficult for non-Aboriginal people to comprehend just how absolute the domination of Aboriginal people has been. With the probable exception of those who have elsewhere experienced colonisation, no other people in Australia, not even those who have suffered at the hands of and escaped from totalitarian or racist regimes, have shared with Aboriginal people the additional dimension of eviction from their own lands. Nor have they experienced the consequent cultural and economic loss, not to say anger, of becoming despised supplicants of those who effected, or benefited from, their dispossession.

20.1.5 The reality of the control over Aboriginal lives can be readily demonstrated. It was no less brutal for the fact that the policies which achieved the control were often justified by their authors on humanitarian or paternalistic grounds. In the process of investigating the lives and deaths of each of the ninety-nine Aboriginal people who died in custody Commissioners had access to the files held by government departments and agencies concerning them. No matter what their age at death they all had files—in many cases hundreds of pages of observations and moral and social judgments on them and their families; considerations of applications for basic rights, determinations about where they could live, where they could travel, who they could associate with, what possessions they could purchase, whether they could work and what, if any, wages they could receive or retain. Welfare officers, police, court officials and countless other white bureaucrats, mostly unknown and rarely seen by the persons concerned, judged and determined their lives. The officials saw all, recorded all, judged all and yet knew nothing about the people whose lives they controlled.

20.1.6 Aboriginal people were removed at the whim of others, crowded into settlements and missions and in impoverished camps on cattle stations. Always there were non-Aboriginal people giving orders, making decisions in which the opinions of the Aboriginal people were not sought nor, if volunteered, heeded. Aboriginal families could be separated, children removed if judged too light skinned, placed in homes or boarded out as servants of non-Aboriginal families.

20.1.7 It is essential to realise that here I am not describing ancient events. This control—these horrors of subjugation—were still occurring in the 1960s and for much of the 1970s. The anger in the demands for self-determination is so strong because the totality of control is so recent, and the effects of it are continuing and remain painful. It is no exaggeration to say—and the individual case reports demonstrate the fact—that the impact of the control over the deceased and their families was a factor in the deaths in custody.

20.1.8 This then is the setting for considering self-determination or, rather, the lack of it, as an underlying issue. In this chapter I look at the legacy of the control of Aboriginal lives, the first uncertain policies to address it and the inadequacies of those responses. In Chapter 27 I will look to the future and suggest means

whereby self-determination may be achieved and enhanced.

20.2 WHAT IS SELF-DETERMINATION?

20.2.1 It is remarkable how a concept which is so widely recognised as being central to the achievement of the profound change which is required in the area of Aboriginal affairs remains so ephemeral and so difficult to define. Governments can genuinely believe that their policies give practical recognition to self-determination, and yet in the eyes of Aboriginal people the policies not only fail to do so but, at times, are regarded as being founded on the concept of assimilation—the very antithesis of self-determination.

20.2.2 As I will later show, self-determination was first embraced as the cornerstone of government policy by the Whitlam Government in 1972. In 1971 the then Prime Minister McMahon had foreshadowed a move towards the concept in a speech in which he acknowledged the right of Aboriginal people to choose the pattern and determine the pace of their future development, and had said that Federal policies would allow them that choice. Government and Aboriginal understandings differed then, as they still do, about what self-determination meant. It is little wonder that the bureaucracy which attempted to administer the policy had such difficulty doing so; since the concept was so little understood it was impossible to determine when policies were consistent with it. This confusion remains today. It is not only among the non-Aboriginal people that understandings differ about the notion of self-determination—Aboriginal opinion too is often apparently divided.

20.2.3 The confusion and uncertainty about the definition of self-determination reflects, I believe, the fact that it is, indeed, an evolving concept, one which encompasses a wide range of ideas; different aspects receiving emphasis at different times. It is easier to determine when serf-determination does not exist than it is to articulate policies and processes which would be universally accepted as being both consistent with the concept and be achievable in practice.

20.2.4 In a recent report of the bi-partisan House of Representatives Standing Committee on Aboriginal Affairs Out *Future, Our Selves* an attempt was made to define the concept and to distinguish it from the concept of 'self-management. The Committee said that the essence of serf-determination was

> *the devolution of political and economic power to Aboriginal and Torres Strait Islander communities. The Committee defined self-determination in terms of Aboriginal control over the decision-making process as well as control over the ultimate decision about a wide range of matters including political status, and economic, social and cultural development. It means Aboriginal people having the resources and capacity to control the future of their own communities within the legal structure common to all Australians .1*

20.2.5 The Committee contrasted this with 'self-management' which

> *is concerned with the efficient management and administration of Aboriginal communities and organisations. It is about effectively implementing those decisions and priorities that have already been determined by Aboriginal people. Consequently, non-Aboriginal people who can understand and work within Aboriginal cultural and social aspirations will have a role in assisting some Aboriginal communities and organisations with their administrative responsibilities.2*

20.2.6 In considering this definition of serf-determination the question can be asked: How can Aboriginal people have control over the ultimate decision about their economic, social and cultural development? The answer must be in broad terms.

20.2.7 Plainly, the House of Representatives Committee contemplated some limitations in the extent to which Aboriginal people could have 'ultimate' control over such decisions. One limitation is explicit in the requirement that decisions be taken 'within the legal structure common to all Australians'. The ultimate decision-making on social and development issues,' under Australia's constitutional structure, is that taken by government at Commonwealth and State (and to a much lesser extent local government) levels.

20.2.8 There are also economic factors which constrain Aboriginal decisions and which are simply impossible to avoid. No decision, by any group in the community, can be taken in an economic vacuum. Whether a decision by an Aboriginal group to develop a wheat farming property in New South Wales is viable may ultimately depend much more on the world market price for wheat than on any decisions taken in Australia.

20.2.9 The Committee was well aware of the complexities of these issues; indeed it trod much of the ground which I now cover in this chapter and in Chapter 27, and I am greatly assisted by the Committee 's reports. In broad terms I agree with the conclusions reached and recommendations made by the Committee. It may be that where I differ is only as to emphasis, but when one is discussing self-determination a difference in emphasis may be an important determinant about whether policies provide the reality of self-determination.

20.2.10 The Committee's definition of serf-determination should be set alongside some others. In a submission to the Commission the National Aboriginal and Islanders Legal Services Secretariat (NAILSS) submitted that self-determination

> *consists of a spectrum of possibilities accompanied by a few non-negotiable minimum standards. The spectrum of possibilities can be summarised as ranging from statehood, free association (with the colonial state), the creation of an international territory, autonomy or integration. The non-negotiable items are;*
>
> *- indigenous people themselves decide what the substance of the definition of self-determination is*
>
> *- indigenous peoples then make a free choice between the various options they have identified*
>
> *- indigenous peoples themselves choose whether they wish to retain an independent connection to the international community or merge their international interests with the colonial state with which they are associated*
>
> *- an economic base, through a means of subsistence is provided to the indigenous self-determining people*
>
> *- the exercise of one choice does not preclude further choices as circumstances change.*[3]

20.2.11 NAILSS, which has received affiliation status as a non-governmental organisation with the Economic and Social Council of the United Nations, draws heavily upon the international articulation of the concept of self-determination. In particular it draws upon the Draft Declaration of the rights of Indigenous Peoples

which was drafted in August 1990 by the Working Group on Indigenous Populations, and on the International Covenant on Civil and Political rights (ICCPR) which Australia has ratified. NAILSS sees the agenda of self-determination requiring substantial reparation for past injustices and loss of land, comprehensive land tights and the elimination of racial discrimination as all being essential elements, together with recognition of indigenous laws and institutions.

20.2.12 NAILSS supports the tight of indigenous people to participate, without discrimination against them, in the mainstream community and, as such participants, to receive improvement in economic and social conditions. It also sees self-determination as providing another option.

> *Central also is the right of indigenous people to be the practical masters of their own affairs for this reason the draft sets out lengthy conditions under which indigenous people are special and powerful participants in any government decision making that effects their own social, economic, cultural and political conditions... [C]onversely and preferably however indigenous people will directly control their own future and social management through the agency of their own political and cultural institutions, the structure and membership of which is determined by indigenous people themselves. (Unlike the newly formed Aboriginal and Torres Strait Islander Commission -ATSIC).*[4]

20.2.13 It could be argued that the agenda for self-determination set by NAILSS goes beyond that contemplated by the definition adopted by the House of Representatives Committee. In so far as NAILSS refers to the creation of an international territory, this could accord with statements made in recent times by those advocating the creation of a separate 'Aboriginal Provisional Government'. On the other hand, whereas those who support the provisional government concept have in effect resolved that this is the option for self-determination which should be adopted, NAILSS merely raises this as one possible option which Aboriginal people may consider among a spectrum of possibilities. NAILSS sees the question of the relationship which Aboriginal people will have with the state as being a matter to be 'determined by indigenous people themselves '.

20.2.14 It should be noted that the ICCPR does not itself necessarily relate the self-determination of peoples with the fight to sovereignty. As Dr John Hookey of the Aboriginal Law Centre, University of New South Wales said in the paper on International Law Issues commissioned by the Royal Commission:

> *It does not follow, of course, that the right of self-determination, in every situation, involves a right to independence as a separate and distinct sovereign state. As Professor Garth Nettheim brings out in his chapter in the rights of Peoples ... at page 119, 'a people exercising their right to self-determination may choose from—-and may even be confined to_a range of possible outcomes other than independence: these include federal arrangements, regional autonomy, and full integration' .5*

International law issues are dealt with in more detail in Chapter 36.

20.2.15 One issue which NAILSS does not specifically address but which is also fundamental in considering the definition of self-determination is the process by which the principle of self-determination may be exercised by Aboriginal people. Self-determination for one Aboriginal group might suggest a particular decision as

to an aspect of economic, social or cultural development, and yet the wishes of that group may be at odds, not only with the views of government but also with the views of other Aboriginal people. Clearly, there are going to be situations which will arise where there are conflicting opinions between Aboriginal groups. In those circumstances it may be said that a process which allows Aboriginal people between themselves to determine which decision should be given effect may, in a broader sense, amount to 'Aboriginal' self-determination.

20.2.16 Other definitions of self-determination are not as broad as that proposed by NAILSS. Mr Tombo Winters is Senior Field Officer with the Western Aboriginal Legal Service in Brewarrina, New South Wales and State Representative of the North-Western Regional Aboriginal Land Council. In the course of discussing the New South Wales land rights legislation which provides for the creation of a significant trust fund from a levy on State land tax receipts, Mr Winters explained self-determination in these terms:

> *Well, I am one of the blokes that feel that Aboriginal people are always asked to he the improvers. We have to be the improvers. We are the most looked after people in Australia. Everyone seems to know what's good for us, and we don't seem to know what's good for ourselves. I feel that through the land rights movement and if it's left alone—that the Aboriginal people of New South Wales at least after 1998 will have sufficient self-determination—and will be able to become self-sufficient without being given handouts by government, and with white people going around saying what' s good for us and what' s not good for us. It is about time we were left alone to say what' s good for ourselves. You know, people have been telling us for a long time as I can remember [sic] I grew up on a mission. I was told what was good for me from the day I was born, and they are still telling us what' s good for us.6*

20.2.17 Debate about self-determination, then, embraces a wide range of definitions. However, I think it is important to note that there is a very solid core of common ground between the bipartisan Standing Committee of the House of Representatives and the other material quoted from Aboriginal sources which covers three crucial points:

1. That Aboriginal people have the control 'over the decision-making process as well as control over the ultimate decisions about a wide range of matters including political status, and economic, social and cultural development' (to quote the Standing Committee's statement). In my judgment, that does not basically contradict either of the two scenarios set out in the quotation from the NAILSS. It may be that in the elucidation of particular words and expressions some differences would emerge but this could only be at the periphery and would not affect the point that I make about the solid core of agreement.

2. That for Aboriginal people 'an economic base is provided to the indigenous self-determining people' (to quote in this instance the fourth of the 'non negotiable' items). This sits very easily with the words of the Standing Committee statement, 'It [self determination] means Aboriginal people having the resources [my emphasis] and capacity to control the future of their own communities'.

3. The fast three non-negotiable items in the NAILSS definition are about the Aboriginal right to make the choice as between the 'spectrum of possibilities' set out in the statement. The statement of the Standing

> Committee refers to 'the ultimate decisions about a wide range of matters including political status'; but the ambit of the decision-making power is 'within the legal structure common to all Australians', while the NAILSS spectrum of possibilities contains at least one option and possibly more which would be outside 'the legal structure common to all Australians'.

20.2.18 The concept put by Mr Tombo Winters would, moreover, fall within the ground common to both these statements.

20.2.19 But I make another, more important point. The thousands of suggestions, proposals, calls for action, demands that have been raised by the families of those who died in custody and raised by Aboriginal communities around Australia directly with Commissioners and indirectly through the AIUs fall within the core area of agreement.

20.2.20 I agree with NAILSS and the Standing Committee of the House of Representatives that Aboriginal people should decide for themselves what they see as the scope of their demand for self-determination.

20.2.21 If the demand far exceeds what governments and the broader community are prepared to accept as appropriate then so will be set the ambit for negotiation or determination of the issue.

20.2.22 In Chapter 27 1 will discuss in more detail what I see to be the objective which, in my opinion, most Aboriginal people set for self-determination and ways in which that might be achieved.

20.2.23 I simply note at this point that it is plain to me that Aboriginal opinions differ on this issue. That is a reflection of the diversity of experience of colonisation and of the present life styles and political and social situations of Aboriginal people in Australia today.

20.2.24 In my opinion, it is appropriate to look at what Aboriginal people and their organisations are actually doing and how they, in fact, relate to the broader society in order to gain an insight into the sense of self-determination which is the aspiration of most Aboriginal people. Whilst few Aboriginal people would or have publicly disassociated themselves from calls for 'sovereignty' (it is a word which bears a multitude of meanings), my strong impression is that what the majority—the large majority—-of Aboriginal people want from self-determination is within what I have called the solid core of agreement.

20.2.25 As this chapter will demonstrate, however, the attainment of even less ambitious demands for self-determination has been an immense straggle, and continues to be so.

20.3 GOVERNMENT AND THE CONCEPT OF SELF- DETERMINATION

20.3.1 To appreciate why it might be that understandings of the meaning of self-determination differ and why the gap between rhetoric and reality has been so great, it is first necessary to consider the history of government policies which preceded acceptance of the ideal of self-determination.

20.3.2 Two critical dates can be said to have marked turning points in the struggle for self-determination. The first was 1967 and approval of the Referendum which gave the Commonwealth power to legislate in Aboriginal Affairs, a power which co-existed with State power but which, in the event of inconsistency, would see Commonwealth legislation being paramount. The second date was 1972 and the election of the Whitlam Government which proclaimed its intention to apply Commonwealth power to legislate for land rights and for great social change in the

situation of Aboriginal people. The Whitlam Government committed itself to a new principle in government relations with Aboriginal people—the concept of self-determination. But first we need to return, once more, to the years of assimilation and integration policies.

THE ASSIMILATION YEARS

20.3.3 The assimilation policy was officially agreed to by the heads of State and Territory Aboriginal affairs authorities in 1937. Some of its practices considerably predated 1937, and after 1937 some of the developments of assimilation were introduced in different States at quite different times. The policy's introduction was generally delayed by the war. World War II had a dramatic impact on many Aboriginal people through their participation in army efforts and an increased exposure to the wider society. The assimilation policy was adopted by the States when it suited other political and economic circumstances relevant to the States and Northern Territory. For example, in Queensland the policy was not really implemented until about 1957 with the discovery of minerals on Aboriginal reserves.[7]

20.3.4 By 1951 all Australian governments claimed they had adopted a policy of 'assimilating' Aboriginal people into the wider society, but interpretations differed. It was not until 1961 that a common definition was adopted:

> *The policy of assimilation means that all Aborigines and part-Aborigines are expected eventually to attain the same manner of living as other Australians and to live as members of a single Australian community enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs, as other Australians. 8*

20.3.5 Charles Rowley pointed out that this statement could accommodate various interpretations: one was the 'extreme assimilationist view of eventual Aboriginal disappearance, which had always been present in Aboriginal administration'. Or it could be used by more liberal persons as promising general equality[9] or what we might now term 'equal opportunities'. But the policy was vague; it did not clearly spell out methods or objectives; its vagueness prevented Aboriginal and non-Aboriginal Australians from understanding its techniques.

20.3.6 The above policy statement is in marked contrast to current policies of 'multiculturalism', let alone 'self-determination'. It assumes a monolithic and homogeneous Australia and the possibility of enforcing social change. Yet at this time the nation was in the earliest stages of a huge migration of various European nationals. While the policy offered the same rights and privileges, this was highly conditional upon Aboriginal people accepting the same responsibilities, observing the same customs and being influenced by the same beliefs, as other Australians.

20.3.7 The statement created a nationalistic fiction. By setting up a false model of Australia as an 'imagined community'[10] of shared interests, beliefs etc., it was casting Aboriginal people as something *other,* something outside this—people not in fact part of this nation, this Australia. Yet they were there from the start of white settlement and had a continuing impact on the evolution of the nation's history and society. The assimilation policy offered a chance to 'fit in'. The formula requested that Aboriginal people stop being culturally distinctive. Presumably their Aboriginality would not then be noticed. Non-Aboriginal people would not have to change at all. These were the only terms upon which non-Aboriginal Australians would accept Aboriginal people as having a place in the nation.

20.3.8 Like earlier policies, assimilation portrayed 'Aboriginality' as a thing of the past. But, unlike its antecedents, this policy was based not on 'race' or related scientific theory, but on a notion of culture and shared values. So assimilationism represented a shift from biology to life style, from skin-colour to what was inside people's heads. The pitch became more one of 'psychological warfare', implemented with the assistance of the disciplines of psychology and other social sciences which promised new understandings of normative behaviour and methods of cultural indoctrination. The Aboriginal child was thus 'deprived' of important stages in early development; intelligence testing showed them to be of inferior capability. New justifications were therefore introduced to remove children away from their homes for intelligence boosting. The value-laden nature of such cross cultural testing was not understood or acknowledged. 'Intelligence' (not 'racial superiority') was now being defined by the 'superior culture' (rather than the 'superior race').

20.3.9 While the assimilationist approach that Aboriginal people be diluted into a larger culture had devastating effects, the welfare emphasis. which sought to improve hygiene and material conditions for Aboriginal people—had some success in regard to better health and housing.[11] However, service providers were totally insensitive to Aboriginal cultural prerequisites, believing that such attitudes had no place in a modern family. The 'New Deal' meant more money would be spent on Aboriginal Affairs, especially on education, and welfare officers were more committed than police working only part time in Aboriginal affairs. So while Aboriginal culture was not being encouraged to survive, their physical needs were slowly being addressed.

20.3.10 District welfare officers were introduced in New South Wales in 1948 to re-socialise Aboriginal people through surveillance rather than compulsory confinement on reserves. Aboriginal people had been gradually moving into towns anyway, but now they would be encouraged and some assistance provided. All Aboriginal people were subject to surveillance, even those living privately in houses in towns. Assimilation switched the focus from the child to the entire household. The number of children removed from parents did not diminish. The policy also switched the focus to the Aboriginal parents, who were constantly assessed as to how well they were looking after their children according to standards of housekeeping set by non-Aboriginal male bureaucrats. In line with contemporary role-models, such men usually had mothers or wives who performed the shopping, cleaning, cooking and general housework. Although some bureaucrats were sympathetic, they lacked personal experience in the everyday ordeal of cleaning and re-cleaning after young children, or the stresses of pregnancy and small babies. These inspectors literally snooped into women's wash baskets, checking to see if there was unfolded washing. 12 They were tirelessly concerned with how much food was stored in the cupboards, and whether the children's noses were clean. This surveillance continued into the 1960s and 1970s.

20.3.11 Aboriginal women were expected to behave like the idealised advertising images as portrayed in contemporary *Women's Weekly.* Aboriginal women were in an impossible position. Their mothers did not endorse the wider society's expectations of them, nor did their relations. They did not necessarily value the 'privacy' offered by the nuclear family model, and often did not have even basic facilities let alone the material comforts and domestic labour-saving devices which were supposed to make the lot of the 'modern mother' so easy. Rather than having 'internal controls' and close-by networks of reinforcement, Aboriginal people struggled to live in their own social worlds, with their own kin support.

20.3.12 The inspectors were 'outsiders' with great power over a family's future**.** Assimilation thus brought many new demands on mothers regarding their children's schooling, clothing, budgeting—not to mention the isolation of life as a housewife they were supposed to adopt. The men were expected to stick to unskilled, menial jobs. If they could not obtain one they were considered lazy and a failure in their role as breadwinner. All these pressures upon Aboriginal families were more than a mere request for social conformity. In effect they represented an ultimatum: meet the ideal standards and be examined at any time, or your children will be taken away and made wards of the state. The discipline of housework could be under constant surveillance, the 'privacy' of the suburban household for non-Aboriginal women never existed for Aboriginal women. Some women achieved such excellence they could not be criticised. Others tried so hard and lost. State punishment for not conforming was far worse than shame of what the neighbours might think.

20.3.13 Aboriginal women's rights as parents were constantly curbed. They were constantly scrutinised, and subject to special regulations and strict sexual codes of conduct. They were not 'free' to do their mothering as best they could. If parents failed in the eyes of the state, they lost the right to see these children, and to play a parenting role with them. This 'failure' that the women suffered in having their children taken away must have had a terrible psychological impact on their relations with these children, if they ever saw them again. Those implementing the policy told Aboriginal mothers to blame themselves. Anxiety, depression, confusion and most of all, anger and despair resulted; if not in the mother or father, then in the children who were taken away.

20.3.14 Residents of 'institutions' such as mission stations required permits to stay, and their houses could be inspected by the Minister or a police officer at will.[13] This right to inspect was used extensively during the 1950s and 1960s in most States. Such inspections often led to removal of children; see, for example, the reports on the deaths of Thomas Carr and Clarrie Nean. Clarrie became a ward on the basis of his home conditions, though reports varied considerably. Muriel, his mother, stated he was taken away for no good reason: 'They were just snapping the kids up from everywhere, every mission, just sending them away'.

20.3.15 It was the mothers, and to a lesser extent the fathers, who were blamed for their children being taken away. It was their fault for not bringing the children up like non-Aboriginal people, in the same material conditions. Children also bore great resentment against their parents for 'letting them go', feeling they had been unwanted, and not understanding why their parents did not fight to have them back, or keep in touch with them. They did not know that parents were often totally denied knowledge of their whereabouts. Some parents feared contact with authorities may mean losing other children.

20.3.16 Assimilation policies meant encouragement and some assistance for Aboriginal people moving off reserves into townships. Surveillance therefore shifted from the manager in control of reserves to the bureaucratic control of the native welfare officer inspecting the 'private' home. However, it also required Aboriginal internalisation of values or self-policing.[14]

20.3.17 Another aspect of the assimilation policy was that it endangered the continuity of Aboriginal communities and their tenuous claims to reserve lands. When the Tasmanian islander peoples were offered housing in Launceston during the 1950s they had to relinquish their past communities. Despite being starved of funds and suffering a poor mutton-bird season, many refused to leave, even for short periods, because they wanted to 'hold on' to the land. From 1960 there was

increasing pressure for European enterprises on the islands, and poverty led some Aboriginal people to sell their leases. The past claims of islanders to more secure title had been fruitless.[15] Many Aboriginal people clearly indicated that they did not want to become like non-Aboriginal people, and non-Aboriginal Australians were reluctant to accept them as equals anyway. Nonetheless, it was Aboriginal people who were blamed for backwardness. However, Aboriginal agitation for equal rights, with no strings attached, was to gather increasing momentum.

THE INTEGRATION YEARS

20.3.18 In 1962, policy started to switch from 'assimilation' to 'integration', and many of the restrictive laws were repealed—including the ban on alcohol. The integration policy responded to criticism that Aboriginal people were being denied the basic human right to live in their own way. It was to enable retention of aspects of traditional culture but also to hurry along equal rights. The anthropologist A. P. Elkin, who had a central role in influencing policy makers from the 1930s, stated that it meant Aboriginal people could

> *remain a group apart, to be integrated with the white or European group of citizens in a plural social and political system. It is a protest against absorption.*[16]

20.3.19 Dissent about this policy was evident, with some academics arguing that assimilation and welfare offered more hope for improvement; integration would only preserve Aboriginal people as an obtrusive and impoverished minority.[17]

20.3.20 Aboriginal people were not to enjoy the same rights and privileges concerning their domestic and family lives as the rest of the community. Their struggle was more immediately directed towards avoiding the worst of State intrusions into their lives. Many New South Wales Aboriginal people saw assimilation as irrelevant, neither realisable nor desirable. Social equality was so remote that they developed ways to defy non-Aboriginal society through creating a world around alcohol.[18] In South Australia, Fay Gale pointed out that Aboriginal people would not be forced to enter the non-Aboriginal community; successful moves could only come upon their own initiative. She called for community control and an end to paternalistic delivery of services. Aboriginal people needed to be self-governing.[19] The absence of secure land bases for Aboriginal people was still not fully recognised, despite their protracted struggles for land. Aboriginal political activism continued, and only through wider struggles—such as the New South Wales Freedom ride of 1965 which called for an end to discrimination, and Gurindji strikes in the Northern Territory which argued for wage equality did the importance of land bases and security emerge as a priority for ninny Aboriginal people.

20.3.21 Assimilation policies had posited that more training was necessary before conferring equal rights. Since the 1951 Aboriginal Welfare Conference, pensions and maternity allowances were to be allowed to Aboriginal people, though often they were paid to missions or other institutions rather than individuals. 'Integration' was seen as a transitory phase, and the final goal was still assimilation and absorption into the wider community.[20] A new definition was adopted: 'The policy of assimilation seeks that all persons of Aboriginal descent will choose to attain a similar manner and standard of living to that of other Australians and live as members of a single Australian community'.[21] The wording was looser; Aboriginal choice was allowed, for citizenship rights were coming.

20.3.22 In the *South Australian Aboriginal Affairs Act 1962* much of the earlier

restrictive legislation was repealed. However, restrictions remained regarding the management of reserves and the use of alcohol. There were still special regulations for the care and education of Aboriginal children, and for their apprenticeship. It was at the Minister's absolute discretion in cases of need to provide for the maintenance and education of children of Aboriginal people and persons of Aboriginal blood.[22]

20.3.23 Under the Northern Territory's Welfare Ordinance of 1953 the Director of Welfare could take and keep a ward in custody, and remove or keep her or him within an institution, but needed the Administrator's authorisation to separate parents from children under fourteen years of age. *The Native Welfare Act 1963 also* provided for a budget of £10,000 'to spend on native welfare and relief, for custody, maintenance and education of the children of natives, and to manage and regulate the use of all reserves set apart for the benefit of natives' 23

20.3.24 The cultural renaissance which was to occur from the 1970s to the 1990s was not foreseen. Nor was the continuing militancy and activism of Aboriginal people. Throughout Australia Aboriginal people struggled for land rights and equality, and, in New South Wales, they lobbied on behalf of their fellows and also those in the north. In the 1960s organisations like the Federal Council for the Advancement of Aboriginal and Torres Strait Islanders (FCAATSI) lobbied for equal wages, supporting the Gurindji walk off from Wave Hill. Faith Bandler, an influential member of FCAATSI, which was formed in 1958, told of the struggles of Aboriginal people and their supporters during the 1960s in *Turning the Tide.* She points to changing public opinion, but shows the various ways in which this was harnessed for various causes. FCAATSI opposed discriminatory legislation, supported Commonwealth power over legislation to assist the integration of Aboriginal people, improved housing, equal pay, special education facilities, vocational training, retention of remaining reserves with communal or individual ownership, and decent food for Aboriginal people on missions and cattle stations. Their campaigns lent major support to the equal wages struggle and towards the Referendum's success. Evelyn Scott, a North Queensland woman of islander ancestry, explained that her involvement with FCAATSI gave her confidence in the power of protest, especially through meeting people like Kath Walker, Dulcie Flower and Joe McGinness.[24] From 1962, they started to gather support for the Referendum. Ninety-four separate petitions were presented to parliament arguing for the removal of discrimination which excluded them from the census and prevented Commonwealth intervention into their affairs. They argued that failure to be counted was an insult to human dignity as well as having implications for budgetary estimates. In many States they suffered under discriminatory legislation.

20.3.25 Throughout the 1960s, States gradually relaxed legislation which restricted drinking by Aboriginal people. This was an important symbolic step in a country where the male mateship of the pub was a central cultural motif. The residents of Aboriginal reserves were, however, still subject to restrictions. South Australia introduced its *Prohibition of Discrimination Act* in 1966, which provided that refusal of admission upon the basis of race, country of origin or skin colour to hotels, places of public entertainment or shops was prohibited.[25]

VOTING AND CITIZENSHIP RIGHTS

20.3.26 Despite the early introduction (in world terms) of suffrage for other Australian-born men and women in the late nineteenth century, Aboriginal people were denied the right to vote for the Commonwealth Government. This now seems like an aberration in a nation whose history is usually thought to epitomise the

influences of democratising trends. The vote was to be extended to men and women of a certain age, irrespective of property, land ownership or class rank. Being an 'Aboriginal native', however, disqualified a person from national citizenship. 'Civil liberties' were not considered an issue for Aboriginal people. They had been denied liberty by colonialism and the polity was not their own; they were excluded from the concept of nation. There was no guarantee of human rights granted by Britain for the self-governing colonies. As Aboriginal people were not considered 'civilised', it was reasoned that they were not entitled to 'civil rights'. In 1812 the term 'civilisation' actually referred to the assimilation of the common law to the civil law. Nineteenth century and early twentieth century policies constantly referred to the need to 'civilise' Aboriginal people. The term had a disciplinary ring to it; generally it meant to acculturate them to follow British cultural norms and to make them subscribe to British order, the rule of government, law and the class hierarchy.

20.3.27 Prior to 1968, Aboriginal voting rights varied throughout Australia. No special restrictions applied to Aboriginal voting rights in South Australia, New South Wales or Victoria.[26] Many Aboriginal people were still denied voting rights even after the *Nationality and Citizenship Act* was introduced in 1948, which made all Australian-born residents citizens. Despite being officially classed as citizens, the *Commonwealth Electoral Act* provided that only those Aboriginal people enrolled to vote in the States or who had been members of the defence forces could vote. In Western Australia only people with a certificate of citizenship could vote, while Queensland Election Acts from 1915 excluded all Aboriginal people from the vote. Those 'half-castes' who did not come under the Act (and who held exemption certificates) were entitled to vote, but on reserves the superintendents could effectively disenfranchise Aboriginal people by refusing to provide information on the numbers entitled to vote to the Commonwealth Electoral Office or by refusing to provide voter education. In the Northern Territory, Aboriginal people were excluded from voting, and in 1953 'wards' were not entitled to vote. This is revealing of Australia's sense of nationhood; Aboriginal people were to be part of the past, not the future.[27]

20.3.28 Aboriginal people were often granted the right to drink before they were given voting rights. Certainly many would not have known about their voting rights or been enrolled. The fact that many Aboriginal people did not enrol to vote was no doubt tied up with their attitudes to surveillance, record-keeping and citizen rights. Previously, 'rights' had meant the rejection of Aboriginality and kin relations. It meant conforming to non-Aboriginal society, close supervision and the ever-present threat of withdrawal of rights.

20.3.29 In 1962, the right to vote for those Aboriginal people not already entitled to do so at Commonwealth and most State elections was granted, with Queensland lagging behind in 1965.[28] Yet 1967 is seen as a much more important turning point for Aboriginal people. Section 51, clause 26, of the Federal Constitution prevented Commonwealth Parliament making laws about Aboriginal people. They were also excluded from the Commonwealth Census by section 127. In 1967, 90% of the Australian public voted to give the Commonwealth powers to make laws relating to Aboriginal people and to require that they be counted in the census.[29] Aboriginal people were first counted in a national census in 1971.

20.3.30 Colonial takeover denied Aboriginal people the right to live by their own rules, to decide on their own policies. They were denied the freedom to run their own economic and family life. They were also denied the right to own land, to earn a secure living as farmers, merchants, or in the labour market at their own

discretion, to earn a family wage, to receive welfare benefits, to live where they pleased. Under various policies their private, reproductive lives were under scrutiny by government and missionary officials. They could not necessarily marry the person they chose, fraternise with people of their choice, speak to people of a certain colour skin, live in a particular street or on a particular reserve. They could not decide how many people they shared their house with. They were not eligible for old age pensions, for workers' compensation, for maternity allowances or for child endowment. Even when legislation on such matters changed in the 1940s and 1950s, it was often the manager of the mission or reserve rather than the individual who was paid this money. They could not run their own bank accounts. Anyone who objected could end up exiled hundreds of kilometres away or imprisoned for an unknown time. After release, they could be again banished from their families. The law extended its arm into the bedroom and into the post-natal ward. Children were taken from mothers after birth, others were taken once they reached the age of three or four years. Many Aboriginal families were thus denied the right to nurture, to rear and educate, to love their own children, to see them grow up. They lost these children, and the children became lost themselves. Who were they? Often children had been taught to detest everything Aboriginal, and this could extend to themselves once they realised their skin was not white.

20.3.31 Aboriginal people were rarely consulted for their view on policy in the pre-1967 period. In the nineteenth century, advisers were leading business people and missionaries. In the twentieth century, there was more of an emphasis on 'expert' advice, with doctors and anthropologists being consulted as well as influential employer groups and missionaries. From the late nineteenth century to the 1930s and beyond, many Aboriginal spokespersons had lobbied for their people to be allowed human dignity, yet such people were so often discredited as ratbags or not 'real Aborigines', or were said to be Nazis or communists, depending on the tenor of the day. But by the 1960s, Australian Governments were starting to pay some heed to Aboriginal voices. Prime Minister Menzies accepted a delegation of FCAATSI representatives in 1965 which was interested in the mess of legislation that required they live under six different sets of laws. To relieve the tension of the meeting, they broke for refreshments, and Menzies offered Oodgeroo Noonuccal (Kath Walker) a whisky:

> *Kath told the Prime Minister that if he had made that offer to her in Queensland, he would have been gaoled. Shock clouded Menzies' face and when he had regained composure he told Kath that he 'was the boss around here' and proceeded to pour her a drink. I believe that was the turning point the incident caused him to give the situation of Aborigines more thought.*[30]

COMMONWEALTH INVOLVEMENT IN ABORIGINAL AFFAIRS

20.3.32 Following the referendum in 1967 the Commonwealth created the Office of Aboriginal Affairs—a small policy unit to develop Federal policies. Until the change in government in 1972, however, reform was modest. The commitment to assimilation remained strong, although there was a gathering of momentum in demands for the Commonwealth to improve living conditions and to abolish discrimination against Aboriginal people.

20.3.33 In 1971 Prime Minister McMahon acknowledged an Aboriginal right to choose the pattern and determine the pace of their future development, promising that Federal policies would give them that choice. His announcement precipitated a counter statement from his Minister for the Interior who restated that any new

policies would continue to maintain assimilation as their objective.

20.3.34 To the demands for citizens' rights, for equality of opportunity and improvement in living standards which had characterised the agenda of reform advanced by and on behalf of Aboriginal people in the decade before 1972 was added a new dimension of demand. Aboriginal activists, inspired by the successes of indigenous and minority groups overseas, especially in the USA, and buoyed by the reassertion of Aboriginal culture and solidarity in Australia, began to press for more than equality of opportunity; their demands included an agenda for land rights, reparation, compensation and self-determination. The 'Tent Embassy' established outside Parliament House in Canberra was the visible evidence that the Aboriginal agenda for self-determination was potentially different in kind to that understood by the Labor Government and the bureaucrats. The latter found themselves committed to a notion of self-determination which was ill-defined but central to the policies of the government.

20.3.35 Dr Rolf Gerritsen, a consultant commissioned by the Royal Commission, has suggested that the shift of policy from assimilation to self-determination (and later to 'self-management') had four key concomitants:

- the abandonment of distinctions between Aboriginal communities;
- the introduction of the Commonwealth into Aboriginal affairs in areas other than the Northern Territory;
- the rapid development of Aboriginal community and service delivery organisations; and
- the recognition that Aboriginal people had both a right and a duty to participate in and to even define the conditions for their development.

PERFORMANCE AND ACCOUNTABILITY IN THE DEPARTMENT OF ABORIGINAL AFFAIRS

20.3.36 On 19 December 1972 the new Department of Aboriginal Affairs (DAA) was established to design and implement policy. The public servants in the department had for the most part little appreciation of the implications of self-determination. After decades of assimilation policies, few Aboriginal people were trained in the administrative and organisational skills which they would need to seize control of their affairs. But there were high expectations that the reality of self-determination—freedom from the tyranny of control, discrimination and dependence—was about to be achieved. Disillusionment was to quickly follow. Aboriginal people began expressing exasperation with the process. They had to deal with a bureaucracy which was itself confronting a growing number of Aboriginal organisations impatient for change and dismissive of what was regarded as red-tape obstruction to self-determination.

20.3.37 In its very earliest days, the DAA's procedures for distributing money to Aboriginal organisations continued the established practices of the Office of Aboriginal Affairs (OAA)—ready acceptance of field officers' recommendations, advance payment of the entire allocation and loosely policed audits. The OAA had begun to fund Aboriginal organisations from the Aboriginal Advancement Trust Account (AATA). The Account was a single line item within the Commonwealth's Budget, and the OAA and the new department decided how best to disburse it, unimpeded by having to go before 'Estimates' scrutinies. The first Minister, Gordon Bryant, made himself highly accessible to Aboriginal people. According to Duke and Sommerlad, Bryant 'encouraged direct telephone calls from all parts of the country, and associated closely with a group of (mainly Aboriginal) advisers not members of the Department'.[31]

20.3.38 Such practices provoked professional bureaucrats. In 1973, the Auditor-General's supplementary report for 1972-73 referred to deficiencies in DAA's control over such expenditures. Barrie Dexter, Secretary of the Department, invited the Auditor-General to report further. Finding no evidence of dishonesty, but lamenting 'unorthodox and irregular practices',[32] the Auditor-General, in March 1974, complained that the AATA, as a one-line appropriation, gave Parliament no information about what DAA was intending to do by way of grants. As well, any Trust money left unspent at the end of each financial year could be carried forward, giving the department an unusual degree of autonomy from Treasury's power to compose the overall pattern of Commonwealth expenditure. The Auditor-General suggested that the appropriation to DAA henceforth be detailed by 'division and item' .33

20.3.39 By October/November 1974, an Operations Management Branch had been formed within DAA's Operations Division. The branch issued standard grant application forms, 'financial rules for the guidance of Aboriginal organisations' and advice about grant conditions. Instead of the total grant being issued in advance of an organisation’s use, money would be released quarterly, after the department had received quarterly statements of expenditure. 'Under the new project control system, the Operations Management Branch would make the judgement as to whether the organisation had complied with the conditions of the grant or not'.[34]

20.3.40 DAA's procedures were again investigated in 1975 and 1976 by the Joint Committee of Public Accounts. Witnesses for the department told the committee that DAA was gradually removing expenditure items from the Trust Account so that they could be separately listed in the annual DAA appropriation that went before Parliament. The Joint Committee was pleased to note that the Trust Account had ceased from 1 July 1976.

20.3.41 Notwithstanding these changes, DAA continued to include many officers who wished to oblige, with a minimum of red tape, Aboriginal organisations' requests for support. The department, addressing the joint committee, defended its field officers, saying that 'it would be too much to expect that all officers in operational areas could be thoroughly familiar with the Audit Act, and the Treasury Regulations and Directions'.[35]

20.3.42 In 1974, Duke and Sommerlad found evidence of tensions in DAA over these matters. Northern Territory officers, they reported, had recently learned to implement what the department understood to be 'self-determination'. 'Aboriginal communities deciding the pace and nature of their future development within the legal, social and economic restraints of Australian society' .36

20.3.43 To these officers, the ministerial largesse of 1973 seemed at first to contradict 'self-determination' and to be wasteful. But they were soon persuaded that the outcome of such easy access to subsidy was 'community learning'; grants did not have to be evaluated as 'investment'. By the time Northern Territory officers had come to internalise their role as community facilitators and educators rather than custodians of the public purse or project managers, there had been a quite catastrophic reversal of policy from Canberra. For some time at least this largely nullified the process of redefinition, and of commitment to longer term Aboriginal advancement and self help? 37

20.3.44 The effect of DAA's response to Auditor-General criticism was 'more formal and traditional forms' of bureaucratic processing and 'less responsiveness to community requests'. As well, the increase in the size of the Head Office establishment—related to the formalisation of assessment and accreditation—-went against the preference expressed by officers in 1973 that

'what was needed was heavy devolution and regionalisation, with a small think-tank and monitoring Head Office group, not an expanded traditional bureaucracy'. Intensified scrutiny by the central officers of the department, Duke and Sommerlad concluded, 'damaged the morale of the Northern Territory community workers ... who are the cutting edge for the policy of facilitation' .[38]

20.3.45 The new emphasis on assessment and acquittal, if it were to be more than simply the practice of a narrow financial accounting, had to make some reference to program objectives and to measuring the degree of their attainment. When D. O. Hay reviewed the department in 1976, he complained that 'statements of policy objectives in some cases are inconsistent or obscure'. Hay advised that, as well as refining objectives, D AA must collect data 'to assess progress and to establish a performance basis for bids for funds from the Commonwealth'. Hay acknowledged that some objectives were difficult to quantify, but suggested crude measures such as 'numbers of houses built and their cost, and the rate of convictions recorded and severity of sentences imposed on recipients of legal aid'.[39]

20.3.46 In August 1976, an anonymous discussion paper which seemed to answer Hay, was circulated within the DAA. *Social Program Evaluation: Problems and Pitfalls* began by noting that over the previous five years it had become common for departments to 'prepare budgets and estimates in terms of categories that reflect Departmental objectives and activities over a longer time-span' .[40] While welcoming this development, the paper warned that it would be necessary to consult with Aboriginal people and that such discussions, if they led to changes in policy, as they surely would at times, could create the impression of confusion. The paper urged tolerance of 'confusion', arguing that to reduce or to eliminate consultation and 'confusion' in the interests of smoother service delivery would, in effect, transform the department's means (its services) into ends. The more global ends (Aboriginal people learning to manage their own lives) were at risk of disappearing from administrative view. The paper questioned whether counting houses ('intermediate outputs' in the Jargon of the paper) was an adequate approach to the assessment of housing policy. To mistake such 'intermediate outputs' for the program goal had a further consequence: the financial costs of those outputs became the primary data to be considered. Because this approach was easier, it was also the more common ('an organisational convenience').[41] The paper observed: 'It is easier to monitor physical outputs (e.g. houses, service delivery rates, etc.) than to try and monitor end products ('self-management')'. 42

20.3.47 This paper was an unusually sophisticated attempt to maintain the social idealism of DAA in the midst of the emerging ethos of performance measurement. Whether it was influential is another matter. A political scientist, Will Sanders, has traced the persistence since then of a sectorially narrow and crudely quantitative approach to the assessment of Aboriginal housing policy[43]—see also Chapter 35.

20.3.48 Who has the power to define Aboriginal peoples' needs? This is, in essence, the issue over which DAA's internal discussions ranged. In its submissions to the Joint Committee on Public Accounts, DAA had argued that 'the majority of grants made from the Trust Account were for work performed on behalf of the Australian Government and were not grants in the philanthropic sense'.[44]

20.3.49 Another unpublished internal discussion paper[45] showed that the corollary of that view enjoyed great support within DAA. That is, the executives and staff of Aboriginal organisations were conceived to be like employees of the department. A variant of this view was that such organisations were sub-contracted to the department. Despoja criticised such notions, urging the DAA to revise its approach

to funding Aboriginal organisations, to return to the minimal accountability procedures that the OAA had inaugurated.

20.3.50 Aboriginal people, Despoja pointed out, did not see 'philanthropy' and working as if for the department as the only possible bases of the department's subsidies. Firstly, some saw DAA's subsidy as 'compensation ... to make up for the wrongs done to us through the circumstances arising out of European settlement and dispossession of our land'.[46] Secondly, Aboriginal people did not see their subsidised work for other Aboriginal people as 'charity', but as something wider and more empowering. Despoja cited Henderson's report on poverty in order to endorse the view that associations to benefit the poor could or should be 'concerned with personal well-being, individual rights, and personal aid as well as social justice, social order and social control'.[47]

20.3.51 The identification and articulation of Aboriginal needs was a 'political' practice, yet the DAA, Despoja found, had not yet been convinced of the legitimacy and necessity of such political action by its clients. Despoja deplored the DAA's instructions and advice to grantees, issued in June 1974 and revised in 1977. While there was much that was helpful in the so-called 'Pink Book', certain passages were judged paternalistic by Aboriginal people. In summary, the DAA tended to scapegoat Treasury and the Auditor-General for its attempts at strict financial administration, but it had overreacted to theft scrutiny in 1973/5 and now invigilated grantees more than those watchdogs decreed, Despoja alleged.

20.3.52 Notwithstanding these dissenting voices among its ranks, and encouraged by the Financial Management Improvement Program (FMIP) of the 1980s (with its further stimulus to program budgeting), DAA Annual Reports have continued to take pride in the rigour of the department's financial self-scrutiny. DAA has developed notions of its goals—such as those I have cited from the 1988 submission to the Standing Committee—which, as predicted in 1976, honour the quantitative and the intermediate at the expense of the longer term and less tangible. Nonetheless, according to the Coopers and Lybrand/W.D.Scott review, some ambiguities and tensions remained within DAA's corporate ethos.[48] The role of the department is not clearly understood by the majority of the Aboriginal people met during the conduct of the study. Some departmental staff also appear to have difficulty distinguishing between the objectives of the DAA and the objectives of Aboriginal organisations.

20.4 FACTORS IMPACTING ON SELF- DETERMINATION

20.4.1 The debate and confusion about the parameters of self-determination has an inevitable impact on defining processes to achieve it in practice, or even to measure the extent to which it has been achieved. Before considering factors which complicate the process of achieving self-determination it is necessary to return to the question of definition.

20.4.2 If self-determination is about policy creation rather than implementation of policies designed by others, then it is necessary to know whether there are limitations upon the scope of policies which may be so designed and to know who sets the limitations, who participates in the design process and who evaluates the success of the policy, once implemented. Given that it is the Commonwealth which, since 1967, has been at the forefront of policy and funding in Aboriginal Affairs it is plain that the most significant shifts in policy will occur at a national level.

20.4.3 The DAA, notwithstanding efforts to recruit Aboriginal staff, was a public

service agency of government. Its staff were neither elected by nor were answerable to Aboriginal people. A great deal of discussion about self-determination falls to recognise that by its public service status alone DAA could never meet a demand for self-determination which required that Aboriginal people themselves designed the policies which would effect them.

20.4.4 Even had DAA been entirely staffed by Aboriginal people it would have remained the administrative body which translated government policy into practical programs. The most that could have been achieved with this structure would have been the maximising of Aboriginal input into the design process for such programs. Ultimately it is the government which sets policy. Many Aboriginal people would argue that that should not be the case and that, out of a pool of money provided to them, Aboriginal people should determine the policies and programs for the allocation of such funds. Many Aboriginal people would also argue that they should be answerable (apart from the obvious need to account for the proper expenditure of public funds) only to Aboriginal people, and not to non-Aboriginal bureaucrats.

20.4.5 It is a source of very great annoyance to Aboriginal people that allocations of funds to Aboriginal organisations, as well as to the DAA itself, have been subject to what they regard as insensitive, racist and super critical monitoring by government, the media and armies of bureaucrats. The cause of this annoyance goes to the very heart of the confusion about the notion of self-determination.

20.4.6 As I have earlier mentioned, Aboriginal people campaigned for their just entitlement as citizens. This campaign emphasised the poverty of their people and the inequality in the delivery of basic services of health, education, housing, etc. which typified their relationship with government. Government, in turn, committed itself to meeting the challenge to improve the delivery of those basic 'citizens' services, but, because they were regarded by government as citizen's rights, it was assumed that the provision of such services was simply part of its responsibility to ensure equality of treatment to all citizens. The DAA was one of many Commonwealth, State and Territory agencies which was charged with the responsibility for ensuring that such citizen's rights were delivered. But in performing that function each of those agencies was accountable to government and subject to the priorities set by government Cost savings, which could be achieved in the delivery of such services, enabled government to spread its dollars more widely among citizens and, hence, arguments about the use of mainstream agencies to deliver services to Aboriginal people were inevitable.

20.4.7 But, while Aboriginal people rightly demand their citizens' rights, they also, frequently, suggest that their entitlement, in this respect, is different to that of other Australians who have not shared their experience of colonisation. Not only do Aboriginal people feel, quite justifiably, that no amount of equality now in the delivery of citizens' entitlements will make up for the failure to deliver such entitlements over the past century or more. They also feel that what, to non-Aboriginal people, is a citizens' right (which is subject to assessment, monitoring and may be taken away if the citizen fails to meet administrative and other criteria) should be available for them on a basis rather like that which might apply if compensation payments were made for past injustices. Given that sense of injustice, many Aboriginal people regard it as an added insult that payments made, either directly or through Aboriginal organisations, to meet basic needs should be subjected to the minute and suspicious scrutiny which accompanies such payments. At this level, Aboriginal people would see the whole process of delivery of such services as being one of further control of their lives and not one which offers autonomy.

20.4.8 It is hardly surprising that the concepts of self-determination and self-management, quite distinct in my view, have been so frequently used interchangeably by government and politicians. It is clear that much, if not all, of what DAA was doing related to self-management only and not to self-determination. I will later explore whether that distinction is likely to continue to be blurred in the role of the Aboriginal and Torres Strait Islander Commission (ATSIC).

20.4.9 The Australian Government in 1972 committed itself to self-determination. The organisational structures which it established—that is, the DAA, the Aboriginal Land Fund Commission (ALFC) and, some years later, the Aboriginal Development Commission (ADC) did not and could not deliver serf-determination, although they played a significant role in bringing the process of consultation into service delivery. In the case of the ADC and to a lesser extent the ALFC there was an increase in the level of Aboriginal input to the prioritising of Aboriginal needs. In the late 1970s and in the 1980s, however, the Federal Government, first under Liberal and then under Labor control, stopped using the term self-determination at all, instead referring only to self-management. Then, in 1987, the Minister for Aboriginal Affairs, Mr Gerry Hand, published a major policy statement 'Foundations for the Future' which spoke of the need 'to address seriously the vital issue of self-determination for Aboriginal and Islander people', the objectives of which he saw as follows.

> *We must ensure that Aboriginal and Islander people are properly involved at all levels of the decision-making process in order that the right decisions are taken about their lives.*
>
> *Until all Australians recognise this need for self-determination, recognise the Aboriginal and Islanders' pride and dignity as a people and until Aboriginal and Islander people can take their rightful place as full and equal participants in the richness and diversity of this nation, our claims to being a civilised, mature and humane society sound hollow.*[49]

20.4.10 If Aboriginal people really are to be 'involved at all levels in the decision-making process' then they must be involved at the level of policy design as well as service delivery, and 'all levels' suggests an extraordinary range of processes of government must be changed to reflect that reality. Such a process cannot occur, in my opinion, unless other constraints are recognised and the processes for identifying Aboriginal opinion are greatly improved. I will deal with this further in Chapter 27, but I will now consider some of the constraining factors which have been insufficiently understood and which have contributed to the constant dispute about whether self-determination has been a reality to date for Aboriginal people.

THE SEARCH FOR 'THE' ABORIGINAL VIEWPOINT

20.4.11 Policy formulation can not easily be made at a national level if the process requires that all Aboriginal people, wherever located, are to be consulted as to the detail and across the whole range of policy and program issues. Governments and officials well recognise that Aboriginal decision making should appropriately occur at a local level. Nonetheless, notwithstanding a commitment to the notion of self-determination, they know that the range of policies is so vast that if Aboriginal people were to be consulted, at all times, at all levels then little activity, apart from consultation, would take place.

20.4.12 The very uncertainty about whether self-determination meant policy formulation or related only to service delivery processes generated incredible confusion within government agencies. It created much confusion within Aboriginal ranks also. The concept of self-determination, as inadequately understood, produced two reactions.

20.4.13 In the first place government and its bureaucracies searched for more convenient mechanisms which would speed up the process by providing 'the Aboriginal viewpoint' on each issue. Invariably this meant turning to organisations or, if they did not exist, creating new structures such as councils and associations which could articulate the corporate voice of a people known not to speak in such a way. The bodies sometimes chosen for this opinion were existing or newly created Aboriginal organisations. More often those bodies intruded by nominating themselves for this role. As will be seen in the discussion which follows about the National Aboriginal Congress (NAC), government and officials frequently found the advice which they were given not to their liking. Given that the organisations all depended for funding from government, their 'rudeness' in pressing Aboriginal opinions was often resented, and at times punished, by those who ostensibly sought their advice.

20.4.14 The second reaction was to decide that since Aboriginal people wanted to exercise self-determination at a local level they would indeed be consulted by every agency on every conceivable issue at a local level. For years throughout the 1970s and 1980s Aboriginal communities were then besieged by government officials determined to be able to demonstrate that they had consulted, even if it meant driving the communities to distraction. Not only was the process one of exhausting imposition, it soon became apparent that consultation meant 'obtaining agreement' to the policies and programs which the officials had already determined were to be put in place. This was not self-determination; it was a mockery of the notion. However, the Aboriginal organisations which so trenchantly criticised government departments for their failure to properly consult with the Aboriginal people found themselves in a dilemma. How could they criticise officials who did consult or claimed to do so? The answer was to seek to protect the communities by urging the officials to deal with the Aboriginal bodies—-an entirely sensible approach but one which carried its own problems. In many instances the Aboriginal organisations could not themselves honestly claim to represent all streams of opinion (nor indeed to necessarily even know all streams of thought). The process of consultation is by no means a simple one. Although Aboriginal organisations could rightly claim to have a greater awareness of the attitudes of Aboriginal people in their areas than officials of government departments, the organisations were themselves vulnerable to criticism from people at a local level who did not believe that they had been adequately consulted by the organisations which represented them. These Aboriginal organisations worked under great pressure and with limited resources. Frequently, too, their meeting and consultation processes were inadequate to ensure that they always got right the fine balance between speaking on behalf of communities on issues where their consultation processes had been effective, on the one hand, or being criticised by local communities for failing to properly consult with them, on the other. But these organisations had one great advantage over government departments they sprang from the communities and were answerable to those communities. If they occasionally 'got it wrong' Aboriginal people usually felt a sufficient degree of ownership of the organisations to vigorously challenge them to do better. Over time this process undoubtedly served to strengthen the organisations and the ability of their management and staff to differentiate between those matters on which they could justifiably claim delegated authority to speak on behalf of others and those matters where it was essential to seek opinions at a local level.

20.4.15 All in all the processes of consultation and self-determination created a dilemma.

Early Attempts to Find a National Voice

20.4.16 Consider the following statements.

> *We have to find leaders who can represent their own people. 50*
>
> *At present, the Aboriginal community in Australia lacks a universally accepted representative political institution.*[51]
>
> *Most Aborigines with whom I have consulted believe an Aboriginal representative body at the national level to be essential.*[52]
>
> *There is a need for Aboriginal society in Australia to try to develop a set of policies, a political agenda, which in fact can be seriously addressed by the government.*[53]

20.4.17 These quotations suggest the persistence of a government desire for a single, representative Aboriginal political voice, and the awakening of a corresponding desire among 'most' Aboriginal people.

20.4.18 In 1973, Gordon Bryant, the first Commonwealth Minister for Aboriginal Affairs, founded the National Aboriginal Consultative Committee (NACC), in order to institutionalise the contribution that the Aboriginal lobby, through such bodies as FCAATSI, had been making to policy and to avert the embarrassment of facing further 'Tent Embassies '. However, the NACC's life was short and turbulent. Its problems were summed up in a 1976 review commissioned by the Fraser Government. *The NACC*

> *has not functioned as a consultative committee and, to that extent, has not been effective in providing advice to the Government... We attribute the absence of effective consultation largely to the failure on the part of the previous government to provide a clear statement of aims, duties and procedures—the disinclination of the elected members to accept a role that was merely consultative, and the state of mutual hostility that prevailed between the NACC and the DAA from the beginning .54*

20.4.19 Indeed, the Whitlam Government had quickly hobbled the NACC. In February 1974, three months after first being elected, the delegates voted that they be given powers to make and administer Aboriginal Affairs policy, that is, to control DAA and the Commonwealth's budget allocation to Aboriginal programs. In response the Minister, Senator Cavanagh, threatened to disband the NACC.

20.4.20 Two American scholars commented in 1982 on the difficulties faced by the nascent NACC. They saw a tension between Aboriginal people's 'political ethnicity' (the new senses of solidarity propagated by Aboriginal leaders aspiring to represent an Aboriginal constituency and to articulate an agenda dealing with economic, racial and cultural oppression) and their 'cultural ethnicity' (a sense of the continuity of Aboriginal culture whatever the political and economic circumstances of its persistence). It was open to the government and other critics to say of the NACC leadership that it was urban and 'political', and so not representative of the more 'tribal' and 'traditional' Aboriginal people of north and central Australia. The sheer diversity of the Aboriginal constituency, even if not

conceived in these terms, certainly posed problems of representation. 'The sources of diversity', Jones and Hill-Burnett argued:

> *are not merely those continued from the diversity of cultural traditions of pre-contact and early contact periods, nor simply those of the socio-economic conditions of the present, but come from the diversity of interests organised into and represented by voluntary associational forms.*[55]

20.4.21 In short, it was both possible and desirable, from the government's point of view, 'to shift the public eye to the localised, particularistic, and special needs of remote people, a very legitimate concern of effective policy making'.[56] To discredit the most ambitious sections of the emerging Aboriginal political elite was thus made relatively easy by the inherent difficulties of national Aboriginal representation. From Hiatt's 1976 review of the NACC until the current discussions about the structure of ATSIC, there has persisted a legitimate concern to find some way to represent the regional diversities and respect the localised loyalties of the Aboriginal constituency.

20.4.22 Reconstituted as the National Aboriginal Congress (NAC) in 1977, the body began to work to a Charter, the NAC was to be 'a forum in which Aboriginal views may be expressed ... on the long-term goals and objectives which the government should pursue and the programs it should adopt in Aboriginal affairs'. However, not once did the Fraser Government refer an issue to the NAC for consideration. When the NAC chose to comment on matters of importance, such as the 1979-80 Noonkanbah dispute or the Commonwealth's attempt to legislate a version of land fights in Queensland (the 1982 Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Bill), it was not heeded.

20.4.23 The NAC began to turn its energies towards international lobbying. 'It is because of too many frustrations in the past that the NAC has recently turned its attention to the international arena', former NAG Chair Jim Hagen later explained in October 1981.[57] In April 1979, as would-be representative of the Aboriginal 'nation ', the NAC—encouraged by a February 1975 Senate resolution that 'the indigenous people of Australia, now known as Aborigines and Torres Strait Islanders, were in possession of this entire nation prior to the 1788 First Fleet landing at Botany Bay'—resolved that a 'Treaty of Commitment' be negotiated between the Australian Government and the NAC. The idea was taken seriously enough that the NAC's credentials as representative of Aboriginal people were examined.

20.4.24 In 1983, the Senate Standing Committee on Constitutional and Legal Affairs looked into the political and legal feasibility of a Treaty and recommended that the NAC co-ordinate the representation of Aboriginal and Torres Strait Islander interests, arguing that**:**

> *the various Aboriginal agencies such as land councils, legal, health and housing services all have a part to play in collecting and representing the views of Aboriginal Australians during the negotiation of the terms of the compact.*[58]

20.4.25 The committee rested this opinion on the advice of Aboriginal lawyer Paul Coe, Professor Charles Rowley and Dr Coombs (for the Aboriginal Treaty Committee), reporting Coombs' personal opinion to be that 'the land councils were closer to the traditional sources of Aboriginal authority, and thus were closer to

Aboriginal people in the communities and groups where they live than the NAC'.[59]

20.4.26 The land councils varied in size and constitution. Some had a statutory basis and relatively secure funding from a government; others, such as the Kimberley Land Council (Western Australia), the North Queensland Land Council and Adnjamathanha Land rights Committee (South Australia) had been set up to lobby for land rights legislation in their State and had few resources and no secure funding. Both kinds of land council had come together—during the Noonkanbah crisis 1979-80—to form the National Federation of Land Councils (NFLC), with affiliated bodies from all States and Territories. The NFLC had no bureaucracy, but was serviced largely by the two main Northern Territory land councils.

20.4.27 *The Aboriginal Land rights (Northern Territory) Act 1976,* following the 1974 recommendations of Justice Woodward, had created the opportunity for these developments by establishing the Northern and Central Land Councils. The Tiwi Land Council soon successfully petitioned the Minister for its autonomy from the Northern Land Council. Generally, land councils have employed non-Aboriginal professionals to assist and prepare land claims (where legislation afforded that opportunity) to lobby for land rights legislation and to advise Aboriginal owners how best to use any land that they gained. Altman and Dillon have suggested that the Northern and Central Land Councils, as advisers to owners of large tracts of land and as the only effective opponents of the dominant 'developmental' public policy of the Northern Territory, show 'para-governmental' tendencies.

20.4.28 In the Northern Territory and New South Wales, land councils have come under great political pressure to have their affairs investigated and their powers curtailed. The very factors which have made them strong—their statutory base and relatively secure funding—have exposed them to pressure to define themselves as new instruments of government rather than as autonomous vehicles of Aboriginal political expression. Their Aboriginal mandate has remained very strong, apart from some traditional owners' urging that decisions about land be devolved to putative regional land councils. Such devolutionary arguments, supported by the Northern Territory Government (in the hope, it is said, of making the Aboriginal interest more tractable), have been particularly evident among the constituents of the Northern Land Council and have recently resulted in the formation of a 'breakaway' land council for the Groote Eylandt and Bickerton Island people. The vigour of both the NLFC's actions and these regional agitations suggest that Dr Coombs was right to see land councils as one of the main avenues of a political mobilisation that paralleled the NAC's elections and assemblies.

20.4.29 Dr Coombs soon had his chance to explore further the argument that the NAG was now only one of several avenues of Aboriginal political expression. The Hawke Labor Government had come to power with a platform that included extending 'the powers of [the NAC] as a policy making organising authority'. But before such innovation could take place, the then Minister for Aboriginal Affairs (Mr Clyde Holding) commissioned a report on the NAC from Dr Coombs.

20.4.30 Dr Coombs concluded that 'the NAC has failed to develop as a significant instrument of Aboriginal influence and power',[60] a failure to which the Commonwealth's poor resourcing contributed. But even more important, in Coombs' account, was the incompatibility between NAC and Aboriginal political processes. Elected representatives were not sufficiently accountable to local groups, and the NAC Executive was only remotely answerable to the forum of elected representatives. Therefore, the NAC, as well as lacking legitimacy among Aboriginal people, was 'unlikely to meet the Minister's needs as an interpreter of Aboriginal views and aspirations'.[61] In any case, as a merely 'advisory' body, the

NAC had less credibility with Aboriginal people than organisations such as region-based land councils and service and resource agencies which, by enabling Aboriginal people to access publicly funded resources of various kinds, had now made themselves an essentially practical feature of Aboriginal life. Throughout his critique, Dr Coombs emphasised the locally—rather than nationally oriented perspectives of Aboriginal political culture. In proposing reforms, he urged not only that the NAC be given 'significant responsibility for decisions about the total and the allocation' of Aboriginal Affairs funds, but also that 'local communities, groups and organisations' be the electoral units to whom members would be accountable.[62]

The Defeat of National Land rights

20.4.31 The first and, as it transpired, the last involvement of the NAC in policy making at a national level concerned the attempts to implement the National Land rights Policy which had been adopted by the Labor Government at the time of the 1983 election.

20.4.32 The Minister for Aboriginal Affairs, Mr Clyde Holding, convened a land rights steering committee which worked with a panel of lawyers to draft appropriate legislation. Included on the steering committee were members of the NAC as well as representatives of the Northern, Central, Kimberley and North Queensland Land Councils. Among the lawyers were those nominated by the NAC and by the National Federation of Land Councils.

20.4.33 There are conflicting versions among participants in this process to explain why the process failed to achieve the desired outcome—national land rights. What is beyond dispute, however, is that the process failed. In February 1985 the Australian Labor Party platform was changed, and the previous policy of national land rights legislation was replaced by adoption of a policy titled the 'Preferred National Land rights Model' (PNLRM). The new policy proposed weaker powers for Aboriginal land owners to refuse consent to exploration and mining on land granted pursuant to the policy. One result of the PNLRM, if adopted, would have been that the powers already granted to traditional owners in the Northern Territory pursuant to the *Aboriginal Land rights (Northern Territory) Act 1986,* would have been reduced. This proposal was rejected by the steering committee.

20.4.34 The NAC and the government were thereafter at odds and the government disbanded the NAC in July 1985, citing its lack of representative status as one of the reasons. It was plain that there were quite fundamental areas of disagreement between some representatives of the NAC and other Aboriginal leaders and organisations, and it was equally plain that the NAC had not demonstrated that, as a body, it could effectively represent the views of all Aboriginal people and their organisations on an area of critical importance—land rights. This is not to say that the failure to achieve national land rights resulted from division on the Aboriginal side. That was undoubtedly a factor, but even if all Aboriginal groups were united on the issues, or even if the NAC had effectively represented all Aboriginal opinions itself, the national land rights proposal had attracted such opposition from mining and other interest groups that many State Governments and the Federal Labor Government had resolved to abandon the proposal irrespective of Aboriginal opinion, by whomever expressed.

20.4.35 By July 1985 government attempts to provide a vehicle to voice 'the' Aboriginal opinion had once again failed. It was to try again later with ATSIC.

20.4.36 Was the expectation of a unified voice a reasonable one for government to hold? Why was there not a unified voice on such an important matter? As

Commissioner Dodson has pointed out to me, many Aboriginal people at that time did not think it was possible to achieve a unified voice. Some people felt that attempts by government to achieve this result showed little more recognition of the diversity of Aboriginal opinion than had earlier attempts of non-Aboriginal people to achieve the same result by declaring certain Aboriginal people to be 'King' of one or other Aboriginal tribe.

20.4.37 Whilst many Aboriginal people believe that the expectation of achieving a unified voice was unreasonable, history has certainly shown it to be not achievable, at least at that time. One reason may well have been associated with the very different circumstances in which Aboriginal people lived in different parts of Australia and the consequent impact which that had on their priorities and perspectives. Another factor may have been connected with cultural matters to which I will refer in the next section where I quote some observers whose observations tally with what has been said to me by a number of Aboriginal people.

ABORIGINAL DECISION-MAKING PROCESSES

20.4.38 As Aboriginal people began to re-assert their identity and to clarify their aspirations to a 'viable, separate stand' while enjoying the entitlements of citizenship, the difficulties of their becoming a politically unified interest group became ever more apparent. The difficulties have been of two kinds: tendencies among Aboriginal people themselves to emphasise local loyalties at the expense of the solidarity of pan-Aboriginal political structures; and unreasonable expectations on the part of governments that they could eventually negotiate with a unified Aboriginal constituency.

20.4.39 Anthropologist Basil Sansom has formulated what one might call the ethnic paradox of Aboriginal peoples' political mobilisations: what Aboriginal people have in common is their gravitation to the local, particular and familiar. This point has been argued by Sansom:

> *Traditional or modern, Aboriginal society is small-scale*
>
> *...the Aboriginal commonality is posited on particularistic manifestations, consociate experience and a conception of a closed set of others who are truly and really one's Countrymen... [T]he Aboriginal commonality is, at once, an extensive and distributed sharing in understandings and a limited and constricted vision of these others who may be admitted to one's own known world made up of trusted and genuinely established persons.*[63]

20.4.40 Sansom's argument aims to account for what, in common Aboriginal experience, inhibits the national integration of their political aims into a single articulated interest.

20.4.41 A non-Aboriginal observer of the mid-1970s Aboriginal political scene in Western Australia, Michael Howard, argued that this cleaving to kin could undermine Aboriginal people whom State officials expected to be widely representative of their people. In fact, Nyoongar (as the Aboriginal people of the south-west are known) who were constituted as leaders by white bureaucrats remained marginal to what Howard referred to as 'mainstream' Nyoongah culture. Modern Nyoongar 'norms', as Howard described them, were introverted and self-protective: solidarity against police, suspicion of all government officials, scepticism about Nyoongah who distanced themselves from kin in order to 'pass' as non-Aboriginals. Nyoongah affirmed kin solidarity, testing any better off kin with

the appeal to reciprocity, and rallying to 'family' in the more demanding passages of intra-Nyoongah politics.[64]

20.4.42 Observers of Aboriginal community politics in other regions have reproduced Howard's sketch of Nyoongar perspectives. Eckermann, who has been working in northern New South Wales and southern Queensland from the early 1970s to the present, has concluded that the term 'community' is misleading when applied to Aboriginal constituencies because it obscures the primary focus of loyalties—the 'group'. Her interviews revealed that individual interest came first, then family interest in the narrow sense, then family interest in its widest sense and finally community interest. Furthermore, she found that individuals rarely gave up their right of veto even though a person from the community may have been elected to represent individual views.[65]

20.4.43 While Eckerman's argument concedes that history has bequeathed factionalism on Aboriginal people, many groups, who had been traditional enemies, were placed on reserves by governments who thought all Aboriginal people were alike. Eckerman notes that:

> *factionalism persists today in areas where people are closely intermarried and share the same environment. It becomes most vicious when individual and immediate family interests are, or are perceived to be, threatened by those of other family interests.*[66]

20.4.44 Crucial to Howard's argument about the Nyoongar in the early 1970s was his account of the differences between Nyoongar and non-Nyoongar notions of 'leadership'. Government officials and the non-Aboriginals prominent in voluntary organisations devoted to Nyoongar welfare were committed to the idea that the Nyoongar had leaders and spokespersons. Dealing with such people was thought to guarantee the involvement of the totality of Nyoongars. To Howard this was an illusion. It was reassuring not only to the non-Aboriginal people concerned but also to the Nyoongar 'leaders' who accepted what was, in effect, non-Aboriginal people's patronage. Howard argued that such 'leaders' in fact tended to be marginal to Nyoongar life.

> *[Nyoongar] could attain popularity because of their personalities or activities in sports or entertainment, but very few individuals sought to use such popularity for political ends. The potential resources available for leaders within the Aboriginal context remained so limited and normative restraints remained sufficiently significant to ensure that individuals were unable to acquire much power or attain very high status. Political activities in general in the intra-ethnic field remained at a fairly low level of articulation (i.e. interpersonal or interfamilial), and it tended to be at this level that intra-ethnic Aboriginal leadership occurred. Activities beyond this level for the most part were instigated and controlled by non-Aborigines.*[67]

20.4.45 Howard' s argument was that, in the early 1970s, despite the rhetoric of self-determination, State and Commonwealth welfare programs were devolving very little power to Nyoongars. However, this should not be taken as a characterisation of Australia-wide circumstances since that time. On the contrary, the strength of Aboriginal political mobilisation has been the rise and flourishing of publicly subsidised, Aboriginal-managed service organisations, dealing with specific, local clienteles. The new generation of Aboriginal activists made their mark in this lively and effective local tier of representation and service delivery.

20.4.46 The first Aboriginal Legal Service (ALS) was established in 1971 in Redfern, New South Wales, in response to the escalation of harassment by police 'unnerved at the 'overnight' black population explosion' in inner city Sydney.[68] Lyons has noted of this and subsequent ALSs that:

> *(a) Aboriginal, not government, initiatives founded the service;*
>
> *(b) though the McMahon Government subsidised the Redfern service, older government officials viewed a 'separate' legal service as subverting 'assimilation';*
>
> *(c) the style of service delivery was new: Aboriginal field officers mediated between professionals and the Black clientele, criteria of eligibility for help were liberal, and legal service premises were accessible shop-fronts rather than intimidating, White-staffed offices.*[69]

20.4.47 The community development potential of such services was illustrated early at Redfern Legal Service. When staff noted that some of their more ill clients could not afford private medical care and would rather die than experience the racist humiliation of public hospital admissions or outpatient services, they called a meeting to establish an Aboriginal Medical Service (AMS). Helped by 'genuinely concerned white doctors',[70] the Service began in 1971. It soon demonstrated to the Federal Government that the needs of a distinct Aboriginal clientele had hitherto been neglected. Indeed that demonstration, which was a caution against any further presumption that mainstream services are best for Aboriginal clients, has been one of the two achievements of the ALSs and AMSs. The other is the political experience it has given to a new generation of Aboriginal activists—the employers of non-Aboriginal professionals, not merely their helpers and broken. Representatives of the AMSs and ALSs make up NAIHO (National Aboriginal and Islander Health Organisation) and NAILSS (National Aboriginal and Islander Legal Services Secretariat), respectively.

20.4.48 These organisations have rebelled, at least rhetorically, against government's welfarist views that their purpose was merely to service a clientele. As Foley acknowledged 'NAIHO is an overtly political organisation'. For, to be healthy, Aboriginal people must have:

> *(a) total control of their own affairs;*
>
> *(b) control of resources and facilities to enable them to alleviate <u>all</u> contributing factors to their problems;*
>
> *(c) inalienable Title to Land which can be an economic base.*[71]

20.4.49 Legal, medical and housing service organisations have been more successful in dealing with those Aboriginal needs which governments have considered legitimate than with the overarching needs to which Foley was referring. The fight to establish a high degree of political autonomy and a secure land base has been pursued unsuccessfully in the national political arena in which Aboriginal organisations other than NAIHO and NAILSS—-the Land Councils, the NACC and the NAC—have figured centrally. Because the political stakes in that arena have been so large, the difficulties of securing Aboriginal representation have been greater.

THE MULTIPLICITY OF AGENCIES

20.4.50 Much has been written about the extent to which the multiplicity of government agencies, Federal, State and local, serves to diminish the prospect of self-determination and self-management.

20.4.51 On the other hand, when 'co-ordination' was a fact of life in Queensland in the Killoran era between the mid-1970s and the early 1980s, all State departmental contacts with the community were carried out through the Aboriginal and Islander Advancement Liaison Officer. But it would be generally accepted that co-ordination in the decade or so following this did not produce the best possible results for Aboriginal communities.

20.4.52 The experience of Aboriginal people in attempting to control the affairs at the community level, the area where local government policies play such a major role, are a microcosm of broader questions. The control of funding at a local level and the determining of priorities for the allocation of funds would be greatly facilitated if Aboriginal people were able to deal with a funding agency—and preferably only one agency—which understood the concept of self-determination. Furthermore, it would be advantageous if staff of such agencies recognised that the process of consultation can either advance self-determination or else can impose intolerable demands which effectively deny community control. Such demands can add significantly to the pressures which are so overwhelming to people in many communities. In regard to these questions it is necessary to ask whether there are not other ways in which Aboriginal people can gain greater control over their own affairs and at the same time can maximise the funds which are available to meet their great needs. In this regard it is necessary to consider ATSIC.

20.4.53 Commissioner Dodson wrote in his regional report:

> *Aboriginal people have, for far too long, been at the receiving end of acts of largess, channelled through bureaucratic functionaries whose loyalties have been primarily to government policies. Aboriginal people often find themselves in an non-contractual relationship with non-Aboriginal society. They are expected to be responsible and accountable for every cent of public money, but they do not determine who has positions in the bureaucracy and who is meant to be responsible to their needs. Aboriginal people stand outside of the real control and decision-making arenas, but are abused and condemned as guilty when outcomes from the perspective of public expenditure are not what is expected.*[72]

20.4.54 In contrast, as both Brennan and Gerritsen point out, no local government authority is expected to submit its budget for approval to the Commonwealth. Only Aboriginal councils and organisations with local governance functions and Aboriginal community governments are required to do so. The double standard is particularly apparent in Queensland where the councils have been dealt with as though they are government departments. As Brennan points out, they are not. The Queensland Auditor-General continues to be unhappy about the standard of community councils' administrative and financial functions. This may be justified in some cases but in others his criticisms are of communities still managed by the Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) personnel or not yet formally community councils.

20.4.55 In recent years there has been a trend for Commonwealth, State and Territory Governments to attempt to reach agreement on the framework of policies

and the processes of implementation. This has occurred, for example, with the National Aboriginal Education Policy. Where these policies have been developed both at Commonwealth and at State/Territory level with substantial Aboriginal involvement in the decision-making process this is a welcome development which gives some prospect of reducing the competition between government agencies for the attention of Aboriginal people and the consequent confusion and duplication which inevitably follows. I will deal further with this in Chapter 27. This is government establishing and using specialist Aboriginal consultative 'bodies. They are usually composed of Aboriginal bureaucrats from the particular department most concerned with the topic and other Aboriginals who are appointed by government. There is usually a small secretariat to service this task force type arrangement. They consult with Aboriginal people through organisations involved in the particular field of service, and generally amongst all Aboriginal people, about the broad policy initiatives of government. I do not suggest that this is a limitation which should diminish the consultative process. Indeed, if the Aboriginal organisations which are consulted are recognised and effective organisations then the process will ensure that the diversity of Aboriginal opinion is brought to the attention of government through the consultative bodies.

MANAGEMENT CAPACITY AND TRAINING

20.4.56 The Commonwealth implemented its self-determination policy in the early mid-1970s. It had a major impact on the communities affected.

20.4.57 Almost immediately non-Aboriginal structures of control and management were physically withdrawn. There had been no training for their local replacements, so there was a severe deficit of the management and technical skills required to administer community facilities. There was no subsequent training, so the communities became heavily dependent on contract employees from outside their communities. The community councils were supposed to provide the policy direction, and the outside employees were to implement these directions. Usually the policy implementation process did not proceed so conventionally. Also, general]y, these advisers did not train their potential successors.

20.4.58 In the late 1980s the Commonwealth used the Aboriginal Employment Development Policy for training. After political upheavals in the administration of DAA in 1989 in part caused by non-compliance with DAA grant conditions by some Aboriginal organisations—the Commonwealth introduced the Aboriginal Organisation Training Program (AOT) to overcome management deficiencies in Aboriginal organisations and communities.

20.4.59 The experience of the States, when they introduced self-management programs in the 1980s, followed a similar cycle.

20.4.60 In 1988, in New South Wales, the Aboriginal Land Council organised workshops to begin management and accounting training in response to allegations of mismanagement of funds.

20.4.61 In 1986 Queensland began a progressive transfer of local government-type functions to thirty-two communities. General Purpose Financial Assistance was distributed for the first time in 1987-88. But the Queensland Department of Community Services retained personnel on communities. The stated intention was that these officers of the department should alleviate the effects of the loss of skills and to train the new local administrators. Most communities felt that they had 'been thrown in at the deep end'.[73] They also attracted the critical attention of the Queensland Auditor-General, whose concerns related not only to the dearth of experience and expertise within the councils but to

their capacities 'to manage and preserve millions of dollars worth of publicly funded assets' represented in the capital and plant infrastructure on the communities. 74 The need for management training, as with the Commonwealth in the Northern Territory, began as an afterthought. In 1988 the Queensland Government instituted an integrated training program to augment the management skills of the new administrators of the Aboriginal and Islander councils. This program was funded by the Commonwealth and delivered by the Queensland Local Government Industry Training Council.

20.4.62 With its emphasis on fiscal accountability, the devolution was also seen as imposing a limited perspective on Aboriginal self-determination and management. This perspective has been contrasted with an Aboriginal one, which is supposedly wider than a single concern with fiscal accountability. The House of Representatives committee reported that:

> *Aboriginal people wish to obtain a wide range of skills and knowledge so they can effectively manage and control the services and facilities within their communities and also ensure the achievement of their economic, social and cultural aspirations.*[75]

20.4.63 These skills are usually defined as being in two stages: preliminary literacy and numeracy and then community management and development training.

20.4.64 There are many examples of training programs which ought to be assessed by ATSIC commissioners and councillors for their value to Aboriginal communities. Some of the models that could be evaluated are the DAA Aboriginal Organisation Training program (limited to incorporated organisations funded by ATSIC); the Queensland Local Government Training Council's program for Aboriginal and Islander community councils; the Northern Territory Local Government Industry Training Committee's training for Community Governments; or the DAA/TAFE program for communities with Community Development Employment Projects (CDEP) programs in Western Australia. The New South Wales Government has added to this list with training in the establishment of commercial businesses. The Commonwealth's Aboriginal Employment Development Policy could provide a co-ordinating framework for a concerted national approach in the training area. Some of this training is provided in CDEP schemes. The National TAFE Centre has developed materials that could be adapted to local realities.

20.4.65 Providing training leads to problems of implementation with respect to the locale of the training, the sensitising of appropriate non-Aboriginal contract administrators and providing a 'pool' of trained Aboriginal administrators to overcome the high turnover rates endemic on Aboriginal communities. Aboriginal preferences are usually for community-based training. This is expensive. Resolution of this difficulty requires some imagination; perhaps through developing mobile training teams on the model of the Commonwealth Electoral Commission's Aboriginal Enrolment Teams. Again, providing 'surplus' management capacity in communities is expensive. But if equity is to be protected and 'factionalism' minimised, this expense may have to be met.

20.5 LOCAL GOVERNMENT

INTRODUCTION

20.5.1 I add something specifically on the question of local government since this is an area where it might have been thought there was the possibility of

introducing aspects of self-determination with relative ease. Probably in all jurisdictions (and certainly in many) there are communities with large Aboriginal populations, many of them in quite remote areas and others which are located some distance from main centres. In such settings the only people or organisations capable of organising local government are in fact the Aboriginal communities themselves. There are, of course, a great many Aboriginal communities otherwise situated and, in particular, falling within the areas of established local government councils. There seems to me to be very little reason why distinct Aboriginal communities living in distinct areas (often on Aboriginal land) should not have been recognised as the bodies capable of exercising local government authority and given access to funds available for local governing bodies.

20.5.2 It is true that local government is organised in Australia on the basis of local government councils which are established and incorporated and whose powers and duties are set out in State and Territory local government legislation. That is a perfectly sensible and acceptable form of organisation for most situations. But exceptions have always been recognised. In South Australia, Whyalla for many years had no local government council, but local government activities were performed by a commission presided over by a commissioner appointed by State government. And even now, in the remote pans of the State where the population is too limited and too scattered to permit local government councils operating in the ordinary way, there is a Trust which has the duty of carrying out local government functions in those areas. My point is that there is nothing sacred or immutable about the form of local government organisation established pursuant to State and Territory legislation and no reason why there should not be departures from that form to meet particular situations.

20.5.3 The fact of the matter, however, is that in this area (which appears so promising) the development of self-determination and equity has not made good progress. In Queensland and in the Northern Territory more has been done than in other places, and I return to those a little later in this chapter.

LOCAL GOVERNMENT AND EQUITY

20.5.4 Aboriginal communities have historically been separate from the surrounding local government authorities. Together with traditional apathy or even discriminatory attitudes, this has encouraged the relative neglect of Aboriginal service needs. Aboriginal people are in a minority in most of the mainstream local government authorities here considered. Even where they form a significant minority in some local government authorities, they have historically been systematically excluded from political participation in mainstream local government In Queensland, the *Community Services (Aborigines) Act 1984* (s. 19, ss.i) specifically disallowed electors of Aboriginal Community Councils from voting in elections for the local government authority within which the Aboriginal community was geographically situated.[76] Noel Pearson of the Hopevale Community regards the disenfranchisement of Aboriginal people from the Deed of Grant in Trust (DOGIT) areas in the Queensland local government elections to be a desperate situation given the development pressure on Cape York Peninsula.[77] The Aboriginal communities were precluded from voting in these elections by virtue of section 19 of the Act. An all-European Council was elected to make decisions for Cape York Peninsula where Aboriginal people far outnumber non-Aboriginal people.

20.5.5 Noel Pearson argues that because Aboriginal people are precluded from participating in the local government of those areas surrounding the Trust areas, which may represent the traditional lands of these Aboriginal people; they need to

be involved in the local government decision-making process especially with respect to development and land zoning.[78] His suggestion is that Aboriginal Trust Areas in Cape York Peninsula, whilst still retaining local government over their own areas, become wards within the local authority area of which they are a part, and that each community should elect a representative to the local shire council. He further recommends that shire councils be compelled to form a Joint Local Government Authority. Such an authority would be empowered to deal with development and land zoning outside of those areas which are the exclusive responsibility of the various Aboriginal and Islander Councils. In this way the councils could be involved in decision making about those traditional lands which are subject to development or re-zoning. Environment and planning legislation should also be considered as a way of including Aboriginal and Islander people in decision making about land use. The Lockhart river Aboriginal Council was recently successful in its litigation against the Farndale Tourist Resort development which is located immediately adjacent to the Lockhart Trust on the traditional land of its Kaanju inhabitants.

20.5.6 In the past there has been no correlation between the proportion of Aboriginal people in a mainstream local government authority and factors such as the quality of services to Aboriginal people, the recognition of Aboriginal priorities, or the level of participation of Aboriginal people. Continuing conflict over rates issues have perpetuated these problems. This occurs Australia-wide. Aboriginal people on reserves, town camps or pastoral leases in the East Kimberley region also receive a poor level of services.[79] The Human rights Commission found that the Toomelah Aboriginal community in New South Wales endures appalling living conditions and were not accorded the same rights, such as for drinkable water, as the local Shire and State Government extended to neighbouring owners of private property.[80]

20.5.7 Human services provision is an area that is relatively new in Australian local government history, local government authorities more traditionally being concerned with property services. Again there is evidence-from the example of Roebourne[81]—that Aboriginal people are systematically discriminated against in these areas. The Western Australian Equal Opportunities Commission has been particularly critical of this phenomenon.[82]

20.5.8 There are three options for Councils: expand mainstream services; maintain existing services but improve Aboriginal access; or provide Aboriginal-specific services. There have been increasing attempts to improve Aboriginal access to services, principally through devices such as Community Liaison Officers and electoral participation programs.

20.5.9 Another area where Aboriginal communities have been particularly disadvantaged is in the area of roads, which has been the traditional priority of rural Australian local government authorities. I deal with the question of roads further in Chapter 18 and make a further recommendation with respect to other aspects of this issue. Aboriginal and Islander communities which have formal local government status and responsibility for their own roads are entitled to a minimum direct allocation from Commonwealth road funds for their local roads needs. But communities without formal local government authority status (the great majority nationally), even if responsible for their community roads, have no direct entitlement. The distinction between communities with or without formal local government authority status should be abolished for purposes of access to Commonwealth roads funding. This recommendation will require State/Territory governmental co-operation for it to be implemented. Road grants are currently

provided on an untied basis. Consequently, the equity claims of formally constituted Aboriginal local government authorities can alone be met by the Commonwealth ensuring that they get their fair share of State roads funding pools.

20.5.10 Under current legislative and administrative practices there is no mechanism by which the Commonwealth can ensure that Local Government Councils (LGCs) provide a fair effort in respect of maintaining Aboriginal community access roads within these councils' boundaries. The States alone can secure that outcome. The Commonwealth Department of Transport and Communications has a policy that any incorporated body with responsibility for roads provision could be eligible for grants from Commonwealth Local Road Funds. That program has been used for funding roads maintenance to some Northern Territory outstations.

20.5.11 The Northern Territory has specific difficulties because of its small, scattered populations. Roads outside formal LGCs (which includes all Aboriginal groups) axe maintained by the Territory Government and funded through Special Purpose Grants (SPGs). Many Aboriginal communities in the Territory are recognised as local governments and so are entitled to direct funding. In South Australia the Department of Aboriginal Affairs funds Aboriginal community roads—though in 1989-90, recognising a special need, the South Australian Government allocated monies to upgrade the main road through Pitjantjatjara Lands. In other States the Commonwealth has made progress in encouraging more equitable roads expenditures. In 1988-89 the Queensland Government commenced distribution of local road funds to Aboriginal and Islander communities with local government status. Despite Specific Purpose Funding for the function, in 1987 statistics showed that none of Western Australia's thirty-seven Aboriginal communities' roads had been serviced by any local government authority. In 1988 the Western Australian Government agreed to discount the proportion of the Local Government Financial Assistance program due to Aboriginal communities when local governments reneged on their roads provision obligations. This is definite progress.

20.5.12 Queensland is the only State and the Northern Territory the only Territory to have created and funded separate Aboriginal local government authorities. In all they fund seventy-three Aboriginal Councils with varied statutory status ranging from full LGCs (Mornington and Aurukun and a number of community government councils formed on discrete Aboriginal communities or 'mixed' communities in the Northern Territory) to Aboriginal Councils and Community Councils. The formal incorporation of Aboriginal communities into the local government system has significant consequences for State Governments' fiscal provision.

20.5.13 Aboriginal Local Government Areas are usually in a separate category from mainstream local government when States' Grants Commissions begin to calculate equalisation disbursements. This is commonly to the disadvantage of the Aboriginal communities. Their remoteness, poor internal funding base, substantial capital works backlogs, and administrative capacity training needs are all depreciated in the calculation.

20.5.14 The Miller Report pointed to the difficulties of integrating Aboriginal organisations uniformly into the normal local government structure. Where separate Aboriginal local government authorities did not exist, the Miller Committee recommended that local government-type functions, generally or for specific matters, should be delegated to Aboriginal community organisations primarily responsible for other functions.[83] That could be done, or, alternately, governmental agencies could just accept a variety of levels and forts of community local governance, including service organisations or 'federations' of Aboriginal

communities, as in the Pitjantjatjara Council. These various organisations could be tasked and funded under specific tripartite contracts between the organisations and the appropriate State and Commonwealth agencies. Such a schema would minimise organisational changes at the local level.

20.5.15 In a discussion paper published in 1987 by the Minister for Aboriginal Affairs titled 'Aboriginal Participation and Equity in Local Government' it was noted:

> *It is generally the case that, if local governments were providing services and facilities to discrete Aboriginal communities on the same basis as they provide them to the rest of the community, then many Commonwealth and State special programs would not be necessary. Similarly, if local government were to become more involved ... then Commonwealth and State programs might have greater and more lasting success.*

20.5.16 A study conducted by the Equal Opportunity Commission of Western Australian found evidence of blatant discrimination in the provision of services to the residents of Roebourne, a predominantly Aboriginal township, compared with services provided to the nearby township of Karratha, a predominantly non-Aboriginal township. Similar inequalities were found by the Human rights and Equal Opportunities Commission study of Toomelah in New South Wales. Local government councillors have tended to respond to such evidence by firstly, denying responsibility for providing services to communities remote from the boundaries of the major township in a municipality; secondly, by noting that Aboriginal communities do not contribute by rates and charges to the same extent as that made by non-Aboriginal people residing in the major towns.

20.5.17 As the Chairperson of ATSIC, Ms Lois O'Donoghue, noted in a speech to the conference of State local government grants commissions in Adelaide on 20 September 1990, there appeared to be an assumption that. Aboriginal needs for what were, essentially, local government services would be provided by ATSIC and were not the responsibility of local government. As Ms O'Donoghue pointed out, funds provided by the Commonwealth to ATSIC were intended to provide supplementary assistance, but because mainstream programs were failing to adequately provide for Aboriginal people, ATSIC was forced to become 'the funder of last resort'. Having thus provided initial funding, ATSIC finds itself locked into recurrent expenditure for the same services each year, thereby having less funding available to provide for those areas of particular disadvantage which its charter is required to address.

20.5.18 In Queensland and the Northern Territory a total of some seventy-three communities received direct local government funding through the local government financial assistance program. Although the total sum expended is only approximately $5m per year, this contrasts with the balance of Australia where no discrete Aboriginal community is directly funded out of the pool of funds available through the Commonwealth for local government purposes.

20.5.19 Some State and Territory Governments have recognised the benefits of ensuring that maximum funding is provided to Aboriginal communities through the Commonwealth budget. There is, however, resistance in other States to the notion that Aboriginal communities should receive funding direct from the Commonwealth rather than receive it through State Government or local government grants commissions.

20.5.20 In the Northern Territory, extensive efforts have been made by the Government to encourage Aboriginal communities to incorporate as Community

Government Councils under the Northern Territory *Local Government Act.* These moves have been resisted by many Aboriginal organisations, especially by the Northern and Central Land Councils which have regarded the Territory proposals as a thinly disguised attempt to bring communities under the control of the government and to subordinate the rights of traditional owners under the *Aboriginal Land rights (Northern Territory) Act,* as well as having the effect of reducing the flexibility of local communities to determine their futures. The Commonwealth Government rather than support the Land Councils generally accepted the approach adopted by the Territory Government. I look at this debate in more detail in Chapter 27.

20.5.21 The needs assessment of LGCs does take into account socioeconomic factors, included in which is the number of Aboriginal people resident within that council area. However, the funds are not permitted to be tied or controlled in any way and are for the councils to use as they choose. They are not required to account for the funds other than in the course of meeting normal local council financial management requirements. This means that the State Minister for Local Government cannot tell councils that they must spend money on Aboriginal communities.

20.5.22 One consequence of this lack of accountability in relation to the general revenue grants is that councils have a lot more flexibility than many other publicly funded organisations to effect long-term planning in their spending. For example, they can utilise 'sinking funds' to set aside funds for recurrent maintenance costs associated with capital assets. This contrasts with Aboriginal community organisations which must spend all their funding before the end of the financial year or risk having it deducted from the following year's grant

20.5.23 Both the Self Inquiry and the Miller Report felt that local government authorities throughout Australia did not provide an adequate and equitable level of services to their Aboriginal residents (even though authorities' general purpose grants were calculated on the basis of Aboriginal populations within their boundaries).[84] The position of Aboriginal communities within mainstream local government areas has always been problematic. In the States where Aboriginal communities are not funded as of statutory right under the relevant local government grants Acts in the respective States, ATSIC (and formerly the DAA) funds these communities under a variety of mechanisms and programs. Though South Australia's Aboriginal communities, for example, are probably not financially worse off for being funded by the Commonwealth rather than the State Government, there is a case for some national standardisation of at least partially funding discrete Aboriginal communities within mainstream local government authorities. At present training programs run by DEET and the CDEP are not directly calculated into the local government assistance to those Aboriginal communities which do receive funds from their States' Grants Commissions, though a fair proportion of these programs do buttress local government functions.

20.5.24 The Self Inquiry was unable to recommend one way or the other as to whether Aboriginal communities should be constituted as separate local government authorities rather than belonging to larger local government authorities. This was because of the problem of the economic viability of such units. They decided that where an Aboriginal community was viable to be constituted as a local government authority, then it should be treated as a local government authority for purposes of Commonwealth funding assistance.[85]

20.5.25 This was an issue of rates equivalence. Aboriginal local government authorities could receive Element A (per capita) funding. This is required to be not

less than 30% of total grants. But estimating Element B (assessed rateable value) funding was a problem. The Self Inquiry recommended that Aboriginal communities obtain access to some local revenue—to give meaning to local autonomy—through earmarking a variable portion of housing rents or else some regime of small user charges. Alternatively, Aboriginal local government authorities could be funded entirely on an Element A basis.[86]

20.5.26 Many remote communities are now grappling with these problems of user charges for electricity, for instance, and other ways of meeting the costs of maintaining services in their communities in the context of usually decreasing funds from local government sources or even State sources. Where the Commonwealth does not 'pick up the tab' on these shortfalls, the problems must be faced by Aboriginal community organisations, including formal local governing bodies, outstation resource centres and town camp associations. Many charge rents for houses, fees for electricity, or organise community work activities on a voluntary basis, or through CDEP schemes or under locally controlled Community Service Order Schemes.

20.5.27 The larger the theoretical question is whether Aboriginal people who have had their traditional lands returned to them under land rights legislation should pay rates or whether this is a question of entitlement as indigenous peoples. Many community organisations, such as Tangentyere for instance, would argue, however, that part of their role is to bring to an end the welfare dependence engendered by the assimilation era. One of their best strategies to achieve freedom from welfare dependence is to demand of their constituents that they contribute to the maintenance and good order of their communities, and in practical terms, the maintenance of their houses and essential services, by paying user charges, rents or rate equivalents.

20.5.28 I believe that each Aboriginal organisation will find its own answers to these problems. The relevance of rate payments to the enormous backlog of needs in terms of infrastructure in Aboriginal communities is another question however. In my view, it is absurd to expect rate payments to mainstream local government councils or to Aboriginal local governance bodies to meet this need. Clearly, a continuation of Commonwealth and State grants to Aboriginal councils and associations is required to overcome the inadequacy of infrastructure.

20.5.29 The Self Inquiry went on to support the Miller Report in recommending a review of Aboriginal local government financing.[87] From this a simple funding formula, similar to local government grants commissions, could be developed. This was to develop a system of horizontal equity without interfering with State local government grants commissions, which could continue to adjust grants to suit local circumstances. The problem with State local government grants commissions was that they appeared reluctant to change relativities between local government authorities, thereby entrenching disadvantage.[88]

20.5.30 In 1987 the Commonwealth initiated an Interdepartmental Task Force on Aboriginal local government issues. This foreshadowed increased DAA interest because of the equity implications and DAA's own expenditure on facilities and services for Aboriginal people, which that department considered should be discharged by local government. This was particularly the case because DAA was providing funding to communities for services that should have been provided by the local government authorities covering these communities.

20.5.31 At present the Commonwealth implements a Local Government Development Program which funds Aboriginal local government units under five heads: environmental management; community development; multi-cultural access

and equity; personnel development; management development

20.5.32 Under the *Aboriginal Councils and Associations Act 1976 the* Commonwealth is empowered to introduce a special system of local government for Aboriginal people, though this power is subject to consultation with the relevant State or Territory Local Government Minister. It remains a reserve power.

20.5.33 Some Aboriginal communities in mainstream local government authorities do not pay rates because their community is on crown reserve land and is consequently not subject to property rates. In those places where the community's land is rateable, as for New South Wales Land Councils, valuation problems arise as the land is usually inalienable. This problem has been resolved in some areas by the LGC levying a uniform general rate on the community as a whole or on each household within the community. This compromise can have negative equity implications. Recent amendments to New South Wales Land rights legislation have changed the status of such land so that it is now alienable.

20.5.34 More serious conflict between the LGC and the Aboriginal community arises when Aboriginal people default on, or do not observe, their obligation to pay rates. Noesjirwan and Pope, in a report for the New South Wales Local Government Association, have noted that: 'The issue of unpaid rates is significant in virtually every Local Government area involving land under the control of Aboriginal Land Councils or other Aboriginal organisations' .[89]

20.5.35 From the LGC perspective rates are a requirement by law. But Aboriginal people see them as a fee-for-service impost for services to which the Aboriginal community is entitled. Where those services are not provided (especially to Aboriginal-owned land), the rate is seen as unjust. In New South Wales, for instance, LGC services to Aboriginal land have to be provided on a fee-for-service basis under the Local Government Act. In Western Australia's Wyndham-East Kimberley Shire there was resentment towards Aboriginal people who paid no rates yet expected Shire services. Similarly, in the Halls Creek Shire Aboriginal interests were accorded little priority in recreation expenditures.[90] According to the Shire this was because Aboriginal people did not contribute to rate income.

20.5.36 One suggestion for resolving these conflicts is put forward by Noesjirwan and Pope.[91] They propose that, in instances where no income by way of rental or other returns is derived from the land, or where no LGC services are currently provided, then the LGC should donate the rate equivalent to the Aboriginal community to provide their own services, perhaps for a limited period to allow implementation of a management plan. The Commonwealth Office of Local Government is an obvious superintendent of such a proposal.

Recommendation 77:

That the distinction between communities with or without formal local government authority status should be abolished for purposes of access to Commonwealth roads funding. The Minister for Aboriginal Affairs and the Federal Minister for Local Government should establish a review of Commonwealth Local Road Funds and specific purpose funding with, amongst others, one specific term of reference being to find feasible solutions to the problem of inequity for Aboriginal people in the provision and maintenance area of roads.

PARTICULAR LOCAL GOVERNMENT ISSUES AT STATE AND TERRITORY LEVEL

South Australia

20.5.37 In South Australia, the situation is very patchwork. Some Aboriginal communities are in local government areas, some are not. None of the communities exercise local government authority or receive funds available to local government authorities. Aboriginal people in the established areas claim that they are not getting equal treatment in the disbursing of funds. The government has recognised that this situation is unsatisfactory and recently appointed Mr Don Dunstan, former Premier of the State and architect of the State's land rights legislation, to inquire into this matter. He did so and I was supplied with a copy of his report. He has suggested seven options (one of which is the maintenance of the status quo) and has recommended that these options should be placed before Aboriginal communities. The options appear to me to be well considered, and the recommendation is the appropriate recommendation in that it puts the decision-making function into the hands of the Aboriginal communities and the people concerned.

Western Australia

20.5.38 In Western Australia the position is that the whole of the State has been divided into local government areas so that no persons, Aboriginal or otherwise, live outside a local government area or outside · the jurisdiction of a local government council. There have been persistent complaints that Aboriginal residents of local government areas receive less than their fair share of the services provided. This is particularly galling in that Commonwealth grants administered through the State Grants Commission, the amounts of which reflect need, are arrived at in part by reference to the number of Aboriginal persons residing in the local government area. In other words, the greater the number of Aboriginal residents in the area, the greater the grant received by that council. Recently the situation has been highlighted by the inquiry conducted into the operations of the Roebourne Council, which council takes its name from the oldest township in the area, Roebourne, but which also includes Dampier, Karratha and Wickham as well as, of course, the surrounding countryside. The inquiry established that funds made available to Roebourne, where the population is in majority Aboriginal, is disproportionately low as compared with the other towns.

20.5.39 There have been three major recent changes that hold out some promise for a rectification of some of these factors. These are changes to the funding base; the franchise and the role of the ADC/ATSIC.

20.5.40 In 1983-84 the Western Australian State Government changed the needs basis for funding local government authorities. Previously this had been ad hoc, as observed by the Self Inquiry. 92 But the expenditures of local government authorities were not necessarily adjusted; they were not compelled to expend resources in relation to need. More recently the Western Australian Local Government Grants Commission has developed a new disability calculation called the 'reduced disability factor'. It will remove the funding element for their constituent Aboriginal communities from local government authorities that do not expend a fair proportion of grants on those communities.

20.5.41 In 1985 voting rights in local government authority elections were expanded from solely the ratepayers and occupiers of rateable property to full legal adult franchise. This was despite opposition from the Country Shires Association, fearful that non-ratepayers, most particularly Aboriginal people, would thereby gain too much power relative to their contribution to rates income.

20.5.42 The other change to which I refer is that in the mid-1980s when, following

the defeat of land rights legislation, a number of pastoral properties were purchased (pursuant to a Commonwealth/State arrangement) on behalf of resident Aboriginal communities. This development promises eventually to allow for a degree of Aboriginal control in local government. The cattle station communities are too small to justify conventional local government organisation and services, but there appears to me no reason why Commonwealth and State Governments should not recognise that local government structural uniformity is unnecessary. These small cattle station communities deserve a basic level of public amenities and control over their provision.

Queensland

20.5.43 In 1978, with the passage of the Queensland *Local Government (Aboriginal Lands) Act,* Aurukun and Mornington Island were constituted as LGCs separate from other Queensland Aboriginal and Islander communities. These new councils were different from mainstream LGCs. They had wider responsibilities in accordance with their Aboriginal character and also had advisory committees comprising State and Commonwealth administrative officials.

20.5.44 Since 1984, Queensland Aboriginal communities (except Aurukun and Mornington Island) have been administered under the provisions of the *Community Services (Aborigines) Act 1984, and the Community Services (Tortes Strait) Act 1984.* These communities were then ineligible for Commonwealth equalisation grants or for specific purpose grants.

20.5.45 This Act provided. that every Trust Area should be governed by an Aboriginal Council which was 'charged with the good rule and government thereof in accordance with the customs and practices of the Aborigines concerned'. The State transferred some of its functions to the new community councils: in particular roads, hygiene and sanitation, parks and gardens, and police.

20.5.46 There has been some trenchant criticism of this development. Gerritsen has noted that: 'Aboriginal councils on reserves under the Community Services Act have only restricted control over use of funds, the regulation of the consumption of alcohol and law and order'. 93

20.5.47 In the early 1980s the Aboriginal communities' leaden began agitating for self-management. Especially after the 1984 Community Services legislation, this led to tension in some communities between the Department of Aboriginal and Islander Advancement personnel and the councils.[94] Councillors gradually learned to exert their authority.

20.5.48 The former Queensland Government has also been miserly with its grants to Aboriginal councils, as Gerritsen explains. He suggests that this would change if Aboriginal and Islander community councils were considered against the average standards used for mainstream Queensland LGCs.[95] This is because community councils carry out or need a variety of human service functions more analogous to mainstream local government authorities rather than the simpler, predominantly roads provision and maintenance function of rural local government authorities. Also, together with rural local government authorities, community councils suffer from the diseconomies of scale. In addition, community councils have to provide a policing function not usual in mainstream local government authorities. This function was not accounted for in the 1987-88 Queensland Grants Commission equalisation calculations. The poor state of health on most communities requires their councils to perform health and sanitation functions analogous with mainstream local government authorities rather than rural shires. Because of the low level of incomes on Aboriginal and Islander communities, their councils should

perform welfare functions similar to main stream authorities where socioeconomic and demographic factors feature in the calculation of their disabilities for equalisation purposes. Indeed this was a recommendation of the Parliamentary Accounts Committee.

20.5.49 Other features of community councils make them more comparable with urban LGCs. Some of these are needs for community and land use planning; sanitation and drainage services; street lighting; housing and other community amenities (such as civic centres and libraries). Mainstream authorities increasingly place an emphasis on human services such as recreation, culture and sporting activities. For community development reasons these are also appropriate emphases for Aboriginal community councils. In addition, community councils have greater responsibilities for employment creation (a factor which may reduce the mortality amongst young Aboriginal men which led to this Royal Commission). Some mainstream local government authorities participate in the Aerodrome Local Ownership Scheme, thereby receiving 50% of appropriate maintenance. The scheme should be extended to community councils because of the significant lack of private transport.

20.5.50 As in the other States, for reasons of historical neglect, Queensland's community councils also have significant backlogs for community infrastructure and equally pressing needs for administrative training. This adds another dimension to their equity claims.

20.5.51 If some of these factors were applied to community councils, then it has been calculated (on the 1987-88 grants allocations) that Aboriginal communities would have received on average 15.4% more funding and Islander councils a 73% increase.[96] Because these councils received only 1.44% of total local government funding, such increases would have a negligible effect when averaged across all local government authorities, even with constant funding in real terms. Equity could be served with very little politically difficult redistribution.

20.5.52 Community councils have not had access to the Capital Works Subsidy Scheme available to mainstream local government authorities. That should change. Neither have community councils been able to obtain loan funding for capital works. This is because their uncertain income base and a lack of security for land tenure reasons precludes borrowing. Grant increases based on the equalisation formulae appropriate to mainstream local government authorities would allow some borrowing's to overcome infrastructure backlogs. Then these communities could be seen to be foregoing current consumption, which should reduce any political difficulties attendant upon this proposed reform.

20.5.53 The fiscal self-management regime is another anomaly in the system. The controls over Aboriginal community councils' finances were more akin to those for a government department than for legally constituted local government authorities.[97] Also the assumption by the councils of rent collection reduced the amounts received, as coercion and threats of eviction became less successful in securing compliance. This further affected councils' finances. Councils rely on profits from their beer canteens to provide a sizeable proportion of their income. All relevant authorities, including the Aboriginal Coordinating Council, the Division of Aboriginal and Islander Affairs of the Queensland Department of Family Services and Aboriginal Islander Affairs, ATSIC and the Liquor Commissioner, should remedy this dependence on the proceeds of alcohol sales for the provision of essential services. It is entirely unacceptable, given the findings of this Commission in relation to the role of alcohol misuse in custody rates, for such a situation to be allowed to continue.

20.5.54 The Miller Report also pointed to the anomaly of the Aboriginal councils of Mornington and Aurukun possessing greater powers than do the other Aboriginal and Islander councils of Queensland. It predicted that because of State Government control of the other communities, dependency and 'welfarism' would persist.[98] Certainly, for internal departmental reasons as much as any other, the 'handover' took longer than three years. In mid-1990 there were still community councils that had not been 'handed over' from Community Services' control.

20.5.55 Queensland's community councils were disadvantaged because they were not constituted under the *Local Government Act.* This meant that they were not initially entitled to a wide range of subsidies from the Commonwealth and Queensland Governments, or grants allocated by the Queensland Grants Commission, as well as a range of services provided by the Local government Association of Queensland.

20.5.56 The Self Inquiry was told that Aurukun and Mornington received reduced grants in relation to other comparable LGCs because they did not have conventional sources of revenue, and that other Queensland Aboriginal communities were constituted under legislation that excluded them from eligibility for other grants, including Commonwealth general purpose grants.[99]

20.5.57 Currently the Queensland Department of Local Government appears to be attempting a rethink of its traditional model of Aboriginal settlements.

20.5.58 For instance, in responding to the Royal Commission on Aboriginal Deaths in Custody, the department's Acting Director-General noted the problems that the nine 'tribes' at Aurukun faced in living together:

> *Given the problems that seem to occur in the clustering of a fairly large number of Aboriginal people together it could be argued that a local government based European-style community is not the best solution to the problem. Indeed, the concept of congregating relatively large numbers of Aboriginal people with different backgrounds together may need to be rethought. 100*

20.5.59 In 1990 the Queensland Government appointed a Review Committee of the Community Services legislation comprised of Aboriginal and Islander people, and the Queensland Parliamentary Committee of Public Accounts has conducted an inquiry into the fiscal management of the fourteen Aboriginal and seventeen Islander councils incorporated under the 1984 Act.[101] The recommendations of both have been substantially incorporated into amendments to the legislation, and its regulations passed in December 1990. Further amendments are expected when the Review Committee completes Stage Two of its inquiry.

> **Recommendation 78:**
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> ***That with respect to the provision of grants the Queensland State Government should ensure that Aboriginal and Islander Community Councils are considered against the average standards used for mainstream local government councils. Aboriginal Community Councils should have access to the Capital Works Subsidy Scheme available to mainstream local Government Authorities. The operation of the Aerodrome Local Ownership Scheme should be extended to Aboriginal Community Councils.***

Northern Territory

20.5.60 The position in the Northern Territory is different again. Under Northern Territory legislation there are two forms of local government organisation. The first are the Municipal Councils, being the form of organisation applicable to the main centres; for example, Darwin, Alice Springs, Katherine, Tennant Creek, Litchfield and Palmerston. These cover areas with substantial Aboriginal populations, as well as discrete Aboriginal communities located in town camps which are run by Aboriginal housing organisations. I speak later about particular questions that arise in these areas and a solution of great promise which has been reached in Alice Springs. The second form of local government organisation are the Community Government Councils set up under the *Local Government Act.* Fifteen of these councils have been established to date, most of them in Aboriginal communities on Aboriginal land. The Act makes special provision for these councils. The Northern Territory Government puts a good deal of effort into persuading Aboriginal communities to incorporate under this legislation. The government claims, and nothing has been put to me to suggest the opposite, that decisions by communities to incorporate under the Act or otherwise are freely made. The government has training films designed to show the benefits of incorporation; these are designed to create a climate of opinion favourable to incorporation under the Act. Many of the Aboriginal communities incorporated under the *Northern Territory Associations Incorporation Act* are opposed to bringing their areas under the *Local Government Act and* many Aboriginal organisations not directly associated with local government are also strongly opposed. The opposition in my view is not to the provisions which the Act makes relative to the composition of the councils, nor to their powers (except as to one point), nor as to the general style of the legislation. In fact, a perusal of the legislation indicates that it goes a good way to meet Aboriginal sensibilities.

20.5.61 The opposition is directed to what is perceived as being an attempt by the Northern Territory Government to gain some measure of control over Aboriginal land. In my view it stems more from deeply embedded hostility between the government, on the one hand, and various Aboriginal interests and organisations on the other, rather than from the terms of the legislation. The matters raised as to the legislation itself are that the councils established pursuant to it may be able to make decisions which would be at odds with what might be desired by the traditional owners. I think it has to be said that there is some potential for this happening, although the areas brought under the Act to date have been small (being related to the living areas) and the powers of the councils in respect of subject matter are quite limited. However, the potential is there. I conducted discussions in Alice Springs which were attended by representatives of the Office of Local Government and by Aboriginal organisations (who were opposed to the legislation). In the course of those discussions the suggestion was made by Mr Graeme Marshall, the senior officer from that office, that an amendment might be considered to the Act which would meet this objection by way of retaining the ultimate decision-making power with the traditional owners. It may be arguable that such a concession would represent no more than an acknowledgement that Commonwealth legislation overrides Territory legislation; however, it would, in my view, certainly be a move which should be carefully considered by the Territory Government and would go some way to alleviating the present hostilities.

20.5.62 The other concern is that, as with local government legislation elsewhere, there is a power in the Minister in certain situations to take control of the affairs of the council. However, this power is closely circumscribed and its use is subject to both political and legal restraint.

20.5.63 There is an acknowledgement on all hands that in point of fact in many remote communities Aboriginal incorporated communities do in fact carry out local

government functions. As a result of an initiative of the Commonwealth some years ago, Aboriginal bodies de *facto* exercising local government functions become eligible in Queensland and the Northern Territory for participation in the distribution of Commonwealth local government grants, and many such councils in the Northern Territory in point of fact receive such grants and other Territory money. However, according to Mr Marshall, in recent times the Territory has introduced an element of advantage into the formula for distribution of Territory funds to the advantage of those communities incorporated under the *Northern Territory Local Government Act.* It is claimed to be a very small element, and the figures placed before me would suggest that it is indeed a very small element.

20.5.64 I would respectfully suggest to the Northern Territory Government that this is an ill-advised attitude. There does not seem to me to be any sound reason why any distinction should be made between bodies which are in fact exercising local government functions in remote communities on the basis of whether they are or are not incorporated pursuant to the local government legislation—as opposed to the Associations Incorporation Act of the Northern Territory. It seems to me that the natural thing is for communities to work out their own attitudes towards these matters and not to be pushed in one direction or another for reasons which have little to do with the administration of local government services and will have little effect on the distribution of available funds. The important thing is the delivery of services to communities expeditiously, efficiently, and in a manner which most accords with the wishes and sensibilities of the Aboriginal people and which is in accordance with principles of equity.

20.5.65 The hostility between the parties is rounded in history and particularly in the history of land rights legislation and claims. The sensible development of local government throughout the Territory, as it seems to me, ought to be permitted to proceed in accordance with principles of self determination and using such structures as the various Aboriginal communities consider at any particular time are appropriate to them.

New South Wales

20.5.66 Generally the situation of Aboriginal communities in mainstream local government authorities in New South Wales is as bad if not worse than in the other States. The Human rights Commission conducted an inquiry into the Toomelah settlement in 1987. It showed that the community, despite being the same population as nearby Boggabilla, was not provided with comparable services. Indeed the poor quality of services was such as to constitute a violation of the Toomelah community's human rights.[102]

20.5.67 In response to the Toomelah Review the New South Wales and Commonwealth Departments of Aboriginal Affairs conducted a review of the infrastructure needs of the forty-six Aboriginal settlements in New South Wales. It was found that $27m was needed to bring them up to the New South Wales Department of Housing's basic estate standards.[103] This was a fairly dismal conclusion after fifteen years of sporadic attempts to upgrade Aboriginal community infrastructure. Since 1989 a slow process of improving the situation has commenced.

20.5.68 The New South Wales Aboriginal Issues Unit (AIU) consulted widely with Aboriginal people in New South Wales, and comments made to the Unit about the role of local government authorities identified a range of concerns. I set out passages from the report of the AIU in order to illustrate Aboriginal perceptions.

Discussions into this topic with members of Aboriginal communities and organisations fell broadly into four categories. Those categories were the failure of local councils to employ Aboriginal labour, the influence that local councils had on development, improvements required by Aboriginal communities in respect to housing and other services, and the influence of local councils in relation to policing and law and order issues in their regions and the effect of local council's enforcement of their rights to recover unpaid land rates especially with relation to the proposed amendments to the New South Wales land rights legislation. However in many cases local Aboriginal communities were not fully aware of the services available to them through councils. One other topic that was discussed at some length with Aboriginal people was the difficulty in having Aboriginal representation on councils.

In addition to this it was claimed that in many cases employment in local councils for Aboriginal people was only possible when positions were made available through the Department of Employment, Education and Training or other government organisations who provided subsidies for Aboriginal employment. It was claimed by Aboriginal people and in many cases acknowledged by the Department of Employment, Education and Training officers that once the subsidies for training schemes for Aboriginals in local councils ceased that there were no positions available for Aboriginal people.

Another area of contention expressed by Aboriginal communities was that it was literally impossible for Aboriginal people to obtain positions in local councils in the administrative or service delivery areas and claimed that any employment for Aboriginal people was restricted to outdoor employment. There were a couple of exceptions to this general rule one being in Kanamble and one in Taree. In Kanamble an Aboriginal woman has been employed in an administrative section of the council on a full-time permanent employment position which she had obtained through a mainstream job advertisement. The other is a situation in Taree which is somewhat different to that in Kanamble where an Aboriginal person has been employed as a Community Liaison Officer funded by both the Department of Family and Community Services and the Local Council.[104]

20.5.69 The AIU then discussed the role of local government councils in delivering badly needed services to Aboriginal people.

A number of Aboriginal communities claimed that local councils had actively or passively prevented Aboriginal communities obtaining approvement applications or development application approvals or had addressed themselves to providing the same types of improvements to Aboriginal communities as were made available to the non-Aboriginal population in the council areas.[105]

20.5.70 The AIU detailed specific town planning and development proposals at Toomelah and Brewarrina which the people believed had been unfairly blocked by the local councils, notwithstanding the fact that the proposals for which the community had funding had widespread support within the community and were regarded as important improvements to their situation. One such project was a

proposed community centre to be constructed at Brewarrina.

20.5.71 The AIU also reported on the concerns felt by many Aboriginal people about attempts by local councils to levy and recover rates on land and housing owned by Aboriginal organisations. The AIU reported that

> *in many cases Aboriginal organisations have refused to pay rates as they believed that their particular communities have not been receiving the same service as those provided to the non-Aboriginal rate payers within their towns.*[106]

20.5.72 The problem of rate collection arises in many places. As back rates mount up so do the interest payments accumulate. Many Aboriginal housing organisations have difficulty collecting rent from the (mostly unemployed) Aboriginal tenants. It is plain that without substantial government funding these rates will never be repaid; thus generating anxiety that attempts may be made to force the sale of these properties. I do not make any judgment about this issue as I have not had the opportunity to explore the issue in depth. I discuss it further in Section 35.4 of this report. It is clear, however, that, as the AIU reports, this is just one of the many issues that create tension at a local government level and which inevitably cause attention to be focused on the lack of equity in the delivery of such services to Aboriginal people.

20.5.73 The AIU noted that friction and conflict had been generated. The Aboriginal people in some places attempted to have more direct influence on council decision making.

> *There have been attempts in some centres to attempt to overcome this particular problem by ... having Aboriginal people stand as candidates and successfully obtain office on local councils, and in other cases with the establishment of community consultative committees.*
>
> *In most cases those Aboriginal representatives on local council have found that it is virtually impossible to convince or persuade the general council to listen to suggestions or proposals put forward on behalf of the Aboriginal communities and have found that this situation has made it untenable for them to continue acting on the council.*
>
> *In a number of rural centres throughout NSW Aboriginal people if exercising their franchise effectively would in some cases hold a majority on local councils and in others have a significant splinter group or hold the balance of power between opposing factions in those centres. However there is nothing to suggest at this stage that Aboriginal communities have seen or believe that greater representation on councils will be in any way of assistance to them.*[107]

20.5.74 The AIU pointed out that experience was not the same with all councils—in some areas there had been a degree of co-operation and understanding of the necessity for Aboriginal needs to be addressed. The AIU spoke of one such experience.

> *It would seem that some local councils have been prepared to address the problems arising in Aboriginal communities because of the lack of general facilities available to them and in some respects*

the youth in their towns.

When a community-based committee was formed comprising of Aboriginal people, local police and members of the local council with a view to establishing some form of activities for local youth [it] put forward to the council to lease the municipal oval and its facilities. The local council appeared to place support behind this proposal. The result of this saw other government departments provide funds to provide equipment for youth in what is regarded as a drop in centre and allowed the committee to lease from the council the municipal oval and its buildings at a nominal rent which allowed the committee to generate some income to assist in the maintenance and equipment purchasing for this youth centre.[108]

20.5.75 Unfortunately this case was presented by the AIU as an exception to the role of lack of support from local government authorities. There are, of course, considerable constraints, both legislative and financial, in what LGCs can achieve. It may be that at times Aboriginal people have directed criticism to local councils when those councils were not the bodies which had responsibility for the matter concerned. As the AIU noted: 'It seemed apparent throughout NSW that many Aboriginal communities had little or no knowledge of the functions, rights and obligations of local councils' .[109]

20.5.76 I do not suggest, however, that Aboriginal complaints about the inequity of local government service delivery are based on fantasy; the evidence is very clear that there are real problems. However, the lack of knowledge and understanding of the constraints and concerns of each group the local council and the Aboriginal community—undoubtedly is a great hindrance in efforts to tackle the problem of inequity. Clearly there is mistrust on both sides.

Victoria and Tasmania

20.5.77 I have been unable to make appropriate investigations into this question in Victoria and Tasmania, but it is well established that there have been long standing complaints from discrete Aboriginal communities falling within rural local government areas, that they have not received services commensurate with those supplied elsewhere.

CONCLUSION

20.5.78 Aboriginal involvement in mainstream local government processes has been limited in each of these States although from time to time an Aboriginal person has been elected to a local government council, usually with the result of feeling isolated and unable to effect significant change for the Aboriginal community. Local government remains, however, a central feature in the daily lives of Aboriginal people in that local councils and their definitions of 'law and order' can significantly influence the reactions of police towards Aboriginal people. I deal with this issue in Chapter 12 and Chapter 13.

20.5.79 Having briefly looked at the situation in various areas I repeat the point that, although local government appears to present an area where the application of principles of self-management and self-determination in a restricted area could be applied, the opportunity has not been grasped; to the contrary, it is an area where inequitable use of funds has been shown to have occurred in many places.

20.6 FUNDING SELF-DETERMINATION

20.6.1 As noted earlier, the House of Representatives Committee in its definition of self-determination stressed that for its attainment Aboriginal people would require 'the resources and capacity to control the future of their own communities'. This is a critical issue. As the quote from Tombo Winters stressed, many Aboriginal people see financial independence as being the key to self-determination. Such independence entails not only the payment of sums sufficient for infrastructure and other capital expenses, but also the attainment of employment and the development of skills to manage their own enterprises.

20.6.2 It is in this area—financial support and self-sufficiency—that a blurring occurs of many quite distinct issues. As I have shown, Aboriginal people have an entitlement as citizens to receive those basic services, often delivered by local governments, which all citizens expect as their right. Aboriginal people, to some extent, object to having to pay for these services, as others do through rates and taxes, but generally I believe that there is acceptance that such 'citizens' rights' justifiably require contributions from citizens. Aboriginal people, however, frequently simply do not have income or other means to meet those demands.

20.6.3 In order to contribute as citizens towards the cost of citizens' entitlements Aboriginal people need work and other means of gaining income. But additionally Aboriginal people want to break away from dependence on government agencies which follows with the delivery of many basic services.

20.6.4 Many Aboriginal people see that what is required is a guaranteed capital base if self-sufficiency is to be realised. They contrast this with the receipt of tied money (paid on a quarterly or annual basis) the use of which is predetermined by people other than themselves. One possible means of providing such a guaranteed capital base flows from payments received under land rights legislation. I deal with this further in Chapter 37. A detailed discussion of economic programs and opportunities for Aboriginal people is contained in Chapters 17 and 34.