ROYAL COMMISSION INTO
ABORIGINAL DEATHS IN CUSTODY

NATIONAL REPORT VOLUME 5

Commonwealth, New South Wales,
Victoria, Queensland, Western Australia,
South Australia, Tasmania and
Northern Territory

BY
COMMISSIONER ELLIOTT JOHNSTON, QC

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 ATSIC)
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 Pitjantjara Homelands
API	Aboriginal Participation Initiative
APS	Australian Public Service
ASAP	Aboriginal Services Action Plan
ASSPA	Aboriginal Student Support and Parent Awareness
ATAS	Aboriginal Tutorial Assistance Scheme
ATSI	Aboriginal and Torres Strait Islander
ATSIC	Aboriginal & Torres 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 (l)	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 Torres Strait Islanders
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 Islamlet Day Organising Committee
NAIHO	National Aboriginal Islander Health Organisation
NAILSS	National Aboriginal and Islander Legal Services Secretarial
NARU	North Australia Research Unit
NCADA	National Campaign Against Drag 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.

ABORIGINAL DEATHS IN CUSTODY
1 January 1980 - 31 May 1989
Showing custodial authority and Place of custody

Part G: Towards Reconciliation

Part G Towards Reconciliation'--is the final part of this report. It is comprised of three chapters. The first, Chapter 38, details Australia's obligations under international treaties as they relate to the underlying cultural, social and legal factors which have a bearing on Aboriginal deaths in custody. The second, Chapter 39 ('Meeting Land Needs'), develops further the issues raised in Chapter 20 concerning the mechanisms by which the diverse needs of Aboriginal people for land can be achieved. The final chapter of the report, is titled The Process of Reconciliation'. In it, the process by which recognition can be given to the past injustices and continuing inequality experienced by Aboriginal people, as has been highlighted throughout this report, is addressed.

Conforming with International Obligation

The adequacy of the care and treatment of Aboriginal people in custody may be assessed from a variety of perspectives. The common law requires custodians to provide a reasonable standard of care. Failure meet this standard gives rise to a direct legal liability on the part custodial authorities which is actionable in Australian courts. Another standard to assess the care and treatment of Aboriginal people held in custody is provided by certain international instruments or treaties by which Australia has acknowledged itself to be bound.

Such treaties are not limited to the definition of standards applicable to the persons held in custody. Several, such as the International Covenant on Civil and Political Rights (ICCPR), are concerned with very broad human rights which are directly relevant to the underlying social, cultural and legal factors which fall within this Commission' s terms of reference.

In this chapter I examine the nature of the obligations imposed on Australia by virtue of such treaties and the degree to which this country has met international standards regarding the treatment of Aboriginal people, both in the custodial setting and generally.

36.1 The Nature of Australia's International Obligations

36.1.1 Australia's duty to observe human rights and standards of treatment specified in particular treaties is governed by international law. The implications of this fact must be clearly understood before any useful examination can be made of Australia's performance in this area. In essence, Australia, as a national State, has formally contracted to observe certain internationally recognised human fights and standards of treatment. The legal obligation upon Australia to observe these rights and standards is owed to other contracting parties. There is no direct legal obligation owed to the people intended to benefit from the terms of these treaties. The breach of a treaty obligation does not give rise to a cause of action which can be brought by an individual person before any Australian or International court.

36.1.2 It may be useful to consider the nature of Australia's international obligations and the character of the rights which flow from them in the context of a specific instrument. The Commission has not made a profound study, nor does it have the competence to do so, of the various international documents that are referred to. My purpose is to draw attention to the existence of important obligations so that their relevance is not overlooked.

36.1.3 The International Covenant on Civil and Political Rights (ICCPR) commences with a preamble which, amongst other things, recites that:

> *The States Parties to the present Covenant,*
>
> *Considering that, in accordance with the principles proclaimed in the Charter of the United Nation, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*
>
> *Recognising that these rights derive from the inherent dignity of the human person, Recognising that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everybody may enjoy his civil and*

political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Agree upon the following articles:

Article 1

1 All peoples have the right of self. determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 2

2 Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

36.1.4 The origin of the rights articulated in the ICCPR and other such treaties is clear from the language of the preamble: they are created through agreement between Member States of the United Nations (UN). In essence, treaties assert the existence of certain rights and standards of conduct by which contracting national States (States Parties) acknowledge themselves to be bound. Australia, as a Member State of the UN and a contracting State Party to the ICCPR, has undertaken 'to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the ... Covenant'. Accordingly, Australia has not only made a formal, international recognition of the human rights prescribed in the ICCPR; it has accepted an obligation to ensure that these abstract rights will be translated into effective enjoyment by all people within the jurisdiction of Australia.

36.1.5 The act of signing a treaty does not render it binding under international law. Legal obligations arise only after the terms of the signed treaty are ratified. Once formal ratification has been made, Australia is obliged to undertake such measures as are necessary to fulfil the terms of the international agreement to which it is a party. The implementation of these terms within the jurisdiction of Australia is referred to as 'domestic implementation '.

36.1.6 A discussion paper on international law issues was prepared for this Commission by Dr John Hookey. Copies of Dr Hookey's paper were forwarded by the Commission to the Commonwealth, State and Northern Territory Governments as well as to many other organisations and individuals, and submissions were invited on the matters raised in it. All State and the Northern Territory Governments accepted this invitation and provided written submissions, but no submission was delivered by the Commonwealth Government although receipt of the discussion paper was acknowledged.

36.1.7 Dr Hookey made the following point in his paper:

> *The Australian system of constitutional law, like the British, requires something more than ratification or the statutory approval of ratification, for a treaty binding Australia in the international sphere to apply as part of our domestic law. Ratification does not result in automatic domestic implementation: Koowarta v Bjelke-Peterson (1982) 153 CLARE 168 at page 224 per Mason, J.* [1]

36.1.8 As it was expressed by Chief Justice Gibbs in the *Koowarta* case: 'Treaties when made are not self-executing; they do not give fights or impose duties on members of the Australian community unless their provisions are given effect by statute' within Australia. [2]

36.1.9 The domestic implementation of international instruments requires specific legislative action. However, as Australia is a federation and many matters referred to in treaties relate to areas of legislative responsibility traditionally exercised by the States and Territories, the domestic implementation of obligations assumed by the Commonwealth Executive can give rise to difficulties. While the Executive is competent to enter into international agreements, the Federal, State and Territory Parliaments may

prevent Australia from fulfilling its international obligations. They may refuse to pass the necessary domestic legislation implementing the terms of treaties within the various Australian jurisdictions.

36.1.10 In reporting to the UN Human Rights Committee in 1985 regarding Australia's performance with respect to its obligations under the ICCPR, the explanation given for Australia's limited implementation of the Covenant was linked to constitutional constraints flowing from federalism.

> *[T]he implementation of the Covenant in Australia was significantly affected by the division of political and legal responsibilities between the Federal Government and the Governments of the various Australian States and Territories, as provided by the Constitution, and that the implementation of a given article of the Covenant depended on the jurisdiction that had the constitutional power to enforce it.* [3]

36.1.11 I mention that Dr Hookey describes Australia's maintenance of such a position as 'obsolete' [4] in terms of current constitutional law. The power to enter into international treaties is conferred upon the Commonwealth Government by Section 51, paragraph (xxix) of the Constitution the external affairs power. As Dr Hookey notes:

> *A majority of the present High Court are clearly of the opinion that a Commonwealth Statute implementing Australia' s treaty obligations can be supported under the external affairs power ... providing it maintains the necessary proportionality to those obligations and does not violate the implied prohibition upon discrimination against a State: Richardson v Forestry Commission (1988) 62 AHR 158 at pages 162, 182 and 187. The watershed decision on the implementation of human rights treaty obligations was, of course, Koowarta v Bjelke-Peterson (1981-82) 153 CLR 168; whilst any lingering doubts about the implementation of treaties were set at rest by the Tasmanian Dams decision, (1983) 57 ALJR 450.* [5]

36.I.12 Further, where the subject matter of a treaty relates particularly to Aboriginal people, it is possible that the Commonwealth Government could rely on its power to make 'special laws' pursuant to Section 51, paragraph (xxvi) of the Constitution.

36.1.13 While the unilateral exercise of Commonwealth legislative powers pursuant to Section 51 of the Constitution may offer a direct means of domestic implementation, there are strong policy constraints upon its exercise. The policy of co-operative federalism has been pursued for many years by successive Commonwealth Governments. In practice the States and Territories are consulted before the Commonwealth becomes a party to a treaty which affects traditional areas of State and Territory responsibility. Only once the Commonwealth is satisfied that the laws within these jurisdictions conform with treaty obligations does Australia ratify a treaty.

36.1.14 Express reference to the constitutional constraints upon the performance of treaty obligations by States is made in relation to certain treaties ratified by Australia. The legal requirement of domestic implementation is tempered by the insertion of a 'federal clause': for example, Article 2(2) of the ICCPR requires that a State shall give effect to the rights recognised in the Covenant 'in accordance with its constitutional processes'. As referred to above, in reporting to the Human Rights Committee regarding domestic implementation of the ICCPR, Australia has advised that its constitutional process is that of a federation in which the executive, legislative and judicial powers are distributed among the Federal and constituent State and Territory authorities. The effect of this distribution of powers is stated to be that the implementation of the Covenant is a matter for the constitutionally appropriate authority. Ultimately, however, because of the broad interpretation given to Section 51, paragraph (xxix) of the Constitution by the High Court, the 'constitutionally appropriate authority' (it may be argued) is, or can be, the Commonwealth Parliament.

36.1.15 The 'progressive development' or gradualist argument is also relevant to the question of implementation. In relation to the ICCPR it is argued that the agreement clearly contemplates implementing legislation following rather than preceding ratification. But this may be interpreted as

requiring legislation immediately upon ratification, rather than in the indefinite future. In contrast to the ICCPR, the International Covenant on Economic Social and Cultural Rights (ICESCR) contains gradualist language which clearly contemplates progressive implementation. [6]

36.1.16 Having considered the potential tempering effect of the federal clause reservation and the gradualist approach to the immediate and strict observance and implementation of Australia's international obligations, it remains to consider the effect of a breach of those treaty obligations and the procedures available for enforcement.

36.1.17 Under international law there are two forms of breaches of treaty obligations. There are 'material' breaches and ordinary breaches. Article 60 of the Vienna Convention on the Law of Treaties (Vienna Convention) provides that a material breach by one of the parties entitles another party to the treaty to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. A material breach, for the purposes of this Article includes the violation of a provision essential to the accomplishment of the object or purpose of the treaty. Therefore, if Australia commits a material breach the ramifications are potentially grave. Not only has Australia failed to honour its international obligations, but, in doing so, it has provided grounds for other nations to abrogate a treaty or suspend the performance of its own obligations under that treaty. In order to maintain the international status and recognition of any treaty, Australia must avoid violation of a provision directly touching its central purposes. [7] An ordinary breach which does not touch on the central purposes of a treaty does not give rise to such dire consequences.

36.1.18 The appropriate forum for the hearing of complaints is the International Court of Justice. Only a State Party has standing to bring a complaint before this body. However, the UN may be able to bring a claim on behalf of an aggrieved individual in contentious litigation before the World Court. In this context, it is significant to note that Article 29 of the Vienna Convention provides that, unless a different intention appears from the treaty or is otherwise established, a treaty is binding on each State Party in respect of its entire territory. Article 27 of the Vienna Convention specifies that a Party may not invoke the provisions of its internal laws as justification for its failure to perform treaty obligations. Article 13 of the Draft Declaration of Rights and Duties of States, 1949, provides that every State has the duty to carry out, in good faith its obligations arising from treaties and may not invoke provisions of its constitution or its laws as an excuse for failure to perform these duties. There is ample judicial and arbitral authority for the rule that a State cannot rely on its domestic law to avoid its international law obligations.

36.1.19 Accordingly, any argument that Australia, because of its federal constitution, is not able to adequately implement the terms of a treaty may provide no adequate defence to a complaint that it has failed to meet its treaty obligations. This raises a dilemma for the Commonwealth Government as to whether to ratify international agreements, subject to substantial and possibly invalid reservations (in order to avoid international responsibility in relation to matters over which it may have no constitutional power or may have difficulty in asserting that power) or to refrain from doing so and risk international scepticism as to Australia's intentions in the field of human rights. [8]

36.1.20 International scepticism, or more potently, international criticism, is a central issue concerning the implication of breaches and enforcement procedures. Essentially a breach is a departure from an obligation undertaken by Australia which would be met on the world stage by condemnation and censure. In blunt terms there is no effective machinery to deal with breaches of international law which would compel Australia to comply with specific obligations contained within international instruments asserting the existence of human rights and certain standards of civilised conduct. The principle of *pact sunt servanda* should be noted. This is the rule that treaties are binding on the parties and must be performed in good faith. It is a fundamental principle of the law of treaties. Any failure to diligently observe and translate the promise of full human rights and proper standards of treatment articulated by international treaties into effective enjoyment within Australia directly raises the question of whether this country is willing to act in good faith. Judgment on this issue will ultimately be made in the international forums of the world community.

36.1.21 The obligation on States Parties to make regular reports regarding their compliance with treating

obligations is one method through which international accountability is maintained. Article 9 of the Convention on the Elimination of All Forms of Racial Discrimination requires a report every two years regarding the legislative, judicial, administrative and other measures adopted to give effect to the provisions of the Convention. Further, States Parties must submit additional reports whenever the United Nations Committee on the Elimination of Racial Discrimination (CERD) requests. During the consideration of the United Nations Human Rights Committee of Australia's Second Periodic Report, pursuant to the ICCPR, members of the Committee asked a number of questions specifically referring to the position of the Aboriginal people in Australia. The first question recorded related to the wish of the

> *I receive additional information concerning affirmative action measures adopted in the economic and cultural spheres in favour of Aboriginals living both inside and outside Aboriginal communities'* [9]

36.1.22 A further means of review and identification of potential breaches is provided by the right of individual petition. For example, the Optional Protocol to the ICCPR, recognises the competence of the Human Rights Committee established under Article 28 of the ICCPR:

> *I receive and consider communications from individual subjects to its jurisdiction who claim to be victims of a violation by the State Party of any of the rights set forth in the Covenant.* [10]

36.1.23 Such a mechanism affords the only direct means of complaint to the people intended to benefit from the treaty obligations assumed by a State Party.

36.1.24 Although in this chapter I principally deal with those human rights and standards of treatment specified in treaties, they are not the only international instruments of relevance. While not holding the same status as treaties, instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment provide significant markers of fundamental standards. They are of special relevance given the terms of reference of this Commission.

36.1.25 Further, it would be unduly constrained to limit my consideration of those instruments which have been finally formulated. There is a great deal of international activity, particularly in the area of the collective fights of indigenous peoples and their right to self-determination. This is an area of critical importance and relates to many broad underlying issues contributing to the marked over-representation of Aboriginal people within Australia's custodial systems.

36.2 International Standards Relating to Custody

36.2.1 Several international instruments deal explicitly with rights and standards of treatment relevant to persons held in custody. Other instruments, such as the ICCPR, cover broader fields but also contain Articles with direct implications for custodial conditions.

36.2.2 The Standard Minimum Rules for the Treatment of Prisoners (SMR) adopted by the United Nations in 1955 do not give rise to any binding obligations on Australia. However, the General Assembly has recommended that Member States make all possible efforts to implement the SMR in the administration of their prison systems and that they be taken into account in the framing of national laws.

36.2.3 In substance they represent the minimum conditions which are accepted as suitable by the United Nations and cover such areas as the classification of prisoners, accommodation, personal hygiene, food, exercise, sport, medical services, discipline procedures and punishment, complaint systems, visits, education, employment and religion. Rule 5(1) states that

> *The Rules do not seek to regulate the management of institutions set aside for young persons... but in general part I would be equally applicable in such institutions. Articles 9 and 27 of the United Nations Minimum Rules for the Administration of Juvenile Justice (The*

Beijing Rules) expressly provide for the application of the SMR to juvenile centres.

36.2.4 My observations concerning these rules are accordingly applicable to standards for the treatment of young offenders.

36.2.5 By necessity the SMR are general in nature and do not describe in detail a model prison system. As Rule 2 acknowledges:

> *In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all the Rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.*

36.2.6 In February 1987, a revised European version of the SMR was adopted by the Council of Europe. Dr Hookey notes that this:

> *emphasises how out of date the SMR, made as they were in 1955, have become, and the urgent need for their revision despite the adoption, in 1984, of Procedures for their effective implementation.* [11]

36.2.7 The direct implementation of the SMR into Australian law does not appear to be the most apt response to either the status, currency or purpose of these rules. Mr M. J. Dawes, Executive Director of the Department of Correctional Services, South Australia responded to Dr Hookey's discussion paper with the observation that:

> *The author clearly sets out the development of the United Nations Standard Minimum Rules (SMR) for the treatment of prisoners and he recognises how out of date they have become. I concur with his assertion (p.123) that the matters being addressed by the Royal Commission will not be solved by the universal application of the SMR' s in their present form...*
>
> *This is an important point that appears to have been overlooked by the author of the discussion paper-that the Rules stand as a general and moral guide on humane conditions in prisons. They should not, as Clifford (1974) pointed out, 'be taken as absolute ... and they were never intended to be law'.* [12]

36.2.8 However, the Australian Government is clearly conscious of the desirability of conformity with the SMR. In presenting its Second Periodic Report on the implementation of the ICCPR to the United Nations Human Rights Committee in April 1988, it was noted that guidelines based on the SMR were being elaborated. [13]

36.2.9 The Standard Guidelines for Corrections in Australia are described by Mr Dawes as:

> *based on the SMR, but have been modified to accommodate trends in correctional thinking and placed in an Australian context. They also have the added advantage of incorporating standards for community-based corrections.* [14]

36.2.10 The Australian Guidelines were adopted at a conference of Ministers of Corrections, held in New Zealand in May 1989. The Commonwealth of Australia and all States and Territories agreed to the Guidelines as setting standards for the conduct of prisons throughout Australia. A national standards body comprising ministers responsible for corrections throughout Australia and New Zealand is the authority established to regularly review these Guidelines.

36.2.11 The parallels between the United Nations SMR and the Australian Guidelines are clear:

> *Rule 6 (1) The following rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

1 On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Guideline 1.8 There must be no discrimination in any aspect of Correctional programs on the grounds of race, colour, gender, marital status, physical or mental impairment, language, religion, political or other opinion, national or social origin, property, birth or other status, except as it is necessary in properly meeting the needs of a disadvantaged individual or group.

Rule 57 Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shah not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

Guideline 1.2 Correctional programs are by the deprivation of liberty to varying degrees, a punishment in themselves. Therefore Correctional programs must not, except as incidental to the maintenance of discipline or justifiable segregation, aggravate the suffering inherent in such a situation.

Rule 46 (1) The prison administration shall provide for careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

2 The prison administration shah constantly seek to awaken and maintain in the minds, both of the personnel and of the public, the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

Guideline 3.5 The Administering Department must ensure that effective selection processes exist for every grade of personnel. Selection programs must reflect the needs of a professional correction service, and a career structure must exist in the service. Persons selected must be of diverse backgrounds, including persons of Aboriginal descent, with or without tertiary qualifications, who possess the qualities and skills required of prospective officers.

Guideline 3.6 Persons recruited to train as officers must possess or be capable of acquiring at least the following:

- *an ability to be objective in relation to a wide variety of offenders or prisoners;*
- *an ability to be firm, fair and understanding;*
- *an ability to translate policy and procedures into daily practice;*
- *an ability to supervise prisoners or offenders and to interview and counsel where required;*
- *an understanding and appreciation of the diversity and cultural backgrounds of offenders and prisoners; and*
- *an ability to effectively communicate and work with offenders and prisoners of all cultural backgrounds.*

Guideline 3.7 The Administering Department must ensure that appropriate training is made available to officers immediately following recruitment and, as required, throughout their career. Such training shah aim to develop jobs, specific skills and a broadening of experience to enable those officers with the capacity and desire, to progress to senior management.

Rule 31 Corporal punishment, punishment by placement in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

Guideline 5.33 Prolonged solitary confinement, corporal punishment, punishment by placement in a dark cell, reduction of diet, sensory deprivation and all cruel, inhuman or degrading punishments must not be used.

36.2.12 Generally the Guidelines provide an appropriate body of principles for the conduct of Australian prison systems structured on respect for individual human rights. It should be acknowledged that they are principles for the structure of a humane administrative system and that individual abuses by delinquent officers cannot be properly cited as evidence of a failure to establish proper standards, unless the activities of such officers are carelessly permitted or consciously tolerated by senior administrators.

36.2.13 However, if the character of the Guidelines as a statement of principles for the general structuring of a humane prison system cannot be impeached on the grounds that individuals may deviate from them, then the failure to provide adequate resources to enable them to be translated into effective operation does constitute a serious ground for criticism. The standing of these Guidelines as a sincere commitment to international prison standards is ultimately a question for the Commonwealth, State and Territory Governments. So much is acknowledged in Paragraph 7 of the preface to the Guidelines:

> *These Guidelines are not intended to be law or to be treated as absolute; they are for guidance... ultimately the desirable level of implementation is a political decision based on legislative provisions, government policies and the availability of resources..*[15]

36.2.14 The Report of the Inquiry into the Death of Daniel Raymond Joseph Lorroway by Commissioner Wyvill states that:

> *Townsville Prison was opened in 1890. Prison cell blocks A, B and C represent cell design and prison philosophy of the late nineteenth Century. Save for the addition of electric lighting there has been very little change to the cells in the intervening years. The cell blocks are highly reminiscent of, and appear to be replicas of, gaols in other parts of Australia which have since been converted into penal museums, such as the old Melbourne Gaol/Museum in which Ned Kelly was imprisoned and later hanged.*
>
> *In common with the old division of Brisbane Prison, the antiquated wings at Townsville Prison were described by the Human Rights Commission as follows -*
>
> > *In the cells in these divisions there is no running water and no sanitary sewerage disposal. Prisoners do not have automatic access to fresh water when they need it but depend upon prison officers to provide it. This is contrary to SMR [Standard Minimum Rules] Rule 20(2). Moreover, the use of buckets instead of toilets does not ensure that the prisoner is able to comply with the needs of nature in a clean and decent manner. This is contrary to SMR Rule 12. We are especially concerned at reports that Two Division cells are used as punishment cells in which prisoners are locked up for twenty-three hours each day, sometimes for months at a time. Such incarceration in such conditions is quite inconsistent with the principles set down in ICCPR [the International Covenant on Civil and Political Rights] Article 10.I.*
>
> *It was to this environment that Daniel Raymond Joseph Lorraway came on 1 November 1974, at the age of twenty-five years, to begin his last sentence.* [16]

36.2.15 It may be observed that such conditions and treatment also contravenes the Australian Guidelines, in particular, Guidelines 5.33, 5.56 and 5.64. Such sub-standard custodial conditions are not confined to Queensland. Nor are they confined simply to the domestic accommodation provided to prisoners. In March 1990, the Queensland Correctional Services Commission initiated an inquiry into the education and training needs of offenders in Queensland. *Unlocking the Minds: From Retribution to Rehabilitation* is the first report from that inquiry. It states that:

> *it should be noted that there are two national standards of which Queensland consistently and constantly is in breach in almost all Correctional Centres.*
>
> *Para. 5.63 of the 1989 Standard Guidelines for Corrections in Australia states that -*
>
> > *Prisoners should have access to a library adequately stocked with both recreational and information resources which is operated according to standard library practice. Prisoners should be encouraged to make full use of the library.*

> *There are very serious deficiencies in the library provision at all Correctional Centres even at the most basic level of standard reference books, texts, literature. Practical barriers placed in the way of prisoners' access to such limited library provision as does exist, exacerbates the problem. in all Centres, the following are especially either totally lacking or are out of date, or are available only in one security wing or compound and therefore not accessible to prisoners in other wings.* [17]

36.2.16 The report goes on to detail the need for basic school text books for secondary school studies, basic reference books such as dictionaries and technical manuals used in Technical and Further Education (TAFE) courses in vocational and technical training. The absence of such elementary materials essential to any prison education program substantially undermines the effectiveness of such programs. The report goes on to observe that the lighting in the cells of almost all of Queensland's Correctional Centres simply does not come up to the standard required by Guideline 5.26 which requires that all places where prisoners are required to live or work should have sufficient natural or artificial light to enable prisoners to read or work without injury to eyesight. It is arguable that such conditions contravene Article 5 of the ICESCR. In summation, the report states that:

> *The inheritance of a retribution-based policy from successive Governments whose practice was consciously to underfund the prison service, has left the Commission with ten out of thirteen Centres or prisons which have no purpose-designed educational facilities whatsoever. This is a particularly indefensible situation given that several have been built in the late 1960s, 70s and early 80s, by which times the value of education and training in the rehabilitation process had been well established for some decades.*
>
> *The Education Officers, tutors and prisoners are now working in conditions that no other staff or students would tolerate. It is a tribute to both that some good work does take place. But, Queensland now has to face the need to provide for the most basic facilities from a thirty-year backlog of non-spending in this area. The [Queensland Corrective Services] Commission cannot be expected to produce results in accordance with what is now normal correctional policy in Western industrialised countries, unless it is given the capital program to provide the most basic accommodation needed at each Centre. Nor can the Queensland community justifiably accept that hundreds of millions of dollars can be allocated for educational building for every other sector of society, but deliberately deny this to prisoners. To deny all prisoners out of hand even access to basic classrooms and equipment is to condemn them automatically to illiteracy, under-education and recidivism.* [18]

36.2.17 SMR 58 and Guideline 1.6 touching on the attempt to return offenders to society so that they are able to lead a law-abiding and self-supporting life through social integration on release are rendered no more than pious hopes if resources are not adequate to these ends. Guideline 1.9 suggests that:

> *Administering Departments should work towards ensuring correctional facilities and programs meet the standard guidelines for corrections set out in this document.*

36.2.18 Such a comprehensive objective, referred to as one of the 'guiding principles' of the Australian Guidelines, is rendered sterile without the commitment of sufficient funds by government.

36.2.19 Mr Dawes expressly acknowledges the fact that:

> *the Guidelines cannot themselves produce the revenue for their implementation at the most desirable levels, so ultimately a political decision has to be made, since resources have to be diverted from other community projects to the Correctional Services.* [19]

36.2.20 In referring to Dr Hookey's consideration of international law issues, Mr Dawes expressed the view that:

> *The author's approach of highlighting principles and articles in now quite outdated documents to demonstrate deficiencies in correctional systems is, I believe, flawed. In the final analysis this approach will not yield a convincing rationale, either to the community,*

administrators or Government for change. [20]

36.2.21 In the practical matter of delivering custodial conditions of a standard which embodies the principles enunciated in the *SMR* and Australian Guidelines, it is my opinion that the budgetary commitment of further financial resources is of greater immediate significance than legislative action.

36.2.22 Article 10 of the ICCPR, SMR Rule 8 and Guidelines 5.15 to 5.20 commonly acknowledge the right of unconvicted, remand prisoners to be held separately from convicted prisoners: preferably in separate institutions. I have not the slightest doubt that all senior correctional administrators in Australia would translate this principle into reality if they were physically able to do so. It should be noted that in the Annotations on the Draft International Covenants on Human Rights it is observed that:

> *A proposal that accused persons should be placed 'in separate quarters' was considered to raise serious practical problems if adopted, States Parties might be obliged to construct new prisons.* [21]

36.2.23 The prime issue is the provision of resources to translate accepted international standards into practice. As expressly stated in the Preliminary Observations to the United Nations SMR:

> *They should... serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are acceptable as suitable by the United Nations.*

36.2.24 It is not merely a question of money for buildings. As Mr Dawes stated to this Commission:

> *Until very recently, much of South Australia's prison accommodation was substandard. Adelaide Gaol in particular, was a disgrace. The situation has altered greatly through this Government' s firm commitment to upgrade the State' s correctional facilities. That has not been achieved at the expense of expenditure upon human resources. Much needed senior management and support staff have been introduced to the Department and staff training has increased enormously.* [22]

Recommendation 328:

That as Commonwealth, State and Territory Governments have adopted Standard Guidelines for Corrections in Australia which express commitment to principles for the maintenance of humane prison conditions embodying respect for the human rights of prisoners, sufficient resources should be made available to translate those principles into practice.

36.2.25 While the effective enjoyment of a human fight is more substantial than its legal prescription, legislation to guarantee certain minimal entitlements is clearly required. The Victorian *Corrections Act,* 1986, Division 4 codifies certain basic 'Prisoners Rights'. They include the fight of daily access to the open air in accord with the SMR, the right to adequate food, medical and psychiatric care, the fight to annual review of classification, the right to make complaints concerning prison management to the Minister, the director-general, the governor, and official visitor and the ombudsman with an express provision that letters to the ombudsman should not be opened by prison staff, the fight to send and receive other letters uncensored by prison staff 'subject to security considerations', and the fight to practise a religion of the prisoner's choice. These prisoners fights are additional to 'any other fights which a prisoner has under an Act other than (the *Corrections Act) or* at a common law '.

36.2.26 Such elementary fights should be axiomatic and given the immediate protection of law throughout Australia.

Recommendation 329:

That the National Standards Body comprising Ministers responsible for corrections throughout Australia give consideration to the drafting and introduction of legislation

embodying the Standard Guidelines and in drafting such legislation give consideration to prisoners' rights contained in Division 4 of the Victorian Corrections Act 1986.

36.2.27 Both the SMR and the Australian Guidelines are primarily directed to setting standards for the treatment of prisoners generally. They are primarily concerned with individual rights. While broader international treaties, identifying collective political, social, cultural and economic rights, may be considered applicable to prisoners [23] the SMR and Guidelines do not directly refer to the special, collective needs of groups such as the Aboriginal people. Rule 6 (2) of the SMR refers to the need to 'Respect the religious beliefs and moral precepts of the group to which a prisoner belongs'.

36.2.28 Guideline 1.5 provides generally that:

> *Services, facilities, activities and programs should be based on the concept of individual management and designed to meet the individual needs of offenders and prisoners. In particular, regard should be paid to the special needs of specific groups of offenders and prisoners.*

36.2.29 Guideline 1.8 already quoted states that:

> *There must be no discrimination in any aspect of Correctional programs on the grounds of race, colour, gender, marital status, physical or mental impairment, language, religion, political or other opinion, national or social origin, property, birth or other status, except as is necessary in properly meeting the needs of a disadvantaged individual or group.*

36.2.30 Given the marked level of over-representation and the substantial number of Aboriginal people consistently held within Australian prison systems, the failure of the Guidelines to recognise the distinct needs of Aboriginal prisoners is a glaring omission. The only oblique reference to the specific kind of responses required of Australian Correctional systems is in Guideline 3.5. It contains the only reference, and only by implication, to the presence and needs of Aboriginal prisoners. It provides that in the recruitment of prison officers:

> *[p]ersons selected must be of diverse backgrounds, including persons of Aboriginal descent, with or without tertiary qualifications, who possess the qualities or skills required of prospective officers.*

36.2.31 The failure to directly recognise the culturally unique requirements of Aboriginal prisoners is perhaps a reflection of the consultative process leading to the formulation of the Australian Guidelines. The Preface to the Guidelines acknowledges participation by correctional administrators, the Australian Institute of Criminology, Prison Officers, ex-prisoners, prisoners' action groups, the New South Wales Law Foundation and Council for Civil Liberties, the Prisoners Aide Association of South Australia and visiting experts from Canada, Sweden and New Zealand. There is no reference to any Aboriginal organisation.

36.2.32 In this connection I note the remarks of the New Zealand Minister of Justice who chaired the Conference of Ministers of Corrections at which the Commonwealth of Australia and all States and Territories agreed to the Guidelines in 1989:

> *I perhaps could say from the New Zealand Government point of view we do appreciate very much the good and hard work that has gone into this over a period of a decade. We look on these standards with great favour but, in order to adopt them into our system, there are certain processes we have to go through, one of which is to consult with the Tangata Whenua (a Maori organisation)... This is a process of considerable sensitivity and importance for us. There is, in our system, some demand on occasion for some people to have cells where they can associate with each other. That means that some of the Guidelines here would need some adaption from our point of view. Nevertheless, we are proposing to go through a series of consultations and we are proposing to work through these from the point of view of our own situation to arrive at some outcome which will not be too dissimilar.* [24]

36.2.33 The absence of any express consideration of the particular needs of Aboriginal people in the Australian Guidelines is perhaps explained by the absence of any expressed reference to consultation with any Aboriginal organisation in the drafting or adoption of the Guidelines. The desirability, indeed the necessity, for such consultation is underlined by the following matters.

36.2.34 The Western Australian Crown Solicitor criticised Dr Hookey's discussion paper in the following terms:

> *IT]he Report contained suggestions which, if implemented, could exacerbate the problem of Aboriginal deaths in custody. For example, the Report recommends the implementation of the 'Standard Minimum Rules for the treatment of prisoners'. It is suggested that these Rules provide a 'basic standard which, if not met, indicates inadequacies in the penal system' (p. 121). Rule 9 (1) provides that-*
>
> > *[E]ach prisoner shah occupy by night a cell or room by himself... it is not desirable to have two persons in a cell or room.*
>
> *Commissioner Muirhead' s Interim Report (in December 1988) stated that-*
>
> > *[C]ell sharing (by Aborigines) is likely to reduce the incidents of deaths in custody and parties who have made submissions to the Commission have claimed that this is so. (p. 36).*
>
> *In the eighteen months since then, that view has been supported by all parties appearing before the Commission.* [25]

36.2.35 The point is raised in the remarks of the New Zealand Minister of Justice quoted above when he refers to the need to consult with the Maori organisations.

> **Recommendation 330:**
>
> ***That the National Standards Body establish and maintain direct consultation with relevant Aboriginal organisations including Aboriginal Legal and Health Services.***
>
> **Recommendation 331:**
>
> ***That the National Standards Body consider the formulation and adoption of guidelines specifically directed to the needs of Aboriginal prisoners. In that process the findings and recommendations of this Commission relating to custodial conditions and the treatment of Aboriginal persons in custody should be taken into account.***

36.2.36 While the United Nations SMR are explicitly designed to establish basic standards for the protection of prisoners, other international instruments are broader in their objectives. Article 7 of the ICCPR provides that 'No-one shall be subjected to torture or to creel, inhuman or degrading treatment or punishment '.

36.2.37 Article 10 provides that 'All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person'.

36.2.38 Such prohibitions, ratified by Australia, clearly extend to all persons deprived of their liberty--not merely convicted prisoners. This directly raises the question of the conditions and standards of treatment afforded to persons held in police custody. It is an area of great significance. Substandard conditions are not only more prevalent in police cells, they also affect a far greater number of people, both Aboriginal and non-Aboriginal. In June 1989, 12,964 persons were held in prison: 1,825 were Aboriginal people. In August 1988, 27,525 people were held in police custody: 7,880 were Aboriginal people. [26] Of the ninety-nine deaths investigated by this Commission, thirty-three occurred in prisons, three in juvenile centres and sixty-three in police custody.

36.2.39 The Police Federation of Australia and New Zealand presented recommendations to this

Commission concerning a variety of matters. Recommendation 3 stated:

> *As the Federation believes that the inhumane conditions in police detention centres in numerous instances may well contribute to the psychological trauma being faced by people at the time of detention and this increased psychological pressure, may well be a major contributing factor in the suicide of persons in custody. [sic]*
>
> *This factor at least may be remedied by a realistic infusion of funds to upgrade the detention facilities to at least a standard where they are fit for human habitation and not the inhumane hovels in which many of these people are incarcerated at the present time.* [27]

36.2.40 The adoption of Standard Guidelines for Corrections in Australia should be replicated by the formulation and adoption of similar guidelines for police custodial facilities. There is absolutely no reason in point of common sense or principle as to why the basic human fights of persons in police custody should receive less attention than those of prisoners. Certain police custodial facilities in fact serve to hold prisoners. In Commissioner Wyvill's report into the death of John Pilot it was observed that:

> *The [Brisbane City] Watch-house occupies two levels within the building. On Level One, there are police officer facilities, the charge counter and eleven cells. On Level Two, there are twenty-five cells. This level is used mainly to house prisoners unable to be accepted at the Brisbane Prison, together with the overflow of prisoners being held in police custody awaiting court appearances who are unable to be accommodated in cells on Level One. Pilot was a remand prisoner and was held on Level Two.* [28]

36.2.41 In his report, Commissioner Wyvill found that prisoners held on Level Two were unable to attract the attention of police custodians in the case of an emergency. Such conditions would contravene Guideline 5.75 in relation to correctional facilities. Provision of some means to attract the attention of custodians in the case of a medical or other emergency is absolutely fundamental. The absence of such provision constitutes a breach of Australia's treaty obligations under Articles 6 and 7 of the ICCPR and Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

36.2.42 The same conclusion may be drawn regarding the watch-house at Wujal Wujal, a description of which is given in Chapter 24.

> **Recommendation 332:**
>
> ***That the Commonwealth State and Territory Ministers for Police should formulate and adopt standard guidelines for police custodial facilities throughout Australia.***

36.2.43 The frank statement of the Police Federation of Australia and New Zealand regarding the appalling nature of many police cells clearly suggest that, day by day, Aboriginal and other people are held in conditions which contravene Australia's international treaty obligations and standards set by other relevant international instruments. As with substandard prison conditions the provision of resources, or, as expressed in the Federation's recommendation 'a realistic infusion of funds', is vital to remedy the problem. The Police Federation expresses a consciousness, common among senior police administrators in Australia, that such conditions directly contribute to Aboriginal deaths in custody and constitute an abuse of basic human rights.

36.2.44 This consciousness of human rights and international standards relating to both police and prison custody is to be commended. Substantial government funds have already been devoted, not only to the replacement or renovation of custodial facilities, but also to the equally important matters of the selection, training and equipping of custodial officers and to the formulation of improved systems and procedures. While acknowledging these facts, it is necessary to identify the most significant areas where international standards have been contravened and the further action required to address them.

36.2.45 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, Article 1, defines torture to be:

> *Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person. information or a confession, punishing him for the act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of the public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

36.2.46 Dr Hookey suggests the domestic implementation of this prohibition throughout Australia by Commonwealth legislation (which presently only applies to such acts committed outside Australia by persons who are Australian citizens or residents) [29] is inadequate In response to this suggestion, Ms M. Doyle, Director of Policy and Research, Crown Solicitor's Office, South Australia, argues that:

> *All States have laws which make, for example, assault a criminal offence. Were the Commonwealth to legislate against torture, arguments could well arise as to whether an assault was merely an assault or torture. This sort of argument is as barren as jurisdictional arguments and brings the legal system into disrepute. Jurisdictional arguments have now been eliminated with the enactment of the cross-vesting legislation and it would be unfortunate if a new type of barren argument was to be created.* [30]

36.2.47 Both the Convention Against Torture and the ICCPR provide for the right of individual petition to the United Nations Committee against Torture and to the Human Rights Committee, respectively. The right of individual petition can only be invoked when the petitioner has exhausted all available domestic remedies. Article 22 (5)(b) of the Convention Against Torture excuses the petitioner from exhaustion of all available domestic remedies if they are unreasonably prolonged or unlikely to bring effective relief.

36.2.48 If Australia's present domestic legislation proves inadequate to provide proper relief to a person claiming to have suffered torture (or the lesser abuse of cruel, inhuman or degrading treatment or punishment) then the safeguard of the right of individual petition should be available. It does no more than provide a means of ultimately protecting the individual through direct access to international review of Australia's commitment to fundamental standards of treatment. Decisions of the relevant committees also provide authoritative interpretations of convention obligations. While Australia has ratified both the Convention Against Torture and ICCPR, further acts are required to confer the right of individual petition on Australian citizens. The conferring of these rights is a means by which Australians can demonstrate before the international community that it is confident both that it is complying with the Convention and that its domestic laws provide adequate opportunities for citizens to obtain relief in respect of any act which is inconsistent with the Convention.

> **Recommendation 333:**
>
> ***While noting that in no case did the Commission find a breach of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, it is recommended that the Commonwealth Government should make a declaration under Article 22 of the Convention and take all steps necessary to become a party to the Optional Protocol to the International Convention on Civil and Political Rights in order to provide a right of individual petition to the Committee Against Torture and the Human Rights Committee, respectively.***

36.2.49 In the context of the work of this Commission, particular importance attaches to Article 6 of the ICCPR (quoted above). I mention that Australia, along with other States, is required to give periodic reports concerning its domestic implementation of this Convention and in 1988 a question was raised concerning the fight to life, referred to in Article 6 and questioning regulations in respect of police (ab)use of prisoners. I mention this matter to show the international community exercises surveillance of member States in respect of those obligations.

RIGHT TO LIFE

36.2.50 The protection of the right to life referred to in Article 6 is, according to Dr Hookey's paper, widely interpreted.

36.2.51 Following a consideration of the relevant international jurisprudence relating to Article 6 of the ICCPR, Dr Hookey concludes:

> *Whilst these decisions of the Human Rights Committee deal with factual situations where intentional killing almost certainly took place, it would be a mistake to conclude that the obligations of States Parties under Article 6 in respect of persons in custody are confined to refraining from arbitrary executions. The principles enunciated are far wider, and extend to the recognition of a duty, not only to refrain from the arbitrary taking of life, but also to establish and maintain conditions of custody consistent with the recognition of the right to life as the most fundamental human right. The countenancing by a State Party of prison conditions (or conditions of police custody) which induce, encourage or permit suicide or the arbitrary killing of prisoners is as much a breach of Article 6 as is the intentional killing of prisoners.*
>
> *The jurisprudence of the European Commission and Court of Human Rights is consistent with this conclusion. In Association X v United Kingdom, (7154/75) DR14, at page 31 quoted in Sieghart, The International Law of Human Rights, at page 133, the European Commission in dealing with the requirement that the "right to life shah be protected by law", said that this imposed the duty upon the State not only to refrain from taking life intentionally but also to take appropriate steps to safeguard life. And, in an admissibility decision, Simon-Herold v Austria, (4340/69) CD38, p. 18, also noted in Sieghart at page 133, the Commission held that a prisoner's complaint that his prison conditions and the negligence of his prison officers resulted in serious illness and loss of weight raised a right to life issue.* [31]

36.2.52 I do not propose to refer to individual cases which have already been discussed, particularly in Chapter 3, but it is quite clear that the circumstances of a number of the deaths inquired into by the Commission disclosed a failure to provide adequate and timely medical attention and disclosed, *inter alia,* that it is clear that these matters require very careful consideration and prompt attention, primarily to avoid any repetition but also to ensure that Australia meets its obligations under the fight to life Article of ICCPR.

36.2.53 The conditions in some police cells, as disclosed by the reports of Commissioners, would also raise similar questions as would such matters as prisoners being left overnight in cells without supervision and without a means of communicating with the custodial authority, failure to provide an available source of good drinking water to those in custody and failure to provide meals to those in custody at regular eating times. These are all matters referred to in the reports. I do not think this is a matter which requires legislation; standard minimum rules which have been adopted deal with such matters. I return to the point that what is needed in some areas is the infusion of the funds necessary to ensure that the guidelines become reality and in this connection I quote Recommendation 3 of the recommendations contained in the submission of the Police Federation of Australia and New Zealand:

> *As the Federation believes that the inhumane conditions in police detention centres in numerous instances may well contribute to the psychological trauma being faced by people at the time of detention and this increased psychological pressure may well be a major contributing factor in the suicide of persons in custody. [sic]*
>
> *This factor at least may be remedied by a realistic infusion of funds to upgrade the detention facilities to at least a standard where they are fit for human habitation and not the inhumane hovels in which many of these people are incarcerated at the present time.* [32]

36.2.54 However, I also draw attention to the point made earlier that while there will be many difficult questions to be faced in the allocation of scarce resources the most pressing priority is the task of

reducing the number of people in custody.

36.3 Convention on the Prevention and Punishment of the Crime of Genocide

36.3.1 The Convention on the Prevention and Punishment of the Crime of Genocide was drawn up as a response to the policy of extermination of the Jewish people which had been exposed during the Nuremberg Trials of prominent Nazis after the Second World War. The Convention came into force on 12 January 1951, although Australia had ratified it on 8 July 1949 and passed the *Genocide Convention Act 1949* which came into force on 12 July 1949.

> *Article II*
>
> *In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*
>
> *a.* *killing members of the group;*
>
> *b.* *causing serious bodily or mental harm to members of the group;*
>
> *c.* *deliberately inflicting on the group conditions of life calculated to bring about its physical* destruction in whole or in part;
>
> *d.* *imposing measures intended to prevent births within the group;*
>
> *e.* *forcibly transferring children of the group to another group.* [33]

36.3.2 The applicability of this Convention to the situation of Aboriginal people was raised by a submission made by the National Aboriginal and Islander Legal Services Secretariat (NAILSS) to Commissioner Wootten during the course of his inquiry into the death of Malcolm Smith in the Metropolitan Reception Prison at Long Bay, Sydney, in 1983.

36.3.3 The NAILSS submission related specifically to paragraph (e) of Article II and argued that the policy and practices of assimilation which were adopted by Australian Governments constituted a breach of the Convention.

36.3.4 The first issue which needs to be considered is the manner in which the question of genocide is raised. Since the arrival of Europeans in Australia there can be no doubt that in various instances the treatment of Aboriginal people, at least by private individuals, was intentionally homicidal. European shooting parties and the poisoning of waterholes were undertaken with the clear intention to either immediately destroy groups of Aboriginal people or with a recklessness as to their survival when driven from and deprived of their land. However, these gross, historical instances of criminal conduct are well beyond the operation of the Convention in point of time. The thrust of the NAILSS submission is not directed to erratic, overtly criminal actions of individuals or groups but to the deliberate pursuit of public policy by State and Commonwealth Governments which had the purpose of transferring members of one section of the Aboriginal community, namely those not of full blood, from Aboriginal society and placing them in non-Aboriginal society. The result was that they lost their Aboriginal identity and association with members of their race.

36.3.6 The essential question is whether policies of assimilation as practised in Australia since 12 January 1951 constitute genocide. [34] This question is most acutely raised by the forceful transfer of Aboriginal children from their parents into the care of State institutions or placements with non-Aboriginal families.

36.3.7 The crime of genocide requires the act constituting it to be performed intentionally. The crucial issue of intention raises difficulty because assimilationist policies are clearly undertaken, not for the purpose of exterminating a people, but for their preservation. Whether or not they are informed by despairing, patronising or idealistic motives, such policies are ultimately benign in so far as they intend to preserve the individual members and their descendants but as members of a different culture.

36.3.8 The history and practices of the assimilation policy are discussed in detail in Chapter 20. While at various times and places there were various forms of assimilation practised in Australia, its essential characteristics and intended effects are illustrated by the following passage from a Commission research paper entitled *The Impact of Queensland's Family and Child Welfare and Juvenile Justice Legislation, Policy and Practice on Aboriginal and Torres Strait Islander Families and Children:*

> *Removals to reserves provided the basis for segregation from White society and for an institutional environment in which the inmates' ways of living could be reformed. This agenda--i.e. the eradication of Aboriginal culture -as to be effected through the socialisation of the children. Efforts to reclaim adults were perceived to be doomed-*
>
> > *"The Aboriginal must, for his own contentment and comfort, be allowed to live more or less in his own native fashion, and the discipline and smartness possible in a reformatory or a benevolent asylum could not possibly be maintained where old myalls or bush blacks are concerned, for they absolutely refuse to avail themselves of better accommodation or conditions when offered to them... But, with every means at our disposal we are endeavouring to raise the younger generation to a higher and better place of life, though at times the results are discouraging ".*
> >
> > *(Bleakley cited in Long, 1970:97)*
>
> *Most missions and reserves established dormitories in which children were separated from their parents and siblings of the opposite sex. Dormitories played a central role in efforts to socialise children into new ways of thought and behaviour. Many children were therefore raised in institutional environments, deprived of normal experiences of childhood, and importantly, deprived of an environment in which they observed processes of non-institutional child rearing. The legacy of this system is inherited today. In relation to the Young Man who died at Wujal Wujal, Commissioner Wyvill commented -*
>
> > *"The dormitory system involving the separation of children from their parents for considerable periods, and the infiltration of Christian and White values, combined to erode the influence of traditional practices and authority structures. Thus, much of the power which once accrued to the elder male leadership of kin and language groups now devolved to White administrators and was personified in the form of the mission' s superintendent"* [35]

36.3.9 In a further submission to this Commission, NAILSS accepted that 'The inclusion of an element of intent (in the Genocide Convention) raises particular problems'. [36]

36.3.10 The particular problem with respect to intention relates to the words with which Article II commences. There would seem to be overwhelming evidence, and, as I will show, the Australian Government now acknowledges this to have occurred, that after ratification of the Convention Aboriginal children were forcibly transferred from their families to non-Aboriginal families and to institutions. But was this done with the intention 'to destroy, in whole or in part, [a] national, ethnical racial or religious group, as such'. [37]

36.3.11 As is described in Chapter 20 of this report the assimilation policy was agreed to by the heads of State and Territory Aboriginal affairs authorities in 1937, and, whilst by 1951 all Australian Governments claimed that they had adopted the policy, interpretations of what assimilation meant differed. It was not until 1961 that a common definition was agreed to at the Native Welfare Conference of Commonwealth, State and Territory authorities. The agreed definition was that:

> *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.* [38]

36.3.12 As also described in Chapter 20, from 1962 the policy began to be called 'integration' rather than

'assimilation' and was accompanied by the repeal of many of the restrictive laws which had been imposed upon Aboriginal people. The change in nomenclature and the repeal of such laws was in part a response to claims that Aboriginal people had been denied their basic rights to live in their own way. Professor A. P. Elkin, who had played an influential role in articulating to government the principles of and need for the assimilation policy, said of the new policy that it meant that 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'. [39]

36.3.13 The attitude of the Australian Government towards the assimilation era was stated in 1988, as described in Dr Hookey's paper:

> *There is now, at least in official circles, an awareness that past policies of assimilation were a mistake. In the responses of the Australian Representative to the questions of the Human Rights Committee during the consideration of Australia's Second Periodic Report on its implementation of the International Covenant on Civil and Political Rights in 1988, it was -*
>
> > *acknowledged that the public policy regarding the care of Aboriginal children, particularly during the post war period, had been a serious mistake. The practice of taking Aboriginal children away from their parents and placing them in foster homes or institutions had been extremely offensive to Aboriginal and Island communities. The erroneous and paternalistic view on which that practice had been based had been replaced by the recognition that Aboriginal people should be treated like anyone else.* [40]

36.3.14 The statement made by the Australian representative has many problematic elements. The suggestion that Aboriginal people 'should be treated like anyone else' could convey meanings very similar to those of statements made pursuant to the very policy which he was denouncing. The Commission did not receive a submission from the Australian Government with respect to Dr Hookey's paper, although one was invited. In the absence of a submission I will not speculate on what meaning the statement of the Australian representative was intended to convey.

36.3.15 It is, however, by no means clear that policies of assimilation (or integration) were implemented with the intention of destroying the racial group, i.e. the Aboriginal race, as such.

36.3.16 It needs to be noted that the philosophy of assimilation was not unique to policies implemented in Australia. Indeed, during the drafting of the ICCPR (described in section 5 of this chapter) the General Assembly of the UN considered the issue in the context of framing Article 27 of the Covenant which provides a fight for ethnic minorities to practice their own culture. Dr Hookey referred to the official report of the proceedings of the General Assembly in these terms:

> *The 1955 Annotations, op. cit. at p. 63 summarise the discussion when Article 27 was at the drafting stage. It is recorded that*
>
> > *"It was agreed that the article should cover only separate or distinct groups, well-defined and long-established on the territory of a State."*
>
> *Reflecting the prevailing philosophies of the times, it is recorded that Article 27 should not be applied so as to obstruct the process of assimilation.* [41]

36.3.17 It is clear therefore that the notion of assimilation, at least in its broad terms, was not seen by the UN to meet the criteria of the Convention against genocide.

36.3.18 It should be said that the policy of removing children pre-dates (at least in some places) by a quarter century the adoption of the policy called assimilation. This was well demonstrated by the submission made by NAILLS in the inquiry into the death of Malcolm Smith. I quote:

> *The policy of widescale seizure of Aboriginal children commenced in earnest with the Aborigines Protection Board in 1909 and was continued by its various welfare successors into the late 1960s. Goodall's research has uncovered explicit strategy statements in the*

Reports and Minutes of the Board.(Submission p.l) They are frankly genocidal;

> *"Reduction of the Aboriginal birthrate by removal of adolescents, particularly girls. Prevention of Aboriginal children's identification with the Aboriginal community by: isolating them from their families and communities through adolescence and preventing or hindering their return to their families or the Aboriginal community at the end of the terms of 'apprenticeship'".* [42]

36.3.19 In his report of the inquiry into the death of Malcolm Smith, Commissioner Wootten said that:

> *In its crudest forms the policy of assimilation fell within this modern definition of genocide and in particular the attempt to 'solve the Aboriginal problem' by the taking away of children and merging them into white society fell within that definition* [43]

36.3.20 I am informed by Commissioner Wootten that he was making the point that acts committed earlier in the century by people convinced of their righteousness would, if committed today, be regarded as genocide. This in itself is a striking testimony to the advance of the world's conscience in relation to indigenous people. As his subsequent remarks show, Commissioner Wootten was directing attention not to the question of possible breaches of the Convention, which in any event did not come into force in relation to Australia until 1951, but the remedying of the destructive effects of past policies where those effects continue to contribute to the numbers of Aboriginal people being placed in custody and to Aboriginal deaths in custody. These effects have been acknowledged and discussed in various parts of this report.

36.3.21 I have not heard any argument on this question. The Commission requested Dr Hookey on behalf of the Aboriginal Law Centre, University of New South Wales to produce his paper on this and other issues. Dr Hookey writes:

> *Although intent is difficult to establish in many cases, as emphasised by Rodley, in The Treatment of Prisoners under International Law, Clarendon, 1987, at pages 54 and 148, it is, at least, arguable that past policies of assimilation, removal of peoples from their lands, and the taking of Aboriginal children from their parents, being intentional and having the tendency to destroy the Aboriginal people as a separate group in order to assimilate them in the white community, fall within the acts prohibited by Article II (c), (d) and (e). The Genocide Convention, though drawn up in response to the events of World War II, applies both in times of peace as in times of war, and to events within the territory of States Parties.* [44]

36.3.22 It has not been suggested to me that any particular act of the Commonwealth or of any other authority constituted a breach of the Convention, although it has been suggested that particular things done fell or might fall within the definition.

36.3.23 I think that it should be said that whatever is now thought to be the position the Commonwealth Government and the parliament clearly acted in good faith. By Act No. 27 of 1949 (assented to 12 July 1949) parliament approved the ratification by Australia of the Convention.

36.3.24 The Convention does not provide any mechanism for compensating people who suffered as a result of genocidal behaviour, even if that was established as having occurred. The real point, and the matter which must be acknowledged and addressed, is that the assimilation policies produced devastating effects on Aboriginal people, tore families apart and has left a legacy which is central to explaining the disadvantages and, in many cases, the despair and anger which Aboriginal people now experience. What matters is what Australia now does to redress the wrongs which those failed policies did to Aboriginal people.

36.3.25 It is not my function to interpret the Convention or to decide whether it has been breached, particularly since the policies involved were modified in 1962 somewhat and abandoned by 1970.

36.4 International Conventions on all forms of Racial Discrimination

36.4.1 Australia ratified the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) in September 1975. Article 1 defines racial discrimination as follows:

> *In this Convention the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

36.4.2 Article 5 creates a positive obligation on Australia to prohibit and eliminate racial discrimination and to guarantee equality before the law. Such equality of legal protection extends not only to the protection of individuals before the criminal law but also to a equality of entitlement to economic, social and cultural rights.

36.4.3 As Dr Hookey observes:

> *The* Racial Discrimination Act 1975 *partially implements the Convention, which is contained in a Schedule to that Act. The Racial Discrimination Act 1975/s administered by the Human Rights & Equal Opportunity Commission. Implementation takes two main forms: firstly, racial discrimination inconsistent with Article 5 of the Convention is made unlawful in a civil, rather than criminal sense; and secondly, racially discriminatory laws of the Commonwealth, the State, or a Territory are nullified by the technique of providing, by Section 10 of the Racial Discrimination Act 1975, for the right to take away by the discriminatory law to be restored by Section 10.* [45]

36.4.4 The operation of the Human Rights and Equal Opportunity Commission (HREOC) and the effectiveness of Commonwealth and equivalent State Equal Opportunity Legislation is considered in Chapter 29

36.4.5 In the present context of examining the broad import of Australia's treaty obligations, it may be said that the provision of such domestic legislation represents appropriate action to eliminate racial discrimination within Australia. While the chosen method places great reliance on conciliation, the legislation, nonetheless, offers effective protection and remedies.

36.4.6 Section 10 of the *Racial Discrimination Act 1975 (Commonwealth)* constitutes an effective measure to implement the specific obligation under Article 2 (1) (c) 'to amend, rescind or nullify any law ... which has the effect of creating or perpetuating racial discrimination. '.

36.4.7 However, Australia's obligations under ICERD extend beyond the prohibition and provision of redress for specific acts of discrimination; they further require progressive measures to equalise the effects of past discrimination or to trot special needs.

36.4.8 Article 2 (2) states that:

> *States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing the full and equal enjoyment of human rights and fundamental freedoms. These measures shah in no case entail as a consequence maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.*

36.4.9 Such special measures entail, in effect, policies and programs which provide a form of positive discrimination in favour of individuals or groups such as Aboriginal people. Such measures are required to neutralise the effects of past discrimination, historical legacies or present attitudes which operate to reduce the ability of Aboriginal people to enjoy the entire range of human rights and freedoms which the law may provide to them, but present circumstances impede them from fully enjoying. Such special

measures are clearly forms of discrimination, in the sense that they represent a form of different treatment directed towards an individual or group because of their racial or ethnic identity.

36.4.10 Article 4 of ICERD deals with this matter directly:

> *Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure that such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shah not be continued after the objectives for which they were taken have been achieved.*

36.4.11 Given the existence of certain policies and programs developed by the Commonwealth and State Governments which are specifically directed towards the economic, social and cultural advancement of Aboriginal people, there can be little doubt that Australia has moved to promote access to the full range of human rights for Aboriginal people. In Chapters 33 and 34 matters such as ABSTUDY and the Aboriginal Employment Development Policy, are considered. They provide examples of programs and policies which are clearly designed to meet the special needs of Aboriginal people and to advance their educational and economic opportunities. While there may be criticism of the effectiveness of such policies and programs, it is clear that they provide examples of endeavours to implement objectives such as those identified in the Annual Report 1989-90 of the then Department of Aboriginal Affairs:

- to serve Aboriginal and Torres Strait Islander people by working to achieve in the longer term, a situation of justice and equity where Aboriginals and Tones Strait Islanders have sufficient economic and social status to enjoy civil, social and economic fights on an equal basis with all other Australian citizens;
- Aboriginal and Torres Strait Islander culture should be recognised as an integral and distinctive part of Australian cultural life and heritage;
- government and other services should be adapted and expanded as necessary, and certain special benefits ...not generally available to other citizens-should recognise Aboriginal and Torres Strait Islander people's unique circumstances, history and identity.
-

36.4.12 These objectives, and the policies and programs which flow from them, represent 'in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection' of the rights of Aboriginal people to the full and equal enjoyment of human rights and fundamental freedoms. They accordingly conform with Australia' s obligations under Article 2 (2) of ICERD.

36.4.13 On ratification of ICERD in 1975 Australia made an express reservation regarding the matter of racial vilification. It was declared that Australia was not at present able to treat as offences all the matters covered by Article 4. In addressing the Committee on the Elimination of Racial Discrimination (CERD) in August 1988 on the occasion of the consideration of Australia's Fifth Periodic Report, the Australian representative

> *stated that the Australian Government was reconsidering its position on the basis that Article 4 should not be read in isolation from the rest of the Convention, and should be interpreted as requiring States to adopt further legislative measures only in so far as that was consistent with fundamental rights of freedom of speech and expression embodied in the Universal Declaration of Human Rights and expressly set forth in Article 5 of the Convention. [46]*

36.4.14 Australia' s reluctance to introduce legislation in this area, in my opinion, reflects a genuine concern not to erode freedom of speech. As such it cannot properly be said to represent a repudiation of the principle implicit in Article 4, so much as a concern not to repudiate another fundamental human right. It is a question of balancing two competing principles. As the Australian representative expressed it, the position originally adopted is under reconsideration. The recent HREOC lnquiry into Racial Violence and

the introduction of State legislation in this area warrants the growing concern that action should be taken in line with Article 4.

36.4.15 In Chapter 29 the issues of racial vilification is considered in detail and I recommend that appropriate legislation prescribing racial vilification should be introduced by all governments. In my opinion, the Commonwealth has a particular obligation in this area in order to more fully implement ICERD. Consideration should also be given to the making of a declaration that Australia recognises the competence of CERD to receive and consider individual petitions relating to the provisions of ICERD.

36.5 International Covenant on Civil and Political Rights (ICCPR)

36.5.1 Australia ratified the International Covenant on Civil and Political Rights (ICCPR) on 13 August 1980. With respect to Article 1 Australia made no reservations or declaration and those which it had to Articles 2 and 50 it withdrew in 1984. I have already discussed Articles 6 and 7 in the context of custodial issues. Article 1 addresses broader questions with which I will now deal.

36.5.2 This article provides:

> *Article I*
>
> *1 All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
>
> *2 In no case may a people be deprived of its own means of subsistence.*
>
> *3 The States Parties... shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.* [47]

36.5.3 I have discussed this Convention in Chapter 20 which deals with the policy of self-determination for Aboriginal people. Dr Hookey notes that this Covenant has not been incorporated into domestic law, although its text was included as a schedule to the *Human Rights Commission Act 1981* and then to the *Human Rights and Equal Opportunity Commission Act 1986.* At best, however, this entitles the Human Rights Commission to investigate and report with respect to the extent to which Commonwealth instrumentalities are complying with the Covenant in their practices.

36.5.4 Compliance with the Covenant is monitored at an international level by the obligation imposed on governments to report to the Human Rights Committee of the UN General Assembly. Dr Hookey suggests that the committee has limited resources and is restricted in the monitoring role which it can perform.

36.5.5 The use of the word 'peoples' in paragraph 1 raises the question of whether this Article applies to Aboriginal people. The reference to 'peoples' needs to be contrasted with reference to 'minorities' contained in Article 27 of the same Covenant. Article 27 reads:

> *Article 27*
>
> *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their culture, to profess and practise their own religion, or to use their own language.* [48]

36.5.6 Dr Hookey observed that there was reluctance among those seeking to assert a right to self-determination under Article 1 to also seek the protection of Article 27 for fear that in so doing they would be categorised as belonging to a 'minority' and thus be denied the broader rights provided by Article 1. In its submission to the Commission NAILSS refers to that concern and says that:

> *Treatment as minorities has been widely rejected by indigenous groups as incompatible with their aspirations for self-determination and with the maintenance of their distinct cultures,*

religious and social organisations. [49]

36.5.7 NAILS S, however, argues that Article 27 does represent a step beyond the Universal Declaration of Human Rights which emphasises individual freedoms in that the Article provides collective rights. NAILSS suggests that there is nothing to prevent indigenous people being both members of a minority group and at the same time 'peoples'. [50] Dr Hookey shares that view [51] and accepts that the notion of 'peoples' should not be, and is not restricted only to the inhabitants of colonial nations which sought to achieve independence after the Second World War. The word appears to be used in its most general sense.

36.5.8 Assuming that Article 1 does apply to Aboriginal people the critical question is what is meant by a 'right to self-determination'. The Covenant does not provide a definition. NAILSS, as I describe in Chapter 20, sees the concept as being one providing a spectrum of possibilities rather than having any rigid meaning. Dr Hookey refers to the 'Annotations on the Text of the Draft International Covenants on Human Rights' prepared in 1955 by the Secretary-General of the United Nations ('the Annotations'). The Annotations provide the record of discussion of the General Assembly.

36.5.9 Dr Hookey notes that suggestions that the right of self-determination should include the right to establish an independent State and to secede from or unite with another people were specifically rejected by the General Assembly, on the basis that it was preferable not to attempt to define self-determination beyond the terms of Article 1. [52] Dr Hookey concludes that it does not follow that the right of serf-determination would, in every situation, provide a right to independence as a separate and distinct sovereign State. [53] He quotes Professor Garth Nettheim:

> *[P]eople exercising their right to self determination may choose from - and may even be confined to - a range of possible outcomes other than independence: those include federal arrangements, regional autonomy and full integration.*

36.5.10 Although NAILSS places substantial emphasis on the right to self-determination contained in Article 1 it does not seem to me that Aboriginal people need to depend upon the Covenant as the basis for insisting that they be granted self-determination. The necessity for and general acceptance of that principle as the basis for policy in Aboriginal affairs is discussed in detail in Chapter 20.

36.6 International Labour Organisation: (ILO 169) Convention Concerning Indigenous and Tribal Peoples in Independent Countries

36.6.1 For completeness in the discussion of indigenous fights under international law it is necessary to consider the Convention, ILO 169. This Convention was finalised in June 1989, but it has not been ratified by Australia. The Convention applies to 'tribal peoples' and to 'indigenous peoples' and quite clearly would cover Aboriginal people.

36.6.2 Article 1, paragraph 3, provides:

> *The use of the term 'peoples' in this Convention shall not be construed as having any implications as regard the rights which may attach to the term under international law.* [54]

36.6.3 The relevant Articles endorse the right of indigenous people to a whole range of individual human fights and freedoms and for the protection of their culture, institutions, property and environment. It is apparently considered by some indigenous people to be unsatisfactory from the point of view of the fight of self-determination. Indeed, NAILSS goes so far as suggesting the ILO has produced 'an instant anachronism ' [55]

36.6.4 However, the chairman of the Revision Committee has said:

> *A. position for or against self-determination was or could be expressed in the Convention, nor could any restrictions be expressed in the context of international law.* [56]

36.6.5 I reproduce Articles 5 and 7 of the Convention below:

Article 5

In applying the provisions of this Convention:

A. the social, cultural, religious and spiritual values and practices of these peoples shah be recognised and protected, and due account shah be taken of the nature of the problems which face them both as groups and as individuals;

B. the integrity of the values, practices and institutions of those peoples shall be respected;

Article 7

C. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.

D. The improvement of the conditions of life and work and levels of health and education of the peoples concerned with their participation and co-operation, shah be a matter of priority in plans for the overall economic development of areas they inhabit.

36.7 International Law in the Making

36.7.1 In its submission NAILSS draws attention to the work of the Working Group on Indigenous Populations which was established in 1982 and is regarded by NAILSS as being the most significant development in the work of the United Nations concerning indigenous rights. The Working Group was established by the Sub-Commission on Prevention of Discrimination and Protection of Minorities which, in turn, was the creation of the Commission on Human Rights of the Economic and Social Council of the United Nations. The Chairman-Rapporteur of the Working Group is Mrs Erica-Irene Daes who attended Australia in 1988 and conferred with Commissioner Muirhead while in Australia.

36.7.2 In 1988 the Working Group produced a 'Draft Universal Declaration on Indigenous Rights' which addressed a comprehensive range of issues including ownership of traditional lands, the protection of culture, the rejection of assimilation policies, control of resources, economic development, etc. In June 1989 a revised draft document was produced. NAILSS notes that whilst many of the terms would represent an advance in the position of indigenous people the issue of self-determination appears not to have been adequately addressed. [57]

36.7.3 Whilst I note the developments which are taking place with the Working Group this is indeed the development of international law at a very tentative stage. There is considerable debate continuing about the terms of the Draft Declaration proposed by the Working Group and that has to be settled before it will present its proposal to the Sub-Committee and the document will move through the various processes of the United Nations before its possible adoption. What document will, if any, eventually emerge and whether Australia will then ratify it can only be speculation.

Addressing Land Needs

Chapter 37 further develops the issues raised in Chapter 19 concerning Aboriginal land needs. I point out that the bases upon which land may be required by Aboriginal people will differ from one community to another which is no doubt a reflection of the diversity of Aboriginal society today. It is thus important that the processes by which land needs are met are flexible enough to accommodate the differing needs and priorities of all Aboriginal people. I conclude that the recognition by non-Aboriginal society of the land needs (of which 'land rights' is apart) of Aboriginal people is an important element in effecting a change in race relations in Australia.

37.1 As I have explained in Chapter 19, Aboriginal needs for land arise in different circumstances with

different aspects of the significance of land being emphasised by Aboriginal people in different parts of the country. In some instances the greatest emphasis is placed on the need for the security of land title as a means of preserving cultural life and ritual responsibilities, especially with respect to protecting sites of significance in that culture. In other places the maintenance of family or community and their health is dependent on adequate housing and infrastructure, and land title is essential to that end. And there are other aspects of land needs that arise between and beyond these two positions.

37.2 This report has demonstrated that at both Commonwealth and State/Territory levels there are programs in existence whereby Governments seek to address these various land needs. The programs vary between locations, in some instances particular land needs are not addressed at all. Whilst there will obviously be many factors which will impair or enhance the prospects of any or some of the land needs being met at all places and for all people, there is no reason why in each jurisdiction the full range of land needs cannot be identified and programs be devised to address each area of need to the maximum extent possible. That the task may be more difficult in some places--whether because of the strength of competing demands or for other reasons--is no reason why programs should not be established which fairly address the identified needs.

37.3 A review of legislation in Australia appears in Chapter 19 and demonstrates that Aboriginal claims to land on grounds of cultural and traditional association are being addressed in an orderly way in the Northern Territory. A process to allow for claims being made on grounds of historical association to land has been provided by legislation in New South Wales, although the success rate of such claims has been significantly less than for claims in the Northern Territory. Legislation in Victoria has provided for the transfer of title to Aboriginal groups on the grounds of past historical and present cultural association. Legislation recognising traditional ownership has allowed the transfer of title to Aboriginal people in South Australia over significant areas of land and without the necessity of there being a formal hearing process. Other groups in South Australia who might wish to make such claims have no process by which to do so, but the current review of the Lands Trust may lead to legislation which will obviate the need in many instances.

37.4 This then leaves Queensland, Tasmania--both States where government has committed itself to meeting claims or at least for allowing a process for such claims to be made--and Western Australia.

37.5 Western Australia is in an anomalous situation. It has had a detailed investigation made into Aboriginal cultural and traditional association with land (the Seamen Inquiry) which demonstrated that there are many Aboriginal people in Western Australia who could make a claim on such cultural and traditional grounds and who wish to do so. Yet, no legislation to achieve this result has been effected. There would appear to be no reason at all why the former Aboriginal reserve land, which is now held under leasehold on behalf of Aboriginal people, could not be transferred under freehold title in exactly the same way that such reserves were automatically transferred by the *Aboriginal Land Rights Act* in the Northern Territory in 1976.

37.6 It is true that Aboriginal people have gained leasehold title to lands which were formerly Aboriginal reserves and, with the assistance of government funding, have purchased a number of pastoral properties. The fact remains that Aboriginal people do not believe that they have been awarded justice with respect to their land needs in that State. In so far as 'land rights' is identified as a legitimate land need (i.e. the gaining of freehold title which provides a measure of special protection and recognition of ownership of land to which there is traditional attachment), then they are right in their belief.

37.7 In one of the recommendations contained in this chapter I suggest that former reserve and mission land and land claimed on the basis of cultural, historical and/or traditional attachment, should be held under freehold title which is inalienable, in other words it cannot be sold once it has been granted. In making this recommendation I appreciate that there are conflicting opinions held by Aboriginal people about whether land granted under a land claim process should be available to be sold or mortgaged. The issue has particularly arisen as a result of amendments to the land rights legislation in New South Wales to which I refer in Chapter 19.

37.8 Commissioner Dodson advises me, and this accords with my own observations, that most Aboriginal people would take the view that land which has been claimed on traditional grounds and which has a continuing importance for ceremonial life should be incapable of being sold, that it should be inalienable. This issue was one considered at length by Justice Woodward in his reports which preceded the Northern Territory's legislation, and he was firmly of the opinion that the land should be inalienable. I agree with that view.

37.9 Land which is purchased on the open market and which is purchased either as an investment or to establish a business enterprise may well fall into a different category. It seems to me that there may well be good reason why such land should be available for transfer or mortgage if the Aboriginal owners want that. The issue is very much one for Aboriginal people to consider and decide.

37.10 Land which is obtained to meet needs for housing and the provision of infrastructure, which are important concerns if the health and living standards of Aboriginal people are to improve, is, generally speaking, granted under leasehold title. A lengthy lease which does not contain onerous conditions and which is tailored to the culture and life style of Aboriginal people seems to me to be appropriate if freehold title is not available. In the Northern Territory many areas of land have been excised from the titles of pastoral properties to provide living areas under secure title. Also, these lands are usually on the traditional country of the occupants and freehold title under Northern Territory legislation is granted.

37.11 In the recommendations I also propose that land should be made available, either by grant, where unalienated Crown land is available and appropriate, or by purchase on the open market where, for one reason or another, the land needs of a community or group cannot be met by a claim based on traditional, cultural or historical grounds. In many parts of the country the processes of colonisation have meant that land and the knowledge of land on which people's ancestors once lived, and for which they maintained the traditional stories and practices, no longer exists. For many such people, however, land needs go beyond the need for land just for housing. Community life is a vital element in the maintenance of Aboriginal society, and community needs for land may encompass land for recreational and other purposes. My discussion about Port Lincoln, which appears in Chapter 27, will demonstrate how important it has been to the progress of that community for land to be obtained for community purposes.

37.12 How 'land rights', that is the granting of land on the basis of traditional association, may be best effected is not a matter which I can appropriately determine. The review of legislation demonstrates that different models (which have accorded, at least to a significant degree, with local Aboriginal concepts of land rights) have been adopted in different jurisdictions. I believe this to be quite appropriate. As I have already said, Aboriginal experience of colonisation has differed from one location to another. Contemporary Aboriginal society and needs reflect the differences in historical experience in addition to other factors such as the circumstances in which people now live and the nature of relationships and interaction with the dominant society.

37.13 It may also be that different models of land rights will need to be adopted in any one State. In a State as large as Western Australia, for example, it is quite likely that some Aboriginal people would want to make claims and could establish claims based on their continued ceremonial and spiritual association with particular lands, but other people in the same State would want to adopt a model similar to that applying under the New South Wales legislation. (I refer here to the existence of a fund and not necessarily to the New South Wales model of the service of the fund.)

37.14 Where Aboriginal people have regained land on the basis of spiritual association, that is traditional ownership in the sense in which it would be understood in the Northern Territory, it seems appropriate to me that two safeguards should be provided. First, the title granted should be freehold title so that there is no question that the land, having so belatedly been returned, may yet be removed as a result of cancellation of a lease or expiry of its term. Secondly, there should be special powers to protect the land and its sites of cultural significance.

37.15 In the Northern Territory the legislation requires that traditional owners give their consent to any development on their land which could damage it or interfere with the life style of those who live on it. In

the Territory those seeking to use the land or to exploit its resources must negotiate with the traditional owners and they must do so through bodies, that is, Land Councils, specifically created to provide protection and to advise the traditional owners in that process. Those rights and protections seem to me to be essential if land rights is to have any meaning. Much criticism has been levelled at these provisions by various interest groups: however, it is my observation that the fact that there is today tangible evidence of improved community relations and of improvement in the social and economic conditions of Aboriginal people, may be directly attributable, at least in part, to the very fact that the legislation was introduced there.

37.16 Western Australia, on the other hand, for all of the efforts which are being made (and which I commend and encourage) and despite the improvements which are being effected in the situation of Aboriginal people and in relations between the races, remains the State which has stunningly bad statistics with respect to arrest and detention rates and grossly excessive numbers of deaths in custody.

37.17 I do not pretend that there is a simplistic correlation between the absence of land rights legislation and the high rates of arrests and detentions and deaths in custody in Western Australia. I can not say that such a nexus exists at all, or has been demonstrated to be probable. I can, however, say that my inquiries have satisfied me that the legislation in the Northern Territory is a very important basis for the optimistic picture which I believe is presented in the Territory.

37.18 I add that there remain differences between Aboriginal and non-Aboriginal people in the Northern Territory on important land issues. One area of dispute which is common to all States and Territories at different times relates to the protection of sacred sites. Commissioner Dodson informs me that many Aboriginal people in Western Australia, even after resolution of the Noonkanbah crisis, which was essentially about the protection of a sacred site, still live under the fear of future confrontation because they lack real participation or control in the protection of sacred sites. The protection of their sacred sites is integral to the cultural survival of Aboriginal people. The Northern Territory Aboriginal Issues Unit (AIU) also emphasised the importance to Aboriginal people of the protection of sacred sites. The AIU submitted:

> *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 Aboriginal owners living nearby them and carrying out the ceremony for them. All other aspects of the welfare of Aboriginal society depend on this. [58]*

37.19 I did not receive any submissions relating to the specifics or adequacy of existing legislation or procedures in place for the protection of sacred sites, and, accordingly, neither I nor any other Commissioner conducted any hearings relating to this issue. I am not, therefore, in a position to make specific recommendations concerning this matter, but after having consulted with Commissioner Dodson I believe that some general principles, which are consistent with the whole thrust of this report, can be identified as being important.

37.20 In the first place, all jurisdictions should have in place legislation which recognises the vital importance of the need to identify, record and protect sacred sites. Aboriginal people should be given a pre-eminent role in the process of sacred site identification and protection.

37.21 It is also desirable that any authority or body which is established and which is charged with the responsibility for the identification, recording and/or protection of sacred sites must be able to perform its role in a manner independent of government control or interference. Whilst government may well choose not to act on the advice of such a body--a decision which would inevitably transfer the debate into the political arena--the body must, at the very least, be in a position to report frankly and forthrightly about the conclusions it has reached and any proposals which it has made.

37.22 Legislation for the protection of sacred sites should bind the Crown and be sufficiently flexible to

accommodate differences in the culture, heritage and traditions of Aboriginal people. In other words, the conception of what is a sacred site and the significance of a site to Aboriginal people should not be based on rigid, anthropological models, or on narrow non-Aboriginal understandings.

37.23 The process relating to the protection of sacred sites should be one which enables the competing interests for the use of land to be identified and evaluated fairly and clearly. Where development work is proposed on any land then Aboriginal people who have concerns about damage which might occur to sacred sites on that land should have a recognised right and a proper opportunity to seek protection through such an authority or body.

37.24 Whilst calm and rational negotiations based on clear knowledge of the proposals and of the concerns held by the competing interests may well produce resolution of many disputes, and in a way which does not compromise Aboriginal traditions, there will be situations where compromise is not possible and where one or other interest must prevail. Negotiations based on respect for Aboriginal culture and a recognition that Aboriginal interests are both legitimate and important will reduce the number of occasions where resolution through unpressured negotiation is impossible.

37.25 Where resolution by negotiation cannot be achieved it is essential that Aboriginal people. be not placed under pressure to compromise their desire for site protection. There have been too many instances in the past where this has occurred, where an appearance of consultation was really only a charade. The devastation which Aboriginal people feel about the destruction or damage to a sacred site cannot be measured, but I have no doubt that it is a factor in the despondency and loss of self-esteem which has led some Aboriginal people to alcoholic alienation from non-Aboriginal society.

37.26 There is a role for the Commonwealth under its sacred site legislation when negotiation at a State or Territory level has failed to resolve a dispute about protection of a site. It is proper that a national perspective, an avenue of appeal, should be available in such a situation. It is not unusual for a dispute of this kind, at a local level, to lose objectivity about the real importance or necessity of a development proposal which threatens a sacred site. There have been many instances, throughout Australia, where a development proposal which its proponents touted as being essential for the development of a State or Territory was later seen to be much less important than thought to be at the time. There are many instances where hindsight showed that, often for reasons not apparent at the time, it was points. Non-Aboriginal Australians gain direct and indirect benefits from Aboriginal culture being preserved and protected. Australia as a nation has a great deal to gain from being seen as one which values and preserves the past and respects the ancient culture which grew up on the land.

Recommendation 334:

That in all jurisdictions legislation should be introduced, where this has not already occurred, to provide a comprehensive means to address land needs of Aboriginal people. Such legislation should encompass a process for restoring unalienated Crown land to those Aboriginal people who claim such land on the basis of cultural, historical and/or traditional association.

Recommendation 335:

That in recognising that improvement in the living standards of many Aboriginal communities (especially for those people living in inadequate housing and environmental circumstances on the fringes of towns and on other discrete areas of Aboriginal occupation of land) cannot be ensured without the security of land title, governments provide, by legislation and/or administrative direction, an accelerated process for the granting of land title based on need.

Recommendation 336:

That unalienated Crown land granted on the basis of cultural, historical and/or traditional

association of Aboriginal people should be granted under inalienable freehold title and should carry with it the right of the Aboriginal owners to, inter alia:

a. Determine who may enter the land and the terms of such entry; and

b. Control the impact of development on the land in so far as such development may threaten the cultural and/or social values of the Aboriginal owners and their communities.

Recommendation 337:

That governments recognise that where appropriate unalienated Crown land is unavailable to be claimed on grounds of cultural, historical or traditional association with the land or where, due to the processes of the history of colonisation, Aboriginal people are no longer able to, nor seek to, make claims to particular areas of unalienated Crown land on the basis of cultural, historical or traditional association there remain land needs of Aboriginal people which should be met by governments. These needs should be accommodated by a process which:

a. Enables Aboriginal communities or groups to obtain secure title to unalienated Crown land or to purchase land for social, recreational and community purposes (including the obtaining of additional land in circumstances in which an Aboriginal community is on Aboriginal land but where the area of that land is established as being too small to accommodate the community);

b. Enables Aboriginal communities or groups to obtain secure title to land so as to improve the environmental circumstances in which they live;

c. Provides adequate funding in order that land may be purchased on the open market in pursuance of the needs identified in paragraphs (a) and (b); and

d. Where pastoral land is held on lease from the Crown, permits Aboriginal communities traditionally or historically associated with the land to have priority when leases come up for renewal.

Recommendation 338:

That as an interim step all land held under leasehold, being former Aboriginal reserve or mission land and being now held for or on behalf of Aboriginal people, be forthwith transferred under inalienable freehold title to the present leaseholder(s) pending further consideration by Aboriginal people as to the appropriate Aboriginal body which should thereafter hold the title to such land.

The Process of Reconciliation

Chapter 38, 'The Process of Reconciliation', is the concluding chapter of this report. It describes the emergence of the support for the concept of reconciliation, the proposal of government for a process of reconciliation and some features which I see as essential to the success of such a process.

38.1 This report has highlighted the factors which combine to comprise the explanation for the level of disadvantage, over so many areas, which is the present situation of most Aboriginal people in Australia. These factors not only explain why the rate of Aboriginal over-representation in prison and police custody is so appallingly high but also why the relationship between Aboriginal and non-Aboriginal people is often characterised by such distrust, enmity and disputation.

38.2 This situation can be changed, and there are many signs that change is already occurring. The process of change, the commitment and sincerity which is brought to bear by those participating in it, the breadth of support for the process throughout the Aboriginal and non-Aboriginal communities will all help to determine whether change will be effected and will be permanent.

38.3 If it is recognised that the cause of distrust and disunity is the historical experience of Aboriginal people and their continuing disadvantage, then, plainly, good community relations cannot be achieved without elimination of the disadvantage and the recognition of Aboriginal fights, Aboriginal culture and traditions. There must be a complete rejection of concepts of superiority and inferiority. Unless the wider society gives the most tangible proof of on-going and substantial efforts to achieve those objectives, there can be little prospect of permanently and substantially improving community relations. I believe that it can be demonstrated that where, over the last twenty-five years, there has been an improvement in community relations it is invariably associated with a genuine effort to reduce disadvantage and to do so by dealing with Aboriginal people in a way which respects their position. Furthermore, if the broader society does give tangible and on-going proof of such efforts in a way which recognises the principles of self-determination it can, I think, be said with much confidence that there will be substantial improvements in relations between Aboriginal and non-Aboriginal people.

38.4 But it has to be recognised that there is a large reservoir of distrust, enmity and anger amongst Aboriginal people, and a lack of understanding amongst non-Aboriginal people. In some cases, there is a resistance to understanding, sometimes associated with racist ideas or just self-interest. These and other factors make it highly desirable that steps be taken to help along the process of improving community relations - a process which may proceed rather slowly unless nurtured.

38.5 This process is often called the process of reconciliation. The process, under that and other names, has been recognised as necessary over many years throughout the Australian community. It could be said that the first step in the process of reconciliation, and the one which received the clearest endorsement of the Australian people, was the referendum in 1967 which demonstrated overwhelming acceptance for the view that Aboriginal people should be part of the national polity.

38.6 It can be said that since 1967 there has been an evolution of thought on the part of non-Aboriginal Australian people which has been reflected in the actions of successive Commonwealth governments irrespective of party composition. Basically, the direction of change has had bipartisan support; no one political persuasion can claim all the credit.

38.7 Following the Referendum result in 1967, the Council for Aboriginal Affairs and the Office of Aboriginal Affairs were set up by the then government. In 1968 the government established a capital fund for Aboriginal enterprises. In 1971, the then Prime Minister Mr McMahon, made a statement acknowledging an Aboriginal right to choose the path and determine the pace of their future development, promising federal policies which would give that choice. The Minister for the Interior issued a counter statement reiterating an adherence to assimilationist policies. But, notwithstanding, the government pushed on and on 26 January 1972 the Prime Minister made an important statement. The statement set out five objectives of policy, the first of which was that Aboriginal Australians as individuals, and if they wish as groups, be assisted 'to hold effective and respected places within one Australian society' with equal rights. But 'at the same time they should be encouraged and assisted to preserve and develop their own culture, languages, traditions and arts so that these can become living elements in the diverse culture of the Australian society'. The document asserted the right of Aboriginal people to effective choice about 'the degree to which and the pace at which' they come to identify themselves with 'the broader society'. The document stated that problems facing Aboriginal people required a programme of action which would:

(a) encourage and strengthen their capacity increasingly to manage their own affairs - as individuals, as groups and as communities at the local level;
(b) increase their economic independence;
(c) reduce existing social and other handicaps...;
(d) promote their enjoyment of normal civil liberties and eliminate remaining provisions in law which discriminate against them. [59]

It stated that the government 'considers that special measures will be necessary to overcome the disabilities being experienced by many persons of Aboriginal descent'. Meantime, the first Aboriginal Legal Service had been set up in Redfern with Commonwealth funding and was followed soon after by other services.

38.8 In late 1972, Mr Whitlam's government was elected. The Department of Aboriginal Affairs (DAA) was established and by 1974 all States except Queensland had entered into agreements with the Commonwealth about the co-ordination of State Aboriginal programmes with DAA. The Whitlam Government made a firm commitment to the policy of self-determination. The government steeply increased the funds available in an attempt to combat Aboriginal disadvantage.

38.9 In 1975 the parliament passed the *Racial Discrimination Act* ratifying the 1965 *International Convention on the Elimination of All Forms of Racial Discrimination.* In the same year, the Senate passed the following motion moved by Senator Neville Bonner, himself an Aboriginal person:

> *That the Senate accepts the fact that the indigenous people of Australia, now known as Aborigines and Torres Strait Islanders, were in possession of the entire nation prior to the 1978 first fleet landing in Botany Bay, urges the Australian Government to admit prior ownership by the said indigenous people, and to introduce legislation to compensate the people now known as Aborigines and Torres Strait Islanders for dispossession of their land.*

38.10 The coalition stood in the 1975 election inter alia on a policy which said 'we recognise the fundamental right of Aborigines to retain their racial identity and traditional lifestyle or where desired adopt a partially or wholly European lifestyle'.

38.11 In 1976 the government, led by Mr Fraser, procured the passing of the *Aboriginal Land Rights (Northern Territory) Act* and brought it into operation.

38.12 I mention these matters because by now they will have receded in memory for many people and, of course, will perhaps be not known to the younger generation. Many Aboriginal people and other people will criticise individual acts that were done but there is no possible doubt that the country was moving to a concept of a better deal for Aboriginal people and also against an assimilationist concept, and towards a position which appreciated the disadvantaged position of Aboriginal people and asserted their right to maintain their social and racial identify.

38.13 In the late 1970s a number of prominent non-Aboriginal people, in particular Dr H. C. Coombs, Judith Wright and Smart Harris called for public support for the notion of a 'Makaratta' or 'A Treaty within Australia between Australians'. The word 'Makaratta' was explained in the report to me from the Northern Territory Aboriginal Issues Unit (AIU) as being an Aboriginal word used in Arnhem Land to refer to a peace-keeping process. Marcia Langton, head of the AIU, said the concept of 'Makaratta' symbolised 'a battlefield over which a flag of reciprocity hung'.

38.14 Although Prime Minister Fraser had been prepared to discuss such a proposed Treaty with Aboriginal people, the process faltered despite substantial enthusiasm for the process from many Aboriginal people, especially from members of the National Aboriginal Conference. In 1983, the Senate Standing Committee on Constitutional and Legal Affairs recommended an amendment to the Constitution to provide for a Treaty and by 1987 Prime Minister Hawke sought 'a compact of understanding'. [60] Thus, whilst the basic idea of reconciliation, by whatever name, has achieved general and bipartisan support, its achievement has so far eluded us.

38.15 The concept--a process of reconciliation--has never been far removed from the political agenda. Each new report which detailed Aboriginal disadvantage, each new program which failed to achieve its objectives, each new incident which highlighted the divisions between Aboriginal and non-Aboriginal people and the mounting signs of Aboriginal anger and frustration with the pace and direction of reform, served to remind us that the process of reconciliation had to take place. There had to be more than a piecemeal approach, issue by issue, to the divisions within the Australian community.

38.16 The latest formal step towards reconciliation comes with the release of a discussion paper by the Australian Government through the Minister for Aboriginal Affairs, the Hon. Mr Robert Tickner, MHR. In February 1991 Mr Tickner said the discussion paper proposed a strategy 'for achieving reconciliation and social justice for Aboriginal and Torres Strait Islander people'.

38.17 The discussion paper states:

> *The Government' s position is that a document which could be called an instrument of reconciliation would be a valuable outcome of the process of reconciliation and such a document should desirably be achieved by the centenary of Federation, 1 January 2001.*
>
> *However, as the Prime Minister has said, the process of reconciliation may be as important as the final outcome and the initial focus would be on the process rather than a document. The best possible outcome is one reflecting a consensus arrived at through extensive community discussion.* [61]

38.18 Although the discussion paper outlines what is proposed by the government and what is anticipated, it does not seek to determine the outcome, nor to set either the parameters or the details of the process. First, the government states the importance which it attaches to the process:

> *The Government believes these issues are of fundamental importance to the future of this country. The process proposed is designed to encourage and facilitate discussion and involvement by all Australians, as well as a consideration of the issues on their merits and free from party politics. The Government believes the process of reconciliation will have cross-party endorsement and should be supported by all Australians.* [62]

In another passage, this discussion paper says: 'Aboriginal people would be justifiably angry if the reconciliation process was not accompanied by a renewed national commitment to address their social and economic disadvantage'. There can be no question of putting off the addressing of social and economic disadvantage.

38.19 I support entirely the suggestion that the process of reconciliation must, if it is to succeed, have the endorsement of all political parties. There is simply no possibility that a successful resolution of the division between Aboriginal and non-Aboriginal people can be achieved without a specific commitment to such a process; and there is no possibility of the process itself succeeding unless it has bipartisan support. Aboriginal people would not bother to make the enormous commitment of effort, to raise their expectations and hopes for a new understanding with non-Aboriginal Australia, unless they could be assured that any agreements reached would be honoured by successive governments and be endorsed broadly by the whole community. Nor would non-Aboriginal Australians want to see an agreement or understanding reached which did not have the broad acceptance of the Aboriginal community and which might not be honoured by them under successive governments. For the process to succeed, there must be genuine commitment on all sides by political leaders and general endorsement for that commitment by their respective constituents.

38.20 Over recent years there has been a tendency for the process to be bogged down and diverted by concentration on issues and on details about which there was, or might be, disagreement. Thus, much discussion has concentrated on the use of terms such as 'treaty', 'sovereignty' and 'compact'. Words can enlighten, but they can also impose their own tyranny. So much of debate in recent years has centred on such words and has involved discussion of what might or might not be appropriate topics to be discussed if the process were to start, that the question of whether the process of reconciliation was itself a desirable objective appeared to be sidelined. In fact, there was very broad agreement as to the need for reconciliation, and it is this point of agreement upon which present efforts should be concentrated.

38.21 As I have said, whilst there is considerable disagreement and uncertainty about the form which the final document might take, there is broad bipartisan support for the process itself, and I regard this as particularly encouraging and an essential prerequisite for success. The need for reconciliation has been supported by the Police Federation of Australia and New Zealand which represents all police officers in Australia. Church leaden have given public support in principle to the government's commitment to the reconciliation process. The President of the Uniting Church in Australia, the Roman Catholic Archbishop of Sydney, the Moderator-General of the Presbyterian Church of Australia and the acting Primate of the Anglican Church of Australia have all made public statements of support. The last mentioned church leader, Dr Keith Rayner, wrote to the Minister for Aboriginal Affairs in these terms:

Our Church would be very pleased to see this symbolic act of reconciliation followed up by concrete steps to make it a reality between white and black Australians. We shah therefore be very receptive of any proposals which the Government may make, and we hope that your desire for all party-support will win a positive response from the members of other political parties. [63]

38.22 The government proposes to establish a Council for Aboriginal Reconciliation, a body supported by a secretariat, charged with the task of advancing the process of reconciliation both by taking initiatives in that regard and by playing a leading role in the educative process. The council would comprise approximately equal numbers of Aboriginal and non-Aboriginal people with a full time chairperson.

38.23 The government says that the process would need to educate non-Aboriginal Australians about the cultures of Australia's indigenous peoples and the treatment of Aboriginal and Torres Strait Islander people by European settlers and their descendants. This sad history-which includes the dispossession and dispersal of Aboriginal people, confinement in reserves, removal of children from their families and the destruction of much Aboriginal culture needs to be recognised as a primary cause of the current disadvantaged position of Australia' s indigenous peoples. All Australians need to understand this country's past and the place of Aboriginal people in it. This would have the objective not of creating guilt, but of building compassion and empathy for Aboriginal people and their disadvantaged position in society, as well as appreciation of Aboriginal cultures and achievements, and the unique position of Aboriginal and Torres Strait Islander people as the indigenous peoples of this continent. [64]

38.24 There will obviously be a very wide range of opinions and attitudes which will emerge during the negotiating process. On the non-Aboriginal side, diversity of opinion is a feature of public life and this is equally true within the Aboriginal community. The exercise will be a very complex one for Aboriginal people, especially, because--as I have described in the chapters relating to self-determination (Chapters 20 and 27) of the attempts to gain a national viewpoint. A task for Aboriginal people will, no doubt, be to determine the processes which should be adopted to ensure that the full range of Aboriginal opinion will be heard.

38.25 I note that the Minister's statement reflects four matters which I regard as essential to any successful attempt at the reconciliation process:

- the taking of concrete measures to tackle disadvantage and establish self-determination cannot await the outcome of the process of reconciliation. In point of fact, these measures are essential building blocks of the process;
- any reconciliation must be between Aboriginal and non-Aboriginal people and that being so it can only be spoken of in terms of a process which has the support of at least a sizeable majority on both sides; on the non-Aboriginal side that means bipartisan support;
- the approach should concentrate on the process of reconciliation and not on an instrument, which might be an outcome of the process. Later on, discussion about an instrument might be appropriate; and
- the approach should be open ended in the sense that neither side sets pre-conditions in advance.

38.26 The process of reconciliation, if it is to be successful, will, in my opinion, follow closely the principle of self-determination which, as I have said in this report, should be the guiding principle for all change in Aboriginal affairs. The principle provides a safeguard for Aboriginal people-by ensuring that the diversity of Aboriginal opinion is recognised at the same time imposes a restraint on Aboriginal leaders which they well appreciate.

38.27 I said earlier that I regarded it as sensible that the government has not set pre-conditions in advance. I think it is equally important that Aboriginal leaders do not act precipitately by attempts to foreclose the ambit of debate. No doubt there will be much public discussion; indeed it would be a very encouraging sign of involvement if members of the public were to participate in the debate.

38.28 The issues which may emerge as agenda items for negotiation as a result of discussions among Aboriginal people should not be prejudged by non-Aboriginal people. As this report demonstrates there is

a very wide range of issues which concern Aboriginal people. Issues such as education, health, housing and employment are likely to figure prominently in discussions among Aboriginal people along with matters such as land needs, constitutional reform, sacred site protection, compensation and the processes for achieving self-sufficiency and many other issues. Some detailed proposals may be advanced for consideration by Aboriginal people as they work towards an agreed agenda to put to government. For example, the National Aboriginal and Islander Legal Services Secretariat provided the Royal Commission with a paper which it commissioned on options to achieve self-sufficiency through creation of a compensation fund. [65] This issue of compensation was raised in the Senate resolution moved by Senator Bonner which I referred to above.

38.29 However, what will emerge as agenda items for negotiation and what priorities may be set remain to be seen. There should be no alarm and no need for any person to withhold or withdraw commitment to the process of reconciliation simply because possible issues are canvassed to which some non-Aboriginal observer may have strong objections. The process involves negotiation, discussion, consideration and, most of all, a willingness to consider those issues which one or other side regards as important to resolve. Negotiations based on mutual respect and equality will of themselves advance reconciliation.

38.30 I said earlier that the principle of self-determination must be applied at all stages if Aboriginal commitment to the process of reconciliation is to be achieved. It is important that if Aboriginal people are to be involved on committees or councils which are established as part of the process then those appointed should not be seen to be people hand picked by non-Aboriginal people but to be people whom the Aboriginal community would generally agree were appropriate. This means that a very wide range of Aboriginal groups and organisations should be given the opportunity to put forward names of people whom they believe would be appropriate to fill any such positions.

38.31 I believe that the process envisaged by the Minister is valuable and I hope that other interests will find it possible to support it. I quoted at the end of Chapter 10 some very fine words from Ms Sally Morgan, the very respected writer and artist. I repeat the words because they say what I feel, that the process must go forward; the sooner the better. Sally Morgan 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.* [66]

38.32 I would only add this. I think that great patience is required, especially on the non-Aboriginal side. It is the non-Aboriginal society that created the division and sustained it over a long period of time; we cannot expect the Aboriginal people to respond quickly. The non-Aboriginal society and culture is evolving and changing and the Aboriginal people must be allowed to develop their own culture in their own ways; clearly there is scope for the two to interact in a fruitful and mutually fulfilling way. The process may falter at times; appear to get lost; but it can be pulled up again and survive if we are cool and negotiate with open minds and as with equals. And in the end, perhaps together, Aboriginal and non-Aboriginal, the situation can be reached where this ancient, subtly creative Aboriginal culture exists in friendship alongside the non-Aboriginal culture. Such an achievement would be a matter of pride not only for all Australians but for all humankind.

Recommendation 339:

That all political leaders and their parties recognise that reconciliation between the Aboriginal and non-Aboriginal communities in Australia must be achieved if community division, discord and injustice to Aboriginal people are to be avoided. To this end the Commission recommends that political leaders use their best endeavours to ensure bi-partisan public support for the process of reconciliation and that the urgency and necessity of the process be acknowledged.

Recommendations

Overview

1. That having regard to the great input which has been made to the work of the Commission, not only by governments and departments of government but also by Aboriginal communities, organisations and individuals, on the one hand, and non-Aboriginal organisations and individuals, on the other, it is highly desirable that the attitude of governments to the recommendations and the implementation of those adopted be carried out in a public way as part of the process of education and reconciliation of the whole society. To this end the Commission recommends:
   a. That the Commonwealth Government and State and Territory Governments, in consultation with ATSIC, agree upon a process which ensures that the adoption or otherwise of recommendations and the implementation of the adopted recommendations will be reported upon on a regular basis with respect to progress on a Commonwealth, State and Territory basis;
   b. That such reports should be made not less than annually and that, subject to the agreement of its Commissioners so to do, ATSIC be given special responsibility and funding to enable it to monitor the progress of the implementation of the adopted recommendations and to report thereon to the Aboriginal and Torres Strait Islander community;
   c. That governments consult with appropriate Aboriginal organisations in the consideration and implementation of the various recommendations in this report;
   d. That, wherever appropriate, governments make use of the services of Aboriginal organisations in implementing such recommendations; and
   e. Ensure that local Aboriginal organisations are consulted about the local implementation of recommendations, and their services be used wherever feasible. (1:29)

2. That subject to the adoption by governments of this recommendation and the concurrence of Aboriginal communities and appropriate organisations, there be established in each State and Territory an independent Aboriginal Justice Advisory Committee to provide each Government with advice on Aboriginal perceptions of criminal justice matters, and on the implementation of the recommendations of this report.
   The Aboriginal Justice Advisory Committee in each State should be drawn from, and represent, a network of similar local or regionally based committees which can provide the State Advisory Committee with information of the views of Aboriginal people. It is most important that the views of people living outside the urban centres be incorporated.
   The terms of reference of each State, local or regional Advisory Committee is a matter to be negotiated between governments and Aboriginal people. The Commission suggests however that matters which might appropriately be considered include, *inter alia:*
   a. The implementation of the recommendations of this report, or such of them as receive the endorsement of the Government;
   b. Proposals for changes to policies which affect the operation of the criminal justice system;
   e. Programs for crime prevention and social control which enhance Aboriginal self-management and autonomy;
   d. Programs which increase the recruitment of Aboriginal people to the staff of criminal justice agencies; and
   e. The dissemination of information on policies and programs between different agencies, and between parallel bodies in different States. (1:30)

3. The Commission notes that some of the recommendations of this report, particularly those relating to the custodial environment, are particularly detailed. The monitoring of the implementation of recommendations could only be carried out in close liaison with the authorities responsible for implementing them. In order to ensure that the State Aboriginal Justice Advisory

Committee is able to give informed advice to the Attorney-General or Minister for Justice, it should be assisted by a small Secretariat, staffed by people with knowledge of Aboriginal interactions with the criminal justice system. The role of the Secretariat should be to provide information to the Advisory Committee, assist it in the development of policy proposals, and liaise on behalf (and at the direction of) the Committee with other agencies. The Secretariat should be located within the Department of Attorney-General or Minister for Justice but be accountable to the Advisory Committee on terms to be negotiated between government and Aboriginal people but with the maximum degree of autonomy from government as may be consistent with it fulfilling its function to assist the Advisory Committee to give informed, independent advice to government. (1:31)

The Findings of the Commissioners as to the Deaths

4. That if and where claims are made in respect of the deaths based on the findings of Commissioners:
   a. Governments should not, in all the circumstances, take the point that a claim is out of time as prescribed by the relevant Statute of Limitations; and
   b. Governments should, whenever appropriate, make the effort to settle claims by negotiation so as to avoid further distress to families by litigation. (1:100)

5. That governments, recognising the trauma and pain suffered by relatives, kin and friends of those who died in custody, give sympathetic support to requests to provide funds or services to enable counselling to be offered to these people. (1:100)

Post-Death Investigations

6. That for the purpose of all recommendations relating to post-death investigations the definition of deaths should include at least the following categories:
   a. The death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile;
   b. The death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention;
   c. The death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and
   d. The death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention. (1: 170)

7. That the State Coroner or, in any State or Territory where a similar office does not exist, a Coroner specially designated for the purpose, be generally responsible for inquiry into all deaths in custody. (In all recommendations in this report the words 'State Coroner' should be taken to mean and include the Coroner so specially designated.) (1:171)

8. That the State Coroner be responsible for the development of a protocol for the conduct of coronial inquiries into deaths in custody and provide such guidance as is appropriate to Coroners appointed to conduct inquiries and inquests. (1:171)

9. That a Coroner inquiring into a death in custody be a Stipendiary Magistrate or a more senior judicial officer. (1:171)

10. That custodial authorities be required by law to immediately notify the Coroners Office of all deaths in custody, in addition to any other appropriate notification. (1:171)

11. That all deaths in custody be required by law to be the subject of a coronial inquiry which culminates in a formal inquest conducted by a Coroner into the circumstances of the death.

Unless there are compelling reasons to justify a different approach the inquest should be conducted in public hearings. A full record of the evidence should be taken at the inquest and retained. (1:172)

12. That a Coroner inquiring into a death in custody be required by law to investigate not only the cause and circumstances of the death but also the quality of the care, treatment and supervision of the deceased prior to death. (1:172)

13. That a Coroner inquiring into a death in custody be required to make findings as to the matters which the Coroner is required to investigate and to make such recommendations as are deemed appropriate with a view to preventing further custodial deaths. The Coroner should be empowered, further, to make such recommendations on other matters as he or she deems appropriate. (1:172)

14. That copies of the findings and recommendations of the Coroner be provided by the Coroners Office to all parties who appeared at the inquest, to the Attorney-General or Minister for Justice of the State or Territory in which the inquest was conducted, to the Minister of the Crown with responsibility for the relevant custodial agency or department and to such other persons as the Coroner deems appropriate. (1:172)

15. That within three calendar months of publication of the findings and recommendations of the Coroner as to any death in custody, any agency or department to which a copy of the findings and recommendations has been delivered by the Coroner shall provide, in writing, to the Minister of the Crown with responsibility for that agency or department, its response to the findings and recommendations, which should include a report as to whether any action has been taken or is proposed to be taken with respect to any person. (1:172)

16. That the relevant Ministers of the Crown to whom responses are delivered by agencies or departments, as provided for in Recommendation 15, provide copies of each such response to all parties who appeared before the Coroner at the inquest, to the Coroner who conducted the inquest and to the State Coroner. That the State Coroner be empowered to call for such further explanations or information as he or she considers necessary, including reports as to further action taken in relation to the recommendation s. (1:173)

17. That the State Coroner be required to report annually in writing to the Attorney-General or Minister for Justice, (such report to be tabled in Parliament), as to deaths in custody generally within the jurisdiction and, in particular, as to findings and recommendations made by Coroners pursuant to the terms of Recommendation 13 above and as to the responses to such findings and recommendations provided pursuant to the terms of Recommendation 16 above. (1:173)

18. That the State Coroner, in reporting to the Attorney-General or Minister for Justice, be empowered to make such recommendations as the State Coroner deems fit with respect to the prevention of deaths in custody. (1:173)

19. That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons so nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known. (1:174)

20. That the appropriate Aboriginal Legal Service be notified immediately of any Aboriginal death in custody. (1:174)

21. That the deceased's family or other nominated person and the Aboriginal Legal Service be advised as soon as possible and, in any event, in adequate time, as to the date and time of the coronial inquest. (1:174)

22. That no inquest should proceed in the absence of appearance for or on behalf of the family of the deceased unless the Coroner is satisfied that the family has been notified of the hearing in good time and that the family does not wish to appear in person or by a representative. In the event that no clear advice is available to the Coroner as to the family' s intention to be appear or be represented no inquest should proceed unless the Coroner is satisfied that all reasonable efforts have been made to obtain such advice from the family, the Aboriginal Legal Service and/or from lawyers representing the family. (1: 174)

23. That the family of the deceased be entitled to legal representation at the inquest and that government pay the reasonable costs of such representation through legal aid schemes or otherwise. (1:175)

24. That unless the State Coroner or the Coroner appointed to conduct the inquiry otherwise directs, investigators conducting inquiries on behalf of the Coroner and the staff of the Coroners Office should at all times endeavour to provide such information as is sought by the family of the deceased, the Aboriginal Legal Service and/or lawyers representing the family as to the progress of their investigation and the preparation of the brief for the inquest. All efforts should be made to provide frank and helpful advice and to do so in a polite and considerate manner. If requested, all efforts should be made to allow family members or their representatives the opportunity to inspect the scene of death. (1: 175)

25. That unless the State Coroner, or the Coroner appointed to conduct the inquiry, directs otherwise, and in writing, the family of the deceased or their representative should have a right to view the body, to view the scene of death, to have an independent observer at any post-mortem that is authorised to be conducted by the Coroner, to engage an independent medical practitioner to be present at the post-mortem or to conduct a further post-mortem, and to receive a copy of the post-mortem report. If the Coroner directs otherwise, a copy of the direction should be sent to the family and to the Aboriginal Legal Service. (1:175)

26. That as soon as practicable, and not later than forty-eight hours after receiving advice of a death in custody the State Coroner should appoint a solicitor or barrister to assist the Coroner who will conduct the inquiry into the death. (1:176)

27. That the person appointed to assist the Coroner in the conduct of the inquiry may be a salaried officer of the Crown Law Office or the equivalent office in each State and Territory, provided that the officer so appointed is independent of relevant custodial authorities and officers. Where, in the opinion of the State Coroner, the complexity of the inquiry or other factors, necessitates the engaging of counsel then the responsible government office should ensure that counsel is so engaged. (1:176)

28. That the duties of the lawyer assisting the Coroner be, subject to direction of the Coroner, to take responsibility, in the first instance, for ensuring that full and adequate inquiry is conducted into the cause and circumstances of the death and into such other matters as the Coroner is bound to investigate. Upon the heating of the inquest the duties of the lawyer assisting at the inquest, whether solicitor or barrister, should be to ensure that all relevant evidence is brought to the attention of the Coroner and appropriately tested, so as to enable the Coroner to make such findings and recommendations as are appropriate to be made. (1:176)

29. That the Coroner in charge of a coronial inquiry into a death in custody have legal power to require the officer in charge of the police investigation to report to the Coroner. The Coroner should have power to give directions as to any additional steps he or she desires to be taken in the investigation. (1:176)

30. That subject to direction, generally or specifically given, by the Coroner, the lawyer assisting the Coroner should have responsibility for reviewing the conduct of the investigation and advising the Coroner as to the progress of the investigation. (1:177)

31. That in performing the duties as lawyer assisting the Coroner in the inquiry into a death the lawyer assisting the Coroner be kept informed at all times by the officer in charge of the police investigation into the death as to the conduct of the investigation and the lawyer assisting the Coroner should be entitled to require the officer in charge of the police investigation to conduct such further investigation as may be deemed appropriate. Where dispute arises between the officer in charge of the police investigation and the lawyer assisting the Coroner as to the appropriateness of such further investigation the matter should be resolved by the Coroner. (1:177)

32. That the selection of the officer in charge of the police investigation into a death in custody be made by an officer of Chief Commissioner, Deputy Commissioner or Assistant Commissioner rank. (1:177)

33. That all officers involved in the investigation of a death in police custody be selected from an Internal Affairs Unit or from a police command area other than that in which the death occurred and in every respect should be as independent as possible from police officers concerned with matters under investigation. Police officers who were on duty during the time of last detention of a person who died in custody should take no part in the investigation into that death save as witnesses or, where necessary, for the purpose of preserving the scene of death. (1: 177)

34. That police investigations be conducted by officers who are highly qualified as investigators, for instance, by experience in the Criminal Investigation Branch. Such officers should be responsible to one, identified, senior officer. (1:178)

35. That police standing orders or instructions provide specific directions as to the conduct of investigations into the circumstances of a death in custody. As a matter of guidance and without limiting the scope of such directions as may be determined, it is the view of the Commission that such directions should require, *inter alia,* that:
    a. Investigations should be approached on the basis that the death may be a homicide. Suicide should never be presumed;
    b. All investigations should extend beyond an inquiry into whether death occurred as a result of criminal behaviour and should include inquiry into the lawfulness of the custody and the general care, treatment and supervision of the deceased prior to death;
    c. The investigations into deaths in police watch-houses should include full inquiry into the circumstances leading to incarceration, including the circumstances of arrest or apprehension and the deceased's activities beforehand;
    d. In the course of inquiry into the general care, treatment or supervision of the deceased prior to death particular attention should be given to whether custodial officers observed all relevant policies and instructions relating to the care, treatment and supervision of the deceased; and
    e. The scene of death should be subject to a thorough examination including the seizure of exhibits for forensic science examination and the recording of the scene of death by means of high quality colour photography. (1:178)

36. Investigations into deaths in custody should be structured to provide a thorough evidentiary base for consideration by the Coroner on inquest into the cause and circumstances of the death and the quality of the care, treatment and supervision of the deceased prior to death. (1: 179)

37. That all post-mortem examinations of the deceased be conducted by a specialist forensic pathologist wherever possible or, if a specialist forensic pathologist is not available, by a specialist pathologist qualified by experience or training to conduct such post-mortems. (1:179)

38. The Commission notes that whilst the conduct of a thorough autopsy is generally a prerequisite for an adequate coronial inquiry some Aboriginal people object, on cultural grounds, to the conduct of an autopsy. The Commission recognises that there are occasions where as a matter of urgency and in the public interest the Coroner may feel obligated to order that an autopsy be conducted notwithstanding the fact that there may be objections to that course from members of the family or community of the deceased. The Commission recommends that in order to minimise and to resolve difficulties in this area the State Coroner or the representative of the State Coroner should consult generally with Aboriginal Legal Services and Aboriginal Health Services to develop a protocol for the resolution of questions involving the conduct of inquiries and autopsies, the removal and burial of organs and the removal and return of the body of the deceased. It is highly desirable that as far as possible no obstacle be placed in the way of carrying out of traditional rites and that relatives of a deceased Aboriginal person be spared further grief. The Commission further recommends that the Coroner conducting an inquiry into a death in custody should be guided by such protocol and should make all reasonable efforts to obtain advice from the family and community of the deceased in consultation with relevant Aboriginal organisations. (1:179)

39. That in developing a protocol with Aboriginal Legal Services and Aboriginal Health Services as proposed in Recommendation 38, the State Coroner might consider whether it is appropriate to extend the terms of the protocol to deal with any and all cases of Aboriginal deaths notified to the Coroner and not just to those deaths which occur in custody. (1:180)

40. That Coroners Offices in all States and Territories establish and maintain a uniform data base to record details of Aboriginal and non-Aboriginal deaths in custody and liaise with the Australian Institute of Criminology and such other bodies as may be authorised to compile and maintain records of Aboriginal deaths in custody in Australia. (1:180)

Adequacy of Information

41. That statistics and other information on Aboriginal and non- Aboriginal deaths in prison, police custody and juvenile detention centres, and related matters, be monitored nationally on an ongoing basis. I suggest that responsibility for this be established within the Australian Institute of Criminology and that all custodial agencies co-operate with the Institute to enable it to carry out the responsibility. The responsibility should include at least the following functions:
    a. Maintain a statistical data base relating to deaths in custody of Aboriginal and non-Aboriginal persons (distinguishing Aboriginal people from Torres Strait Islanders);
    b. Report annually to the Commonwealth Parliament; and
    c. Negotiate with all custodial agencies with a view to formulating a nationally agreed standard form of statistical input and a standard definition of deaths in custody. Such definition should include at least the following categories:
        i. the death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile;
        ii. the death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention;
        iii. the death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and
        iv. the death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention. (1: 189)

42. That governments require the provision of and publish, on a regular and frequent basis, detailed information on the numbers and details of the people passing through their police cells. (1:195)

43. That a survey such as the 1988 National Police Custody Survey be conducted at regular intervals

of, say, two to five years, with the aim of systematically monitoring and evaluating the degree to which needed improvements in legislation, attitudes, policies and procedures that affect police custody are implemented. (1:195)

44. That the Australian Institute of Criminology co-ordinate and implement the recommended series of national surveys. The experience of the first national survey points to the fact that careful planning with all the relevant authorities will be needed to ensure that the maximum amount of useful information is derived from the surveys. (1:195)

45. That the appropriate Ministerial Councils strive to achieve a commonality of approach in data collections concerning both police and prison custody. (1:196)

46. That the national deaths in custody surveys which I have recommended be undertaken by the Australian Institute of Criminology include the establishment of uniform procedures and methodologies which would not only enhance the state of knowledge in this area but also facilitate the making of comparisons between Australian and other jurisdictions, and facilitate communication of research findings. (1: 196)

47. That relevant Ministers report annually to their State and Territory Parliaments as to the numbers of persons held in police, prison and juvenile centre custody with statistical details as to the legal status of the persons so held (for example, on arrest; on remand for trial; on remand for sentence; sentenced; for fine default or on other warrant; for breach of non-custodial court orders; protective custody or as the case may be), including whether the persons detained were or were not Aboriginal or Torres Strait Islander people. (1:197)

Aboriginal Society Today

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. (2:53)

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. (2:62)

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. (2:63)

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. (2:63)

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 re-establish their links to family and community should be recognised and funded, where appropriate. (2:79)

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 re-establish 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. (2:79)

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. (2:83)

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. (2: 141)

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. (2: 142)

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 given responsibility for determining access the material jointly with the normal authority for determining such matters. (2: 142)

Relations with the Non-Aboriginal Community

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. (2:179)

59. That Police Services use every endeavour to police the provisions of Licensing Acts which make it an offence to serve intoxicated persons. (2:180)

The Criminal Justice System: Relations with Police

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. (2:223)

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. (2:223)

Young Aboriginal People and the Juvenile Justice System

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. (2:252)

The Harmful use of Alcohol and other Drugs

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. (2:330)

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. (2:330)

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. (2:330)

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. (2:331)

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. (2:331)

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. (2:331)

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. (2:332)

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. (2:332)

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. (2:332)

Schooling

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. (2:368)

Housing and Infrastructure

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. (2:343)

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. (2:449)

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. (2:451)

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. (2:462)

Self-Determination and Local Government

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. (2:551)

78. 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. (2:556)

Diversion from Police Custody

79. That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness. (3:28)

80. That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons. (3:28)

81. That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons. (3:28)

82. That governments should closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody in particular areas and other consequences. (3:28)

83. That:

a. The Northern Territory Government consider giving a public indication that it will review the two kilometre law at the end of a period of one year in the expectation that all relevant organisations, both Aboriginal and non- Aboriginal, will negotiate as to appropriate local agreements relating to the consumption of alcohol in public that will meet the reasonable

expectations of both Aboriginal and non-Aboriginal people associated with particular localities; and

b. Other Governments give consideration to taking similar action in respect of laws operating within their jurisdictions designed to deal with the public consumption of alcohol. (3:28)

84. That issues related to public drinking should be the subject of negotiation between police, local government bodies and representative Aboriginal organisations, including Aboriginal Legal Services, with a view to producing a generally acceptable plan. (3:29)

85. That:

a. Police Services should monitor the effect of legislation which decriminalises drunkenness with a view to ensuring that people detained by police officers are not being detained in police cells when they should more appropriately have been taken to alternative places of care;

b. The effect of such legislation should be monitored to ensure that persons who would otherwise have been apprehended for drunkenness are not, instead, being arrested and charged with other minor offences. Such monitoring should also assess differences in police practices between urban and rural areas; and

c. The results of such monitoring of the implementation of the decriminalisation of drunkenness should be made public. (3:29)

86. That:

a. The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and

b. Police Services should examine and monitor the use of offensive language charges. (3:29)

87. That:

a. All Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;

b. Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;

c. Administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons and in particular should take account of the following matters:

i. all possible steps should be taken to ensure that allowances paid to police officers do not operate as an incentive to increase the number of arrests;

ii. a statistical data base should be established for monitoring the use of summons and arrest procedures on a Statewide basis noting the utilisation of such procedures, in particular divisions and stations;

iii. the role of supervisors should be examined and, where necessary, strengthened to provide for the overseeing of the appropriateness of arrest practices by police officers;

iv. efficiency and promotion criteria should be reviewed to ensure that advantage does not accrue to individuals or to police stations as a result of the frequency of making charges or arrests; and

v. procedures should be reviewed to ensure that work processes (particularly relating to paper work) are not encouraging arrest rather than the adoption of other options such as proceeding by summons or caution; and

d. Governments, in conjunction with Police Services, should consider the question of whether procedures for formal caution should be established in respect of certain types of offences rather than proceeding by way of prosecution. (3:42)

88. That Police Services in their ongoing review of the allocation of resources should closely

examine, in collaboration with Aboriginal organisations, whether there is a sufficient emphasis on community policing. In the course of that process of review, they should, in negotiation with appropriate Aboriginal organisations and people, consider whether:

a. There is over-policing or inappropriate policing of Aboriginal people in any city or regional centre or country town;
b. The policing provided to more remote communities is adequate and appropriate to meet the needs of those communities and, in particular, to meet the needs of women in those communities; and
c. There is sufficient emphasis on crime prevention and liaison work and training directed to such work. (3:43)

89. That, the operation of bail legislation should be closely monitored by each government to ensure that the entitlement to bail, as set out in the legislation, is being recognised in practice. Furthermore the Commission recommends that the factors highlighted in this report as relevant to the granting of bail be closely considered by police administrators. (3:54)

90. That in jurisdictions where this is not already the position:

a. Where police bail is denied to an Aboriginal person or granted on terms the person cannot meet, the Aboriginal Legal Service, or a person nominated by the Service, be notified of that fact;
b. An officer of the Aboriginal Legal Service or such other person as is nominated by the Service, be granted access to a person held in custody without bail; and
c. There be a statutory requirement that the officer in charge of a station to whom an arrested person is taken give to that person, in writing, a notification of his/her right to apply for bail and to pursue a review of the decision if bail is refused and of how to exercise those rights. (3:54)

91. That governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation:

a. to enable the same or another police officer to review a refusal of bail by a police officer,
b. to revise any criteria which inappropriately restrict the granting of bail to Aboriginal people; and
c. to enable police officers to release a person on bail at or near the place of arrest without necessarily conveying the person to a police station. (3:55)

Imprisonment as a Last Resort

92. That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort. (3:64)

93. That governments should consider whether legislation should provide, in the interests of rehabilitation, that criminal records be expunged to remove references to past convictions after a lapse of time since last conviction and particularly whether convictions as a juvenile should not be expunged after, say, two years of non-conviction as an adult. (3:64)

94. That:

a. Sentencing and correctional authorities should accept that community service may be performed in many ways by an offender placed on a community service order;, and
b. Consistent with the object of ensuring that offenders do not re-offend, approval should be given, where appropriate, for offenders to perform Community Service work by pursuing personal development courses which might provide the offender with skills, knowledge, interests, treatment or counselling likely to reduce the risk of re-offending. (3:71)

95. That in jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment the factors relevant to such incidence be identified, and, in conjunction with

Aboriginal community organisations, programs be designed to reduce that incidence of offending. (3:71)

96. That judicial officers and persons who work in the court service and in the probation and parole services and whose duties bring them into contact with Aboriginal people be encouraged to participate in an appropriate training and development program, designed to explain contemporary Aboriginal society, customs and traditions. Such programs should emphasise the historical and social factors which contribute to the disadvantaged position of many Aboriginal people today and to the nature of relations between Aboriginal and non-Aboriginal communities today. The Commission further recommends that such persons should wherever possible participate in discussion with members of the Aboriginal community in an informal way in order to improve cross-cultural understanding. (3:79)

97. That in devising and implementing courses referred to in Recommendation 96 the responsible authorities should ensure that consultation takes place with appropriate Aboriginal organisations, including, but not limited to, Aboriginal Legal Services. (3:79)

98. Those jurisdictions which have not already done so should phase out the use of Justices of the Peace for the determination of charges or for the imposition of penalties for offences. (3:79)

99. That legislation in all jurisdictions should provide that where an Aboriginal defendant appears before a Court and there is doubt as to whether the person has the ability to fully understand proceedings in the English language and is fully able to express himself or herself in the English language, the court be obliged to satisfy itself that the person has that ability. Where there is doubt or reservations as to these matters proceedings should not continue until a competent interpreter is provided to the person without cost to that person. (3:79)

100. That governments should take more positive steps to recruit and train Aboriginal people as court staff and interpreters in locations where significant numbers of Aboriginal people appear before the courts. (3:80)

101. That authorities concerned with the administration of non-custodial sentencing orders take responsibility for advising sentencing authorities as to the scope and effectiveness of such programs. (3:80)

102. That, in the first instance, proceedings for a breach of a non- custodial order should ordinarily be commenced by summons or attendance notice and not by arrest of the offender. (3:80)

103. That in jurisdictions where a Community Service Order may be imposed for fine default, the dollar value of a day's service should be greater than and certainly not less than, the dollar value of a day served in prison. (3:80)

104. That in the case of discrete or remote communities sentencing authorities consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should in appropriate circumstances relate to sentences in individual cases. (3:85)

105. That in providing funding to Aboriginal Legal Services governments should recognise that Aboriginal Legal Services have a wider role to perform than their immediate task of ensuring the representation and provision of legal advice to Aboriginal persons. The role of the Aboriginal Legal Services includes investigation and research into areas of law reform in both criminal and civil fields which relate to the involvement of Aboriginal people in the system of justice in Australia. In fulfilling this role Aboriginal Legal Services require access to, and the opportunity to conduct, research. (3:91)

106. That Aboriginal Legal Services recognise the need for maintaining close contact with the Aboriginal communities which they serve. It should be recognised that where charges are laid against individuals there may be a conflict of interests between the rights of the individual and the interests of the Aboriginal community as perceived by that community; in such cases arrangements may need to be made to ensure that both interests are separately represented and presented to the court. Funding authorities should recognise that such conflicts of interest may require separate legal representation for the individual and the community. (3:91)

107. That in order that Aboriginal Legal Services may maintain close contact with, and efficiently serve Aboriginal communities, weight should be attached to community wishes for autonomous regional services or for the regional location of solicitors and field officers. (3:91)

108. That it be recognised by Aboriginal Legal Services, funding authorities and courts that lawyers cannot adequately represent clients unless they have adequate time to take instructions and prepare cases, and that this is a special problem in communities without access to lawyers other than at the time of court hearings. (3:91)

109. That State and Territory Governments examine the range of non-custodial sentencing options available in each jurisdiction with a view to ensuring that an appropriate range of such options is available. (3:96)

110. That in view of the wide variety of pre-release and post-release support schemes conducted by Corrective Services authorities and other agencies and organisations in various parts of the country it is the view of the Commission that a national study designed to ascertain the best features of existing schemes with a view to ensuring their widespread application is highly desirable. In such a study it is most important that consultation take place with relevant Aboriginal organisations. (3:96)

111. That in reviewing options for non-custodial sentences governments should consult with Aboriginal communities and groups, especially with representatives of Aboriginal Legal Services and with Aboriginal employees with relevant experience in government departments. (3:96)

112. That adequate resources be made available to provide support by way of personnel and infrastructure so as to ensure that non-custodial sentencing options which are made available by legislation are capable of implementation in practice. It is particularly important that such support be provided in rural and remote areas of significant Aboriginal population. (3:96)

113. That where non-custodial sentencing orders provide for a community work or development program as a condition of the order the authorities responsible for the program should ensure that the local Aboriginal community participates, if its members so choose, in the planning and implementation of the program. Further, that Aboriginal community organisations be encouraged to become participating agencies in such programs. (3:97)

114. Wherever possible, departments and agencies responsible for non-custodial sentencing programs for Aboriginal persons should employ and wain Aboriginal people to take particular responsibility for the implementation of such programs and should employ and train Aboriginal people to assist to educate and inform the community as to the range and implementation of non-custodial sentencing options. (3:97)

115. That for the purpose of assessing the efficacy of sentencing options and for devising strategies for the rehabilitation of offenders it is important that governments ensure that statistical and other information is recorded to enable an understanding of Aboriginal rates of recidivism and the effectiveness of various non-custodial sentencing orders and parole. (3:97)

116. That persons responsible for devising work programs on Community Service Orders in Aboriginal

communities consult closely with the community to ensure that work is directed which is seen to have value to the community. Work performed under Community Service Orders should not, however, be performed at the expense of paid employment which would otherwise be available to members of the Aboriginal community. (3: 109)

117. That where in any jurisdiction the consequence of a breach of a community service order, whether imposed by the court or as a fine default option, may be a term of imprisonment, legislation be amended to provide that the imprisonment must be subject to determination by a magistrate or judge who should be authorised to make orders other than imprisonment if he or she deems it appropriate. (3: 109)

118. That where not presently available, home detention be provided both as a sentencing option available to courts as well as a means of early release of prisoners. (3:114)

119. That Corrective Services authorities ensure that Aboriginal offenders are not being denied opportunities for probation and parole by virtue of the lack of adequate numbers of trained support staff or of infrastructure to ensure monitoring of such orders. (3:117)

120. That governments consider introducing an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines. (3:126)

121. That:

a. Where legislation does not already so provide governments should ensure that sentences of imprisonment are not automatically imposed in default of payment of a fine; and
b. Such legislation should provide alternative sanctions and impose a statutory duty upon sentencers to consider a defendant's capacity to pay in assessing the appropriate monetary penalty and time to pay, by instalments or otherwise. (3:126)

Custodial Health and Safety

122. That Governments ensure that:

a. Police Services, Corrective Services, and authorities in charge of juvenile centres recognise that they owe a legal duty of care to persons in their custody;
b. That the standing instructions to the officers of these authorities specify that each officer involved in the arrest, incarceration or supervision of a person in custody has a legal duty of care to that person, and may be held legally responsible for the death or injury of the person caused or contributed to by a breach of that duty; and
c. That these authorities ensure that such officers are aware of their responsibilities and trained appropriately to meet them, both on recruitment and during their service. (3:189)

123. That Police and Corrective Services establish clear policies in relation to breaches of departmental instructions. Instructions relating to the care of persons in custody should be in mandatory terms and be both enforceable and enforced. Procedures should be put in place to ensure that such instructions are brought to the attention of and are understood by all officers and that those officers are made aware that the instructions will be enforced. Such instructions should be available to the public. (3:193)

124. That Police and Corrective Services should each establish procedures for the conduct of de-briefing sessions following incidents of importance such as deaths, medical emergencies or actual or attempted suicides so that the operation of procedures, the actions of those involved and the application of instructions to specific situations can be discussed and assessed with a view to reducing risks in the future. (3: 194)

125. That in all jurisdictions a screening form be introduced as a routine element in the reception of

persons into police custody. The effectiveness of such forms and of procedures adopted with respect to the completion of such should be evaluated in the light of the experience of the use of such forms in other jurisdictions. (3:241)

126. That in every case of a person being taken into custody, and immediately before that person is placed in a cell, a screening form should be completed and a risk assessment made by a police officer or such other person, not being a police officer, who is trained and designated as the person responsible for the completion of such forms and the assessment of prisoners. The assessment of a detainee and other procedures relating to the completion of the screening form should be completed with care and thoroughness. (3:241)

127. That Police Services should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody. Such examination should include, but not be limited to, the following:
    a. The introduction of a regular medical or nursing presence in all principal watch-houses in capital cities and in such other major centres as have substantial numbers detained;
    b. In other locations, the establishment of arrangements to have medical practitioners or trained nurses readily available to attend police watch-houses for the purpose of identifying those prisoners who are at risk through illness, injury or serf-harm at the time of reception;
    c. The involvement of Aboriginal Health Services in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement;
    d. The establishment of locally based protocols between police, medical and para-medical agencies to facilitate the provision of medical assistance to all persons in police custody where the need arises;
    e. The establishment of proper systems of liaison between Aboriginal Health Services and police so as to ensure the transfer of information relevant to the health, medical needs and risk status of Aboriginal persons taken into police custody; and
    f. The development of protocols for the care and management of Aboriginal prisoners at risk, with attention to be given to the specific action to be taken by officers with respect to the management of:
        i. intoxicated persons;
        ii. persons who are known to suffer from illnesses such as epilepsy, diabetes or heart disease or other serious medical conditions;
        iii. persons who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour,
        iv. persons with an impaired state of consciousness;
        v. angry, aggressive or otherwise disturbed persons;
        vi. persons suffering from mental illness;
        vii. other serious medical conditions;
        viii. persons in possession of, or requiring access to,medication; and
        ix. such other persons or situations as agreed. (3:242)

128. That where persons are held in police watch-houses on behalf of a Corrective Services authority, that authority arrange, in consultation with Police Services, for medical services (and as far as possible other services) to be provided not less adequate than those that are provided in correctional institutions. (3:243)

129. That the use of breath analysis equipment to test the blood alcohol levels at the time of reception of persons taken into custody be thoroughly evaluated by Police Services in consultation with Aboriginal Legal Services, Aboriginal Health Services, health departments and relevant agencies. (3:243)

130. That:
    a. Protocols be established for the transfer between Police and Corrective Services of

information about the physical or mental condition of an Aboriginal person which may create or increase the risks of death or injury to that person when in custody;

b. In developing such protocols, Police Services, Corrective Services and health authorities with Aboriginal Legal Services and Aboriginal Health Services should establish procedures for the transfer of such information and establish necessary safe-guards to protect the rights of privacy and confidentiality of individual prisoners to the extent compatible with adequate care; and

c. Such protocols should be subject to relevant ministerial approval. (3:243)

131. That where police officers in charge of prisoners acquire information relating to the medical condition of a prisoner, either because they observe that condition or because the information is voluntarily disclosed to them, such information should be recorded where it may be accessed by any other police officer charged with the supervision of that prisoner. Such information should be added to the screening form referred to in Recommendation 126 or filed in association with it. (3:244)

132. That:

a. Police instructions should require that the officer in charge of an outgoing shift draw to the attention of the officer in charge of the incoming shift any information relating to the well being of any prisoner or detainee and, in particular, any medical attention required by any prisoner or detainee;

b. A written check list should be devised setting out those matters which should be addressed, both in writing and orally, at the time of any such handover of shift; and

c. Police services should assess the need for an appropriate form or process of record keeping to be devised to ensure adequate and appropriate notation of such matters. (3:244)

133. That:

a. All police officers should receive training at both recruit and in-service levels to enable them to identify persons in distress or at risk of death or injury through illness, injury or serf-harm;

b. Such training should include information as to the general health status of the Aboriginal population, the dangers and misconceptions associated with intoxication, the dangers associated with detaining unconscious or semi-rousable persons and the specific action to be taken by officers in relation to those matters which are to be the subject of protocols referred to in Recommendation 127;

c. In designing and delivering such training programs, custodial authorities should seek the advice and assistance of Aboriginal Health Services and Aboriginal Legal Services; and

d. Where a police officer or other person is designated or recognised by a police service as being a person whose work is dedicated wholly or substantially to cell guard duties then such person should receive a more intensive and specialised training than would be appropriate for other officers. (3:245)

134. That police instructions should require that, at all times, police should interact with detainees in a manner which is both humane and courteous. Police authorities should regard it as a serious breach of discipline for an officer to speak to a detainee in a deliberately hurtful or provocative manner. (3:245)

135. In no case should a person be transported by police to a watch- house when that person is either unconscious or not easily roused. Such persons must be immediately taken to a hospital or medical practitioner or, if neither is available, to a nurse or other person qualified to assess their health. (3:246)

136. That a person found to be unconscious or not easily rousable whilst in a watch-house or cell must be immediately conveyed to a hospital, medical practitioner or a nurse. (Where quicker medical aid can be summoned to the watch-house or cell or there are reasons for believing that

movement may be dangerous for the health of the detainee, such medical attendance should be sought). (3:246)

137. That:

a. Police instructions and training should require that regular, careful and thorough checks of all detainees in police custody be made;

b. During the first two hours of detention, a detainee should be checked at intervals of not greater than fifteen minutes and that thereafter checks should be conducted at intervals of no greater than one hour;

c. Notwithstanding the provision of electronic surveillance equipment, the monitoring of such persons in the periods described above should at all times be made in person. Where a detainee is awake, the check should involve conversation with that person. Where the person is sleeping the officer checking should ensure that the person is breathing comfortably and is in a safe posture and otherwise appears not to be at risk. Where there is any reason for the inspecting officer to be concerned about the physical or mental condition of a detainee, that person should be woken and checked; and

d. Where any detainee has been identified as, or is suspected to be, a prisoner at risk then the prisoner or detainee should be subject to checking which is closer and more frequent than the standard. (3:246)

138. That police instructions should require the adequate recording, in relevant journals, of observations and information regarding complaints, requests or behaviour relating to mental or physical health, medical attention offered and/or provided to detainees and any other matters relating to the well being of detainees. Instructions should also require the recording of all cell checks conducted. (3:247)

139. The Commission notes recent moves by Police Services to install TV monitoring devices in police cells. The Commission recommends that:

a. The emphasis in any consideration of proper systems for surveillance of those in custody should be on human interaction rather than on high technology. The psychological impact of the use of such equipment on a detainee must be boree in mind, as should its impact on that person's privacy. It is preferable that police cells be designed to maximise direct visual surveillance. Where such equipment has been installed it should be used only as a monitoring aid and not as a substitute for human interaction between the detainee and his/her custodians; and

b. Police instructions specifically direct that, even where electronic monitoring cameras are installed in police cells, personal cell checks be maintained. (3:247)

140. That as soon as practicable, all cells should be equipped with an alarm or intercom system which gives direct communication to custodians. This should be pursued as a matter of urgency at those police watch-houses where surveillance resources are limited. (3:247)

141. That no person should be detained in a police cell unless a police officer is in attendance at the watch-house and is able to perform duties of care and supervision of the detainee. Where a person is detained in a police cell and a police officer is not so available then the watch-house should be attended by a person capable of providing care and supervision of persons detained. (3:248)

142. That the installation and/or use of padded cells in police watch- houses for punitive purposes or for the management of those at risk should be discontinued immediately. (3:248)

143. All persons taken into custody, including those persons detained for intoxication, should be provided with a proper meal at regular meal times. The practice operating in some jurisdictions of excluding persons detained for intoxication from being provided with meals should be reviewed as a matter of priority. (3:248)

144. That in all cases, unless there are substantial grounds for believing that the well being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a police cell. Wherever possible an Aboriginal detainee should be accommodated with another Aboriginal person. The views of the Aboriginal detainee and such other detainee as may be affected should be sought. Where placement in a cell alone is the only alternative the detainee should thereafter be treated as a person who requires careful surveillance. (3:248)

145. That:

a. In consultation with Aboriginal communities and their organisations, cell visitor schemes (or schemes serving similar purposes) should be introduced to service police watch-houses wherever practicable;

b. Where such cell visitor schemes do not presently exist and where there is a need or an expressed interest by Aboriginal persons in the creation of such a scheme, government should undertake negotiations with local Aboriginal groups and organisations towards the establishment of such a scheme. The involvement of the Aboriginal community should be sought in the management and operation of the schemes. Adequate training should be provided to persons participating in such schemes. Governments should ensure that cell visitor schemes receive appropriate funding;

c. Where police cell visitor schemes are established it should be made clear to police officers performing duties as custodians of those detained in police cells that the operation of the cell visitor scheme does not lessen, to any degree, the duty of care owed by them to detainees; and

d. Aboriginal participants in cell visitor schemes should be those nominated or approved by appropriate Aboriginal communities and/or organisations as well as by any other person whose approval is required by local practice. (3:249)

146. That police should take all reasonable steps to both encourage and facilitate the visits by family and friends of persons detained in police custody. (3:249)

147. That police instructions should be amended to make it mandatory for police to immediately notify the relatives of a detainee who is regarded as being 'at risk', or who has been transferred to hospital. (3:249)

148. That whilst there can be little doubt that some police cell accommodation is entirely substandard and must be improved over time, expenditure on positive initiatives to reduce the number of Aboriginal people in custody discussed elsewhere in this report constitutes a more pressing priority as far as resources are concerned. Where cells of a higher standard are available at no great distance, these may be able to be used. More immediate attention must be given to programs diverting people from custody, to the provision of alternative accommodation to police cells for intoxicated persons, to ball procedures and to proceeding by way of summons or caution rather than by way of arrest. All these initiatives will reduce the call on outmoded cells. The highest priority is to reduce the numbers for whom cell accommodation is required. Where, however, it is determined that new cell accommodation must be provided in areas of high Aboriginal population, the views of the local Aboriginal community and organisations should be taken into account in the design of such accommodation. The design or re-design of any police cell should emphasise and facilitate personal interaction between custodial officers and detainees and between detainees and visitors. (3:250)

149. That Police Services should recognise, by appropriate instructions, the need to permit flexible custody arrangements which enable police to grant greater physical freedoms and practical liberties to Aboriginal detainees. The Commission recommends that the instructions acknowledge the fact that in appropriate circumstances it is consistent with the interest of the public and also the well being of detainees to permit some freedom of movement within or outside the confines of watch-houses. (3:250)

150. That the health care available to persons in correctional institutions should be of an equivalent

standard to that available to the general public. Services provided to inmates of correctional institutions should include medical, dental, mental health, drug and alcohol services provided either within the correctional institution or made available by ready access to community facilities and services. Health services provided within correctional institutions should be adequately resourced and be staffed by appropriately qualified and competent personnel. Such services should be both accessible and appropriate to Aboriginal prisoners. Correctional institutions should provide 24 hour a day access to medical practitioners and nursing staff who are either available on the premises, or on call. (3:278)

151. That, wherever possible, Aboriginal prisoners or detainees requiring psychiatric assessment or treatment should be referred to a psychiatrist with knowledge and experience of Aboriginal persons. The Commission recognises that there are limited numbers of psychiatrists with such experience. The Commission notes that, in many instances, medical practitioners who are or have been employed by Aboriginal Health Services are not specialists in psychiatry, but have experience and knowledge which would benefit inmates requiring psychiatric assessment or care. (3:278)

152. That Corrective Services in conjunction with Aboriginal Health Services and such other bodies as may be appropriate should review the provision of health services to Aboriginal prisoners in correctional institutions and have regard to, and report upon, the following matters together with other matters thought appropriate:
    a. The standard of general and mental health care available to Aboriginal prisoners in each correctional institution;
    b. The extent to which services provided are culturally appropriate for and are used by Aboriginal inmates. Particular attention should he given to drug and alcohol treatment, rehabilitative and preventative education and counselling programs for Aboriginal prisoners. Such programs should be provided, where possible, by Aboriginal people;
    c. The involvement of Aboriginal Health Services in the provision of general and mental health care to Aboriginal prisoners;
    d. The development of appropriate facilities for the behaviourally disturbed;
    e. The exchange of relevant information between prison medical staff and external health and medical agencies, including Aboriginal Health Services, as to risk factors in the detention of any Aboriginal inmate, and as to the protection of the rights of privacy and confidentiality of such inmates so far as is consistent with their proper care;
    f. The establishment of detailed guidelines governing the exchange of information between prison medical staff, corrections officers and corrections administrators with respect to the health and safety of prisoners. Such guidelines must recognise both the rights of prisoners to confidentiality and privacy and the responsibilities of corrections officers for the informed care of prisoners. Such guidelines must also be public and be available to prisoners; and
    g. The development of protocols detailing the specific action to be taken by officers with respect to the care and management of:
        i. persons identified at the screening assessment on reception as being at risk or requiring any special consideration for whatever reason;
        ii. intoxicated or drug affected persons, or persons with drug or alcohol related conditions;
        iii. persons who are known to suffer from any serious illnesses or conditions such as epilepsy, diabetes or
        iv. persons who have made any attempt to harm themselves or who exhibit, or are believed to have exhibited, a tendency to violent, irrational or potentially self-injurious behaviour,
        v. apparently angry, aggressive or disturbed persons;
        vi. persons suffering from mental illness; vii. other serious medical conditions; viii. persons on medication; and
        ix. such other persons or situations as agreed. (3:278)

153. That:

a. Prison Medical Services should be the subject of ongoing review in the light of experiences in all jurisdictions;
b. The issue of confidentiality between prison medical staff and prisoners should be addressed by the relevant bodies, including prisoner groups; and
c. Whatever administrative model for the delivery of prison medical services is adopted, it is essential that medical staff should be responsible to professional medical officers rather than to prison administrators. (3:280)

154. That:

a. All staff of Prison Medical Services should receive training to ensure that they have an understanding and appreciation of those issues which relate to Aboriginal health, including Aboriginal history, culture and life-style so as to assist them in their dealings with Aboriginal people;
b. Prison Medical Services consult with Aboriginal Health Services as to the information and training which would be appropriate for staff of Prison Medical Services in their dealings with Aboriginal people; and
c. Those agencies responsible for the delivery of health services in correctional institutions should endeavour to employ Aboriginal persons in those services. (3:281)

155. That recruit and in-service training of prison officers should include information as to the general health status of Aboriginal people and be designed to alert such officers to the foreseeable risk of Aboriginal people in their care suffering from those illnesses and conditions endemic to the Aboriginal population. Officers should also be trained to better enable them to identify persons in distress or at risk of death or harm through illness, injury or self-harm. Such training should also include training in the specific action to be taken in relation to the matters which are to be the subject of protocols referred to in Recommendation 152 (g). (3:281)

156. That upon initial reception at a prison all Aboriginal prisoners should be subject to a thorough medical assessment with a view to determining whether the prisoner is at risk of injury, illness or self-harm. Such assessment on initial reception should be provided, wherever possible, by a medical practitioner. Where this is not possible, it should be performed within 24 hours by a medical practitioner or trained nurse. Where such assessment is performed by a trained nurse rather than a medical practitioner then examination by a medical practitioner should be provided within 72 hours of reception or at such earlier time as is requested by the trained nurse who performed such earlier assessment, or by the prisoner. Where upon assessment by a medical practitioner, trained nurse or such other person as performs an assessment within 72 hours of prisoners' reception it is believed that psychiatric assessment is required then the Prison Medical Service should ensure that the prisoner is examined by a psychiatrist at the earliest possible opportunity. In this case, the matters referred to in Recommendation 151 should be taken into account. (3:281)

157. That, as part of the assessment procedure outlined in Recommendation 156, efforts must be made by the Prison Medical Service to obtain a comprehensive medical history for the prisoner including medical records from a previous occasion of imprisonment, and where necessary, prior treatment records from hospitals and health services. In order to facilitate this process, procedures should be established to ensure that a prisoner's medical history files accompany the prisoner on transfer to other institutions and upon re-admission and that negotiations are undertaken between prison medical, hospital and health services to establish guidelines for the transfer of such information. (3:282)

158. That, while recognising the importance of preserving the scene of a death in custody for forensic examination, the first priority for officers finding a person, apparently dead, should be to attempt resuscitation and to seek medical assistance. (3:289)

159. That all prisons and police watch-houses should have resuscitation equipment of the safest and

most effective type readily available in the event of emergency and staff who are trained in the use of such equipment (3:290)

160. That:
   a. All police and prison officers should receive basic training at recruit level in resuscitative measures, including mouth to mouth and cardiac massage, and should be trained to know when it is appropriate to attempt resuscitation; and
   b. Annual refresher courses in first aid be provided to all prison officers, and to those police officers who routinely have the care of persons in custody. (3:290)

161. That police and prison officers should be instructed to immediately seek medical attention if any doubt arises as to a detainee's condition. (3:290)

162. That governments give careful consideration to laws and standing orders or instructions relating to the circumstances in which police or prison officers may discharge firearms to effect arrests or to prevent escapes or otherwise. All officers who use firearms should be trained in methods of weapons retention that minimise the risk of accidental discharge. (3:290)

163. That police and prison officers should receive regular training in restraint techniques, including the application of restraint equipment. The Commission further recommends that the training of prison and police officers in the use of restraint techniques should be complemented with training which positively discourages the use of physical restraint methods except in circumstances where the use of force is unavoidable. Restraint aids should only be used as a last resort. (3:290)

164. The Commission has noted that research has revealed that in a significant number of cases detainees or prisoners who had inflicted self-harm were subsequently charged with an offence arising from the incident. The Commission recommends that great care be exercised in laying any charges arising out of incidents of attempted self-harm and further recommends that no such charges be laid, at all, where self-harm actually results from the action of the prisoner or detainee (subject to a possible exception where there is clear evidence that the harm was occasioned for the purpose of gaining some second advantage). (3:291)

165. The Commission notes that prisons and police stations may contain equipment which is essential for the provision of services within the institution but which may also be capable, if misused, of causing harm or self-harm to a prisoner or detainee. The Commission notes that in one case death resulted from the inhalation of fumes from a fire extinguisher. Whilst recognising the difficulties of eliminating all such items which may be potentially dangerous the Commission recommends that Police and Corrective Services authorities should carefully scrutinise equipment and facilities provided at institutions with a view to eliminating and/or reducing the potential for harm. Similarly, steps should be taken to screen hanging points in police and prison cells. (3:291)

166. That machinery should be put in place for the exchange, between Police and Corrective Services authorities, of information relating to the care of prisoners. (3:291)

167. That the practices and procedures operating in juvenile detention centres be reviewed in light of the principles underlying the recommendations relating to police and prison custody in this report, with a view to ensuring that no lesser standards of care are applied in such centres. (3:292)

The Prison Experience

168. That Corrective Services effect the placement and transfer of Aboriginal prisoners according to the principle that, where possible, an Aboriginal prisoner should be placed in an institution as close as possible to the place of residence of his or her family. Where an Aboriginal prisoner is subject to a transfer to an institution further away from his or her family the prisoner should be given the fight to appeal that decision. (3:310)

169. That where it is found to be impossible to place a prisoner in the prison nearest to his or her family sympathetic consideration should be given to providing financial assistance to the family, to visit the prisoner from time to time. (3:312)

170. That all correctional institutions should have adequate facilities for the conduct of visits by friends and family. Such facilities should enable prisoners to enjoy visits in relative privacy and should provide facilities for children that enable relatively normal family interaction to occur. The intervention of correctional officers in the conduct of such visits should be minimal, although these visits should be subject to adequate security arrangements. (3:312)

171. That Corrective Services give recognition to the special kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family and give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance. (3:313)

172. That Aboriginal prisoners should be entitled to receive periodic visits from representatives of Aboriginal organisations, including Aboriginal Legal Services (3:3 14)

173. That initiatives directed to providing a more humane environment through introducing shared accommodation facilities for community living, and other means should be supported, and pursued in accordance with experience and subject to security requirements. (3:316)

174. That all Corrective Services authorities employ Aboriginal Welfare Officers to assist Aboriginal prisoners, not only with respect to any problems they might be experiencing inside the institution but also in respect of welfare matters extending outside the institution, and that such an officer be located at or frequently visit each institution with a significant Aboriginal population. (3:318

175. That consideration be given to the principle involved in the submission made by the Western Australian Prison Officers' Union that there be a short transition period in a custodial setting for prisoners prior to them entering prison routine. (3:318)

176. That consideration should be given to the establishment in respect of each prison within a State or Territory of a Complaints Officer whose function is:

a. To attend at the prison at regular (perhaps weekly) intervals or on special request for the purpose of receiving from any prisoner any complaint concerning any matter internal to the institution, which complaint shall be lodged in person by the complainant;
b. To take such action as the officer thinks appropriate in the circumstances;
c. To require any person to make enquiries and report to the officer,
d. To attempt to settle the complaint;
e. To reach a finding (if possible) on the substance of the complaint and to recommend what action if any, should be taken arising out of the complaint; and
f. To report to the complainant, the senior officer of the prison and the appointing Minister (see below) the terms of the complaint, the action taken and the findings made.

This person should be appointed by, be responsible to and report to the Ombudsman, Attorney-General or Minister for Justice. Complaints receivable by this person should include, without in any way limiting the scope of complaints, a complaint from an earlier complainant that he or she has suffered some disadvantage as a consequence of such earlier complaint. (3:321)

177. That appropriate screening procedures should be implemented to ensure that potential officers who will have contact with Aboriginal people in their duties are not recruited or retained by police and prison departments whilst holding racist views which cannot be eliminated by training or re-training programs. In addition Corrective Services authorities should ensure that all correctional officers receive cross-cultural education and an understanding of Aboriginal-non-Aboriginal relations in the past and the present. Where possible, that aspect of training should be conducted by Aboriginal people (including Aboriginal ex-prisoners). Such

training should be aimed at enhancing the correctional officers' skills in cross-cultural communication with and relating to Aboriginal prisoners. (3:327)

178. That Corrective Services make efforts to recruit Aboriginal staff not only as correctional officers but to all employment classifications within Corrective Services. (3:329)

179. That procedures whereby a prisoner appears before an officer for the purpose of making a request, or for the purpose of taking up any matter which can appropriately be taken up by the prisoner before that officer, should be made as simple as possible and that the necessary arrangements should be made as quickly as possible under the circumstances. (3:331)

180. That where a prisoner is charged with an offence which will be dealt with by a Visiting Justice, that Justice should be a Magistrate. A charge involving the possibility of affecting the period of imprisonment should always be dealt with in this way. All charges of offences against the general law should be heard in public courts. (3:333)

181. That Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention. In any event, Corrective Services authorities should provide certain minimum standards for segregation including fresh air, lighting, daily exercise, adequate clothing and heating, adequate food, water and sanitation facilities and some access to visitors. (3:334)

182. That instructions should require that, at all times, correctional officers should interact with prisoners in a manner which is both humane and courteous. Corrective Services authorities should regard it as a serious breach of discipline for an officer to speak to a prisoner in a deliberately hurtful or provocative manner. (3:335)

183. That Corrective Services authorities should make a formal commitment to allow Aboriginal prisoners to establish and maintain Aboriginal support groups within institutions. Such Aboriginal prisoner support groups should be permitted to hold regular meetings in institutions, liaise with Aboriginal service organisations outside the institution and should receive a modest amount of administrative assistance for the production of group materials and services. corrective service authorities should negotiate with such groups for the provision of educational and cultural services to Aboriginal prisoners and favourably consider the formal recognition of such bodies as capable of representing the interests and viewpoints of Aboriginal prisoners. (3:338)

184. That Corrective Services authorities ensure that all Aboriginal prisoners in all institutions have the opportunity to perform meaningful work and to undertake educational courses in self-development, skills acquisition, vocational education and training including education in Aboriginal history and culture. Where appropriate special consideration should be given to appropriate teaching methods and learning dispositions of Aboriginal prisoners. (3:353)

185. That the Department of Education, Employment and Training be responsible for the development of a comprehensive national strategy designed to improve the opportunities for the education and training of those in custody. This should be done in co- operation with state Corrective Services authorities, adult education providers (including in particular independent Aboriginal-controlled providers) and State departments of employment and education. The aim of the strategy should be to extend the aims of the Aboriginal Education Policy and the Aboriginal Employment Development Policy to Aboriginal prisoners, and to develop suitable mechanisms for the delivery of education and training programs to prisoners. (3:353)

186. That prisoners, including Aboriginal prisoners, should receive remuneration for work performed. In order to encourage Aboriginal prisoners to overcome the educational disadvantage, which most Aboriginal people presently suffer, Aboriginal prisoners who pursue education or training courses during the hours when other prisoners are involved in remunerated work should receive the same level of remuneration. (This recommendation is not intended to apply to study

undertaken outside the normal hours of work of prisoners.) (3:357)

187. That experiences in and the results of community corrections rather than institutional custodial corrections should be closely studied by Corrective Services and that the greater involvement of communities and Aboriginal organisations in correctional processes be supported. (3:358)

The Path to Self-Determination

188. That governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people. (4:7)

189. That the Commonwealth Government give consideration to constituting ATSIC as an employing authority independent of the Australian Public Service. (4: 12)

190. That the Commonwealth Government, in conjunction with the State and Territory Governments, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations and also implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis. (4:4.21)

191. That the Commonwealth Government, in conjunction with the State and Territory Governments, develop means by which all sources of funds provided for or identified as being available to Aboriginal communities or organisations wherever possible be allocated through a single source with one set of audit and financial requirements but with the maximum devolution of power to the communities and organisations to determine the priorities for the allocation of such funds. (4:21)

192. That in the implementation of any policy or program which will particularly affect Aboriginal people the delivery of the program should, as a matter of preference, be made by such Aboriginal organisations as are appropriate to deliver services pursuant to the policy or program on a contractual basis. Where no appropriate Aboriginal organisation is available to provide such service then any agency of government delivering the service should, in consultation with appropriate Aboriginal organisations and communities, ensure that the processes to be adopted by the agency in the delivery of services are appropriate to the needs of the Aboriginal people and communities receiving such services. Particular emphasis should be given to the employment of Aboriginal people by the agency in the delivery of such services and in the design and management of the process adopted by the agency. (4:28)

193. That the Commonwealth Government, in negotiation with appropriate Aboriginal organisations, devise a procedure which will enable Aboriginal communities and organisations to properly account to government for funding but which will be least onerous and as convenient and simple as possible for the Aboriginal organisations and communities to operate. The Commission further recommends that State and Territory Governments adopt the same procedure, once agreed, and with as few modifications as may be essential for implementation, in programs funded by those governments.

194. That Commonwealth, State and Territory Governments, in negotiation with appropriate Aboriginal communities and organisations, agree upon appropriate performance indicators for programs relevant to Aboriginal communities and organisations. The Commission further recommends that governments fund Aboriginal organisations and communities to enable the appropriate level of infrastructure and training as is required to develop, apply and monitor performance indicators. (4:29)

195. That, subject to appropriate provision to ensure accountability to government for funds received,

payments by government to Aboriginal organisations and communities be made on the basis of triennial rather than annual or quarterly funding. (4:30)

196. That whilst governments are entitled to require a proper system for accounting of funds provided to Aboriginal organisations and communities, those organisations and communities are equally entitled to receive a full explanation of the funding processes which are adopted by governments. The Commission recommends that governments ensure that Aboriginal communities and organisations are given prompt advice, in writing and in plain English or, where appropriate, in Aboriginal languages, as to decisions concerning funding applications and as to financial and other matters relevant to the assessment of applications for funding made by those organisations and communities so as to enable those organisations and communities to make appropriate planning decisions. (4:30)

197. That ATSIC Councillors and Commissioners at an early stage be encouraged to consult with Aboriginal organisations and communities to develop a program for training staff of Aboriginal organisations and communities in appropriate management and accounting procedures to ensure the efficiency and integrity of the organisations which are culturally appropriate. In particular, there should be a commitment to devising management procedures which provide rules for the relationship, obligations and rights, both individually and as between each other, of directors, managers and staff of Aboriginal organisations. (4:30)

198. That governments commit themselves to achieving the objective that Aboriginal people are not discriminated against in the delivery of essential services and, in particular, are not disadvantaged by the fact that the low levels of income received by Aboriginal people reduce their ability to contribute to the provision of such services to the same extent as would be possible by non-Aboriginal Australians living in similar circumstances and locations. (4:38)

199. That governments recognise that a variety of organisational structures have developed or been adapted by Aboriginal people to deliver services, including local government type services to Aboriginal communities. These structures include community councils recognised as local government authorities, outstation resource centres, Aboriginal land councils and co-operatives and other bodies incorporated under Commonwealth, State and Territory legislation as councils or associations. Organisational structures which have received acceptance within an Aboriginal community are particularly important, not only because they deliver services in a manner which makes them accountable to the Aboriginal communities concerned but also because acceptance of the role of such organisations recognises the principle of Aboriginal self-determination. The Commission recommends that government should recognise such diversity in organisational structures and that funding for the delivery of services should not be dependent upon the structure of organisation which is adopted by Aboriginal communities for the delivery of such services. (4:38)

200. That the Commonwealth Government negotiate with State and Territory Governments to ensure that where funds for local government purposes are supplied to local government authorities on a basis which has regard to the population of Aboriginal people within the boundaries of a local government authority equitable distribution of those funds is made between Aboriginal and non-Aboriginal residents in those local government areas. The Commission further recommends that where it is demonstrated that equitable distribution has not been provided that local government funds should be withheld until it can be assured that equitable distribution will occur. (4:38)

201. The Commission has observed the operations of the Tangentyere Council in Alice Springs and the co-operative relationship established with the Alice Springs Town Council. It is imperative that the Tangentyere Council be provided with stable and adequate funding to enable it to continue and to enhance its provision of services and that governments, local government authorities, Aboriginal organisations and communities consider the adoption of similar models for local governance modified according to the desires of particular communities. (4:39)

202. That where such courses are not already available, suitable training courses to provide necessary administrative, political and management skills should be available for persons elected to regional councils of ATSIC, elected to, appointed to, or engaged in Aboriginal organisations involved in the delivery of services to Aboriginal people and other Aboriginal community organisations. The content of such training courses should be negotiated between appropriate education providers (including Aboriginal education providers) other appropriate Aboriginal organisations and government. Such courses should be funded by government and persons undertaking such courses should be eligible for such financial assistance in the course of studies as would be available under ABSTUDY guidelines. (4:41)

203. That the highest priority be accorded to the facilitation of social, economic and cultural development plans by Aboriginal communities, and on a regional basis, as a basis for future planning of:
    a. Economic development goals;
    b. Training, employment and enterprise projects;
    c. CDEP schemes;
    d. The provision of services and infrastructure; and
    e. Such other social and cultural needs as are identified. (4:44)

204. The preparation of community development plans should be a participative process involving all members of the community, and should draw upon the knowledge and expertise of a wide range of professionals as well as upon the views and aspirations of Aboriginal people in the local area. It is critical that the processes by which plans are developed are culturally sensitive, unhurried and holistic in approach, and that adequate information on the following matters is made available to participants:
    a. The range of Aboriginal needs and aspirations;
    b. The opportunities created by government policies or programs;
    c. The opportunities and constraints in the local economy;
    d. The political opportunities to influence the local arena. (4:44)

Accommodating Difference: Relations Between Aboriginal and Non-Aboriginal People

205. That:
    a. Aboriginal media organisations should receive adequate funding, where necessary, in recognition of the importance of their function; and
    b. All media organisations should be encouraged to develop codes and policies relating to the presentation of Aboriginal issues, the establishment of monitoring bodies, and the putting into place of training and employment programs for Aboriginal employees in all classifications. (4:59)

206. That the media industry and media unions be requested to consider the establishment of and support of an annual award or awards for excellence in Aboriginal affairs reporting to be judged by a panel of media, union and Aboriginal representatives. (4:59)

207. That institutions providing journalism courses be requested to:
    a. Ensure that courses contain a significant component relating to Aboriginal affairs thereby reflecting the social context in which journalists work; and
    b. Consider, in consultation with media industry and media unions, the creation of specific units of study dedicated to Aboriginal affairs and the reporting thereof. (4:59)

208. That, in view of the fact that many Aboriginal people throughout Australia express disappointment in the portrayal of Aboriginal people by the media, the media industry and media unions should encourage formal and informal contact with Aboriginal organisations, including Aboriginal media

organisations where available. The purpose of such contact should be the creation of a better understanding, on all sides, of issues relating to media treatment of Aboriginal affairs. (4:59)

209. That continuing support should be given to Aboriginal organisations such as the Aboriginal Arts Board in their endeavours to protect the interests of Aboriginal artists and to ensure the continuing expansion of the production and marketing of Aboriginal art and craft work. (4:60)

2 10. That:

a. All employees of government departments and agencies who will live or work in areas with significant Aboriginal population and whose work involves the delivery of services to Aboriginal people be trained to understand and appreciate the traditions and culture of contemporary Aboriginal society;
b. Such training programs should be developed in negotiation with local Aboriginal communities and organisations; and
c. Such training should, wherever possible, be provided by Aboriginal adult education providers with appropriate input from local communities. (4:61)

2 11. That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to further pursue their programs designed to inform the Aboriginal community regarding anti-discrimination legislation, particularly by way of Aboriginal staff members attending at communities and organisations to ensure the effective dissemination of information as to the legislation and ways and means of taking advantage of it. (4:69)

212. That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to consult with appropriate Aboriginal organisations and Aboriginal Legal Services with a view to developing strategies to encourage and enable Aboriginal people to utilise anti-discrimination mechanisms more effectively, particularly in the area of indirect discrimination and representative actions. (4:69)

213. That governments which have not already done so legislate to proscribe racial vilification and to provide a conciliation mechanism for dealing with complaints of racial vilification. The penalties for racial vilification should not involve criminal sanctions. In addition to enabling individuals to lodge complaints, the legislation should empower organisations which can demonstrate a special interest in opposing racial vilification to complain on behalf of any individual or group represented by that organisation. (4:75)

Improving The Criminal Justice System: Aboriginal People and Police

214. The emphasis on the concept of community policing by Police Services in Australia is supported and greater emphasis should be placed on the involvement of Aboriginal communities, organisations and groups in devising appropriate procedures for the sensitive policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live. (4:85)

215. That Police Services introduce procedures, in consultation with appropriate Aboriginal organisations, whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, including:

a. The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination;
b. Any problems perceived by Aboriginal people; and
c. Any problems perceived by police. Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints. (4:85)

216. That the Northern Territory Department of Correctional Services should, at the conclusion of the review of the Aboriginal Community Justice Project, establish regular meetings with Magistrates to monitor the effective operation of the program and establish a mechanism to ensure that the views of the Aboriginal communities in which the program operates are considered in the context of these meetings. (4:97)

217. That the review of the Aboriginal Community Justice Project should undertake a detailed consideration of the resources required by the Project to operate effectively. Consideration should be given to the creation of specific liaison officer positions employing Aboriginal people to facilitate communications between the court and the community. (4:97)

218. That in reviewing the Aboriginal Community Justice Project the Northern Territory Department of Correctional Services should undertake extensive consultations with all Aboriginal communities which wish to participate in the program. In pursuing this consultation, care should be given to canvassing the entire range of community opinions and the means by which these may be brought, in any relevant case, to the Court's attention. (4:97)

219. The Australian Law Reform Commission's Report on the Recognition of Aboriginal Customary Law was a significant, well- researched study. The Royal Commission received requests from Aboriginal people through the Aboriginal Issues Units regarding the progress in implementation of the recommendations made by the Australian Law Reform Commission and in some cases from communities which had made proposals to the Law Reform Commission. This Commission urges government to report as to the progress in dealing with this Law Reform Report. (4:102)

220. That organisations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates. (4: 108)

221. That Aboriginal people who are involved in community and police initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal affairs budget (4:109)

222. That the National Police Research Unit make a particular study of efforts currently being made by Police Services to improve relations between police and Aboriginal people with a view to disseminating relevant information to Police Services and Aboriginal communities and organisations, as to appropriate initiatives which might be adopted. (4: 109)

223. That Police Services, Aboriginal Legal Services and relevant Aboriginal organisations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people. Protocols, among other matters, should address questions of:
    a. Notification of the Aboriginal Legal Service when Aboriginal people are arrested or detained;
    b. The circumstances in which Aboriginal people are taken into protective custody by virtue of intoxication;
    c. Concerns of the local community about local policing and other matters; and
    d. Processes which might be adopted to enable discrete Aboriginal communities to participate in decisions as to the placement and conduct of police officers on their

communities. (4:111)

224. That pending the negotiation of protocols referred to in Recommendation 223, in jurisdictions where legislation, standing orders or instructions do not already so provide, appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person other than such arrests or detentions for which it is agreed between the Aboriginal Legal Services and the Police Services that notification is not required. (4:111)

225. That Police Services should consider setting up policy and development units within their structures to deal with developing policies and programs that relate to Aboriginal people. Each such unit should be headed by a competent Aboriginal person, not necessarily a police officer, and should seek to encourage Aboriginal employment within the Unit. Each unit should have full access to senior management of the service and report directly to the Commissioner or his or her delegate. (4: 123)

226. That in all jurisdictions the processes for dealing with complaints against police need to be urgently reviewed. The Commission recommends that legislation should be based on the following principles:
    a. That complaints against police should be made to, be investigated by or on behalf of and adjudicated upon by a body or bodies totally independent of Police Services;
    b. That the name of a complainant should remain confidential (except where its disclosure is warranted in the interests of justice), and it should be a serious offence for a police officer to take any action against or detrimental to the interest of a person by reason of that person having made a complaint;
    c. That where it is decided by the independent authority to hold a formal hearing of a complaint, that heating should be in public;
    d. That the complaints body report annually to Parliament;
    e. That in the adjudication of complaints made by or on behalf of Aboriginal persons one member of the review or adjudication panel should be an Aboriginal person nominated by an appropriate Aboriginal organisation(s) in the State or Territory in which the complaint arose. The panel should also contain a person nominated by the Police Union or similar body;
    f. That there be no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint;
    g. That Aboriginal Legal Services be funded to ensure that legal assistance, if required, is available to any Aboriginal complainant
    h. That the complaints body take all reasonable steps to employ members of the Aboriginal community on the staff of the body;
    i. That the investigation of complaints should be undertaken either by appropriately qualified staff employed by the authority itself, or by police officers who are, for the purpose of and for the duration of the investigation, under the direction of and answerable to, the head of the independent authority;
    j. That in the course of investigations into complaints, police officers should be legislatively required to answer questions put to them by the head of the independent authority or any person acting on her/his behalf but subject to further legislative provisions that any statements. made by a police officer in such circumstances may not be used against him/her in other disciplinary proceedings;
    k. That legislation ensure that the complaints body has access to such files, documents and information from the Police Services as is required for the purpose of investigating any complaint. (4:131)

227. That the Northern Territory Police Service School-based Program be studied by other Police Services and that the progress and results of the program should be monitored by those services. (4:137)

228. That police training courses be reviewed to ensure that a substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people. It is important that police training provide practical advice as to the conduct which is appropriate for such interactions. Furthermore, such training should incorporate information as to:
    a. The social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people;
    b. The social and historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today; and
    c. The history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation. (4:150)

229. That all Police Services pursue an active policy of recruiting Aboriginal people into their services, in particular recruiting Aboriginal women. Where possible Aboriginal recruits should be taken in groups. (4:152)

230. That where Aboriginal applicants wish to join a service who appear otherwise to be suitable but whose general standard of education is insufficient, means should be available to allow those persons to undertake abridging course before entering upon the specific police training. (4:152)

231. That different jurisdictions pursue their chosen initiatives for improving relations between police and Aboriginal people in the form of police aides, police liaison officers and in other ways; experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances. (4:152)

232. That the question of Community Police in Queensland and the powers and responsibilities of Community Councils in relation to them be urgently reviewed. (4:161)

233. That the question of Aboriginal police aides in Western Australia be given urgent consideration in light of recent developments, including the Police Aides Review (1987), the development of programs for police aides in other jurisdictions and the investigations into the work of police aides reported in the report of Commissioner Dodson and in this National Report and the recommendations of this report. In the consideration of Aboriginal police aides special attention should be given to the wisdom of police aides being engaged to work in communities other than those from which they were recruited. (4:161)

Breaking the Cycle: Aboriginal Youth

234. That Aboriginal Legal Services throughout Australia be funded to such extent as will enable an adequate level of legal representation and advice to Aboriginal juveniles. (4: 177)

235. That policies of government and the practices of agencies which have involvement with Aboriginal juveniles in the welfare and criminal justice systems should recognise and be committed to ensuring, through legislative enactment, that the primary sources of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies. (4: 177)

236. That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding. (4:177)

237. That at all levels of the juvenile welfare and justice systems there is a need for the employment and training of Aboriginal people as youth workers in roles such as recreation officers, welfare officers, counsellors, probation and parole officers, and street workers in both government and

community organisations. Governments, after consultation with appropriate Aboriginal organisations, should increase funding in this area and pursue a more vigorous recruitment and training strategy. (4:177)

238. That once programs and strategies for youth have been devised and agreed, after negotiation between governments and appropriate Aboriginal organisations and communities, governments should provide resources for the employment and training of appropriate persons to ensure that the programs and strategies are successfully implemented at a local level. In making appointment of trainers preference should be given to Aboriginal people with a proven record of being able to relate to, and influence, young people even though such candidates may not have academic qualifications. (4:178)

239. That governments should review relevant legislation and police standing orders so as to ensure that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary. The test whether arrest is necessary should, in general, be more stringent than that imposed in relation to adults. The general rule should be that if the offence alleged to have been committed is not grave and if the indications are that the juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected. (4:183)

240. That:

a. Police administrators give police officers greater encouragement to proceed by way of caution rather than by arrest, summons or attendance notice;

b. That wherever possible the police caution be given in the presence of a parent, adult relative or person having care and responsibility for the juvenile; and

c. That if a police caution is given other than in the presence of any such person having care and responsibility for the juvenile such person be notified in writing of the fact and details of the caution administered. (4:184)

241. The Commission notes that in some jurisdictions (in particular South Australia and Western Australia) Children's Aid Panels or Screening Panels apply. These panels provide an option lying between police cautions, on the one hand, and appearances in children's courts, on the other hand. The Commission is unable to recommend that such panels be established in places where they do not presently exist, nor that panels be abolished in places where they do exist. The Commission, however, draws attention to evidence suggesting that the potential benefits which may flow from the provision of such panels are not fully realised in the case of Aboriginal juveniles. The Commission draws attention to the desirability of studies being done on a wide scale to determine the efficacy of such initiatives. The Commission recommends that for South Australia and Western Australia the following matters should be made clear by legislation, standing orders or administrative directions so as to provide:

a. That the fact of arrest is not to be taken into account in determining whether a child is referred to a Children's Court as opposed to being referred to an alternative body such as a Children's Aid Panel;

b. That the decision to proceed by way of summons or attendance notice rather than by cautioning a juvenile should not be influenced by the existence of such panels;

c. That there should be adequate representation of Aboriginal people on the list of panel members;

d. That the panels should be so constituted that there be adequate representation of Aboriginal members of the panel on any occasion in which an Aboriginal juvenile's case is being considered;

e. That in no case should there be consideration of the case of an Aboriginal juvenile unless one member, at least, of the panel is an Aboriginal person; and

f. That an Aboriginal juvenile should not be denied consideration by a Children's Aid Panel by virtue of the juvenile's inability, on financial grounds, to make restitution for property

lost, stolen or damaged. (4:184)

242. That, except in exceptional circumstances, juveniles should not be detained in police lockups. In order to avoid such an outcome in places where alternative juvenile detention facilities do not exist, the following administrative and, where necessary, legislative steps should he taken:
   a. Police officers in charge of lockups should be instructed that consideration of bail in such cases be expedited as a matter of urgency;
   b. If the juvenile is not released as a result of a grant of bail by a police officer or Justice of the Peace then the question of bail should be immediately referred (telephone referral being permitted) to a magistrate, clerk of Court or such other person as shall be given appropriate jurisdiction so that bail can be reconsidered;
   c. Government should approve informal juvenile holding homes, particularly the homes of Aboriginal people, in which juveniles can lawfully he placed by police officers if bail is in fact not allowed; and
   d. If in the event a juvenile is detained overnight in a police lock-up every effort should be made to arrange for a parent or visitor to attend and remain with the juvenile whether pursuant to the terms of a formal cell visitor scheme or otherwise.

   Such steps should be in addition to notice that the officer in charge of the station should give to parents, the Aboriginal Legal Service or its representative. (4:202)

243. That where an Aboriginal juvenile is taken to a police station for interrogation or as a result of arrest, the officer in charge of the police station at which the juvenile is detained should be required to immediately advise the relevant Aboriginal Legal Service and the parent or person responsible for the care and supervision of the juvenile of the fact of the child being detained at the police station (without prejudice to any obligation to advise any other person). (4:203)

244. That no Aboriginal juvenile should be interrogated by a police officer except in the presence of a parent, other person responsible for the care and supervision of the child or, in the absence of a parent or such other person, an officer of an agency or organisation charged with responsibility for the care and welfare of Aboriginal juveniles. (4:203)

245. That legislation, regulations and/or police standing orders, as may be appropriate, be amended so as to require compliance with the above recommendations. (4:205)

Towards Better Health

246. That the State, Territory and Commonwealth governments act to put an end to the situation where insufficient accurate and comprehensive information on inputs to and activities of Aboriginal health programs is available. Such information is needed if Aboriginal organisations, governments and the community are to be in a position to understand and monitor what is taking place in this area, to estimate the benefits derived therefrom and to develop appropriate policies and programs to address existing and newly emerging needs. (4:227)

247. That more and/or better quality training be provided in a range of areas taking note of the following:
   a. Many non-Aboriginal health professionals at all levels are poorly informed about Aboriginal people, their cultural differences, their specific socio-economic circumstances and their history within Australian society. The managers of health care services should be aware of this and institute specific training programs to remedy this deficiency, including by pre-service and in-service training of doctors, nurses and other health professionals, especially in areas where Aboriginal people are concentrated;
   b. The rotation of staff through country hospitals means that many professional staff are ill-prepared to provide appropriate health care services to Aboriginal people. Staff on such rotations should receive special training for their rural placements, and resources to make this possible should routinely be provided as part of the operating budgets of the

relevant facilities;

c. The primary health care approach to health development is highly appropriate in the Aboriginal health field, but health professionals are not well trained in this area. The pre-service and in-service training of doctors, nurses and other health professionals should provide such staff with a firm understanding of and commitment to primary health care. This should be a special feature of the training of staff interested in working in localities where Aboriginal people are concentrated;

d. Health care staff working in areas where Aboriginal people are concentrated should receive specific orientation training covering both the socio-cultural aspects of the Aboriginal communities they are likely to be serving and the types of medical and health conditions likely to be encountered in a particular locality. Such orientation programs must be complemented by appropriate on-the-job training;

e. Effective communication between non-Aboriginal health professionals and patients in mainstream services is essential for the successful management of the patients' health problems. Non-Aboriginal staff should receive special training to sensitise them to the communication barriers most likely to interfere with the optimal health professional/patient relationship; and

f. Aboriginal people often present to mainstream health care facilities with unusual health conditions and unusual presentations of common conditions, as well as urgent, life-threatening conditions. The training of health professionals must enable them to cope successfully with these conditions. (4:257)

248. That health departments, academic institutions and other relevant training authorities monitor the proposed Monash University/Victorian Aboriginal Health Service's Aboriginal Primary Health Care Unit, with a view to learning from its experiences and that those interested in this field study the philosophies and methods of operation of the Aboriginal community-controlled health services. (4:258)

249. That the non-Aboriginal health professionals who have to serve Aboriginal people who have limited skills in communicating with them in the English language should have access to skilled interpreters. (4:259)

250. That effective mechanisms be established for communicating vital information about patients, between the mainstream and Aboriginal community-based health care services. This must be done in an ethical manner, preserving the confidentiality of personal information and with the informed consent of the patients involved. Such communication should be a two-way process. (4:259)

251. That access to health care services and facilities, including specialised diagnostic facilities, in areas of Aboriginal population should be brought up to community standards. The greater needs, for the time being, of Aboriginal people should be fully recognised by the responsible authorities in their consideration of the allocation of staff and equipment. (4:259)

252. That hospitals that are regularly attended by Aboriginal people should review existing procedures in casualty, in consultation with Aboriginal Health and Medical Services, to reduce the likelihood of Aboriginal patients receiving ineffective diagnosis and treatment. The usefulness of standard protocols in such situations should be explored in the reviews. (4:259)

253. That the physical design of and methods of operating health care facilities be attuned to the needs of the intended patients. Particularly where high concentrations of Aboriginal people are found, their special needs in these regards should be taken into consideration. The involvement of Aboriginal people in the processes of designing such facilities is highly desirable. (4:259)

254. That health departments and other mainstream health authorities accept as policy, and implement in practice, the principle that Aboriginal people should be involved in meaningful ways in decision-making roles regarding the assessment of needs and the delivery of health services to

the Aboriginal community. One application of this principle is that efforts should be made to see that Aboriginal people are properly represented on the Boards of hospitals serving areas where Aboriginal patients will be a significant proportion of hospital clients. (4:260)

255. That the holding of negative stereotypes of both Aboriginal people and people with drinking problems be addressed through effective staff selection and supervision, along with pre-service and in-service education, to reduce the ignorance, and through clear instructions by employing authorities that such stereotyping of Aboriginal people and those with drinking problems will not be tolerated in the health care setting. (4:260)

256. That more Aboriginal staff be employed through affirmative action programs as health care workers (and, indeed, in other capacities such as support staff) in those mainstream health care facilities which serve Aboriginal clients and patients and that their involvement must be well thought out, be at appropriate levels, and be structured so that they contribute effectively with the minimum amount of role conflict. (4:260)

257. That special initiatives now in place in a number of tertiary training institutions. such as medical schools, to facilitate the entry into and successful completion of courses of study and training by Aboriginal students be expanded for use in all relevant areas of health services training. (4:260)

258. That in areas where Aboriginal people are concentrated and the state or territory governments provide or intend to provide a particular service or services to Aboriginal people, the governments invite community-controlled Aboriginal Health Services to consider negotiating contracts for the provision of the services to Aboriginal people and also, where appropriate, to non-Aboriginal people. (4:261)

259. That Aboriginal community-controlled health services be resourced to meet a broad range of functions, beyond simply the provision of medical and nursing care, including the promotion of good health, the prevention of disease, environmental improvement and the improvement of social welfare services for Aboriginal people. (4:261)

260. That:

a. Funding bodies should facilitate program evaluation of Aboriginal community-controlled health services, not with the aim of making decisions on levels of funding, but with the aim of assisting the services to operate most effectively and efficiently;
b. Representatives of the Aboriginal community should be invited to participate in the control of the evaluation research activity; and
c. Performance indicators should be drawn up co-operatively between the managers of the services and the funding bodies. (4:261)

261. That the use of Aboriginal hospital liaison officers be expanded in hospitals which serve Aboriginal patients and that they be seen and used as respected members of the therapeutic team. (4:262)

262. That the States recognise the contributions of Aboriginal Health Workers and in so doing review the Northern Territory's experience of the establishment of appropriate career structures and the registration of them. (4:262)

263. That where there is a high level of non-compliance by a range of Aboriginal patients with advice tendered to them by health professionals, the health professionals should examine their styles of operation with a view to checking whether those styles can be improved. (4:262)

264, That:

a. There be a substantial expansion in Aboriginal mental health services within the framework of the development, on the basis of community consultation, of a new national

mental health policy;

b. There be close scrutiny by those developing the national policy of the number of models that exist for such expansion; and

c. Aboriginal people be fully involved in the policy development and implementation process. (4:262)

265. That as an immediate step towards overcoming the poorly developed level of mental health services for Aboriginal people priority should be given to complementing the training of psychiatrists and other non-Aboriginal mental health professionals with the development of a cadre of Aboriginal health workers with appropriate mental health training, as well as their general health worker training. The integration of the two groups, both in their training and in mental health service delivery, should receive close attention. In addition, resources should be allocated for the training and employment of Aboriginal mental health workers by Aboriginal health services. (4:262)

266. That the linking or integrating of mental health services for Aboriginal people with local health and other support services be a feature of current and expanded Aboriginal mental health services. (4:263)

267. That aerial medical services and the appropriate authorities review the effectiveness of practices relating to medical diagnosis at a distance, for example by radio or telephone, and consider the implementation of standard diagnostic protocols, where they are not currently being used. (4:263)

268. That the National Health and Medical Research Council actively stimulate research into health concerns identified as priorities by appropriate Aboriginal health advisory bodies (such as the proposed Council of Aboriginal Health), particularly research that involves Aboriginal people at both the development and implementation stages. (4:263)

269. That compliance with the National Health and Medical Research Council's Advisory Notes on Aboriginal health research ethics be a condition of Aboriginal health research funding from all sources. (4:263)

270. That:

a. Aboriginal people be involved in each stage of the development of Aboriginal health statistics; and

b. Appropriate Aboriginal health advisory bodies (such as the proposed Council of Aboriginal Health) consider developing an expanded role in this area, perhaps in an advisory capacity to the Australian Institute of Health, and that the aim of this involvement should be to ensure that priority is given to the collection, analysis, dissemination and use of those Aboriginal health statistics most relevant to Aboriginal health development. (4:263)

271. That the implementation of the National Aboriginal Health Strategy, as endorsed by the Joint Ministerial Forum, be regarded as a crucial element in addressing the underlying issues the Commission was directed to take into account, and that funds be urgently made available to allow the Strategy to be implemented. (4:268)

Coping With Alcohol and other Drugs: Strategies for Change

272. That governments review the level of resources allocated to the function of ensuring that the holden of liquor licences meet their legal obligations (in particular laws relating to serving intoxicated persons), and allocate additional resources if needed. (4:281)

273. That consideration be given to legislating for the appointment of community workers who would have the power to inspect licensed premises to ensure that licensees comply with the applicable

legislation and licence conditions. (4:282)

274. That governments consider whether there is too great an availability of liquor, including too many licensed premises, and the desirability of reducing the number of licensed premises in some localities, such as Alice Springs, where concentrations of Aboriginal people are found. (4:282)

275. That the Northern Territory Government review its liquor legislation in the light of the size of the Aboriginal population of the Territory and its needs, and include in such a review the desirability of appointing at least one Aboriginal person to be a member of the Northern Territory Liquor Commission. (4:282)

276. That consideration be given to the desirability of legislating to provide for a local option as to liquor sales trading hours, particularly in localities where there are high concentrations of Aboriginal people. (4:282)

277. That legal provision be available in all jurisdictions to enable individuals, organisations and communities to object to the granting, renewal or continuance of liquor licences, and that Aboriginal organisations be provided with the resources to facilitate this. (4:282)

278. That legislation and resources be available in all jurisdictions to enable communities which wish to do so to control effectively the availability of alcoholic beverages. The controls could cover such matters as whether liquor will be available at all, and if so, the types of beverages, quantities sold to individuals and hours of trading. (4:283)

279. That the law be reviewed to strengthen provisions to eliminate the practices of 'sly grogging'. (4:283)

280. That ATSIC and other organisations be encouraged to provide resources to help Aboriginal communities identify and resolve difficulties in relation to the impact of beer canteens the communities. (4:283)

281. That Aboriginal communities that seek assistance in regulating the operation of beer canteens in their communities be provided with funds so as to enable effective regulation, especially where a range of social, entertainment and other community amenities are incorporated into the project. (4:283)

282. That media campaigns and other health promotion strategies targeted at Aboriginal people at the local and regional levels include Aboriginal involvement at all stages of development to ensure that the messages are appropriate. (4:284)

283. That the possibility of establishing early intervention programs in Aboriginal health services and in hospitals and community health centres with a high proportion of Aboriginal patients be investigated. This would include the training needs of staff in intervention techniques. (4:290)

284. That Aboriginal organisations consider adopting alcohol-free workplace policies and be encouraged and given supper to develop employee assistance programs. (4:290)

285. That Aboriginal organisations and Councils (including ATSIC) be encouraged to give consideration to the further implementation of programs to employ multipurpose Aboriginal drug and alcohol community workers, and that appropriate assistance is sought in the training of Aboriginal people to fill such roles. (4:290)

286. That the Commonwealth Government. in conjunction with the States and Territories Governments and non-government agencies, act to co-ordinate more effectively the policies, resources and programs in the area of petrol sniffing. (4:293)

287. That the Commonwealth, States and Territories give higher priority to the provision of alcohol and other drug prevention, intervention and treatment programs for Aboriginal people which are functionally accessible to potential clients and are staffed by suitably trained workers, particularly Aboriginal workers. These programs should operate in a manner such that they result in greater empowerment of Aboriginal people, not higher levels of dependence on external funding bodies. (4:297)

288. That all workers, both Aboriginal and non-Aboriginal, involved in providing alcohol and other drug programs to Aboriginal people, receive adequate training. Priority training needs include:
    a. Relevant cross-cultural awareness and communication training for non-Aboriginal workers such as health and welfare staff who provide services to Aboriginal people;
    b. Skills training for Aboriginal alcohol and other drug treatment workers, particularly those who have recovered from alcohol problems themselves but have no formal training in the area. (4:297)

Educating for the Future

289. That
    a. governments, State Aboriginal Education Consultative Groups and local AECGs should pay great attention to the fact that the scope of the National Aboriginal and Torres Strait Islander Education Policy extends to pre- schooling programs and that it should be recognised that to a considerable extent the success of the whole NAEP will turn on the success of the pre-schooling initiatives;
    b. That pre-schooling programs should have as a major aim the involvement not only of the children, but of the parents or those responsible for the care of the children. (4:303)

290. That curricula of schools at all levels should reflect the fact that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters. It is essential that Aboriginal viewpoints, interests, perceptions and expectations are reflected in curricula, teaching and administration of schools. (4:308)

291. That:
    a. In designing and implementing programs at a local level which incorporate Aboriginal viewpoints on social, cultural and historical matters local schools should, wherever possible, seek the support and participation of the local Aboriginal community in addition to any other appropriate Aboriginal organisations or groups; and
    b. In engaging local Aboriginal people to assist in the preparation and delivery of such courses at a local level, school principals and the relevant education departments accept that in recognition of the expertise which local Aboriginal people would bring to such a program, payment for the services of such Aboriginal people would be appropriate. (4:309)

292. That the AECGs in each State and Territory take into account in discussing with governments the needs of the Aboriginal communities in their area, and that local Aboriginal Education Consultative Groups take into account when consulting with school principals and providers at the local level, the fact that many Aboriginal communities and organisations have identified the need for the education curriculum to include a course of study to inform students on social issues such as the legal system-including police and Courts-civil liberties, drug and alcohol use and sex education. (4:309)

293. That the introduction of the Aboriginal Student Support and Parent Awareness Program be commended as being an appropriate recognition of the need for the participation of Aboriginal people at a local level in the delivery of school programs. The Commission notes, however, that the success of the program will be dependent on the extent to which the Aboriginal community is guaranteed adequate consultation, negotiation and support in devising and implementing this program. (4:314)

294. That governments and Aboriginal Education Consultative Groups take note of the methodology employed in such programs as that at Batchelor College, Northern Territory in the training of Aboriginal, teachers and others for work in remote communities. **(**4:318)

295. That:

a. All teacher training courses include courses which will enable student teachers to understand that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters, and to teach the curriculum which reflects those matters;

b. In-service training courses for teachers he provided so that teachers may improve their skill, knowledge and understanding to teach curricula which incorporate Aboriginal viewpoints on social, cultural and historical

c. Aboriginal people should he involved in the training courses both at student teacher and in-service level. (4:322)

296. That:

a. AECGs consider such processes which might allow communities and teachers to negotiate and agree upon the role of teachers at local community level; and

b. Governments, AECGs and, where appropriate, unions explore processes which will enable teachers, pupils and parents to negotiate guidelines for the teaching of Aboriginal students and the employment and conditions of teachers on local communities. (4:322)

297. That:

a. The vital role which Aboriginal Education Workers or persons performing a similar role but with another title-- can play in ensuring effective Aboriginal participation in

b. Aboriginal Education Workers be given the recognition and remuneration which their role merits and that it be recognised that they suffer from conflicting expectations of community and Department as to their role; and

c. It be understood that there is a need for them to have accountability to the Aboriginal community as well as to their employer. (4:327)

298. That:

a. Governments support Aboriginal community controlled adult education institutions and other institutions which provide a program of courses which have the support of

b. Governments accept that courses delivered by such institutions should be regarded as courses entitling students to such payments or allowances as would be their entitlement in the event that they were participating for the same or equivalent time in a TAFE course; and

c. It be recognised that owing to the substantial historical educational disadvantage which Aboriginal people have experienced, a course for Aboriginal students may necessarily be longer than might be the case if the course were provided to non-Aboriginal students. (4:345)

299. That:

a. At every stage of the application of the National Aboriginal Education Policy the utmost respect be paid to the first long-term goal expressed in the policy, that is: To establish effective arrangements for the participation of Aboriginal parents and community members in decisions regarding the planning, delivery, and evaluation of pre-school, primary, and secondary education services for their children.

b. It be recognised that the aims of the Policy are not only to achieve equity in education for Aboriginal people but also to achieve a strengthening of Aboriginal identity, decision making and self-determination; and

c. It is unlikely that either of these aims can be achieved without the achieving of the other. (4:351)

Increasing Economic Opportunity

300. That support be given to the aims of AEDP to:
    a. Increase opportunities for Aboriginal people in the mainstream labour market to achieve equity with other Australians in the rates and levels of permanent employment; and
b. Generate employment through greatly enhanced assistance for community development and the expansion of employment reaches an acceptable level, governments should be prepared to set targets for recruitment into the public sector at somewhat higher target figures than would reflect the proportionate representation of Aboriginal people in the population. (4:385)

307. That Commonwealth, State and Territory Governments adopt a fair employment practice in relation to the letting of government contracts, which gives preference to those tenderers who can demonstrate that they have adopted and implemented a policy of employing Aboriginal persons in their workforce. (4:388)

308. That Commonwealth and State Governments give consideration to establishing a body made up of representation from government (DEET and ATSIC, [67] as well as State Governments) and Australian employer and employee peak bodies to discuss, with a view to setting in motion, a process of implementing the aims of the AEDP in the private sector. (4:388)

309. That increased funding be allocated to the establishment of local employment promotion committees comprised of representatives of Aboriginal groups, local employers, government departments and unions to:
    a. Develop and implement suitable promotional marketing campaigns aimed at the total labour market;
    b. Lobby for local initiatives in improving employment options and broadening local understanding of the needs and aspirations of Aboriginal people in the region; and
    c. Increase the understanding in the Aboriginal community of the possible local employment options, the nature of the work involved and the skills required.

    In funding the establishment of the committees, priority should be given to locations where labour market opportunities exist and where the greatest disparity between Aboriginal and non-Aboriginal employment rates are identified. (4:388)

310. That the Commonwealth, and in particular the Department of Employment, Education and Training, analyse its current programs with a view to ensuring that they fully address the employment, education and training needs of potential and existing Aboriginal offenders. Where necessary, existing program guidelines should be modified and/or new program elements developed to increase access by such clients. In particular, DEET should examine means of assisting Aboriginal communities to become more involved in preventative, diversionary and rehabilitative programs to assist Aboriginal offenders, particularly where they would provide an alternative to incarceration. (4:390)

311. That ATSIC ensure that in the administration of its Enterprise Program a clear distinction is drawn between those projects that are supported according to criteria of commercial viability and those that are supported according to social development or social service satisfaction criteria. (4:399)

312. That the intention of Sections 17 and 18 of the *Aboriginal and Torres Strait Islander Commission Act 1989 be* clarified, by amendment to the legislation if necessary, in order to facilitate the funding of enterprises which are not necessarily commercially viable on the basis of social development criteria (4:399)

313. That the ongoing review of the Enterprise Program by the Commonwealth Government should seek to develop the Program in such a way that:
    a. Adequate program flexibility is provided to allow for the diversity of aspirations and needs of different Aboriginal communities; and

b. Funding difficulties caused by cyclic government budgeting and delays between application and receipt of moneys are minimised. (4:402)

314. That mechanisms for the notification and determination of Aboriginal interests in major mining and tourism development proposals incorporate:
    a. Provision of formal written notification concerning the development to appropriate Aboriginal organisations within the area affected by the development proposal; and
    b. A process of consultation and negotiation between representatives of government, the developer and representatives of the Aboriginal groups with an interest in the area affected by the proposal, in order to facilitate participation by Aboriginal groups or communities in the equity, management and employment concerned with the projects. (4:402)

315. That the recommendations submitted to the Conservation and Land Management meeting (held at Millstream on 6-8 August 1990) by representatives of Aboriginal communities and organisations be implemented in Western Australia upon terms to be negotiated between Aboriginal people and appropriate Aboriginal organisations and communities on the one hand and National Park authorities on the other so as to protect and preserve the rights and interests of Aboriginal people with cultural, historical and traditional association with National Parks. The recommendations proposed at the Millstream meeting were:
    a. The encouragement of joint management between identified and acknowledge representatives of Aboriginal people and the relevant State agency;
    b. The involvement of Aboriginal people in the development of management plans for National Parks;
    c. The excision of areas of land within National Parks for use by Aboriginal people as living areas;
    d. The granting of access by Aboriginal people to National Parks and Nature Reserves for subsistence hunting, fishing and the collection of material for cultural purposes (and the amendment of legislation to enable this, where necessary);
    e. Facilitating the control of cultural heritage information by Aboriginal people;
    f. Affirmative action policies which give preference to Aboriginal people in employment as administrators, rangers, and in other positions within National Parks;
    g. The negotiation of lease-back arrangements which enable title to land on which National Parks are situated to be transferred to Aboriginal owners, subject to the lease of the area to the relevant State or Commonwealth authority on payment of rent to the Aboriginal owners;
    h. The charging of admission fees for entrance to National Parks by tourists;
    i. The reservation of areas of land within National Parks to which Aboriginal people have access for ceremonial purposes; and
    j. The establishment of mechanisms which enable relevant Aboriginal custodians to be in control of protection of and access to sites of significance to them. (4:416)

316. That the relevant Governments, in consultation with relevant Aboriginal organisations give consideration to funding the establishment of a small unit, comprising Aboriginal people drawn from northern Western Australia, the Northern Territory and northern Queensland, which would be based in the northern part of the country. The function of the unit would be to study, in consultation with the residents of remote communities in those areas, the means of achieving greater self-sufficiency in those communities. The Unit would have the task of keeping remote communities advised of successful initiatives achieved in other communities and assisting remote communities in the preparation of their community plans, so as to assist them in developing economic independence, or at least a greater degree of self sufficiency. (4:423)

317. That further extension of the CDEP Scheme (or some similar program) to rural towns with large Aboriginal populations and limited mainstream employment opportunities for Aboriginal people be considered. **(**4:439)

318. That in view of the considerable demands placed on staff of ATSIC by the expansion of the CDEP Scheme, consideration be given to developing a mechanism for devolving to appropriate consenting Aboriginal organisations, in particular resource agencies, responsibility for some aspects of the administrative support of CDEP, including in particular:

a. Advising. communities on the types of work which the community may wish to consider undertaking;
b. Advising communities on the potential for incorporating other types of funding for employment and enterprise development into a CDEP project;
c. Dissemination of information (collected by ATSIC) on successful schemes;
d. Financial and administrative support for management of a scheme; and
e. Assisting in the provision or co-ordination of training for participants and managers of CDEP.

Those Aboriginal organisations should be adequately resourced to carry out the tasks which are devolved to them. (4:439)

319. That in the coming review of the CDEP Scheme consideration be given to:

Funding

a. Improved mechanisms for the combining of funds from different programs (such as the Aboriginal Enterprise Incentive Scheme and the Enterprise Program) to supplement the capital and recurrent funding of CDEP in order to facilitate greater Aboriginal community control over infrastructural components of projects;
b. The introduction of a mechanism which ensures that CDEP projects are not used as a substitute for the provision of an adequate level of municipal and other social services, unless funds equivalent to those which would have been provided in respect of municipal and social services are provided to supplement the operation of
c. The recognition by the Department of Finance of CDEP as a discrete program with considerable offset savings to the government (in respect of administrative savings from non-payment of Unemployment Benefits), and the automatic provision of the 20% on-cost component--not from the ATSIC existing global allocation;

Equity Considerations

d. The improved policing of payments under CDEP to ensure that all participants in CDEP receive an income equivalent to Unemployment Benefit regardless of work actually performed, subject to the participants' performance of their obligations under the scheme;
e. Addressing issues of access to income, and meaningful work activities for women participants in CDEP;

Administrative and Financial Management Support

f. The enhanced involvement of Aboriginal controlled organisations and resource agencies in the provision of administrative expertise and advice in the operation of
g. Improvements in the financial control systems for CDEP and provision for the training of CDEP managers in the maintenance of financial controls;
h. Initiatives for the development of ATSIC staff training in negotiation and consultation skills, and in cultural sensitivity, in order to improve the effectiveness and minimise the burden of consultation and support provided by ATSIC to communities on CDEP;

Training and Employment Potential

i. An improved level of training and planning support for projects, and for the development of medium and long term plans for CDEP projects which reflect the aspirations of participants for access to mainstream employment opportunities, enterprise development or culturally appropriate work;
j. Increased co-ordination between ATSIC and DEET in respect of the training requirements of both new and ongoing CDEP projects, and in relation to the enterprise development potential of CDEP projects; and

k. The dissemination of information to Aboriginal communities who are on CDEP or who are planning to apply to receive CDEP funds about successful work programs undertaken by other communities under CDEP. (4:440)

320. That further research be undertaken in relation to:
    a. The particular economic circumstances of Aboriginal people in discrete geographical areas, in order to:
        i. determine the contribution which Aboriginal people make to the local or regional economy;
        ii. identify the sources of and amounts of funding which might be available to them; and
        iii. facilitate realistic economic planning by Aboriginal people which is consistent both with the prevailing economic circumstances and with their aspirations and lifestyle; and
    b. The impact of the overall taxation system on Aboriginal people and on Aboriginal organisations, and the extent to which Aboriginal people benefit from the Australian taxation system.

    Where research is commissioned or funded, a condition of the research being undertaken should be the active involvement of Aboriginal people in the area which is the subject of the research, the communication of research findings across a wide cross-section of the local Aboriginal community in an easily understood form, and the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations. (4:446)

Improving the Living Environment: Housing and Infrastructure

321. That any future accommodation needs survey include not only an emphasis on the physical housing needs but also incorporate assessments that relate to management, administrative and housing support needs; in respect of remote communities such surveys should also establish the need for hostel accommodation in service towns where people may be required to spend time utilising services not available in remote areas. (4:459)

322. That quantification of required housing stock take into account community aspirations as to the number of people who are likely to share a house, its location and potential impact on present and future infrastructure requirements. (4:459)

323. That:
    a. Increased funding be made available to Aboriginal community groups for the implementation of homemaker schemes. Groups that may be appropriate to receive such funding should include women's groups, housing organisations and community councils; and
    b. Adult education providers, and particularly Aboriginal community controlled adult education providers, be encouraged and supported to provide:
        i. courses in homemaking and domestic budgeting; and
        ii. courses for training Aboriginal persons as community advisers and teachers in homemaking. (4:464)

324. That the model which Tangentyere Council offers for integrating the various service delivery and administrative needs associated with Aboriginal housing be studied in other regions. (4:473)

325. That the question of providing assistance to Aboriginal housing organisations in relation to administration costs and the cost of repair of housing stock receive close attention. In this respect the CDEP scheme appears to offer an excellent opportunity for communities to solve some of the problems of the cost of housing repairs whilst at the same time providing work of a type that opens the way for training in important areas of skill development. (4:475)

326. That in recognition of both the depressed economic conditions in many remote communities and the importance of Aboriginal participation in the control of new construction:
    a. Where governments require tenders to be called for public works, they introduce procedures to enable Aboriginal communities to participate in the determination of the award of the construction contract;
    b. Such contracts should provide for the employment of labour from the community as far as is possible;
    c. The training of local persons in preparation for employment pursuant to such contracts should be a high priority for training providers; and
    d. Contracts should be let where possible to local tenderers, provided that their tender price is not unreasonably high.

    Pending these arrangements being put in place, and with consequent improvements in income for housing organisations, governments and authorities should take into account the need of housing organisations for assistance with their recurrent costs, in addition to funding for new dwellings. (4:476)

327. That:
    a. Relevant Aboriginal training institutions and Aboriginal housing organisations, in consultation with DEET, devise and implement a strategy specifically directed to the training of Aboriginal people to build and maintain
    b. This training program should be adequately co-ordinated with employment strategies established under the AEDP and CDEP. (4:479)

Conforming with International Obligations

328. That as Commonwealth, State and Territory Governments have adopted Standard Guidelines for Corrections in Australia which express commitment to principles for the maintenance of humane prison conditions embodying respect for the human rights of prisoners, sufficient resources should be made available to translate those principles into practice. (5: 19)

329. That the National Standards Body comprising Ministers responsible for corrections throughout Australia give consideration to the drafting and introduction of legislation embodying the Standard Guidelines and in drafting such legislation give consideration to prisoners' rights contained in Division 4 of the Victorian *Corrections Act 1986.* (5:19)

330. That the National Standards Body establish and maintain direct consultation with relevant Aboriginal organisations including Aboriginal Legal and Health Services. (5:22)

331. That the National Standards Body consider the formulation and adoption of guidelines specifically directed to the needs of Aboriginal prisoners. In that process the findings and recommendations of this Commission relating to custodial conditions and the treatment of Aboriginal persons in custody should be taken into account. (5:22)

332. That the Commonwealth State and Territory Ministers for Police should formulate and adopt standard guidelines for police custodial facilities throughout Australia. (5:24)

333. While noting that in no case did the Commission find a breach of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, it is recommended that the Commonwealth Government should make a declaration under Article 22 of the Convention and take all steps necessary to become. a party to the Optional Protocol to the International Convention on Civil and Political Rights in order to provide a right of individual petition to the Committee Against Torture and the Human Rights Committee, respectively. (5:26)

Addressing Land Needs

334. That in all jurisdictions legislation should be introduced, where this has not already occurred, to provide a comprehensive means to address land needs of Aboriginal people. Such legislation should encompass a process for restoring unalienated Crown land to those Aboriginal people who claim such land on the basis of cultural, historical and/or traditional association. (5:53)

335. That in recognising that improvement in the living standards of many Aboriginal communities (especially for those people living in inadequate housing and environmental circumstances on the fringes of towns and on other discrete areas of Aboriginal occupation of land) cannot be ensured without the security of land title, governments provide, by legislation and/or administrative direction, an accelerated process for the granting of land title based on need. (5:53)

336. That unalienated crown land granted on the basis of cultural, historical and/or traditional association of Aboriginal people should be granted under inalienable freehold title and should carry with it the right of the Aboriginal owners to, *inter alia:*
    a. Determine who may enter the land and the terms of such entry; and
    b. Control the impact of development on the land in so far as such development may threaten the cultural and/or social values of the Aboriginal owners and their communities. (5:53)

337. That governments recognise that where appropriate unalienated crown land is unavailable to be claimed on grounds of cultural, historical or traditional association with the land or where, due to the processes of the history of colonisation, Aboriginal people are no longer able to, nor seek to, make claims to particular areas of unalienated crown land on the basis of cultural, historical or traditional association there remain land needs of Aboriginal people which should be met by governments. These needs should be accommodated by a process which:
    a. Enables Aboriginal communities or groups to obtain secure title to unalienated crown land or to purchase land for social, recreational and community purposes (including the obtaining of additional land in circumstances in which an Aboriginal community is on Aboriginal land but where the area of that land is established as being too small to accommodate the community);
    b. Enables Aboriginal communities or groups to obtain secure title to land so as to improve the environmental circumstances in which they live;
    c. Provides adequate funding in order that land may be purchased on the open market in pursuance of the needs identified in paragraphs (a) and (b); and
    d. Where pastoral land is held on lease from the Crown, permits Aboriginal communities traditionally or historically associated with the land to have priority when leases come up for renewal. (5:54)

338. That as an interim step all land held under leasehold, being former Aboriginal reserve or mission land and being now held for or on behalf of Aboriginal people, be forthwith transferred under inalienable freehold title to the present leaseholder(s) pending further consideration by Aboriginal people as to the appropriate Aboriginal body which should thereafter hold the title to such land. (5:54)

The Process of Reconciliation

339. That all political leaders and their parties recognise that reconciliation between the Aboriginal and non-Aboriginal communities in Australia must be achieved if community division, discord and injustice to Aboriginal people are to be avoided. To this end the Commission recommends that political leaders use their best endeavours to ensure bi-partisan public support for the process of reconciliation and that the urgency and necessity of the process be acknowledged. (5:65)

30 March Report

On 30 March 1991 the preceding recommendations and the following brief report were submitted to meet the requirements of the Letters Patent (as they then existed) issued by Their Excellencies the Governors

of New South Wales, Victoria, Queensland, South Australia and Tasmania, the Commission issued by His Excellency the Governor of Western Australia and the Letters Patent issued under the *Commission of Inquiry (Deaths in Custody) Act 1987* of the Northern Territory.

> *The Commission has had, broadly speaking, two main tasks to_inquire into the immediate causes of death of those Aboriginal and Torres Strait Islander People who died in custody between 1 January 1980 and 31 May 1989 and to report and make recommendations regarding the underlying issues associated with the deaths. At an early stage in the Commission' s inquiries, research strongly indicated that the disproportionately high number of Aboriginal people who die in custody appears to be directly related to the disproportionately high number of Aboriginal people who are arrested and imprisoned the rate of death of Aboriginal and non-Aboriginal people amongst incarcerated people being broadly the same. Hence the Commission's examination of underlying issues focussed on what it is about the interaction of Aboriginal people with the non-*
>
> *Aboriginal society which so strongly predisposes Aboriginal people to arrest and imprisonment.*
>
> *The Commission has carried out inquiries into over 120 deaths; 99 of those deaths were determined to lie within the Commission's jurisdiction and the circumstances relating to those deaths have been the subject of separate reports.*
>
> *In fulfilling my commission I have drawn heavily on the work of my predecessor, the Hon. J.H. Muirhead, AC, QC, and the work of the other Commissioners - Commissioner P.L. Dodson, Commissioner the Hon. D.J. O'Dea, LLB, Commissioner the Hon. J.H. Wootten, AC, QC and Commissioner L.F. Wyvill, QC. Commissioner Dodson was commissioned to inquire into the underlying issues associated with the deaths in Western Australia and the other Commissioners were required to inquire into the deaths which occurred in particular Stales and into underlying issues associated with those deaths and to submit a report of their overall findings. The Regional Reports of the overall findings of the other Commissioners are being presented at the same time as this report.*
>
> *The following recommendations relate to the broad underlying issues relating to arrest and imprisonment of Aboriginal people as well as more immediate measures which should be taken to prevent Aboriginal deaths in custody.*
>
> *In the course of these inquiries all five Commissioners have come to share common views regarding the changes required to remedy the problems faced by Aboriginal People. The overall thrust of the recommendations is supported by all Commissioners and most of the specific recommendations have unanimous support. There are some recommendations, however, which deal with areas or matters which*
>
> *particular Commissioners were unable to inquire into sufficiently to reach a final view. Commissioner*
>
> *Dodson who was responsible for inquiring into underlying issues only is in close agreement with the report and recommendations.*

Part H: Appendices

There are four appendices containing background information about the Commission as follows:

Appendix A - *deals with the formal instruments of appointment. Appendix A(i) sets out the chronology of the issue of Letters Patent at the Commonwealth level and briefly outlines the effect of each change.*
Appendix A(ii)
is a table showing the date of each Commonwealth issue of Letters Patent and the date of the parallel action in each State and the Northern Territory.
Appendix A(iii)

is a consolidated version of the Commonwealth Letters Patent of each Commissioner (the inclusion of all instruments of appointment of all Commissioners in the States and the Northern Territory would have been unnecessarily repetitious).

Appendix B - sets out details of the individual deaths inquired into by Commissioners and some of the key rulings made by them; it also includes a list of rulings and details of the legal challenges to some of those rulings.

Appendix B(i)

is a list in alphabetical order of those deaths inquired into and found to be within the Commission's jurisdiction. It shows the name of the deceased (except when such name has been suppressed), case number, the Commissioner who conducted the inquiry, the number of hearing days involved, the number of witnesses called, the number of exhibits tendered, the date of death and the place of death.

Appendix B(ii)

is a list of inquiries conducted by the Commission which upon inquiry were found to be outside the Commission's jurisdiction.

Appendix B(iii)

contains rulings made by Commissioners Johnston and Wootten arising from the provision in the Letters Patent excluding deaths in hospitals except if such deaths resulted from injury whilst in police or prison Custody.

Appendix B(iv)

is a ruling by Commissioner Muirhead on the standard of proof adopted by the Royal Commission.

Appendix B(v)

sets out details of the various legal challenges made against Commissioners' rulings.

Appendix C - deals with the approach taken by the Commission to the inquiries into individual deaths and investigation of underlying issues.

Appendix C(i)

is an overview paper on methodology

Appendix C(ii)

is a copy of a letter from Commissioner Johnston to other Commissioners regarding their authority to inquiry into underlying issues

Appendix C(iii)

is a copy of the Procedural Guidelines used for the inquiry into individual deaths.

Appendix D - deals with sources of information

Appendix D(i)

is a copy of the submission made by the Aboriginal Issues Unit of the Northern Territory

Appendix D (ii)

is an outline of the research program undertaken by the Commission' s Criminology Research Unit

Appendix D(iii)

is an outline of the various sources of information used by the Commissioner (reports, research projects, exhibits, submissions, and published and unpublished material).

Appendix A: The Terms of Reference

Appendix A (I): Chronology of the issue of Commonwealth Letters Patent

The following is a chronology of the issue of Commonwealth Letters Patent. Appendix A (ii) shows the dates parallel action was taken in the States and the Northern Territory.

16 OCTOBER 1987

The Honourable James Henry Muirhead, QC, was appointed to inquire into and report upon -

(i) the deaths in Australia since 1 January 1980 of Aboriginals and Tones Strait Islanders whilst in

police custody, in prison or in any other place of detention,

(ii) any subsequent action taken in respect of those deaths.

Commissioner Muirhead was requested to report the findings of his inquiry and to make such recommendations as appropriate by 31 December 1988 or such later date as may be fixed. The Letters Patent authorised Commissioner Muirhead to conduct his inquiry in consultation with any Commission issued by Governors of the States.

21 DECEMBER 1987

Commissioner Muirhead was authorised to conduct his inquiry in combination with any Commissions issued under the law of the Northern Territory.

6 MAY 1988

Commissioner Muirhead's Letters Patent were amended to -

(i) vary the specification of the deaths under inquiry to:

the deaths in Australia since I January 1980 of Aboriginals and Torres Strait Islanders whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any place of detention caused or contributed to that death,

(ii) authorise him, for the purpose of reporting on any underlying issues associated with the deaths to take account of social, cultural and legal factors which, in his judgment appeared to have a bearing on the deaths.

(iii) authorise him to refer to other Commissioners for inquiry or request another Commissioner not to undertake inquiry into a particular death,

(iv) authorise him to issue guidelines to the Commissioners as to methods and procedures,

(v) authorise him to receive reports from the other Commissioners,

(vi) require him to submit all reports, including those of the other Commissioners, by 31 December 1989 or such later date as may be fixed.

Letters Patent were also issued to three additional Commissioners with responsibility to conduct inquiries in particular States as follows:

The Hon. Elliott Frank Johnston QC:	Western Australia
	South Australia
	Northern Territory
The Hon. John Halden Wootten QC:	New South Wales
	Victoria
	Tasmania
Lewis Francis Wyvill QC:	Queensland

The new Commissioners were required to submit their reports to Commissioner Muirhead by 30 June 1989 and thereafter be available to consult with him in the preparation of his report.

27 OCTOBER 1988

Commissioner Muirhead's final reporting date was amended to 31 December 1990.

The Hon. Daniel John O'Dea was appointed to conduct inquiries in Western Australia,

Commissioner O'Dea was required to submit his reports by 30 September 1990,

The reporting dates of Commissioners Johnston, Wootten and Wyvill were varied to 31 December 1989.

7 DECEMBER 1988

A minor amendment was made to Commissioner O'Dea's Letters Patent to conform with the specification of location of death contained in the Letters Patent of the other Commissioners.

27 APRIL 1989

Commissioner Muirhead's Commission was revoked with effect at noon on 28 April 1989,

Commissioner Elliott Frank Johnston was appointed (with bridging provisions) to take over from Commissioner Muirhead (the former's earlier Commission was revoked),

The specification of deaths to be inquired into was varied in all commissions to exclude any deaths occurring after 31 May 1989,

The reporting dates of Commissioners Wootten and Wyvill were varied to 30 September 1990.

28 JUNE 1989

Patrick Lionel Dodson [68] was appointed to inquire into underlying issues associated with deaths in custody of Aboriginals and Torres Strait Islanders in Western Australia. Commissioner Dodson was required to submit his report to Commissioner Johnston and to undertake to consult with him in the preparation of his final report.

24 SEPTEMBER 1990

Commissioner Johnston's reporting date was extended to 31 March 1991.

The reporting dates of Commissioners Dodson, O'Dea, Wootten and Wyvill in respect of their regional reports of overall findings were extended to 30 November 1990 (the deadline for reporting on individual cases in respect of Commissioners O'Dea, Wootten and Wyvill remained 30 September 1990).

11 OCTOBER 1990

Commissioner Wootten's reporting date in respect of his inquiry into individual deaths was extended to 31 December 1990. [69]

9 NOVEMBER 1990

Commissioner Wootten's reporting date in respect of the overall findings of his inquiries was extended to 31 December 1990.

27 MARCH 1990

Commissioner Johnston's reporting date was extended to 26 April 1991.

Appendix A(ii) Table Showing Dates of Issue of Commonwealth Letters Patent and dates of Parallel Action* In the States and the Northern Territory

* letters Patent were issued by Their Excellencies the Governors of New South Wales, Victoria, Queensland, South Australia and Tasmania.
His Excellency the Governor of Western Australia issued Commissions.

In the Northern Territory the appointment of Commissioner Muirhead and, upon his departure, of Commissioner Johnston was made under the *Commission of Inquiry (Deaths in Custody) Act* 1987. His Honour the Administrator issued Letters Patent to Commissioner Johnston before he took over from Commissioner Muirhead as National Commissioner, and to the other Commissioners

COMMONWEALTH	NEW SOUTH WALES	VICTORIA	QUEENSLAND
*16 October 1987*Muirhead	*21 October 1987*	*10 November 1987*	*29 October 1987*
*21 December 1987*Muirhead			
*6 May 1988*MuirheadJohnstonO'DeaWoottonWyvill	*17 August 1988*MuirheadWootten	*7 June 1988*MuirheadJohnstonWoottenWyvill	*2 June 1988*MuirheadWyvill
*27 October 1988*MuirheadJohnstonO'DeaWoottenWyvill	*25 January 1989*MuirheadWootten	*13 December 1988*MuirheadJohnstonO'DeaWoottenWyvill	*15 December 1988*MuirheadWyvill
*7 December 1988*O'Dea			
*27 April 1989*MuirheadO'DeaJohnstonWoottenWyvill	*10 May 1989*MuirheadJohnstonWootten	*26 April 1989*MuirheadJohnstonO'DeaWoottenWyvill	*29 June 1989*MuirheadJohnstonWyvill
		*2 May 1989*JohnstonO'DeaWoottenWyvill	
*28 June 1989*Dodson			
*24 September 1990*JohnstonDodsonO'DeaWoottenWyvill	*26 September 1990*JohnstonWootten		*27 September 1990*JohnstonWyvill
*11 October 1990*Wootten			
*9 November 1990*Wootten		*18 December 1990*JohnstonWootten	
*27 March 1990*Johnston			

WESTERN AUSTRALIA	SOUTH AUSTRALIA	TASMANIA	NORTHERN TERRITORY
*10 November 1987*Muirhead	*10 November 1987*Muirhead	*23 November 1987*Muirhead	
			*21 December 1987*Muirhead
*21 June 1988*MuirheadJohnston	*2 June 1988*MuirheadJohnstonWoottenWyvill	*11 July 1988*MuirheadJohnstonWoottenWyvill	*29 July 1988*JohnstonWyvillWootten
*18 October 1988*WoottenWyvill			
*6 December 1988*O'Dea	*17 December 1988*MuirheadJohnstonO'DeaWoottenWyvill	*19 December 1988*MuirheadJohnstonO'DeaWoottenWyvill	*30 November 1988*JohnstonO'DeaWoottenWyvill
*8 August 1989*JohnstonO'DeaWoottenWyvill	*27 April 1989*JohnstonO'DeaWoottenWyvill	*2 May 1989*MuirheadJohnstonO'DeaWoottenWyvill	*15 June 1989*Johnston
	18 May 1989 JohnstonO'DeaWoottenWyvill		*31 August 1989*JohnstonO'DeaWoottenWyvill
*8 August 1989*Dodson	*29 November 1990*JohnstonDodsonO'DeaWoottenWyvill		
*9 October 1990*JohnstonDodsonO'DeaWoottenWyvill		*6 November 1990*JohnstonO'DeaWoottenWyvill	

Appendix A (iii) Consolidated Letters Patent of Commissioners

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God,

Queen of Australia and Her other Realms and

Territories, Head of the Commonwealth:

TO:

THE HONOURABLE ELLIOTT FRANK JOHNSTON, QC

GREETING:

WE DO by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and every other enabling power, appoint you with effect on and from 12 o'clock noon on 28 April 1989 to be a Commissioner to inquire into:

(a) the deaths in Australia since 1 January 1980 of Aboriginals and Torres Strait Islanders (including any such death that may occur after the date of these Our Letters Patent but not including any such death that occurs after the expiration of 31 May 1989) whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to that death; and

(b) any subsequent action taken in respect of each of those deaths including, but without limiting the generality of the foregoing, the conduct of coronial, police and other inquiries and any other things that were not done but ought to have been done;

AND We further declare that you are authorised to conduct your inquiry into any matters under these Our Letters Patent in combination with any inquiry into the same or related matters that you are directed or authorised to make by any Commission issued, or pursuant to any order or appointment made, by any of Our Governors of the States or under the law of the Northern Territory of Australia:

AND We further declare that, for the purpose of reporting on any underlying issues associated with those deaths. you are authorised to take account of social, cultural and legal factors which, in your judgement, appear to have a bearing on those deaths:

AND We further declare that for the purposes of expediting your inquiry and the inquiries of relevant Commissioners, you are authorised in the course of your inquiry:

(c) to refer to a relevant Commissioner for inquiry by that Commissioner in accordance with his or her Commission of inquiry, as you may determine, any particular death;

(d) to request a relevant Commissioner not to undertake inquiry, or further inquiry, into any particular death; and

being a death to which these Our Letters Patent relate:

AND We direct you to consult generally in the course of your inquiry with each relevant Commissioner with regard to the methods and procedures to be followed in relation to your and their inquiries in order to establish a uniform approach to those inquiries and authorise you, following such consultation, to issue guidelines or make recommendations, or both, to each of those Commissioners in relation to those methods and procedures:

AND We further direct you to have regard to the reports and recommendations (if any) of the Honourable James Henry Muirhead and each relevant Commissioner, and to consult with each of those relevant Commissioners, in relation to the preparation of your report or reports and your recommendations:

AND We further declare that, for the purpose of conducting your inquiry, you are authorised to have regard to:

(e) any evidence received by, and any matters submitted to, you under the Commission of inquiry issued to you on 6 May 1988 by Our Governor-General of the Commonwealth of Australia by Letters Patent (as subsequently varied); and

(f) any evidence received by, and any matters submitted to, the Honourable James Henry Muirhead under the Commission of inquiry issued to him on 16 October 1987 by Our Administrator of the Government of the Commonwealth of Australia by Letters Patent (as subsequently varied);

as if that evidence had been received by you, or those matters had been submitted to you, as the case may be, for the purposes of your inquiry and any report or reports under these Our Letters Patent:

AND We further declare that in these Our Letters Patent, the expression 'relevant Commissioner' means a person other than yourself to whom a Commission of inquiry relating to the deaths of Aboriginals and Torres Strait Islanders has been or is issued by Our Governor-General of the Commonwealth of Australia, or a person administering the Government of the Commonwealth of Australia, by Our Letters Patent. not being a person in relation to whom such a Commission of inquiry has been or is revoked:

AND We require you as expeditiously as practicable to make your inquiry and, not later than 26 April 1991 or such later date as We may be pleased to fix. to furnish to Our Governor- General of the Commonwealth of Australia:

(Varied by Letters Patent dated 24 September 1990: 27 March 1991)

(g) a report or reports of the findings of your inquiry; and

(h) the reports and any recommendations of relevant Commissioners that have been forwarded to you;

and to make such recommendations as you consider appropriate.

WITNESS His Excellency the Honourable William George Hayden, Companion of the Order of Australia, Governor-General of the Commonwealth of Australia.

Dated this 27th Day of April 1989

Governor-General

By His Excellency's Command,

Prime Minister

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God,

Queen of Australia and Her other Realms and

Territories, Head of the Commonwealth:

TO:

PATRICK LIONEL- DODSON

GREETING:

WE DO by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and every other enabling power, appoint you with effect on and from 1 July 1989 to be a Commissioner to inquire into any underlying issues associated with deaths of Aboriginals and Torres Strait Islanders in the State of Western Australia in all cases where such occurred during the period that commenced on 1 January 1980 and ended at the expiration of 31 May 1989 whilst in police custody in prison or in any other place of detention other than such deaths occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to them:

AND We declare that, for the purpose of reporting on any underlying issues associated with those deaths, you are authorised to take account of social, cultural and legal factors which, in your judgement, appear to have a bearing on those deaths:

AND We direct you:

(a) to consult generally with the Honourable Elliott Frank Johnston with regard to the methods and procedures to be followed in relation to his and your inquiries; and

(b) to conform with any guidelines issued or recommendations made by the Honourable Elliott Frank

Johnston under the relevant Commission in relation to those methods and procedures;

for the purposes of establishing a uniform approach in relation to those inquiries:

AND We further direct you, when so requested by the Honourable Elliott Frank Johnston under the relevant Commission, whether before or after the submission of your report but not later than 31 March 1991, to consult with him in relation to the preparation of his report or reports and recommendations under that Commission*:*

Varied by Letters Patent dated 24 September 1990

AND We authorise you to have regard, in relation to the preparation of your report, to any reports of the Honourable James Henry Muirhead relating to deaths of Aboriginals and Torres Strait Islanders in the State of Western Australia:

AND, where a relevant Commissioner has inquired, or inquires, under the Commissioner's Commission of inquiry into a death in the State of Western Australia:

(c) We further authorise you to have regard to any report of that Commissioner relating to that death; and

(d) We further direct you to consult with that Commissioner,

in relation to the preparation of your report:

AND We further declare that you are further authorised to conduct your inquiry into any matters under these Our Letters Patent in combination with any inquiry into the same or related matters that you are directed or authorised to make by any Commission issued, or pursuant to any order or appointment made, by Our Governor of the State of Western Australia:

AND We further declare that in these Our Letters Patent:

(e) the expression 'relevant Commission' means the Commission of inquiry issued on 27 April 1989 by Our Governor-General of the Commonwealth of Australia by Letters Patent to the Honourable Elliott Frank Johnston; and

(f) the expression 'relevant Commissioner' means a person other than yourself to whom a Commission of inquiry relating to the deaths of Aboriginal and Torres Strait Islanders has been or is issued by Our Governor-General of the Commonwealth of Australia, or a person administering the Government of the Commonwealth of Australia, by Our Letters Patent, not being a person in relation to whom such a Commission of inquiry has been or is revoked:

AND We require you as expeditiously as as practicable to make your inquiry and, not later than 30 November 1990 or such later date as We may be pleased to fix, to furnish to the HonourableElliott Frank Johnston for his consideration and for furnishing by him to Our Governor-General of the Commonwealth of Australia under the relevant Commission a report of the results of your inquiry.

Varied by Letter Patent dated 24 September 1990

WITNESS His Excellency the Honourable William George Hayden, Companion of the Order of Australia, Governor-General of the Commonwealth of Australia.

Dated this 28th day of June 1989

Governor-General

By His Excellency's Command,

Attorney-General for and on behalf of the Prime Minister

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God,

Queen of Australia and Her other Realms and

Territories, Head of the Commonwealth:

THE HONOURABLE DANIEL JOHN O'DEA GREETING:

WE DO by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and every other enabling power, appoint you to be a Commissioner to inquire into:

(a) deaths:

(i) in the State of Western Australia; and

(ii) where in a particular case, or any particular cases, you are so requested by the Honourable Elliott Frank Johnston under the relevant Commission - elsewhere in Australia;

Varied by Letters Patent dated 27 April 1989

since 1 January 1980 of Aboriginals and Torres Strait Islanders (including any such death that may occur after the date of these Our Letters patent but not including any such death that occurs after the expiration of 31 May 1989) whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to that death; and

Varied by Letters Patent dated 7 December 1988; 27 April 1989

(b) any subsequent action taken in respect of each of those deaths including, but without limiting the generality of the foregoing, the conduct of coronial, police and other inquiries and any other things that were not done but ought to have been done:

AND We direct you:

(c) to consult generally with the Honourable Elliott Frank Johnston with regard to the methods and procedures to be followed in relation to his and your inquiries; and

Varied by Letters Patent dated 27 April 1989

(d) to conform with any guidelines issued or recommendations made by the Honourable Elliott Frank Johnston under the relevant Commission in relation to those methods and procedures;

Varied by Letters Patent dated 27 April 1989

for the purpose of establishing a uniform approach in relation to those inquiries:

AND We further direct you if so requested by the Honourable Elliott Frank Johnston under the relevant Commission:

Varied by Letters Patent dated 27 April 1989

(e) to undertake inquiry into a particular death specified in the request; or

(f) not to undertake inquiry, or further inquiry, into a particular death, as specified in the request:

AND We further direct you, when so requested by

the Honourable Elliott Frank Johnston under the relevant Commission, whether before or after the submission of your reports but not later than 31 March 1991, to consult with him in relation to the preparation of his report or reports and recommendations under that Commission:

Varied by Letters Patent dated 27 April 1989

AND We declare that you are authorised to conduct your inquiry into any matters under these Our Letters Patent in combination with any inquiry into the same or related matters that you arc directed or authorised to make by any Commission issued, or pursuant to any order or appointment made, by any of Our Governors of the States or under the law of the Northern Territory of Australia:

AND We further declare that until guidelines are issued or recommendations are made by the Honourable Elliott Frank Johnston under the relevant Commission, the guidelines issued and recommendations made by the Honourable James Henry Muirhead under the Commission of inquiry issued to him on 16 October 1987 by Our Administrator of the Government of the Commonwealth of Australia by Letters Patent (as subsequently varied) continue to have effect for the purposes of these Our Letters Patent:

Substituted by Letters Patent dated 27 April 1989

AND We further declare that in these Our Letters Patent, the expression 'relevant Commission' means the Commission of inquiry issued on this day by Our Governor-General of the Commonwealth of Australia by Letters Patent to the Honourable Elliott Frank Johnston:

Substituted by Letters Patent dated 27 April 1989

AND We require you as expeditiously as practicable to make your inquiry and to furnish to the Honourable Elliott Frank Johnston for his consideration and for furnishing by him to Our Governor-General of the Commonwealth of Australia under the original Commission:

Substituted by Letters Patent dated 24 September 1990

(g) as soon as practicable after the completion of your inquiry into a particular death and not later than 30 September 1990 or such later date as We may be pleased to fix, a report of your findings in relation to that death; and

(h) upon completion of your inquiry into the several deaths in accordance with these our Letters Patent and not later than 30 November 1990 or such later date as We may be pleased to fix, a report of any other findings of your inquiry and such recommendations (if any) as you consider appropriate.

WITNESS His Excellency the Right Honourable Sir Ninian Martin Stephen, a member of Her Majesty's Most Honourable Privy Council, Knight of the Order of Australia, Knight Grand Cross of The Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of The Royal Victorian Order, Knight Commander of The Most Excellent Order of the British Empire and Governor-General of the Commonwealth of Australia.

Dated this 27 day of October 1988

Governor-General

By His Excellency's Command,

Prime Minister

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO:

THE HONOURABLE JOHN HALDEN

WOOTTEN, QC

GREETING:

WE DO by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and every other enabling power, appoint you to be a Commissioner to inquire into:

(a) deaths:

(i) in the States of New South Wales, Victoria and Tasmania; and

(ii) where in a particular case, or any particular cases, you are so requested by the Honourable Elliott Frank Johnston under the relevant Commission - elsewhere in Australia;

Varied by Letters Patent dated 27 April 1989

since 1 January 1980 of Aboriginals and Torres Strait Islanders (including any such death that may occur after the date of these Our Letters Patent but not including any such death that occurs after the expiration of 31 May 1989) whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to that death; and

Varied by Letters Patent dated 27 April 1989

(b) any subsequent action taken in respect of each of those deaths including, but without limiting the generality of the foregoing, the conduct of coronial, police and other inquiries and any other things that were not done but ought to have been done:

AND We direct you:

(c) to consult generally with the Honourable Elliott Frank Johnston with regard to the methods and procedures to be followed in relation to his and your inquiries; and

Varied by Letters Patent dated 27 April 1989

(d) to conform with any guidelines issued or recommendations made by the Honourable Elliott Frank Johnston under the relevant Commission in relation to those methods and procedures;

for the purpose of establishing a uniform approach in relation to those inquiries:

AND We further direct you if so requested by the Honourable Elliott Frank Johnston under the relevant Commission:

Varied by Letters Patent dated 27 April 1989

(e) to undertake inquiry into a particular death specified in the request; or

(f) not to undertake inquiry, or further inquiry, into a particular death, as specified in the request:

AND We further direct you, when so requested by the Honourable Elliott Frank Johnston under the relevant Commission, whether before or after the submission of your reports but not later than 31 March 1991, to consult with him in relation to the preparation of his report or reports and recommendations under that Commission:

Varied by Letters Patent dated 27 October 1988; *27 April 1989: 27 September 1990*

AND We declare that you are authorised to conduct your inquiry into any matters under these Our Letters Patent in combination with any inquiry into the same or related matters that you are directed or authorised to make by any Commission issued, or pursuant to any order or appointment made, by any of Our Governors of the States or under the law of the Northern Territory of Australia:

AND We further declare that, until guidelines are issued or recommendations are made by the Honourable Elliott Frank Johnston under the relevant Commission, the guidelines issued and recommendations made by the Honourable James Henry Muirhead under the Commission of inquiry issued to him on 16 October 1987 by Our Administrator of the Government of the Commonwealth of Australia by Letters Patent (as subsequently varied) continue to have effect for the purposes of these Our Letters Patent*:*

Substituted by Letters Patent dated 27 April 1989

AND We further declare that in these Our Letters Patent, the expression 'relevant Commission' means the Commission of inquiry issued on this day by Our Governor-General of the Commonwealth of Australia by Letters Patent to the Honourable Elliott Frank Johnston*:*

Substituted by Letters Patent dated 27 April 1989

AND We require you as expeditiously as practicable to make your inquiry and, to furnish to the Honourable Elliott Frank Johnston for his consideration and for furnishing by him to Our Governor-General of the Commonwealth of Australia under the original Commission*:*

Substituted by Letters Patent dated 24 September 1989

(g) as soon as practicable after the completion of your inquiry into a particular death, and not later than 31 December 1990 or such later date as We may be pleased to fix a report of your findings in relation to that death;

Varied by Letters Patent dated 11 October 1990

(h) upon completion of your inquiry into the several deaths in accordance with these our Letters Patent, and not later than 31 December 1990 or such later date so we may be pleased to fix a report 'of any other findings of your inquiry and such recommendations (if any) as you consider appropriate*.*

Varied by Letters Patent dated 9 November 1990

WITNESS His Excellency the Right Honourable Sir Ninian Martin Stephen, a member of Her Majesty 's Most Honourable Privy Council, Knight of the Order of Australia, Knight Grand Cross of The Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of The Royal Victorian Order, Knight Commander of The Most Excellent Order of the British Empire and Governor-General of the Commonwealth of Australia.

Dated this 6 day of May 1988

Governor-General

By His Excellency's Command,

Prime Minister

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO:

LEWIS WYVILL, QC

GREETING:

WE DO by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and every other enabling power, appoint you to be a Commissioner to inquire into:

(a) deaths:

(I) in the State of Queensland; and

(ii) where in a particular case, or any particular cases, you are so requested by the Honourable Elliott Frank Johnston under the relevant Commission - elsewhere in Australia;

Varied by Letters Patent dated 27 April 1989

since 1 January 1980 of Aboriginals and Torres Strait Islanders (including any such death that may occur after the date of these Our Letters Patent but not including any such death that occurs after the expiration of 31 May 1989) whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to that death; and

Varied by Letters Patent dated 27 April 1989

(b) any subsequent action taken in respect of each of those deaths including, but without limiting the generality of the foregoing, the conduct of coronial, police and other inquiries and any other things that were not done but ought to have been done:

AND We direct you:

(c) to consult generally with the Honourable Elliott Frank Johnston with regard to the methods and procedures to be followed in relation to his and your inquiries; and

Varied by Letters Patent dated 27 April 1989

(d) to conform with any guidelines issued or recommendations made by the Honourable Elliott Frank Johnston under the relevant Commission in relation to those methods and procedures;

Varied by Letters Patent dated 27 April 1989

for the purpose of establishing a uniform approach in relation to those inquiries:

AND We further direct you if so requested by the Honourable Elliott Frank Johnston under the relevant Commission:

Varied by Letter Patent dated 27 April 1989

(e) to undertake inquiry into a particular death specified in the request; or

(f') not to undertake inquiry, or further inquiry, into a particular death, as specified in the request:

AND We further direct you, when so requested by the Honourable Elliott Frank Johnston under the relevant Commission, whether before or after the submission of your reports but not later than 31 March 1991, to consult with him in relation to the preparation of his report or reports and recommendations under that Commission:

Varied by Letters Patent dated 27 October 1988; *27 April 1989; 24 September 1990*

AND We declare that you are authorised to conduct your inquiry into any matters under these Our Letters Patent in combination with any inquiry into the same or related matters that you are directed or authorised to make by any Commission issued, or pursuant to any order or appointment made, by any of Our Governors of the States or under the law of the Northern Territory of Australia:

AND We further direct you, if immediately before 12 o'clock noon on 28 April 1989 you had not completed your inquiry under these Our Letters Patent into a death undertaken in accordance with a request made by the Honourable James Henry Muirhead, to continue with that inquiry as if the request had been made by the Honourable Elliott Frank Johnston under the relevant Commission unless or until you arc requested by the Honourable Elliott Frank Johnston under the relevant Commission not to undertake further inquiry into that death:

Substituted by Letters Patent dated 27 April 1989

AND We further declare that, for the purpose of conducting your inquiry and making your reports, you are authorised to have regard to any evidence received by, and any matters submitted to, you in the course of any inquiry, or part thereof, undertaken by you in accordance with a request made by the Honourable James Henry Muirhead under the Commission of inquiry issued to him on 16 October 1987 by Our Administrator of the Government of the Commonwealth of Australia by Letters Patent (as subsequently varied):

Substituted by Letters Patent dated 27 April 1989

AND We further declare that, until guidelines are issued or recommendations are made by the

Honourable Elliott Frank Johnston under the relevant Commission, the guidelines issued and recommendations made by the Honourable James Henry Muirhead under the Commission of inquiry issued to him on 16 October 1987 by Our Administrator of the Government of the Commonwealth of Australia by Letters Patent (as subsequently varied) continue to have effect for the purposes of these Our Letters Patent:

Substituted by Letters Patent dated 27 April 1989

AND We further declare that in these Our Letters Patent, the expression 'relevant Commission' means the Commission of inquiry issued on this day by Our Governor-General of the Commonwealth of Australia by Letters patent to the Honourable Elliott Frank Johnston:

Substituted by Letters Patent dated 27 April 1989

AND We require you as expeditiously as practicable to make your inquiry and to furnish to the Honourable Elliott Frank Johnston for his consideration and for furnishing by him to Our Governor-General of the Commonwealth of Australia under the existing Commission:

Substituted by Letters Patent of 24 September 1990

(g) as soon as practicable after the completion of your inquiry into a particular death and, not later than 30 September 1990 or such later date as We may be pleased to fix, a report of your findings in relation to that death; and

(h) upon completion of your inquiry into the several deaths and, not later than 30 November 1990 or such later date as We may be pleased to fix, in accordance with these Our Letters Patent, a report of any other findings of your inquiry and such recommendations (if any) as you consider appropriate.

WITNESS His Excellency the Right Honourable Sir Ninian Martin Stephen, a member of His Majesty's Most Honourable Privy Council, Knight of the Order of Australia, Knight Grand Cross of The Most Distinguished Order of Saint Michael and Said George, Knight Grand Cross of The Royal Victorian Order, Knight Commander of the Most Excellent Order of the British Empire and Governor-General of the Commonwealth of Australia.

Dated this 6 day of May 1988.

Governor-General

By His Excellency's Command,

Prime Minister

Appendix B: Individual Deaths — Inquiries and Rulings

Appendix B(i) List of Cases inquired into and found to be within the jurisdiction of the Commission

Referred to as ...	Identifier	Commissioner	Hearing Days	Witnesses	Exhibits	Date of Death	Place of death

ANDERSON, Robert	W 16	O'Dea	4	16	58	22.2.83	Wiluna Lockup, WA
ATKINSON, Shane	N 11	Wootten	8	23	112	5.10.86	Griffith Watch-house, NSW
Aurukun*	Q B	Wyvill	13	21	73	11.4.87'	Aurukun Watch-house, Qld
BARNES, Faith	W 30	O'Ead	2	4	27	27.10.82	Royal Perth Hospital, WA
BARNEY, Walter	QP	Wyvill	4	9	61	22.2.81	Townsville Prison, Qld
Bates, Bobby	W 31	Ol'Dea	2	5	28	2.6.86	Sir Charles Gairdner Hospital
Beatrice Hill Prison Farm*	NT 12	O'Dea	3	0	20	21.8.88	Beatrice Hill Prison Farm, NT
Betts, Eddie	S 8	Johnston	8	5	55	6.10.87	Port Lincoln Watch-house, SA
Binks, Muriel	Q AA	Wyvill	9	25	111	11.3.89	Townsville Base Hospital, Ql
BLANKETT, Nita	W 10	O'Dea	6	15	61	14.1.82	en route to St Andrews Medic Centre Midland, WA
Boney, Lloyd	N 16	Wootten	10	12	110	6.8.87	Brewarrina Watch-house, NS
Booth, Patrick	Q V	Wyvill	4	7	107	15.11.88	Rockhampton Prison, Qld
Brisbane Prison*	Q Z	Wyvill	1	0	26	4.12.80	Brisbane Prison, Qld
BROWN, Stanley	W 13	O'Dea	7	23	67	27.6.87	Broome Lockup, WA
Burralangi*	NT 11	Johnston	3	0	56	13.10.88	Raoyal Darwin Hospital, NT
BUZZACOTT, Malcom	S 4	Johnston	9	7	39	19.7.82	en route from place of work to Port Augusta Gaol, SA
CAMERON, Edward	W 20	O'Dea	8	14	22	8.7.88	Geraldton Lockup, WA
CAMPBELL, Peter	N 7	Wootten	12	23	121	11.2.80	Long Bay Gaol, NSW
CARR, Thomas	N 15	Wootten	1	0	21	23.3.81	Minda Remand Centre, NS
Ceduna *	S 7	Johnston	9	14	80	18.2.83	Ceduna Watch-house, WA
CHATUNALGI, Donald	W 29	O'Dea	1	3	16	15.12.88	Halls Creek Lockup, WA
CLARK, Glenn	T 1	Wootten	14	27	91	27.3.86	Glenorchy Watch-house, T
Darwin Prison*	N T 7	Johnston	20	20	153	5.7.85	Darwin Prison, NT
DAY, Harrison	V 1	Wootten	5	13	46	23.6.82	Euchuca District Hospital, V
DIXON, Kingsley	S 1	Muirhead	27	57	126	9.7.87	Adelaide Gaol, SA
DOOLER, Wayne	W 4	O'Dea	7	19	59	19.6.80	Carnarvon Lockup, WA
DOUGAL, Albert	W 11	O'Dea	8	16	41	9.12.80	Derby Regional Hospital, W
DUNROBIN, Gregory	Q F	Wyvill	7	19	51	2.8.84	Cherbourg Watch-house, Q
EGAN, Joyce	S 11	Johnston	4	0	10	5.8.88	Mount Gambier Watch-hou
Elliot*	N T 6	O'Dea	6	6	65	21.3.85	Elliott Watch-house, NT
FARMER., Paul	W 5	Muirhead	7	14	67	11.7.84#	Albany Regional Prison, W
GARLETT, Daryl	W 7	O'Dea	5	10	23	26.5.80	Wooroloo District Hospital,
Geraldton*	W 21	O'Dea	5	17	23	31.12.88	Geraldton Lockup, WA
GOLLAN, Michael	S 9	Johnston	7	9	31	19.6.88	South Australian Youth Tra Centre, SA
GOLLAN, Stanley	S 10	Johnston	8	10	50	7.3.86	Mount Gambier Hospital, S
GREEN, Dixon	W 24	O'Dea	4	8	34	19.11.85	Broome Regional Prison, W
GUNDY, David	N 19	Wootten	36	29	110	27.4.89	Royal Prince Alfred Hospita NSW
HARRIS, Donald	W 25	O'Dea	2	5	55	10.3.88	Fremantle Hospital, WA
HIGHFOLD, John	S 2	Muirhead	7	26	61	4.1.83	Adelaide Gaol, SA
HYDE, Charle	Q I	Wyvill	7	28	66	18.12.86	Yarrabah Watch-house, Ql
Jabanardi*	NT 2	Johnston	7	6	31	29.7.80	Aileron Road, Ti Tree, of S Highway, NT
Jambajimba*	N T 1	Johnston	22	39	148	16.6.80	Alice Springs Prison, NT
JOHNSON, Bernard	Q N	Wyvill	6	7	65	7.6.86	Townville Prison, NT
JONES, Christone	W 3	O'Dea	6	20	88	18.10.80	Midland Lockup, WA
KARPANY, Craig	S 12	Johnston	3	2	31	27.1.89	Darlington Watch-house, S
KARPANY, Keith	S 3	Johnston	17	23	78	14.3.83	Royal Adelaide Hospital, S

* Name suppressed by order of Commissioner.
# Shown as 11 April 1984 in the individual case report

Referred to as ...	Identifier	Commissioner	Hearing Days	Witnesses	Exhibits	Date of Death	Place of death
Katherine*	NT 5	Johnston	15	21	101	21.11.84	Katherine Watch-house, NT
KEARNEY, Paul	N 13	Wootten	5	9	85	11.7.86	Darlinghurst Watch-house,
KOOWOOTHA, David	Q J	Wyvill	10	34	68	14.3.87	Carins Base Hospital, Qld
KULLA KULLA, Charlie	Q D	Wyvill	15	46	61	12.8.84	Coen Watch-house, Qld
Kwementyaye Price*	NT 3	Johnston	4	8	69	21.11.80	Alice Springs Watch-house

LACEY, Daniel	Q T	Wyvill	1	0	24	11.6.87#	Brisbane Prison, Qld
LESLIE, Bruce	N 5	Wootten	19	47	110	6.6.85	Royal North Shore Hospita
LORRAWAY, Daniel	Q Y	Wyvill	4	5	43	16.5.81	en route to Townsville Bas Hospital, Qld
MAU, Nkikira	Q S	Wyvill	1	0	21	3.1.81	Brisbane City Watch-house
McGRATH, Bernard	W 17	O'Dea	10	26	136	15.11.87	Kalgoorlie Lockup, WA
MICHAEL, Charles	W 1	Muirhead	15	42	78	9.10.84	Barton's Mill Prison, WA
MICHAEL, Steven	W 26	O'Dea	1	3	24	23.5.87	Canning Vale Remand Cer Prison, WA
MISI, Patrine	Q O	Wyville	6	6	55	14.3.85	Townsville Watch-house, Q
MOFFATT, Arthur	V 2	Wootten	8	30	75	11.6.87	Warragul Watch-house, Vic
Moore, James	V 3	Wootten	7	13	87	15.5.82	Swan Hill District Hospital,

* Name suppressed by order of Commissioner.

Shown as 12 June 1987 in the individual case report

Referred to as ...	Identifier	Commissioner	Hearing Days	Witnesses	Exhibits	Date of Death	Place of death
MORRISON, Banjamin	W 15	O'Dea	7	20	58	6.5.88	Fremantle Lockup, WA
MURRAY, Eddie	N 1	Muirhead	30	76	140	12.6.81	Wee Waa Watch-house, N
MURRAY, Tim	N 4	Wotten	8	21	63	31.12.83	Bowral Hospital, NSW
NEAN, Clarrie	N 14	Wootten	2	4	57	15.8.82	Dubbo Base Hospital, NSW
NJANJI, Jimmy	W 8	O'Dea	9	18	55	22.5.85	Port Hedland Regional Hos WA
NOBLE, Perry	Q H	Wyvill	14	29	95	4.12.86	Yarrabah Watch-house, Ql
O'ROURKE, Karen	Q M	Wyvill	5	13	53	11.2.80	Rockhampton Base Hospit
Oodnadatta*	S 6	Johnston	8	11	52	17.12.83	Oodnadatta Watch-house,
PAT, John	W 19	Johnston	? 54	? 48	186 +	28.9.83	Roebourne Lockup, WA
PILOT, John	Q A	Wyvill	13	48	158	25.1.87	Brisbane City Watch-house
POLAK, Kim	W 18	O'Dea	3	13	44	28.3.85	Kalgoorlie Lockup, WA
QUAYLE, Mark	N 6	Wootten	13	27	133	24.6.87	Wilcannia Watch-house, N
REVELL, Mark	N 12	Wootten	9	8	57	29.10.82	Grafton Watch-house, NSW
RIVERSLEIGH	QE	Wyvill	6	25	77	13.3.87	Doomadgee Watch-house,
Royal Darwin Hospital	NT 10	Johnston	9	7	55	2.4.87	Royal Darwin Hospital, NT
RYAN, Vincent	Q Q	Wyvill	6	15	80	30.3.85	Townsville Prison, Qld
SALT, Monty	Q L	Wyvill	11	13	65	21.6.87	en route to Cooktown Hosp Qld
SAMSON, Ginger	W 23	O'Dea	0	0	21	30.3.88	Roebourne Lockup, WA
SAUNDERS, Max	N 18	Wootten	3	4	76	28.11.88	Goulburn Training Centre,
SEMMENS, Gordon	S 5	Johnston	9	7	30	23.7.80	Port Augusta Gaol, SA
SHORT, Deidre	Q X	Wyvill	4	17	84	24.3.89	Lockhart River Watch-hous
Sir Charles Gairdner Hospital*	W 9	O'Dea	9	16	47	25.2.83	Sir Charles Gairdner Hospi
SMITH, Malcolm	N 2	Wootten	7	22	100	5.1.83	Prince Henry Hospital, NSW
TIERS, Barbara	Q W	Wyvill	2	7	54	1.2.89	Rockhampton Watch-hous
UGLE, Ronald	W 28	O'Dea	2	1	21	12.12.83	Broome District Hospital, W
VICENTI, Ricci	W 27	O'Dea	3	17	49	31.3.82	Royal Perth Hospital, WA
WAIGANA, Misel	W 14	O'Dea	4	11	47	4.3.87	East Perth Lockup, WA
WALKER, Robert	W 2	Wyvill	33	55	142	28.8.84	Fremantle Prison, WA
WALKER, Roy	W 32	O'Dea	4	6	28	2.4.81	Royal Perth Hospital, WA
WALLEY, Graham	W 22	O'Dea	4	13	25	23.10.88	Greenough Regional Priso
WELLS, Milton	W 33	O'Dea	4	11	24	6.8.85	Kalgoorlie regional Hospita
WEST, Eddie	Q G	Wyvill	6	16	76	9.7.87	Cherbourg Watch-house, C
WILLIAMS, Peter	N 17	Wootten	5	21	46	18.11.87	Grafton Gaol, NSW
WODULAN, Hugh	W 12	O'Dea	5	19	41	19.7.83	Broome Lockup, WA
WOUTERS, Darren	Q K	Wyvill	6	12	78	15.11.87	Brisbane City Watch-house
Wujal Wujal*	Q C	Wyvill	10	21	87	29.3.87	Wujal Wujal Watch-house,
Yarrie, Barbara	Q R	Wyvill	7	31	81	14.4.86	Royal Brisbane Hospital, Q
YARRIE, Fay	Q U	Wyvill	4	28	115	15.12.88	Royal Brisbane Hospital, Q

* Name suppressed by order of Commissioner.

Appendix B(ii) Deaths inquired into which were found to be outside the jurisdiction of the Commission

NAME OF THEDECEASED	DATE OF DEATH	PLACE OF DEATH	REASONS OUTSIDE JURISDICTION
New South Wales			
Adams	Skull found 19 June 1984 — Adams disappeared September 1982	Collarenabri	No evidence to suggest that the death had any correlation with custody death not caused or
Clayton	2 January 1982	Tamworth	contributed to by time spent in custody ·Death not caused or
Buchanan	10 November 1986	Happy Valley, near Coffs Harbour	
Cobb	14 .August 1987	Cooma Jail I	contributed to by time spent in custody not Aboriginal
Cooper	3 August 1984	Prince Henry Hospital	No injury was sustained while in custody that caused or contributed to death. Not Aboriginal
Mulvihill	14 September 1987	Sydney Police Centre	
Hillsey	14 December 1987	Pentridge Prison	Not Aboriginal
Tiddle	1985	Shepparton Police Cells	Not Aboriginal
South Australia			
Koko	8 February 1983	Murat Bay Hospital	Not in custody
Northern Territory			
Wunnunmurra	4 July ,1983	Gove Hospital	Not in custody
Walker	20 December 1986	McLachlan Sweet Sobering Up Centre Darwin	Not in custody
Queensland			
Ashwell	8 November 1987	Townsville Prison	Not Aboriginal
Barnes	12 August 1985	Wacol Detention Centre	Not in custody
Doctor	14 December 1982	Mater Public Hospital	Not in custody
Yow Yeh	27 June 1975	Police Watchhouse Mackay	Outside time restriction of Terms of Reference
Teace	27 October 1981	Former Urandangi Lockup	Not in place of detention
Stanley	2 May 1986	Brisbane Hospital	Not in custody
Gracey	28 November 1983	Brisbane Hospital	Not in custody
Western Australia			
D. Green	20 March 1982	Greenough Regional Hospital	Not in place of detention
Gentle	21 March 1985	Rockingham Police Lockup Perth	Not Aboriginal
Gloede	17/18 June 1980	Gnowangerup Police Station	Not Aboriginal
Johns	5 February 1975	Police Lockup Katanning	Outside time restriction of Terms of Reference
Simpson	24 August 1985	Railway Hotel Mullewa	Not in custody
Majurey	29 October 1985	Geraldton	Not Aboriginal

In addition to the above a preliminary inquiry was conducted into the death of Paul Pryor, at the request of the Victorian Government and with the agreement of the Government of Queensland. The death of Mr Pryor occurred at his home in East Brunswick, Victoria, on 10 or 11 January 1988. Commissioner Wootten, who conducted the preliminary inquiry, considered that the Commission's Terms of Reference should not be extended to include the death of Mr Pryor.

Appendix B(iii) Deaths occurring in Hospital

The following is an extract from a ruling made by Commissioner Johnston in the case of NT/8 (name suppressed) addressing jurisdictional questions arising from deaths occurring in hospital subsequent to removal from custody.

3. Terms of Reference

The Terms of Reference in the Commission which I held from the Commonwealth Government in so far as are relevant are as follows:

> '.... to inquire into: (a) deaths:
>
> (i) in the States of Western Australia and South Australia and the Northern Territory; and
>
> (ii) where in a particular case, or any particular cases, you are so requested by the Honourable James Henry Muirhead under the existing Commission — elsewhere in Australia;
>
> since 1 January 1980 of Aboriginals and Torres Strait Islanders (including any such death that may occur after the date of these Our Letters Patent) whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to that death; ...'

The Commission which I held from the Northern Territory Government is in essentially the same terms.

(My Terms of Reference are now different in a number of respects but not in any relevant respect. I publish my reasons on the basis of the Letters Patent as they were at the time of the argument, so that the reasons fit in with the transcript of argument.)

4. The Argument that the Case is Outside Jurisdiction

The central matters in the agreed facts are that the deceased was not in custody from the time he was taken out of the cell and conveyed to the local hospital. Mr Riley and Mr McDonald argued that this case cannot be within the Terms of Reference because the deceased was not in custody at the time of his death. The opposing views on the construction of the Terms of Reference can be, in their essence, shortly stated. Mr Riley and Mr McDonald contend that the passage commencing with the words: 'deaths since 1 January 1980 ... in prison or any other place of detention' (first occurring) define the outer limits of the inquiry into deaths; that they do so by reference to three distinctly different criteria:

(a) by reference to time — the death must have occurred since 1 January 1980 (including deaths occurring after the date of issue of the Letters Patent;

(b) by reference to race — the death must be of an Aboriginal or Torres Strait Islander, and

(c) by reference to what I will call the circumstances in which the death occurred — namely that the deceased died whilst in police custody, in prison or in any other place of detention.

The argument is that if a particular death does not satisfy all three criteria, the death is not within the ambit of the Terms of Reference. It is claimed that the effect of the remainder of the words in paragraph (a), namely: '...but not including such a death occurring in a hospital ... caused or contributed to that death; ...' is to exclude from jurisdiction any death which otherwise meets the criteria of the Terms of Reference but which occurs in a hospital, mental institution, infirmary or medical treatment centre but that such exclusion is in itself subject to an exception, namely, where the death, although occurring in a hospital or other named type of institution, is caused or contributed to by injuries suffered while in police custody, in prison, or in any other place of detention.

Accordingly, on the agreed facts of this matter and on the basis of that interpretation, the death is excluded since the deceased was not in custody at the time of his death and accordingly the death is not within the outer limits of those deaths encompassed by the Terms of Reference; accordingly it is without any significance whether the death was contributed to or otherwise by injury suffered while in police custody, etc.

I should make it clear that the concession made by the parties for whom Mr Riley and Mr McDonald act in para 12 of the agreed facts (namely that the death was contributed to by injury suffered while in detention) was made for the purpose of facilitating this ruling on the principal point. If I rule that the death is on a proper construction not excluded by reason of the death not having occurred whilst the deceased was in custody it will be open to them to argue that in fact there was no such injury contributing to the death. In that case there would have to be an inquiry and I would have to be satisfied that the death occurring in the Royal Adelaide Hospital was contributed to by some injury suffered while in policy custody. But for the time being Mr Riley and Mr McDonald argue that that matter is entirely without significance since on their construction the simple fact is that the death does not meet the qualifying criteria and hence never got into the category of relevant deaths from which it might be excluded by reason of occurring in a hospital.

5. The Argument that the Case is Within Jurisdiction

The argument to the contrary is that the proper construction of the document is that it establishes a category of deaths, namely, those occurring after 1 January 1980 and being the deaths of persons who were Aboriginal or Tones Strait Islanders (this category being the requirement of 'such deaths') which category is then qualified in two ways:

Firstly, by providing a further qualification for the death to come within the Terms of Reference namely, that the death occurred in policy custody, in prison, or in some other place of detention; and secondly, to exclude, as a matter of policy, any death which occurs in a hospital, mental institution, infirmary or medical treatment centre; but in introducing the exclusionary category of death in hospital etc., it introduces as an exception another inclusionary category, namely where the death occurs in hospital etc. but is caused or contributed to by injury suffered whilst in police custody etc. This argument says that on the agreed facts the death is within the Letters because the death occurred in a hospital and was caused or contributed to by injury suffered whilst in policy custody.

6. Ruling

My conclusion is that the second construction is the proper one. I should say that Commissioner Muirhead (as he then was) and Commissioner Wootten independently came to a similar conclusion enunciated by them in certain reasons for rulings given by Commissioner Muirhead (in Perth on 22 December 1988) and by Commissioner Wootten (in Melbourne on 14 December 1988).

Generally speaking I agree with their reasoning but I will state my own reasons for reaching my conclusion.

7. Reasons for Ruling

Giving to the words of the Letters Patent their ordinary meaning it is clear that the words 'but not including such a death' standing before the words 'occurring in a hospital etc.', are words of exclusion in the sense that they are designed to remove from the ambit of the Terms of Reference deaths which, were it not for the exclusion, would be within the Terms of Reference. This being so, the question seems to boil down to a consideration of whether the phrase 'such a death' refers to a death which meets all the criteria of the Terms of Reference, enunciated to that point (that is to say that the death is one occurring since 1 January 1980, is the death of an Aboriginal or Torres Strait Islander and the death occurring in circumstances defined by the words in policy custody, imprison or in any other place of detention; or whether the phrase 'such a death' refers back to a death meeting the first two criteria (i.e. date of death and race of the deceased).

In my view each of those constructions is a possible construction; each of them can be supported

by reasonable argument. As I have said, I favour the latter construction.

The main argument advanced in support of the first construction is based on the order of the words themselves. The fact is that the three criteria are set out and immediately followed by the words 'but not including such a death'. This arrangement of the words provides powerful support for this interpretation. There are basically three reasons leading me to the conclusion that the second construction is to be preferred:

(a) the exclusion uses the words 'but not including such a death 'occurring' etc,' thereby virtually echoing the language of the earlier inclusive words, namely, '(including any such death that may occur after the date of the Letters Patent)' which words follow and can only be related to the words setting out the first two criteria (time and race).

In this respect it is important to look at the history of the Terms of Reference.

When Letters Patent were first issued to Commissioner Muirhead alone, the full extent of the phenomenon of Aboriginal deaths in custody was not then understood. The Letters Patent issued to Commissioner Muirhead required him to inquire into, inter alia, 'the deaths in Australia since 1 January 1980 of Aboriginal and Tones Strait Islanders (including any such death which may occur after the date of this Commission) whilst in policy custody, in prison, or in any other place of detention'. There was no exclusion.

The Letters Patent of Commissioner Muirhead were subsequently varied (inter alia) by adding the exclusionary words at the same time as Letters Patent were issued to Commissioner Wootten, Commissioner Wyvill and myself. The Terms of Reference in the Letters Patent issued to the additional Commissioners follow, in respect of the matter under discussion, the amended Terms of Reference of Commissioner Muirhead. The inquiries directed to be carried out by all the Letters Patent are, on the face of them, interlinked and the words being considered must clearly, in my view, be given the same meaning in each of the four sets of Letters Patent but more particularly the same meaning as is attributed to the verbiage in the Letters Patent issued to Commissioner Muirhead. I might say that no counsel argued to the contrary of this proposition.

The history of the Letters Patent has another significance, which I will deal with later but its immediate significance from the point already raised, seems to me to be very considerable. the person drafting the variation of Commissioner Muirhead's Letters Patent had as a starting point the original Terms of Reference which had the inclusionary words '(including any such death that may occur after the date of these our Letters Patent)'. The drafting task was to add an exclusion. The paragraph to be amended in the Terms of Reference is so small as to make it impossible, in my view, to imagine that the person responsible for the drafting was unaware that in drafting the exclusionary words 'but not including such a death occurring in a hospital, etc.' the verbiage of the inclusive clause was not being followed. It seems to me that there is a strong argument that the words 'such a death' in the exclusionary clause are to be read in the same way as 'such deaths' in the inclusionary phrase, and upon that basis such a death can be read only as referring to a death in Australia since 1 January 1980 of an Aboriginal or Torres Strait Islander.

So construed, the meaning of paragraph (a) in the Letters Patent is, that the broad subject is first defined as being deaths in Australia since 1 January 1980 of Aboriginals or Torres Strait Islanders including deaths occurring after the date of the Letters Patent, with a further proviso that to be within the Terms of Reference the death must occur in police custody, in prison, etc. but with the further provision that any death meeting the primary requirements of place, date and racial background of the deceased is excluded if it occurred in a hospital etc., subject to the proviso contained within the exclusion.

On ordinary principles of construction it appears to me that the words 'any such death' and the words 'such a death' should be given the same meaning unless there is indication in the document that they should be given a different meaning. I do not find any clear indication of a

(b) My second reason for preferring what I have called the second interpretation, is connected with the history of the Letters Patent. That history is set out in the reasons for ruling of Commissioner Muirhead, to which I have already referred. In particular, the question was raised when the original Terms of Reference were first under discussion as to whether the Letters Patent included the deaths of persons admitted involuntarily to mental institutions pursuant to the provisions of mental health acts and dying whilst a patient in such an institution.

It seems to me that the raising of this and other questions may well have alerted those responsible for considering the Terms of Reference to the thought that there could be considerable argument as to whether a particular death occurring in a 'hospital, mental institution, infirmary or medical treatment centre' was or was not also a death occurring whilst 'in police custody, in prison or in any other place of detention '.

Take the instance of death in a mental institution. The debate which occurred at the time of the first hearing of the Commission (when Commissioner Muirhead was sitting pursuant to his original Terms of Reference) indicated that there was a widely held view that the death of a patient in a mental institution who was in such an institution voluntarily was within the Terms of Reference (or at least might well be). Of course that does not now arise but in my view there is considerable doubt as to whether such a death was within the then Terms of Reference. Plainly such a death is not in police custody, or in prison, but it may be thought without reference to context to be in a place of detention. But in context, it seems to me, that any 'other place of detention' in the Letters Patent (both as originally drafted and in their present form) is referring to detention associated with the administration of the law relating to the commission of offences or the alleged or suspected commission of such offences or dealing with anti-social behaviour in some way. Detention resulting merely from a person's state of health whether physical or mental seems to me in context to be outside the natural meaning of the word. Whether that view is right or wrong is of no present moment. What is clear is that the attention of the Executive Government was drawn to the fact that in relation to mental institutions there might well be confusion and argument as to whether a death in such an institution was a death 'in any other place of detention'. And a consideration of other possible circumstances would soon show (as Commissioner Wootten has demonstrated his reasons for ruling to which I have referred) that there are many sets Of circumstances in which there could be argument as to whether the death occurring in hospital, etc. was or was not within the category of a death occurring in police custody, in prison, or in any other place of detention. (Indeed, that is precisely what counsel representing the family raises in the additional question to which I later refer.) It seems to me that in these circumstances it would be completely logical for those dealing with the Terms of Reference to come to the conclusion that what was needed, as a matter of policy, was an exclusion of all deaths occurring in hospital, etc. without reference to whether the deceased was then in police custody, prison, etc. It seems to me that one can see rational policy reasons for such an attitude. Deaths occurring in police custody or in prison are deaths occurring in places from which the general public is excluded; places where the rights of inmates are severely restricted; where those in charge are not of the medical profession or otherwise associated with the care of sick people where the relations between those are inmates and those who are custodians. It is topically such that it is easy to accept the possibility of violence and in a situation where, as everyone knows, it is not uncommon for allegations of violence to be made on both sides. There is not the same basis for public concern when a death occurs in a hospital or some other established medical treatment centre where members of the public, quite unassociated with custodial institutions, are likely to be found both s patients and staff; where, if a patient is in custody, there may be a prison officer or constable sitting by the side of the patient's bed, but doctors, nurses and other staff supervise the health and welfare of the patient

In short, questions concerning the reach of the original Terms of Reference having been

brought before the Executive, it appears to me to be quite understandable that steps should be taken to short circuit argument about whether a deceased was in custody or in a place of detention at the time of death by a general provision that deaths in hospital, etc. should not be within the Terms of Reference without reference to the question of custody or detention. If this were the purpose, then the use of the words 'but excluding such a death', thereby echoing the words 'such death', referring to deaths in Australia since 1 January 1980 of Aboriginal and Torres Strait Islanders would be a very appropriate way of achieving the desired meaning.

(c) The third reason which leads me to my conclusion is the terminology of the proviso concerning deaths caused or contributed to by injuries suffered whilst in policy custody, prison or in any other place of detention.

I preface what say on this point by remarking that whether the first construction, supported by Mr Riley and Mr McDonald, or the second construction, favoured by other counsel, is preferred, it is quite understandable that a proviso should be introduced.

I think that I can take it as well known that it was agitation following a number of deaths in custody which led to the establishment of the Royal Commission. Death in a custodial situation is the very essence of the Commission's jurisdiction on the first construction but given this construction it is still understandable that Government would see the need for a proviso to cover at least some instances of custody related death (in hospital). It would seem to be a strange situation that if a prisoner in a prison suffered severe injuries (however sustained), the question of jurisdiction should depend on whether death occurred whilst the prisoner was still in the prison, in an ambulance on the way to hospital for treatment or minutes after arriving at hospital.

Likewise on the second construction, if the words in question are simply intended to bring about an exclusion from the Terms of Reference of deaths in hospital, etc., irrespective of whether the patient was in custody or otherwise, one can well imagine that policy considerations would lead to a proviso. The proviso would predictably cover cases where the death in hospital etc. is associated with injuries sustained whilst in custody.

Accordingly, I do not regard the existence of the proviso as in any way indicating whether the first or second interpretation is correct; but the actual words of the proviso appear to me to point quite strongly towards the correctness of the second interpretation.

If the first suggested construction is correct then the only way that a death can be within the Terms of Reference is by occurring in the course of a given custodial situation (i.e. a given prison sentence, a given period of remand etc.). A policy exclusion which excludes a death in custody but in hospital etc. is understandable for reasons already discussed: a proviso to that exclusion is also understandable again for reasons discussed: but the proviso which one would surely then expect is one which brings back into jurisdiction an injury associated with that custodial situation, the mere existence of which made it possible for the exclusion to operate.

But plainly the proviso relates to any injury causing or contributing to death suffered whilst in any episode of police custody, imprisonment or in any other place of detention. A construction which says that death in the course of an episode of custody is the precondition to jurisdiction under these Terms of Reference is, to me, understandable. A construction which then excludes in custody deaths occurring in a hospital, is acceptable. But if that is the intended meaning the draftsperson would hardly add a proviso which operates to bring back within jurisdiction (despite the fact that death was in hospital etc.) any death caused or contributed to by injury suffered not in the course of that particular episode of being in custody but in the course of any episode of being in custody, whenever occurring. The proviso in its terms is destructive of the whole focus asserted for the first construction — namely that the sole basis for jurisdiction is death in

the course of a specific episode of being in custody.

On the other hand, the second construction seems to me to offer an acceptable explanation for the actual terms of the proviso. The exclusionary words are not associated with any specific episode of being in custody or indeed with the concept of custody at all. The words involve a broad policy exclusion. Deaths in hospital, etc. are simply not included. One need not bother about going into what may be a difficult question of whether the deceased was in custody or detention at the time of his death. It is the fact of the death occurring in a hospital etc., that as a matter of policy takes the death outside the ambit of the inquiry. This broad, all embracing exclusion must be tempered. The proviso is in a form that one might expect the proviso to take given the general nature of the inquiry. The exclusion does not apply where the death in hospital etc. is caused or contributed to by injuries suffered in the course of being in police custody, in prison or in any other place of detention.

The following is an extract from a general ruling made by Commissioner Wootten addressing jurisdictional questions arising from deaths occurring in hospital subsequent to removal from custody.

This is a statement of my reasons for earlier decisions, made following argument by all parties, that I would proceed to hold hearings into the deaths of Bruce Thomas Leslie in New South Wales and Harrison Joseph Day and James Archibald Moore in Victoria. It is also relevant to the question of whether I should make reports in the cases of Francis Thomas Cooper and Thomas William Murray, in which I heard evidence without objection or argument. The reasons deal with a question of construction of the similar terms of reference in the commissions which I hold from the Commonwealth Government and from the Governments of the States of New South Wales and Victoria. My jurisdiction to inquire into certain deaths in those States depends on the answer to the question. The same question exists under the commission which I hold from the Government of Tasmania but there is no death in that State raising the question. I understand that the question is also raised by deaths occurring in a number of other States where inquiries are being conducted by other Commissioners with commissions in similar terms to my own.

<u>The problem</u>

The question arises in a number of cases where an Aboriginal has died in a hospital to which he has been removed, because of his medical condition, from a police cell or prison. In some cases the person has still be in police custody or in the custody of prison authorities at the time of his death in hospital. In other cases however, custody or detention of any kind has come to an end prior to his death.

By way of illustration, I outline in very general terms the facts of two cases. Mr Bruce Thomas Leslie was taken into police custody as an intoxicated person around midnight on the night of May 29, 1985. Under the relevant legislation he could not be detained for longer than 8 hours. At 7.00 am the next morning he was taken in a state of unconsciousness by ambulance from Tamworth Police Station to Tamworth Hospital where he was found to have a fractured skull. He did not regain consciousness and died some six days later in the Royal North Shore Hospital, when he was no longer in custody. Without investigation it is not possible to say with certainty whether he sustained the fractured skull before or after being taken into police custody, or whether he sustained any other injury in police custody. The coroner found that his skull was fractured before he was taken into custody, but there was no direct evidence of this and Commission investigation has revealed some evidence of happenings in the police station not placed before the coroner. In any event questions arise as to why his condition was not identified earlier.

A second case is that of Francis Thomas Cooper, who died in the renal unit of Prince Henry Hospital. The unit is an ordinary public ward, not part of a proclaimed prison and at the time of his death Mr Cooper was not under guard. However, he was a remand prisoner and had been taken from prison to the hospital for treatment. His death was the final stage of long standing kidney and liver disease, consequential on alcoholism. He had been in prison or in police custody on remand for some months prior to his death and at other times since the onset of his disease. Although there

is no suggestion of deliberate mistreatment of Mr Cooper, serious questions arise as to why such a sick man, convicted of no offence, was in custody for so long and allowed to die in custody, and whether proper regard was had to his medical condition in the conduct of the proceedings against him.

There are other cases in both New South Wales and Victoria which raise the same questions but for the moment these cases are sufficient to illustrate the matter. Day's case will be outlined later to illustrate a particular point.

The terms of the commission

The terms of my Commonwealth commission and the cumulative effect of the terms of my commissions from the States of New South Wales, Victoria and Tasmania provide that I am required to inquire into:

(a) deaths:

(i) in the States of New South Wales, Victoria and Tasmania; and

(ii) where in a particular case, or any particular cases, I am so requested by the Honourable James Henry Muirhead under his Commission — elsewhere in Australia; since 1 January 1980 of Aboriginals and Torres Strait Islanders (including any such death that may occur after the date of the Letters Patent) whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any other place of detention caused or

(b) any subsequent action taken in respect of each of those deaths including, but without limiting the generality of the foregoing, the conduct of coronial, police and other inquiries and any other things that were not done but ought to have been done.

Competing constructions

The commissions should in the fast instance be construed according to the natural and ordinary meaning of the words used. While lawyers profess this to be the test of construction, they seek to ascertain the natural or ordinary meaning, not be consulting natural ordinary people and ascertaining their use of words, but by applying their own legally trained minds and sophisticated analysis to the words to be interpreted. In the context in which I work as a Royal Commissioner I have had the opportunity to see how a number of ordinary people, and indeed lawyers who have not stopped to make a sophisticated analysis of the commissions, understand the natural and ordinary meaning. Invariably the response to facts such as those I have given in the two illustrative cases is that the Commission has jurisdiction to inquire into a death which occurred in a hospital, provided that injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to that death.

However there is another more restrictive construction. The construction reflects a lawyer's conditioned reaction to the words 'but not including' as signalling a purely exclusionary proviso. From this starting point there is a well-trodden path to the conclusion that the following words operate only to exclude some matters which are covered by the words which have gone before, but not to include any matter which would not otherwise have been within the tenor of the document. In this case it leads to the inference that it is not sufficient to bring a death occurring in hospital within the terms of reference, that injuries suffered while in police custody, in prison or in another place of detention caused or contributed to the death. It must also be shown as a threshold matter that the death was of a person who was 'in police custody, in prison or in any other place of detention, (as may be thought to be the case with a voluntary patient dying in an ordinary public or private hospital), the death is not within the terms of reference.

A lawyer may feel some professional satisfaction in advancing this very logical analysis of the terms of reference in the face of a general assumption to the contrary, but I was left with a nagging doubt whether the lawyer who by logical analysis discovers in words a meaning not immediately suggested to the ordinary meaning of the words. This is particularly troubling when one remembers

that the subject matter of this Royal Commission is not events in some sophisticated legal or business context but the deaths of ordinary Aboriginal people, usually coming from underprivileged families with limited educational and employment opportunities and with little contact with the world of sophisticated legal analysis. The establishment of the Commission was to a large extent meant to address their concerns and one would expect the terms of reference to be in readily accessible language, and not so couched as to raise expectations which would be disappointed.

Attitudes of participants

As it turned out, even after I raised the question and sought argument on it, the restrictive construction was not adopted by Counsel Assisting and five of the six other counsel arguing the matter in NSW, nor by any of the six interests arguing the matter in Victoria. While it is not surprising that Aboriginal interests rejected the restrictive construction, it is to be noted that it was not adopted by the Governments of NSW and Victoria, whose policies and practices come under further scrutiny with each case heard, nor by the police association of either State, the conduct of whose members comes under critical examination in each case.

While it cannot conclude the legal position, I think that I should treat with some respect the views of the relevant Governments as to the construction of the commissions which they have issued to me. Both the New South Wales and Victorian Governments appeared by counsel and submitted that I should proceed to inquire whether the deaths which occurred in hospital were caused or contributed to by injuries suffered in custody. While they acknowledged that the restrictive construction was open, their submissions invited its rejection in favour of a more liberal approach. The Victorian Government supported the submissions of Counsel Assisting, the general thrust of which were along the lines of my present reasons. Counsel for the New South Wales Government submitted that the restrictive construction was the grammatical one, but that the liberal construction should be adopted pursuant to the statutory injunction to construe statutory instruments so as to promote the purpose or object underlying them (Acts Interpretation Act. 1901, section 46 (Commonwealth) and Interpretation Act. 1987, section 33 (New South Wales)).

The Commonwealth Government has not appeared in any of the hearings before me, nor has it made any direct communication of its views. However, in response to a recent request from the Victorian Legal Aid Service for consideration of an amendment of the terms of reference to include the case of an Aboriginal in Victoria who died in a private home after release from custody, the Minister assisting the Prime Minister stated in the course of a letter explaining the Government's unwillingness to expand the terms of reference: 'The current terms of reference include all Aboriginals and Torres Strait Islanders who died in police custody, in prison or in any other place of detention and those who suffered injury in custody or prison which later contributed to their deaths in hospitals or mental institutions'. (Emphasis added). This is quite inconsistent with the restrictive construction of the terms of reference.

Notwithstanding the introductory phrase 'but not including', the common reaction is to treat what the lawyer may identify as a limited exclusionary proviso as a general statement of the circumstances in which a death in a hospital, mental institution, infirmary or medical treatment centre comes within the terms of reference. On reflection I have come to the conclusion that this more liberal construction is not only grammatically open, but is preferable as giving effect to the natural and ordinary meaning of the words, used, and as promoting the object or purpose of the terms of reference.

Analysis of the terms of reference

The commissions appoint my fellow Commissioners and myself to inquire into certain deaths. The relevant deaths are defined in a number of ways.

A geographically — the individual commissions vary as to the parts of Australia specified and are supplemented by a power of allocation in Commissioner Muirhead.

B by time of occurrence -since 1 January 1980 and including future deaths

C by racial background of deceased — Aboriginals and Torres Strait Islanders

D by various circumstances surrounding the death, which may include the nature of custody at the time of death or the nature of the place of death, and the custody or place in which injuries causing or contributing to the death were suffered -

a) whilst in police custody, in prison or in any other place of detention

b) (i) but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre

(ii) unless injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to that death.

For convenience of discussion I will refer to the various parts of the terms of reference by the paragraphing letters which I have used in the above analysis.

The commissions took their present form when additional commissioners were appointed on May 6, 1988. Prior to that time the sole commissioner was Commissioner Muirhead and his commission included only what I have identified as A, B, C, and D(a) in my analysis. What I earlier described as the exclusionary proviso and have now identified as D(b) was introduced into his commission by way of amendment when the extra commissioners were appointed. The amended formula was also used in their commissions. Historically D(b) can therefore be regarded as an amendment of the original terms of reference.

The original terms of reference

Before proceeding to discuss the effect of the amendment, it is useful to note a few matters about the original terms of reference. Jurisdiction did not depend in any circumstances on the cause of death, or on the time or place or legal circumstances of causative injuries. Deaths from natural causes, or from injuries suffered prior to being taken into custody or detention, or injuries suffered in earlier periods of custody and detention, or injuries inflicted by the prisoner himself or fellow prisoners, were all unconditionally included, so long as the actual death occurred in police custody, in prison or in another place of detention.

Questions could arise in borderline cases as to the meaning of 'in police custody', but non do in the cases before me. Police custody is clearly a legal or factual state, not a place. The phrase 'in prison' might be regarded as a referring to a legal state or to a place, but the following phrase 'or any other place of detention' provides reason for concluding that the intention was to refer to a place. The phrase 'or any other place of detention' gives rise to a question whether 'detention' should be read down for contextual reasons to detention similar in character to police custody or imprisonment. The question does not directly arise in the cases before me, but I shall refer to it later in considering possible reasons for the amendment.

Another question arising under the original terms of reference is whether 'place of detention' refers to the intrinsic character of the place, e.g. a prison or a police cell, or to the relationship of the deceased to the place, so that any place may be a place of detention for a person who is detained there, e.g. a public hospital to which a prisoner is taken from a prison by his warders. The latter construction is much to be preferred, as otherwise there would be extraordinary gaps, and anomalous inclusions, in the terms of reference. A prisoner in transit between prisons, or in the custody of prison officers in a courtroom (as distinct from the cells below), would not be covered. On the other hand an Aboriginal prison officer, or relative visiting a prisoner in a gaol, who died in gaol, would be covered, although for that person the gaol was not a place of detention.

The competing constructions compared

I return to the construction of the current or amended terms of reference. The more restrictive construction links D(b) to D(a) and treats (b) as operating solely by way of exception. No death not already covered by the terms of reference is brought in by (b) but any deaths in hospitals, mental institutions, infirmaries or medical treatment centres which would otherwise have been within the terms of reference, and in particular within (a), are taken out by (b)(i) unless they can satisfy the condition in (b) (ii).

On the liberal construction on the other hand, (b) operates to make a general statement about deaths in certain places, viz any hospital, mental institution, infirmary or medical treatment centre, whether or not those deaths are included in (a). In the result, it has an exclusionary effect, but it also has an expansive effect. it both adds to and subtracts from the deaths that occur in the places specified in (b)(i) in the absence of any element of custody or detention, if the condition laid down in (b) (ii) is met. It subtracts deaths which occur in those places in circumstances of custody or detention unless the condition laid down in (b)(ii) is met.

The need to choose between the two constructions arises only if hospitals, mental institutions, infirmaries and medical treatment centres are not 'places of detention' within the meaning of the terms of reference, or at all events not 'places of detention' for all Aborigines who may die there. Unless this is so, there is no difference in result between the two constructions. It is a possible explanation of the use of the words 'but not including' that the draftsperson elected to proceed on the basis that all deaths in hospitals, mental institutions, infirmaries and mental treatment centres were deaths in a place of detention, either through concern at the possibility that this might be held to be the case, or because of the desirability of treating in the same way all deaths occurring in such institutions as a result of injuries suffered on custody. For the moment I will assume that, for a patient who is not in some form of police or prison custody, a hospital is not 'a place of detention', although later in discussing possible reasons for the amendment I will canvass the possibility that the amendment rested on a different assumption.

Arguments critical of each construction on grounds of policy can be advanced and each construction can be supported by some rationale of the amendment. I shall refer to some of these considerations later. They may be relevant in choosing between two or more constructions which are grammatically open (as I believe to be the case here), as they may suggest which is more likely to have been intended. They may also be relevant in considering whether, in terms of the Acts Interpretation Act, 1901, section 46 (Commonwealth) and the Interpretation Act, 1987, section 33 (New South Wales), a particular construction promotes the purpose or object underlying a statutory instrument. But first it is necessary to consider whether the words used are capable of the more liberal construction or are consistent only with the restrictive construction.

'But not including such a death'

The immediate appeal of the restrictive construction is that it gives obvious and strong effect to the words 'but not including such a death' by treating them as making an exclusion from the category of deaths mentioned immediately before, viz. deaths in police custody, in prison, or in any other place of detention.

If there had been no express reference to deaths in (b)(i), (b) would have been simply a list of places, and hence could have operated only as an exception to 'any other place of detention' (or possibly 'prison or any other place of detention'). it could not have operated as an exception, not from places, or from places and states, but from deaths, it was made clear that (b) was an exception from something other than the list of states and places in (a). The words 'such a death' make it an exception from some category of deaths. But what category?

There have been two previous uses of the word 'death' in the terms of reference. The first is the opening word so the terms of reference, viz 'deaths', where it stands alone as a completely general category, about to be qualified. The second is in the parenthesis immediately before D '(including any such death that may occur after the date of Our Letters Patent)'. Here the words 'any such death' refer to the category defined by A, B and C, which the parenthetical statement extends into the future.

The restrictive construction assumes the category referred to by the words 'such a death' in (b) is as defined by all words up to the beginning of (b), that is, a category already limited by (a). It picks up the opening use of the word 'deaths' in the terms of reference, and takes it as qualified by A, B, C, and D(a).

However, there is another possibility. The exclusion may be a qualification not of the category of deaths defined by A, B, C and D(a), but of the category defined by A, B and C. Thus, on the more liberal construction (a) is not assumed to have a controlling power over (b), but both (a) and (b)

operate, each in their own right, to qualify the combined A, B and C. The words in (a) do so by defining categories to be covered unconditionally. The words in (b) do so by defining cases to be covered only conditionally; this is the substance of (b), although its form is that of conditionally excluding certain cases which are by implication admitted if they satisfy the condition. I will suggest a reason for adopting this form later, when I discuss the question of potential conflict between (a) and (b).

On this construction (a) and (b) cumulatively state which deaths of those satisfying the criteria of A, B, and C are to be included. Whereas the restrictive construction assumes that (b) is making a statement about a category limited by (a), the liberal construction treats (a) and (b) as that defined before either of them comes into operation. This construction does not depend on the occurrence of the words 'such a death' earlier in the terms of reference; it could be maintained if there were no parenthetical statement. However the words being there, the liberal construction may draw some comfort from the fact that it treats the similar phrases 'such a death' and 'any such death', used in different parts of the document, as referring to the same deaths, namely the category defined in A, B and C.

If one treats (a) and (b) as each making an statement about the same category, namely A to C, (as the liberal construction does), and with (a) not making an a priori limitation of (b), there is a potential conflict between them. This would arise, for example, where a death occurs in a hospital which is in a prison, or an ordinary public hospital to which a person is taken in police or prison custody and there remains in custody. Sometimes this custody is physically expressed, for example by a guarding police officer or prison officer remaining at the bedside.

Sometimes it may be merely a legal state, as for example with Mr Cooper who was at the time of his approaching death far too ill to escape, so that it was thought unnecessary to maintain a prison guard in the hospital. Being a prisoner he was, under the Prisons Act, deemed to be in the custody of the governor of the gaol from which he had been sent to the hospital, and was not free to leave it. He was in a place of detention, if not actually in prison, and according to (a) his death was unconditionally within the terms of reference. But he was also in a hospital, and according to (b) his death was within the terms of reference only if the condition in (b)(ii) could be satisfied. No problem arises under the restrictive construction, which says that the only role of (b) is to create exceptions from (a) so the conflict can ex hypothesi never arise.

Under the liberal construction, on the other hand, (b) is not a mere appendage to (a), but an independent statement of deaths which are conditionally included. Even without the the introductory words of (b), there would be a number of reasons why (b) should prevail — it is a special provision about hospitals, it is later in the document. However, this is not left to the risks of interpretation, but made express by the exclusionary terms with which the (b) is introduced. The words 'but not including' resolve the potential conflict, which conflict in turn provides a reason for using exclusionary language, consistently with the liberal construction.

Clarity of expression

It may be that the liberal meaning could have been expressed in a more logically and elegantly phrased (b). However, it is only realistic to acknowledge that even formal documents are not always drafted in the most logical and elegant manner. The words 'but not including' are not inappropriate, as on the liberal construction there is an important exclusionary effect. They can sensibly co-exist with the natural impact of (b) on the reader as a full statement of the circumstances in which deaths in hospitals, mental institutions, infirmaries and medical treatment centres are, and are not, covered.

The restrictive construction may, like the liberal construction, also be criticised on the ground that an intention to give effect to it could have been expressed much more simply and clearly, and moreover not in a way which required a refined explanation to ordinary readers, however logical that explanation may be. I have already suggested that this is a particularly telling consideration when it is remembered that this Royal Commission was set up in particular response to the concerns of the families of deceased Aborigines, and are unlikely to bring experience of sophisticated legal analysis to the reading of the terms of reference. To interpret away the first

impression that there will be investigation of the deaths of those who died in hospital as a result of injuries in custody may seem a further deception and disappointment.

A third construction

I note here a still more liberal construction, which was advanced in argument but gives no exclusionary effect to the introductory words of (b). On this construction (b) would operate solely as an addition to the terms of reference and not cut down the operation of (a) at all. On this view a death in a prison hospital would come in unconditionally under (a) and not be affected by (b). Read literally the passage quoted above from the letter of the Minister assisting the Prime Minister could be taken as expressing this still wider view. I reject this construction on two grounds. It gives no exclusionary effect to (b), and it introduces another form of subtle construction in lieu of the straightforward course of reading (b) as a general statement about hospitals etc.

Rationale of amendment

I have referred earlier to the fact that historically (b) may be regarded as an amendment added to the original terms of reference given to Commissioner Muirhead. There is no publicly documented history of the reasons for the amendment. However there seems to be general agreement that consideration of an amendment to the terms of reference was triggered by a public assertion by counsel that deaths in mental hospitals were included because a mental hospital was a 'place of detention'. It is obvious however that, when the terms of an amendment came to be considered, attention was given to a much wider range of issues than the issue of deaths in mental hospitals.

It is not surprising that there should have been an adverse reaction to the suggestion that deaths in mental hospitals were covered, as this would have altered the intended focus of the Commission considerably. Historically it is clear that the focus was on deaths in police and prison custody, that is deaths arising out of the operation of law enforcement agencies and involving relations between Aborigines on the one hand and police of prison officers on the other. To bring in mental institutions, where the reasons of detention were medical (i.e. psychiatric) and the controlling staff were medical, would have had the potential to bring into the purview of the Commission an entirely different range of problems and responsibilities.

While we do not know the processes of thought which in fact led to the formulation of the amendment, it is quite possible to see an intelligible rationale for an amendment designed to give effect to the more liberal construction.

One way to have dealt with the claim that mental hospitals were included would have been to leave the terms of reference unamended and rely on argument that, given its context and close association with police custody and prison, the word 'detention' should be construed noscitur a sociis as detention by law enforcement agencies. An argument leading to the same conclusion would have been that the phrase 'any other place of detention' referred back to 'prison' — this being the only other 'place of detention', as police custody is a state, not a place, of detention. 'Place of detention' should then be construed eiusdem generis with prison. (It is sometimes said that the eiusdem generis rule cannot be applied where this is only one previous species, as a genus implies a number of species. This is fallacious, as under the Linnean classification system, from which the analogy is drawn, a sufficiently distinct species may have to be placed in a genus of its own to maintain the integrity of the pyramidal classification system.)

The arguments for construction of 'place of detention' on the principle of noscitur a sociis or eiusdem generis would have been very strong, as unless the phrase was read down in some way it could have included soldiers confined to barracks, children given detention after school, and many other categories. Nevertheless those confronted with the issues raised must have decided, that it was not sufficient to leave the matter to be dealt with in this way. Clearly the view was taken that, whatever the original terms of reference might be held to mean, it was not appropriate to have mental hospitals unconditionally included or excluded, and that other institutions of a medical nature should be dealt with in the same way as mental hospitals.

A little thought about mental hospitals would have yielded the insight that some patients were compulsory patients and some voluntary patients. A mental hospital could be argued to be a place

of detention for those compulsorily committed to it. If so, it might equally be a place of detention for 'voluntary' patients in those States where they have to give a statutory period of notice before release (Paul v. Paul 1954 V.L.R. 331, O'Sullivan Mental Health and the Law, Law Book Co 1981 p19). In other States voluntary patients who were not required to give notice before leaving might, on the other hand, be held not to be in a place of detention. But where was the logic or merit in distinguishing categories for investigation on the basis of such accidental variations between State laws?

Equally a hospital may have both voluntary patients and patients for whom the hospital is a place of detention. I have already mentioned patients in prison hospitals, and prisoners still in custody taken to general hospitals for treatment. There are statutes under which provision is made for the detention of persons suffering from infectious diseases, lepers and inebriates (O'Sullivan Law for Nurses, Law Book Co 1983 pp36-7). A hospital might be within or be proclaimed as a quarantine station under the Quarantine Act 1908 so that is would become a place of detention for persons subject to quarantine. Although the voluntary patients in a hospital usually constitute the overwhelming majority, the notion of a voluntary. patient yields some difficulties. A person taken unconscious to hospital and operated on can scarcely be regarded as a voluntary patient. At the present time a Royal Commission in New South Wales is hearing a great deal of evidence about patients who when into private hospitals expecting relatively short and conscious treatment and were then without their consent given deep-sleep therapy which rendered them unconscious for many weeks. For such persons the hospital, although they originally entered it voluntarily, might well have been described as a place of detention, albeit not a place of detention pursuant to law.

Such trains of thought could well have lead a draftsperson whose attention was originally focused on mental hospitals to think it desirable to make a general statement clarifying the application of the inquiry to institutions of medical treatment. As what happens in such institutions is primarily under the control of professional medical staff, it could well have been thought reasonable to make a general statement that deaths in such institutions were not covered, whether or not the person was in police or prison custody. Death in such places is not an extraordinary event. However, this would have immediately invited the comment that if police or prison officers had fatally mistreated a person their actions would escape scrutiny if the prisoner had been taken to hospital where he died, whereas precisely the same treatment would be covered by the terms of reference if the prisoner died before removal from the prison or police cell. An obvious way to deal with this issue was by the insertion of the proviso in (b)(ii), brining back into the terms of reference deaths which, although occurring in an institution under medical control, were the result of injuries suffered in police custody or in prison or in other places of detention. By this means the original focus of the Commission on deaths in custody would be maintained, with arguments about whether a person under medical treatment was in a place of detention put to one side.

Deaths in custody or arising from custody

It has been argued in defence of the restrictive construction that it maintains the focus of the original terms of reference on deaths in custody, as it does not include any death which occurred outside custody. This is true but there is no compelling reason for supposing that the amendment was not intended to shift the focus. The original focus was idiosyncratic; surely what was important was what had happened to Aborigines in custody, not where they drew their last breath. It is no criticism of the liberal construction that it includes some deaths which were not in custody but were the consequence of injuries suffered in custody. Indeed on either construction some deaths will have to satisfy the criterion of being caused or contributed to by injuries suffered in custody, so it cannot be suggested that this was rejected by the draftsperson as a relevant criterion.

This is a convenient point to mention one other suggested construction. I mention it in deference to the fact that it was put in argument in both New South Wales and Victoria. That is that all deaths, wherever occurring, which result from events in police custody, in prison or in another place of detention, are within the terms of reference, because 'in' should be read as meaning 'pertaining to'. I will assume that it is possible to find contexts in which 'in' may have this meaning, although no example was given. Clearly the word does not have that meaning in simple, well-understood phrases like 'in custody', 'in prison', or 'in a place of detention'. If it did have that meaning, the

amendment to the terms of reference, that is the whole of (b), would be completely pointless.

Arguments based on suggested anomalies

Both the more restrictive construction and the more liberal construction given rise to what are arguably anomalies, that is, anomalies from the point of view of reasonableness of policy rather than from the point of view of logic. What are seen as anomalies are often in truth no more than inevitable consequences of the fact that a line has to be drawn somewhere as a compromise between the arguable desirability of investigation all deaths consequent on events occurring in custody, wherever the deaths occurred, on the one hand, and on the other the need to keep the scope of the inquiry within practicable limits. Consider for example the fixing of the date of commencement of the period to be investigated. It is anomalous that a death occurring at one minute to midnight on the day before commencement should be excluded, and a death occurring one minute later should be included, but a line has to be drawn somewhere. An arbitrary result is unavoidable if a time limit is to be fixed at all, but nevertheless one must be drawn. It is not a criticism of either the restrictive or the liberal interpretation that each draws a line around deaths to be investigated, but the reasonableness of the consequence may be a reason for concluding that one construction may have been more likely to have been intended than the other.

Supporters of the more liberal construction would instance a case such as that of Leslie as being anomalously excluded by the more restrictive construction. A person who has spent the night in a police cell, in police custody as an intoxicated person, is taken unconscious from e police cell to a hospital where he is found to have a fractured skull and where he ultimately dies. It is clearly for various reasons, including lapse of time, that he is no longer in police custody when he dies. There is some evidence from other prisoners in the cells suggestive of an assault taking place in the police station. It would be highly anomalous if the matter could not be investigated merely because custody determined before the prisoner died in hospital. Indeed it might well be said that Leslie's case, where there is suspicion about whether a person died as a result of mistreatment in custody, is precisely the sort of case which the Commission was established to consider. It would be strange if the very consequence of mistreatment, namely the removal of the person to hospital, should protect the mistreatment from scrutiny.

To this it may be rejoined that the liberal construction still leaves an anomaly. If, instead of being taken to hospital and dying there, Mr Leslie had been discharged and died at home, his death would still not be covered, although the policy arguments for covering it are as strong as if he had been taken to hospital.

In defence of the more liberal construction it may be said that at lease the field of anomaly is smaller. If a prisoner has suffered such serious injury in custody that he is going to die from it there is a considerable chance that he will be taken to hospital. Indeed overwhelmingly the jurisdictionally contentious cases are those where a prisoner was taken to hospital. It was necessary in the course of the amendment to make a statement about deaths in medical institutions; it was not necessary to make a statement about deaths in private homes or in public places. If the omission of those deaths was an anomaly, it was an anomaly remnant from the original terms, not one introduced by the amendment.

To look at the same matter from a different point of view, the medical institution may have a mix of custodial and non-custodial patients, between whom it is invidious to distinguish, a problem which will not arise if a person dies elsewhere after release, e.g. at home or in a public place. Why should two people in hospital, each dying as a result of injuries suffered in custody be dealt with differently because of the accident of when their custody expires? Suppose there is an incident in a police station or prison in which two prisoners are injured. Both are taken to hospital and placed in adjoining beds. One is due for release next day, the other next year. Both die a week later. Is it not more likely that (b) was intended to apply the same test to both of them, namely whether their deaths were caused or contributed to by the injuries sustained in custody, than that the one whose sentence expired should be outside the terms of reference and the other inside?

Or consider the case of Day. A man is in a police cell 'cutting out' a warrant of commitment for non-payment of a $10 fine, and is due for release at 6.00pm. He is taken from the cells at 5.30pm

to hospital, where he dies at 5.50pm. The police returns from the hospital and (quite bona fide) enters up station records on the basis that the prisoner was discharged at 5.30pm, on which assumption he did not die in custody. It is not clear that the police had power to discharge him before 6.00pm. But should it matter? The need for investigation is exactly the same in either case, and it seems an odd criterion for drawing the line. While there has to be an arbitrary cut-off somewhere, the liberal construction chooses a line with less arbitrary consequences.

The wording of (b)(ii)

Whether one regards (b)(i) as speaking only of deaths in hospital etc. which are also deaths in police custody or in prison or a place of detention (the restrictive construction), or as referring to all deaths in hospitals etc. (the liberal construction), there is a natural ground for bringing back into the terms of reference deaths resulting from injuries suffered in custody, which is the subject matter of (b)(ii). But the actual way in which it is done, that is the actual wording of (b)(ii), may be thought to be more appropriate to the liberal construction than to the restrictive construction. The restrictive construction assumes an over-riding insistence on the periods at the time of death being in a particular identifiable state of police custody or a particular place such as a prison or other place of detention. Consistently with that focus one might have expected that a proviso bringing back causally connected deaths would have been framed so as to bring back into the terms of reference deaths causally connected with the particular custody, imprisonment or detention from which be came to the hospital. However (b)(ii) is not worded in this way but brings in deaths causally connected with injuries suffered in any police custody or in any prison or in any place of detention.

On the liberal construction (b)(i) is a general statement about deaths in hospitals, etc., whether or not the person is in custody, in prison or in a place of detention. This being so, it is more natural in dealing with a question of causal linkage to link back to injuries suffered not in a particular custody or in a particular place, but in any police custody, prison or place of detention. This is what (b)(ii) does.

To look at the matter another way, the restrictive construction requires one to conduct two separate inquiries about the person being in police custody, in prison or in a place of detention. First, one must ask whether, at the time of death, the person is in police custody, in prison or in a place of detention, before one can even consider the relevance of Co). Having answered that question in the affirmative, one must then conduct a second inquiry to whether, at the time the injuries causing or contributing to the death were suffered, the deceased was in police custody, in prison or in a place of detention, whether or note the same as that in which he died. This seems a somewhat unlikely and cumbersome process.

If the restrictive construction is adopted, every case of death in hospital would require investigation of what happened in the hospital, because ex hypothesi the hospital is a place of detention within (a) and hence also within (b)(ii). Thus an injury inflicted by the surgeon's knife or hospital medication would itself be an injury suffered in custody which could be relied on to satisfy the condition of (b)(ii), and so invite inquiry as to whether it had contributed to the death. Hence, if the restrictive construction is adopted, (b) will have little operation in limiting inquiries unless a very narrow interpretation is given to 'injuries'. Unless this is done, deaths in hospital will be taken out by (b)(i), only to be put back by (b)(ii) by deteriorative or agonal events, incidents of treatment, or other matters which may be suggested to have contributed to the death but with which police or prison officers or authorities had nothing to do. Thus it seems more likely that the framer of (b) was not thinking of the hospital as necessarily a place of detention.

While I do not intend to give a definitive ruling on the meaning of 'injuries suffered' until it arises in the context of particular facts, I see strong reasons for not adopting a narrow meaning. It may be asserted with confidence that a major reason for the establishment of the Royal Commission was to examine whether custodial officers were responsible for the deaths of Aboriginal prisoners. The responsibility of such officers went far beyond refraining from inflicting violence on prisoners, and extended to duties to ensure that medical, psychological and other needs were reasonably met, and that prisoners were not treated in ways that exacerbated existing conditions or drove or allowed prisoners to injure themselves. In selecting among the wide range of meanings of which the word 'injury' is capable, weight should be given to this evident purpose of the Royal

Commission.

Taking all these matters into consideration, the terms of (b)(ii) are more appropriate, it is suggested, when (b) is assumed, as on the liberal construction, to be a general statement about deaths in hospitals, etc.

Conclusion

I therefore adopt what I have described as the liberal construction, namely that my terms of reference require me to inquire into any death of an Aboriginal or Torres Strait Islander in relevant areas in the prescribed period, which occurred in a hospital, mental institution, infirmary or medical treatment centre, and was caused or contributed to by an injury suffered in police custody, in prison or in another place of detention, whether or not the deceased was at the time of death still in police custody, in prison or in another place of detention.

As I indicated earlier, the reasons which I am now giving are for decisions which I have already taken and acted on. In Cooper's case the hearing in fact proceeded without anyone raising any question of jurisdiction. The same thing happened in the case of Thomas Murray where a prisoner took an overdose of drugs in prison and was taken to a public hospital where he died. Before I commenced the hearing of Leslie's case, however, I raised the issue myself and required that the question of jurisdiction be fully argued. All parties to that case including the Police Officers Association and the New South Wales Government supported at least the liberal construction, on which the jurisdiction depended ultimately on whether or not injuries suffered in custody had caused or contributed to the death. This could only be determined by inquiry and all parties supported my proceeding, which I have done. A similar situation arose in the two Victorian cases where custody was claimed to have been determined before death in hospital. All panics to those cases, including the Police Association and the Victorian Government, supported the more liberal construction and invited me to proceed. Again I have done so. In these cases I will, before reporting, have to decide, as in the already heard cases of Cooper and Thomas Murray, whether injuries suffered in relevant circumstances caused or contributed to the death.

It is a problem in such cases that one does not know until the inquiry is conducted whether the condition in (b)(ii) will be satisfied. Hence there is a risk that the inquiry will prove abortive, if in the end it is not shown that an injury suffered in custody caused or contributed to the death. However it is in the nature of an investigation that one has to explore what sometimes turn out to be blind alleys. In such cases one can only proceed on the basis of a bona fide believe that the inquiry may assist in carrying out the commission (cf. Ross and anor v. Costigan and anor. (1982) 41 ALR 337).

Questions will arise in these cases as to whether what happened to the deceased while in custody constitutes the suffering of an injury. The events vary from case to case — the progression of a long-standing disease, the serf administration of a drug overdose, an epileptic fit, a possible fall or assault, a cardiac failure. Although I have had some argument on the meaning of injury, and have suggested above reasons for not adopting a narrow interpretation, I prefer to decide on a case by case basis whether the sometimes complex evidence establishes the suffering of an injury within the meaning of the terms of reference. Accordingly I will not deal with that matter in this decision.

Appendix B(iv) The Standard of Proof

The following is an extract from Chapter 12 of Commissioner Muirhead' s Report of the Inquiry Into the Death of Kingsley Richard Dixon, p .3 et seq.

The current Terms of Reference require Commissioners to inquire firstly into qualifying custodial deaths and secondly into 'subsequent action taken in respect of each of these deaths'. I am required to report such findings and recommendations to Government. I have already held that the Letters Patent require more than an investigation into the processes and causes of death, that it is necessary to inquire into preceding events and the underlying causes which contributed to death; that is to say it is necessary, if practicable, to investigate and ascertain not only how people died but why. This view appears to find acceptance amongst Commissioners. It involves research as

well as the legalistic inquiry processes. '

The inquiries are essentially a fact finding exercise, conducted against the background of the Royal Commissions Act 1902 (Commonwealth) and corresponding State and Territory legislation whereby witnesses, whether or not under suspicion of misfeasance or criminal conduct are compellable under sanctions of contempt provisions. Unlike the Kaye Police Inquiry (1970) our Terms of Reference make no mention of a standard of proof to be applied before such findings are made. In that case the inquiry related to criminal offences. The Board was required to report whether there was 'credible evidence raising a strong or probable presumption' of guilt which the Board of Inquiry interpreted as demanding a higher standard than a 'prima facie case'.

The degree of proof required by Commissioners in the past has depended in some measure upon the nature of the inquiry. The Hon. Dame Roma Mitchell, at page 23 of her report in the Commission of Inquiry into Compensation arising from Social Security Conspiracy Prosecutions stated:

> *I did not impose an onus of proof on any claimant. Nor did I seek to establish facts beyond reasonable doubt or even on the balance of probabilities. Rather I sought information from all reasonably available sources and assessed it according to its inherent weight; the capacity, if any, of the claimant and others to provide better evidence or information; and having regard to conflicting evidence and the weight of that evidence. In making this assessment I relied heavily upon my considerable experience as a legal practitioner and as a judge.*

Dr Hallett in his text book, *Royal Commissions And Boards of Inquiry,* p.167 et seq, deals with the applicable standards of proof. Bearing in mind the functions of a Royal Commission, to gather information for executive government, it is clear that the general standard of proof to be applied in reaching findings of fact is the civil onus, the balance of probabilities. That of course is not to say that such a standard is capable of definition or application in inflexible terms. I agree with submissions put to me by Mr Eames in Kingsley Dixon and Edward Murray that an eye must be kept on the words of Dixon, J. in Briginshaw v. Briginshaw and Another (1938) 60 CLR 336 at 361 et seq:

> *The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its' occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgement if the question was whether some act had been done involving grave moral*

Gresley Clarkson, QC, clearly had this in mind in his 1981 report of the Royal Commission into Allegations in relation to South Australian prisons. He there stated under the heading 'Standard of proof,:

As indicated elsewhere in this report (Appendix 5) the Commission is not a court. No inevitable legal consequences follow its conclusions and legal rights are not affected. At the same time, its conclusions, especially if critical of a person, may be widely reported and may create in the public mind much the same reaction as an adverse finding in a court of law.

It is important to appreciate that the standard of proof which has been adopted is not that of the criminal law. The standard adopted is one of reasonable satisfaction according to the probabilities having in mind always the gravity of the allegation, the inherent likelihood of the event occurring, and the likely consequences of an adverse finding. [p.3].

Mr Eames also referred me to the words of Lord Diplock in Mahon v. Air New Zealand Ltd. and Others 50 ALR 193 at 206 where His Lordship referred to the rules of natural justice, earlier referred to by the Court of Appeal in R v. Deputy Industrial Injuries Commissioner. Ex parte Moore (1965) IQB 456. His Lordship stated:

The first rule is that the person making a finding in the exercise of such a jurisdiction must base his decision upon evidence that has some probative value in the sense described below. The second rule is that he must listen fairly to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career or reputation) may be adversely affected by-it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made.

The technical rules of evidence applicable to civil or criminal litigation form no part of the rules of natural justice. What is required by the first rule is that the decision to make the finding must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding, if it be disclosed, is not logically self-contradictory.

The second rule requires that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional material of probative value which, had it been placed before the decision-maker, might have deterred him from making the finding even though it cannot be predicated that it would inevitably have had that result.

I adhere to my observations as to the onus of proof during argument. A feature of this Commission is that it is inquiring into deaths which occurred in the main in lockups and prisons — often in lonely cells. I do not consider there is any onus upon Counsel acting on instructions of the deceased persons' relatives to prove anything, in the sense that the onus of proof is referred to in courts of law. In reaching my findings as to essential events, such findings must be based on the totality of the material before me. I use the word 'material' as opposed to 'evidence' deliberately as some of that material would not in legal proceedings qualify as evidence. This does not mean that the evidentiary value of that material can be ignored — questions of credibility and veracity are inevitably vital matters. Nor does it mean that I am required to make a finding of some sort or the other merely because such a finding is important, perhaps vital. It is probable that there will be situations in which the material or competing material permits no finding; the requirement to report to Government does not justify guesswork, inferred or otherwise. In some cases Commissioners may find it necessary to observe that they can make no findings. I may at times refer to 'possibilities' or 'reasonable possibilities' but when situations are referred to in such terms they remain but possibilities which would not be found persuasive in the fact finding processes in ordinary legal proceedings.

In the background when assessing the evidence it is necessary to bear in mind the consequences of a custodial death where a person dies beyond reach of his family, isolated perhaps in a lonely

place and often in the company only of those whose task it is to isolate him, a task which is attended by responsibilities for care. To sum up, my reports will be as brief as my responsibilities permit. The structure of reports will not necessarily follow the same pattern as circumstances may require diverse methods."

Appendix B(v) Rulings of Commissioners and subsequent Legal Challenges

In the course of Commission hearings a number of rulings were made on questions & jurisdiction. In most cases rulings of Commissioners were accepted by parties given leave to appear. There were, however, a number of matters where formal legal challenges resulted by way of appeal to the Federal Court of Australia. The rulings of the Commissioners were upheld in each case. The brief outcome of each of those appeals is as follows:

In the matter of Tony Majurey — (requires details of Muirhead ruling and appeal).

In the matter of Robert Joseph Walker — On 22 November 1988, action seeking a writ of prohibition was commenced in the Western Australian Supreme Court following the issue of a subpoena by Commissioner Wyvill in respect of certain documents, requiring production of those documents before the Commission. A claim was made that the documents were subject of legal professional privilege and an order nisi was issued by the Supreme Court of Western Australia.

The matter was transferred to the Federal Court pursuant to a further application on 7 December, 1988. There were nine applicants including the Western Australian Police Officers Union of Workers and the Western Australian Prison Officers Union of Workers.

Orders pursuant to the Administrative Decisions (Judicial Review) Act 1977 were sought regarding the subpoena issued and the question of privilege. In addition, a writ of prohibition was sought against the Commissioner to prevent him from proceeding with the inquiry into the death of Robert Walker and seeking an injunction to restrain him from proceeding further with the inquiry and from exercising compulsive powers. In the alternative, a writ of prohibition was sought in so far as documents alleged to be privileged were concerned and a restraining injunction in respect of the Commission taking evidence in relation to them.

On 8 December, 1988, the matter came before the Federal Court for hearing and was referred to the Full Court of the Federal Court for hearing in Sydney. That hearing commenced on 21 December, 1988.

At that hearing, questions were argued concerning the validity of Commissioner Wyvill's appointment by both the Commonwealth and State Governments. On 22 February, 1989, the Full Court of the Federal Court upheld the validity of the Commissioner's appointment. The application for prohibition and injunctive relief was dismissed, special leave was then sought by the applicants to appeal to the High Court, however, that leave was refused.

In the matter of Wayne John Dooler — an application was filed in the Federal Court of Australia on 18 January, 1989, against Commissioner O'Dea by three Applicants including the Western Australian Police Union of Workers seeking a writ of prohibition against the Commissioner prohibiting him from proceeding with the inquiry into the death of Wayne Dooler or any other death in custody under the Letters Patent. An injunction was also sought to restrain Commissioner O'Dea from proceeding further with the inquiry or from exercising compulsive powers. The application was brought prior to the Full Court of the Federal Court determining the Robert Walker matter referred to above.

An application for interim relief was heard on 19 January, 1989, and was refused. The matter was adjourned 'sine die'. The action was formally discontinued by the applicants on 26 May 1989.

In the matter of John Peter Pat- On 12 January, 1990, at a pre-hearing conference, Counsel for the Western Australian Police Union of Workers advised of an application in relation to the nature of the

hearing to be conducted having regard to possible contempt of the Supreme Court of Western Australia, given certain civil action in progress in that Court.

On 22 January, 1990, an application was made to Commissioner Johnston seeking an order that hearings conducted in Roebourne in the matter of John Pat be restricted from publication. On 6 February 1990, the Commissioner rejected that application.

On 22 February 1990, an application was filed in the Federal Court of Australia by five applicants seeking an order to review the ruling made by Commissioner Johnston.

The matter was argued before the court on 2 March 1990, and judgment refusing the application was handed down on 5 March 1990.

In the matter of David John Gundy — On 31 October 1989, Commissioner Wootten held a preliminary hearing at which Counsel Assisting the Commissioner, Counsel for the defacto widow, Counsel for NAILSS and Counsel for the New South Wales Government, all submitted that the circumstances of David Gundy's death fell within the Commission's Terms of Reference. Counsel for the New South Wales Police Association did not argue against jurisdiction at the preliminary hearing and the matter was added to the list of deaths for inquiry by the Commission.

Parties were subsequently advised that the hearing of the matter would commence on 23 April, 1990.

An approach was then made to the Commission by legal representatives of the police officers involved in the operation in which David Gundy had been killed, advising they had instructions to challenge the jurisdiction of the Commission to conduct a hearing into the matter.

On 19 March, 1990, at a further preliminary hearing Counsel for the police officers argued before the Commissioner that David Gundy was not in police custody at the time of his death.

On 27 March, 1990, Commissioner Wootten ruled that David Gundy was in custody at the relevant time or at the very least, the Commission should make further inquiry.

On 30 March, 1990, an application for an injunction seeking to restrain Commissioner Wootten from proceeding with further inquiry was made pursuant to S.39B of the Judiciary Act 1903, in the Federal Court of Australia.

On 9 April, 1990, the matter was heard by Burchett J. who held that David Gundy was not in custody at the relevant time and granted a permanent injunction against the Commissioner proceeding.

That decision was appealed before the Full Court of the Federal Court by Doreen Eatts (defacto wife of David Gundy) and NAILSS.

On 11 May, 1990, the appeal commenced in Sydney before Morling, Beaumont and Gummow JJ. At that time a notice of cross appeal was handed up by the respondents, challenging the decision of the judge at first instance giving standing to Ms Eatts and NAILSS to appear in the matter.

On 23 May, 1990, the court found that David Gundy was in custody at the relevant time and unanimously upheld the appeal. The cross appeal claiming the appellants had wrongly been given standing by Burchett I. was dismissed.

An application for special leave to appeal to the High Court was lodged by the legal representatives of the Police Officers involved. That application was heard on 31 May, 1990, and dismissed.

In the matter of Darren Steven Wouters- On 1 September 1989, after referring to evidence which had been placed before him and certain legal considerations, Commissioner Wyvill ruled that Darren

Steven Wouters was an Aboriginal whose death on 15 November 1987, was within his Terms of Reference.

The Commissioner's ruling was challenged by the State of Queensland and an application to review was filed in the Federal Court of Australia pursuant to the Administrative Decisions (Judicial Review) Act 1977.

The matter was argued at first instance before Pincus J. who, in a decision handed down in Brisbane on 24 November 1989, held that Darren Wouters was not an "Aboriginal" within the meaning of the Letters Patent and a declaration was made accordingly.

An appeal to a Full Court of the Federal Court of Australia was filed. The appellants were the Attorney-General of the Commonwealth of Australia (Intervener) and NAILSS

The appeal was argued before Jenkinson, Spender and French JJ. in Brisbane on 16 July, 1990. The Full Court of the Federal Court unanimously upheld the appeal setting aside the orders previously made by Pincus J.

In the matter of Karen Lee O'Rourke. — On 14 August 1989, the State of Queensland advised that they would challenge the jurisdiction of Commissioner Wyvill to inquire into the death. A ruling was made by Commissioner Wyvill on 3 November 1989 that the death was within the Terms of Reference. (Application of order to review — 15 November 19897 check with AGS)

In the matter of The Young Man Who Died at Wujal Wujal. a submission from NAILSS was received by Commissioner Wyvill. The State of Queensland objected to the Commissioner receiving the submission as an exhibit and hearings on the matter were held on 28 and 29 August and 1 September. On 13 November the Commissioner ruled that he would receive the submission.

The change of government in Queensland subsequent to elections held on December 2 1989 was followed by Notices of Discontinuance in the matters of Karen Lee O'Rourke and The Young Man Who Died at Wujal Wujal being filed in the Federal Court on 17 January 1990.

Appendix C: Methodology

Appendix C(i) Methodology

Introduction

There were broadly two main tasks for the Commission, viz:

- to inquire into those deaths in custody of Aboriginal people which occurred between 1 January 1980 and 31 May 1989; and
- to report on the underlying issues--social, cultural and legal factors-which were associated with the deaths.
-

The inquiries into the individual deaths were conducted under quasi-judicial conditions, with formal hearings at which interested parties (the family of the deceased, the State Government concerned, the Police and/or Prison Officers Union and individuals who may have been associated in some way with the death) were represented. In these hearings the individual Commissioner was assisted by Counsel.

In order to be able to report on the underlying issues the Commission adopted a number of approaches to gaining information-it publicly invited submissions, it solicited submissions from interested parties, notably Aboriginal organisations, it conducted research through its Criminology Research Unit, it commissioned research on selected topics and it undertook a research program through specially established Aboriginal Issues Units (set up in each State and the Northern Territory). The Units which were staffed by Aboriginal

people had the task of ascertaining what Aboriginal people, Aboriginal organisations and communities believed were the underlying issues of deaths in custody and the disproportionately high rate of Aboriginal arrests and imprisonments and what they believed the solutions to be.

A single Commissioner--the Honourable J.H. Muirhead QC--was appointed in October 1987; an additional three Commissioners (the Hon. E.F. Johnston, QC, the Hon. J.H. Wootten, QC, and L.F. Wyvill, QC) were appointed in May 1988 and a fifth Commissioner (the Hon. D.J. O'Dea) was appointed in November of that year. The Commissioners were authorised to inquire into deaths in particular areas, i.e.:

Commissioner Johnston	Western Australia, South Australia, and Northern Territory
Commissioner Wootten	New South Wales, Victoria, and Tasmania
Commissioner Wyvill	Queensland
Commissioner O'Dea	Western Australia

Because of the high number of deaths in Western Australia, Commissioner Muirhead also conducted his inquiries in that State from mid-1988 until his retirement in April 1989. He was replaced as National Commissioner on 28 April 1989 by Commissioner Johnston and the Commission was returned to full strength (five Commissioners) in July 1989 with the appointment of Mr P.L. Dodson.

Mr Dodson was commissioned to inquire into the underlying issues of Aboriginal deaths in Western Australia. Thus because of the heavy workload in that State there were two Commissioners working full time -one (Commissioner O'Dea) inquiring into the individual deaths, the other (Commissioner Dodson) inquiring into underlying issues.

The Commission was organised on a regional basis with offices in Adelaide, Brisbane, Broome, Canberra, Darwin and Perth and sub-officers in Melbourne, Alice Springs and Hobart.

Each Commissioner held Letters Patent in his own right and conducted his inquiry independently. The Letters Patent provided certain linkages to the National Commissioner including a requirement that he issue guidelines for the conduct of inquiries to achieve a uniform approach.

INQUIRIES INTO THE DEATHS

As noted above the National Commissioner was authorised to issue guidelines as to the conduct of the inquiries. The Letters Patent provided as follows:

> *consult generally in the course of your inquiry with each relevant Commissioner with regard to the methods and procedures to be followed in relation to your and their inquiries in order to establish a uniform approach to those inquiries and authorise you, following such consultation, to issues guidelines or make recommendations, or both, to each of these Commissioners in relation to those methods and procedures*

On 10 December 1987, during the first sittings of the Royal Commission, a document was tendered titled 'Procedural Guidelines' which set out the procedures that would be followed by the Commission and parties appearing before it in the course of investigations and formal hearings. Those guidelines were supplemented from time to time by other memoranda from counsel assisting to other counsel appearing in particular cases.

On 19 July 1989, because of substantial changes in composition, terms of reference and workload of the Commission, another document was prepared and issued by Commissioner Johnston to replace the original guidelines. But it was not only the amended Letters Patent that motivated the issue. Experiences

gained from the cases heard up to that time were also incorporated. The new guidelines were not to take effect until a month later, thereby giving parties appearing an opportunity to become acquainted with the new provisions. The guidelines appear in full in Appendix B(ii). The month delay in operation was also allowed for the purpose of permitting objections to the new guidelines. No objection was received.

The guidelines set down procedures for pre-hearing conferences, one of the primary purposes of which was isolating those matters where there was dispute between the parties. In preparing for and conducting hearings, it became apparent that some of the inquiries would take longer than others. Those cases where there were allegations of foul play obviously required an investigative approach quite different to those where death may have resulted from some pre-existing medical condition. It followed that in a case where allegations of foul play had been made, hearings would concentrate on resolving the allegation. Where someone had apparently died of a heart attack in prison, the hearings might concentrate more on such matters as the delivery of health services in custodial settings. The conduct of Commission inquiries were influenced by other matters, including how long ago the death occurred, whether or not there was a coronial inquest in the fast instance, and, if there was, how thoroughly it was conducted.

In some cases, the pre-hearing procedures, including the settling of statements of agreed facts, meant hearings lasted only a short time, often with there being no need for witnesses to be called. Other more contentious cases took much longer. Appendix B(i) is a list of cases investigated by the Commission showing the number of days over which the cases were heard, the number of witnesses called and the number of exhibits tendered. The information contained therein demonstrates the different approaches taken.

I should also mention that Commissioner Dodson, because of the unique nature of his Commission, conducted inquiries in Western Australia in a manner different from other Commissioners. Details of the methodology adopted by him, the witnesses called, conferences held, and exhibits tendered appear in the appendices to his report and are not repeated here.

RELATIONS WITH PARTIES

At the opening hearings of the Commission, both nationally and in each State, co-operation was promised by all governments. Inevitably some difficulties arose, but overall governments provided both information, access and material assistance to allow the Commission to thoroughly undertake the task set by the Letters Patent. The Northern Territory and State Governments gave some assistance to the Commission in the provision of staff, office accommodation and functional equipment

Nationally, the National Aboriginal and Islander Legal Services Secretariat (NAILSS), the Committee to Defend Black Rights (CDBR) and the Police Federation of Australia and New Zealand (PFANZ) were granted leave to appear and received funding from the Commonwealth for that purpose. Regional Commissioners also granted them qualified leave. These organisations' concerns were largely with the underlying issues. NAILSS is the umbrella organisation for the majority of Aboriginal Legal Services in Australia. Having regard to the ongoing interest of Aboriginal legal services in issues relating to the arrest, charging, trial and imprisonment of Aboriginal people, and the fact that CDBR played such an important role in relation to publicising the numbers of Aboriginal people dying in custody and calling for a Royal Commission, both organisations showed great interest and made detailed submissions. The sheer number of cases being held throughout the country meant that it was impossible for them to appear at every hearing, and their input was largely by way of written submission.

The PFANZ engaged in a process of commenting on the contents of individual case reports as they were released. Some government departments engaged in a similar process. The Western Australian Department of Correctional Services, for example, provided comments on a number of cases heard in that State. The department detailed initiatives taken between the time that the hearings were completed and the report was published.

DEATHS THAT OCCURRED AFTER THE ESTABLISHMENT OF THE COMMISSION

When the Commission was announced there was thought to be 44 cases within its jurisdiction. In fact, the Commission conducted investigations into 124 deaths, 99 of which were determined to lie within its

jurisdiction. Of those 21 occurred between the time it was set up and 31 May 1989, which was subsequently set as the cut-off date for inquiry jurisdiction. In each case, Royal Commission staff became involved as soon as the deaths were reported. In some jurisdictions, Commission staff sought leave to appear at the coronial inquests and called and cross-examined witnesses with a view to obviating the necessity for prolonged Commission hearings. The Commission was not always so represented. Again, decisions to become involved in coronial hearings were made at the discretion of individual Commissioners. One matters that influenced such decisions was what the circumstances of the deaths were.

Notwithstanding appearances at the coronial hearings, the obligations under the Letters Patent meant there was still to be an inquiry and report. Inquiries conducted by the Commission in these circumstances were slightly different in focus to others. Appearances at Coronial inquests meant that Commission inquiries were by and large more concerned with the investigations into underlying issues. Copies of statements and transcripts from the coronial inquiries were tendered before the Commission as the evidence upon which findings would be made as to the circumstances of death. Rarely were witnesses recalled.

THE HEARINGS

The facts and circumstances surrounding deaths

The coronial inquires held subsequent to many of the deaths were typically heard by a few different coroners, in a few different places, often hundreds of kilometres from the place where the death occurred and the family lived. Throughout Australia, coroners are often the local magistrates and often have police appearing to assist in inquiries. Aboriginal perceptions of non-Aboriginal legal structures and their agents are characterised by suspicion and doubt. Mindful of these considerations the Commission hearings into individual deaths were held as near as possible to the places where the deaths had occurred. During the course of some hearings into individual deaths, particularly those conducted in some more remote parts of the country, some of the witnesses required interpreters. The Commissioners and Counsel Assisting were always mindful of the need to reduce the necessary formalities of the hearings and to counter the intimidatory nature of some of the cross-examination of some of the Aboriginal witnesses.

At each of the hearings leave to appear was granted to the family or kin of the deceased. In most cases they were represented by local Aboriginal Legal Services. State and Territory governments were also granted leave to appear. Though the arrangements varied between jurisdictions, counsel for governments usually appeared for government employees. Occasionally, where the conduct of individual police and prison officers came into question, separate representation was sought, usually on behalf of the relevant employees union. Police or prison officers were represented in every case before me and government departments were represented by the Crown. As a general rule though, people or organisations whose interests may have been effected by, or who had an interest in, the findings on the facts and circumstances of death sought representation.

Considerable public disquiet and great concern, particularly within the Aboriginal community, preceded the issue of Letters Patent and the creation of the Commission. In some instances, allegations of foul play, often inspired by dissatisfaction with investigations that followed the deaths, gave rise to considerable animosity between the parties concerned.

In some instances, where there were no allegations of foul play, relatives of the deceased were reticent about a Royal Commission inquiring into the circumstances surrounding the death of a loved one. Police investigations, coronial inquiries and in some instances, other departmental investigations had followed the deaths. The agony of again recollecting circumstances of arrest and death was difficult for many. The obligations in the Letters Patent were, however, most specific. Many of those cases were of very great importance in that they raised very significant questions of the standard of custodial care.

INQUIRY INTO THE UNDERLYING ISSUES

The fact that inquiries and hearings into many of the deaths necessitated travelling outside of metropolitan areas provided a unique opportunity to discuss matters of relevance with those people living

there. As a consequence, a lot of information was gathered on underlying issues during the course of hearings and in more informal consultations that had commenced to inquire into the facts and circumstances of the deaths.

Similarly, the facts surrounding a death may necessitate investigation of whether police orders have been breached or whether a correctional services department was aware that a prisoner may have made a previous suicide attempt. In a broader sense, the issues underlying the deaths in these circumstances is an analysis of systemic inadequacies in all aspects of the custodial system--reception, ongoing checking, care, reaction to emergency, inquiries following death, insistence upon adherence to standing orders and many other matters. It is only through calling and cross-examining those who operate the systems that deficiencies can be understood and informed recommendations made.

SOURCES OF INFORMATION

Files and Interviews

At the commencement of the Commission, subpoenas were issued to State and Territory Governments under the .hand of Commissioner Muirhead for documents relevant to the circumstances of individual deaths. This meant that as a starting point large numbers of files from a number of .government departments were gathered. The files subpoenaed in the first instance were those directly related to the deaths Coroners files including exhibits, police department files, prisons department files and health department files. From this information, more detailed investigations followed. Files held by Aboriginal legal and health services, employers records, educational histories, welfare records, and family histories were gathered.

Witnesses were identified and interviewed. Though the procedural guidelines provided for this work to be shared among the parties given leave to appear, this task was largely assumed by the staff of the Commission. In some instances, this required an enormous amount of work. By way of example, where someone had died in a watch-house or prison where there had been a dozen or occasionally more other inmates, circumstances of the death may have necessitated each person being located and interviewed. It was these files, statements and records of interview that made up the bulk of exhibits tendered at hearings into individual deaths. Exhibits that are referred to throughout this report can be identified by the case list that appears in Appendix B.

An important part of the preliminary preparation was early direct contact with the family of the deceased to hear their particular concerns and desires in relation to investigations into the death. This was especially important given that records maintained by police, prisons and welfare departments often paint far from favourable pictures of their clients. Cultural stereotyping among those compiling the information contributes to images of lawlessness and welfare dependence. Aboriginal perceptions were a necessary complement to the contents of files.

In some circumstances, rather than call relatives as witnesses to hearings, transcripts of interviews were tendered before Commissioners. The time between the death and the commencement of Commission inquiries often made recalling events a difficult task, with many of the deaths occurring many years before and people's memories fading. Many found it difficult to discuss the deaths of close family members. Some of the deaths had been the subject of recent police investigations and coronial inquiries, and another inquiry was sometimes not welcomed.

Public meetings and conferences

As mentioned above, many of the Commission hearings were conducted in the communities where the deaths had occurred. Precise details of the places where hearings were held and the witnesses called appear in the individual case reports. But that detail does not provide the total picture of Commission inquiries conducted in these places. In some circumstances, being at the community presented an opportunity to have public and private meetings with Aboriginal people to discuss matters of relevance to the underlying issues.

As part of my inquiries in the Northern Territory, I convened a number of conferences on a variety of

topics. In advance of such conferences discussion papers were prepared by Counsel Assisting identifying issues which needed to be addressed and providing reading material relevant to those issues. Other Commissioners held similar conferences.

General submissions and responses to the Underlying Issues Paper

Since the commencement of the Commission, a great number of submissions have been received in all offices of the Commission. The range of topics that have been addressed in submissions to me and the other Commissioners has been extraordinarily wide--a reflection of the breadth of issues encompassed in the Letters Patent.

At a meeting of Commissioners in July 1989, it was resolved that a process would be commenced with the objective of generating further public response to submissions received on the underlying issues. A document drawing together the topics which had been identified by investigations, reports and submissions received up to that time was prepared by Counsel Assisting and circulated widely. Simultaneously, invitations were sent to parties given leave to appear and governments throughout the country asking them to list those matters which they believed to be underlying the deaths.

Responses to that preliminary document were considered and a further document prepared. In October 1989, a paper titled 'Underlying Issues' which set out the Commissioners' preliminary thoughts on the possible range of underlying issues was circulated to some 2,000 people and organisations. In February 1990 another version with minor changes was circulated. The response to the paper was extraordinary. The paper, which invited people to make submissions on the topics listed, warned that if people wanted submissions to be kept confidential, they should state so in the submission. The reason for this was that since the commencement of the Commission, it has been a policy to encourage a wide-ranging exchange of opinions between interested parties. Copies of responses to the underlying issues paper were regularly provided to parties given leave to appear.

In addition to this method of actively seeking out submissions, notices regularly appeared in newspapers, both regional and local, prior to the commencement of hearings into individual deaths inviting public attendance and submissions. Hearings were closed to the public only in the most exceptional circumstances. Notices requesting submissions also regularly appeared in national newspapers.

Questions put to Government

Another method of investigation used by the Commission outside of formal hearings was the drafting of a series of detailed questions to various State and Commonwealth Government departments. This was done subsequent to receipt of submissions and responses to the underlying issues paper to fine tune the contribution that could be made by various departments. Given the range of topics under investigation by the Commission and the plethora of agencies that impact on the lives of Aboriginal people, it was a most useful exercise. In some cases, subsequent to receipt of the responses, conferences were held with senior departmental officers to discuss and expand on some of the answers

given.

This was seen as a way for the Commission to keep abreast of government policy and programs throughout Australia, and by putting similar questions to different State Governments, enabling comparisons to be made.

RESEARCH UNDERTAKEN BY AND ON BEHALF OF THE ROYAL COMMISSION

In seeking to understand the relation between Aboriginal deaths in custody and the position of Aboriginal people within Australian society, it has been necessary to consider the impacts, demonstrated and potential, of a number of programs instituted by governments and Aboriginal organisations to improve that position. It has necessitated an examination of the differing impact of colonisation on Aboriginal populations throughout Australia. As is demonstrated by the topics covered by the preceding chapters, to fully comprehend the issues a range of interrelated subject areas was necessarily considered.

During the course of hearings into individual deaths, expert witnesses and consultants have been called to assist. Forensic pathologists, health professionals, including cardiologists and psychiatrists, drug and

alcohol counsellors and psychologists and knot experts have been called. Again, details of those witnesses called and documents tendered appear in the appendices to the individual case reports. There has, however, been other research undertaken by and for the Commission.

The Aboriginal Issues Units

In his *Interim Report,* Commissioner Muirhead commented on the task then at hand in the following terms:

> *The social reasons are complex and cannot and will not be fully addressed in this Interim Report, but nevertheless they cannot be ignored. The explanations for these deaths do not all lie within prison walls or the confines of lockups, nor are they explicable only in terms of sentencing policies. I am confident a significant number of the deaths have their roots, not only in health issues, but in the very despair of individuals, in frustration, in anger, in legal practices and procedures in which many Aborigines have no confidence.*

The Aboriginal Issues Units (AIUs) were established following a resolution made by all Commissioners in March of 1989. The initiative was one encouraged by the special consultant to the Commission, Mr Gary Foley. It was contemplated that the units would complement the work being done by other staff of the Commission but exercise professional autonomy and integrity. The AIUs worked under the same constraints of time, task, and geography that came to typify the workload of the Commission throughout the country, but, given the demographic factors that characterise the Aboriginal and Torres Strait Islander population, their task was particularly onerous.

The role of the AIUs was agreed by Commissioners to be as follows.

> *The Aboriginal Issues Units have been established within the Royal Commission into Aboriginal Deaths in Custody to ensure that each Commissioner hears and understands the views of Aboriginals and Aboriginal Communities and Organisations in his region about the reasons why so many Aboriginals are in custody and die in custody and their views as to how the situation can be changed.*
>
> *The job of the Units is to identify what Aboriginals see as the issues and the solutions, to ensure that those perceptions are conveyed to and understood by the Commissioner and in appropriate cases to encourage Aboriginal Communities, Organisations or individuals to prepare their own submission(s).*
>
> *To help ensure that the views of Aboriginals are understood and get through to each Commissioner, an Aboriginal person is being appointed to head each Unit and will have a very high degree of independence and responsibility.*
>
> *The Head of each Unit will have the task of planning and organising the process of consultation with Aboriginals, Aboriginal Communities and Organisations referred to; and will also have a responsibility, in appropriate cases, for the task of organising such research work as is necessary in relation to the Aboriginal viewpoints (taking into account the constraints referred to below, already available research material and the work of other Commission staff).*
>
> *A Unit will have to work within the constraints of the available time and funds and the Commission' s Terms of Reference. It will co-operate with other staff and the Commissioner as part of a team to make the best use of the Commission's resources and the best possible contribution to the Commission's work; likewise the Unit is entitled to the same co-operation from other staff and the Commissioner. While the Head of the Unit will be accountable to the Commissioner for the work of the Unit, he or she will be accorded and expected to accept professional responsibility for it, with a corresponding degree of independence. In particular the basic principle will be that the work undertaken by the Unit must reflect the concerns of Aboriginal people, not those of the Commissioner of Commission staff or of the Aboriginal Issues Units.*

An AIU was established in the Northern Territory and each State with reports of their consultations being

made to the respective Regional Commissioners. Details of the reports appear in Appendix D(iii).

In this way the AIUs sought to complement the work being undertaken by other staff within the Commission. Much of the information in the AIU reports came by way of meetings and interviews. They spoke with young and old, men and women, prisoners, people in remote communities, people in cities and in country towns. They were a remarkable and valued resource to the Commission.

The Criminology Research Unit

Shortly after the establishment of the Commission, it became apparent that the knowledge of the numbers of Aboriginal people in custody, let alone the number of custodial deaths was, to say the least, scant.

In order to understand the phenomenon of Aboriginal deaths in custody, original research was necessary. The Deputy Head of the Australian Institute of Criminology was seconded to head the Unit and the CRU was established in the Canberra office of the Commission. An overview of the research program and details of the subject matter and dates of release of the Research Papers published by the CRU appear in Appendix C.

Other research

As mentioned above, during the course of hearings into individual deaths a number of reports and opinions were sought from a range of expert witnesses.

In addition there were consultants engaged on a range of subject matter to supplement the information and research resources of the Commission. Research was carried out under the direction of individual Commissioners and was co-ordinated nationally to avoid duplication of effort.

Appendix D details those research papers that were prepared to fill gaps in existing knowledge.

OTHER SOURCES OF INFORMATION

In addition to the materials referred to above, the Commission has used much other pre-existing information on the subject matters under inquiry. Books, government reports and other published works have been considered. These sources, together with unpublished works and theses referred to appear in Appendix D.

The procedural guidelines referred to above did not apply to the obtaining of evidence and information relating to underlying issues associated with the deaths. Royal Commissioners, through established case law, may inform themselves in any way that they see fit. Subject to the requirements of natural justice, Commissioners could inform themselves on background matters relating to the life of the deceased, family and community circumstances or social and historical matters in a manner outside formal hearings.

Although most of the information presented before the Commission has been in the form of exhibits, submissions, research papers, responses to discussion papers, and oral testimony, there have been other forums. Many less formal meetings with groups or individuals such as police officers, Aboriginal people, and public servants contributed to the body of knowledge of all Commissioners. There is no sense in trying to identify and list all such meetings and consultations as it would be quite impossible to do so such has been the range of such consultations.

Not all of the information gathered during the life of the Commission could possibly be referred to in a report. However, because a submission is not referred to or a suggestion not adopted, that is not to say it has not been considered. Opinions and evaluations are fashioned on a continuing basis by the views and submissions heard and received. I am particularly indebted to those Aboriginal people who came forward and offered to myself and to other Commissioners what were at times deeply personal accounts of their lives and views on matters investigated by the Commission.

REGIONAL REPORTS

Commissioner Dodson prepared a substantial report on Underlying Issues in Western Australia. The other regional Commissioners also submitted regional reports of their overall findings. All regional reports have been submitted separately as follows:

Commissioner Dodson:	Regional Report of Inquiry into Underlying Issues In Western Australia (Volumes 1 and 2)
Commissioner O'Dea:	Regional Report of Inquiry into Individual Deaths in Custody in Western Australia (Volumes 1 and 2)
Commissioner Wootten:	Regional Report of Inquiry in New South Wales, Victoria and Tasmania
Commissioner Wyvill:	Regional Report of Inquiry in Queensland

Appendix C (ii) Extract from Letter to Regional Commissioners from Commissioner Johnston regarding jurisdiction to inquire into the Underlying Issues

(The following extract is from a letter to all Commissioners, from Commissioner Johnston, addressing the question of the jurisdiction of all Commissioners as provided in the Letters Patent.)

> The power and the duty of inquiry conferred upon each of us in our Letters Patent are in the same terms essentially but with some minor variations (some Commissioners being limited as to the deaths they investigate by reference to place of death and other Commissioners being subject to the power of the National Commissioner to direct a regional Commissioner to inquire or not inquire into a particular death). But in so far as a death is within our Terms of Reference the scope of the inquiry is expressed in exactly the same words.
>
> Each of our Letters Patent provides an obligation on each of us to report; in the case of the regional Commissioners to myself and in the case of myself to government (to put it shortly). In the case of the regional Commissioners the obligation is to report in relation to the individual deaths and the group of deaths into which they have inquired; in my case the obligation is to report in respect of all of the deaths.
>
> My Letters Patent declare 'that, for the purpose of reporting on any underlying issues associated with those deaths, you are authorised to take account of social, cultural and legal factors which, in your judgement, appear to have a beating on those deaths'. In context, 'those deaths' means all the deaths which fall within my Terms of Reference. The reference to 'underlying issues' and to 'social, cultural and legal factors which appear to have a bearing on the deaths' is found in a paragraph which relates to reporting and there is no corresponding verbiage in those parts of my Letters Patent which relate to my inquiring. It is plain that as far as my Letters Patent are concerned, the inquiry powers conferred upon me include the power to examine the underlying issues associated with the deaths. Your own powers of inquiry are expressed in the same terms as mine, (subject to the matters referred to above) and in my opinion you have the power (and duty) to inquire into the underlying issues associated with those deaths to which your inquiries relate.
>
> I believe that this interpretation corresponds with the view held by Commissioner Muirhead when he was sole Commissioner and when his Letters Patent were simply expressed as being
>
> 'to inquire into -
>
> (a) the deaths in Australia since 1 January 1980 of Aboriginal and Torres Strait

Islanders (including any such death that may occur after the date of these Our Letters Patent) whilst in police custody, in prison or in any other place of detention; and

(b) any subsequent action taken ... but ought to have been done:'

He made it clear publicly that he proposed to inquire not only into 'the how' but 'the why' of the various deaths. I would understand the 'why' as referring in a general way to underlying issues. Consistent with that approach, Commissioner Muirhead had heard evidence and received submissions on topics which would now be identified as 'underlying issues', a fact which was known to Government at the time of the amendment to Commissioner Muirhead's Letters Patent.

As you all know, the reference to underlying issues was introduced into Commissioner Muirhead's Terms of Reference in May 1988 at the time when other Commissioners were appointed and the present slightly complicated system of reporting (i.e. regional Commissioners reporting to National Commissioner and National Commissioner reporting to government) was introduced. It was at that time not unnatural that close attention should be given to the reporting responsibilities of the National Commissioner. It appears to me, as it appeared to Commissioner Muirhead, that the reference to underlying issues was intended to underline the function of investigating and reporting on those issues.

Accordingly, it is my view that the position immediately preceding the appointment of Commissioner Dodson was that all regional Commissioners were required to investigate certain of the deaths referred to in my Letters Patent and to look at the underlying issues associated with each death and the deaths as investigated by each of them as a whole and to report inter alia on those matters.

The appointment of Commissioner Dodson and the actual terms of his Letters Patent in my opinion give support to this interpretation of the Letters Patent. It is inconceivable that the Commonwealth Government wanted the underlying issues associated with the Western Australian deaths to be investigated in each case and as a whole but did not want the same son of investigation carried out in all other regions. The history of Commissioner Dodson's appointment makes the position absolutely clear. As we all know, Commissioner Muirhead, with the support of all other Commissioners was, prior to his retirement, pressing for another appointment to be made following his retirement. He was urging that his replacement would sit in Western Australia to do, together with Commissioner O'Dea, what Commissioner Muirhead and Commissioner O'Dea had been doing together for some months. It was clear that the number of cases to be investigated in Western Australia required two Commissioners working on the task. The Premier of Western Australia made it clear in public statements that he was particularly keen that underlying issues should be investigated but not keen that the facts and circumstances pertaining to the actual deaths should be investigated; or, to put it in another way, he was extremely interested in the 'why' but felt that the 'how' had been sufficiently addressed by coronial and other inquiries. The concerns of the Premier were met by Commissioner Dodson's appointment. Whereas Commissioner Muirhead had been seeking the appointment of another Commissioner who, with Commissioner O'Dea, would investigate both the circumstances of and background issues associated with Western Australian deaths, the actual solution arrived at was one which involved Commissioner O'Dea concentrating on the circumstances surrounding the deaths (although not being precluded from himself examining underlying issues) and Commissioner Dodson investigating the underlying issues (and reporting same).

For these various reasons I am clearly of the view that each of us has the power and duty to investigate underlying issues associated with the deaths which are the subject of our inquiries (although in the case of Commissioner O'Dea this is to be seen against the background of the particular responsibility of Commissioner Dodson).

I do not regard the words 'underlying issues associated with those deaths' occurring in my Letters Patent as having any particular meaning other than their ordinary meaning and

certainly do not regard them as 'terms of art'. The Letters Patent deal with a broad social problem and the reference to underlying issues should be construed in that context. That this is the correct approach is underlined by the reference to 'social, cultural and legal factors ... which have a bearing on those deaths'.

Appendix C(iii) The Procedural Guidelines

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY
GUIDELINES FOR INVESTIGATIONS AND HEARINGS RELATING TO PARTICULAR DEATHS (ISSUED BY COMMISSIONER ELLIOTT JOHNSTON, Q.C. ON 19th JULY 1989 AND TO COME INTO EFFECT ON 19th AUGUST 1989)

1. INTRODUCTION

A document dated 10 December 1987 and titled '*Procedures Guidelines'* was tendered at the fast sittings of the Royal Commission in December 1987. That document was a guide to the methodology and procedures which Commission staff would follow in collating relevant documents and in pre-hearing investigations. Furthermore, the document indicated the processes which would be adopted in the formal hearings of the Commission.

Since December 1987, the composition, terms of reference and workload of the Commission have changed substantially and this document will now replace the original Procedures Guidelines document and will reflect those changes.

Although Commissioners have endeavoured to ensure consistency in the administrative, investigative and hearing processes which each adopts, there will be some variation in the approach adopted by each Commissioner. The general approach and the methodology adopted by Commissioners will, however, be that set out in this document

The guidelines are subject to directions made from time to time by any Commissioner in respect of any particular case whether made prior to or during the course of a hearing but these procedures guidelines now replace and supersede any ruling on procedure made up until this date by any present or former Commissioner.

As this document demonstrates, every effort, consistent with thoroughness and fairness, will be made to expedite investigations. In some instances there will be no necessity for formal hearings to be conducted at all. A decision in that regard will be made only after examination of all relevant documents and in consultation with counsel for interested parties. That process is provided for in this document.

These Procedural Guidelines relate specifically to the preparation for and conduct of formal hearings into the circumstances of individual deaths. Except in so far as a Commissioner considers it desirable they do not apply to a preliminary investigation into the question whether a particular death should be listed as possibly falling within the Commissioner's Terms of Reference. Nor, subject to the requirements of natural justice, do the Guidelines limit the right of a Commissioner to inform himself as he sees fit as to background matters relating to the life of the deceased, or to family or community circumstances, or to social or historical matters.

The Guidelines do not apply to the obtaining of evidence and information relating to underlying issues associated with the deaths. Whilst in some instances these underlying issues may be addressed by a witness whilst giving evidence m a formal inquiry into an individual death, Commissioners may conduct group or conference sessions, hold informal consultations, or consider written submissions or any other material in order to examine those issues. The methods adopted in the examination of such issues may differ between Commissioners and inquiries relating to these matters should be addressed to particular Commissioners and their staff.

2. DOCUMENTARY MATERIAL

Commissioners will endeavour to obtain a complete profile on each deceased person — his or her past involvement with welfare agencies, health agencies, police, prisons, the education system and the like. A great deal of such information will come from files held by the relevant departments.

In order to discover the circumstances in which a person died, oral evidence may be called from witnesses but in many instances it may be that earlier evidence or contemporaneous statements of those witnesses will not only shed light on the circumstances of the death but may also narrow the issues and areas of dispute before the Commission, and may even make it unnecessary for the witness to be called to give evidence before the Commission.

Original documents will be held by the Commission until such time as a Commissioner shall deem it appropriate to return that material to the provider or to such other place as may seem appropriate.

The following categories of documents will be sought with respect to each death. These categories should be regarded as the minimum and where files are held by other bodies, those too are likely to be sought for inspection.

2.1 Police Files

The file relating to the arrest or detention on the occasion which led to the person's death. In addition, each file held by the police department and relating to previous arrests or detentions may be required: the criminal record sheet; reports; journals; log books relating to detention at the time of death and subsequent investigations into the death; records of checks made and maintenance of cell and intercom system; records of medical and cell checks made on the deceased; and other relevant documents.

Relevant police standing orders, directions and guidelines should be obtained. Post mortem and any other photographs and exhibits should also be obtained.

2.2 Court Files/Crown Law Department Files

Where appropriate, files relating to previous detentions on apprehensions will be required for relevant information, including transcripts of submissions on penalty and sentencing remarks.

2.3 Probation And Parole Reports

Any and all reports by parole and/or probation officers will

contain useful information relating to the antecedents of the deceased and should be obtained, subject to any legislative prohibition against access.

2.4 Community Welfare/Social Welfare Department Files

The Commission may require access to Community Welfare/Social Welfare Department files on the deceased or his/her family including any relevant files held by Aboriginal Welfare and/or Protection Boards or agencies.

2.5 Coroner's Files

The entire file must be obtained, not merely those statements or documents which were actually tendered during the inquest. The Coroner's office records which indicate files that were subpoenaed or documents produced for inspection should themselves be obtained, as should any internal records or memoranda which record the scope of investigations which were requested and/or conducted. It is essential to know which information was supplied to the coroner and by whom; whether it was used and, if not, what factors militated against its use.

The relationship between and respective roles of the coroner, coroner's constable, counsel assisting, pathologist and police investigators may need to be considered in evaluating the effectiveness of post-death investigations; to that end any procedural or administrative guidelines which relate to those roles should be examined and, if relevant, be copied.

The pathologist's files should also be obtained, including notes and photographs taken during autopsy.

The files of the coroner's constable, investigating police (including, where necessary, police note books) and counsel assisting the Coroner should be examined and a copy, at least, be obtained. All documents which record the receipt and disposition of items seized by police or others in the course of the coronial investigation should be obtained. Exhibits and other physical evidence held by police or coroners should be securely stored as many of those items may be required for tendering or for forensic examination during the Royal Commission.

Where the next of kin of deceased persons were not represented in coronial hearings all records held by the Coroner, the police or Coroner's constable which relate to notification of next of kin as to the death, the inquest and the inquest findings should be obtained.

2.6 Correctional Services Files

Where death occurred in prison, all files relating to the death, including day and night journals, cell location books, discipline records, intercom reports, rosters of officers, together with all reports made by officers (including external reports) relating to the death.

Additionally, prison records of previous incarcerations should also be obtained.

Full records of prison medical service relating to deceased should be obtained.

Prisoners visitors records should be obtained and prisoner's property sheets, records of correspondence, and names of next of kin.

Standing orders and procedure manuals or other written directions should be examined and where possible be copied and held by the Commission. In some instances, Correctional Service authorities may seek to have some documents (especially those relating to matters of security) treated as confidential. The documents should be obtained, parties be advised of the request for confidentiality and, if agreement cannot be reached between all parties as to the appropriate method of dealing with the material, the matter be referred to a Commissioner for a ruling.

2.7 Medical Files

Where the death apparently relates to either pre-existing or recent illness, an attempt must be made to obtain a total picture of the deceased's health before and during his last detention. All files relating to his previous health and medical treatment should be sought. All public hospitals in areas where the deceased has previously lived (especially those known to have been attended by him or her) should be approached and, if files exist, be subpoenaed to produce the files. The appropriate Aboriginal Medical Services should also be approached and any general practitioners from whom the deceased may have sought treatment. Where death occurred in hospital the hospital administration or relevant Health Department may itself have caused internal investigations or review to be conducted as to the effectiveness of the treatment offered to the deceased. If so, the records and findings of any such review or investigation should also be obtained and be examined.

Departmental files on any review or action taken with regard to procedures, allocation of resources or other administrative arrangements relevant to or consequent upon the circumstances of a particular death the subject of inquiry.

2.8 Social Security Files

All files relating to the deceased and his/her history of benefits, including employment, medical and social history.

2.9 Police Complaint Authority/ Ombudsman/Personnel Files

In some States there are legislative barriers to the obtaining of such information but where appropriate any files relating to any relevant witnesses should, at the request of the Commission, be provided to

Counsel Assisting on the basis that there be no publication or use made of such material until a determination has been made in accordance with the procedure set out i paragraphs 8.12, 8.18 and 8.19 (below).

2.10 Aboriginal Legal Service Files

A question of privilege may arise but in many instances the Aboriginal Legal Service will have contemporaneous statements from witnesses who were interviewed as to the circumstances of the death. These documents should be sought from the ALS together with any other material held on file and relevant to the terms of reference.

2.11 Education

Files relevant to the background and education of the deceased held by schools, other educational institutions or relevant Government Departments.

2.12 Previous Reports

Reports of previous inquiries or Royal Commissions relating either to the individual whose death is under investigation, the institution in which he or she was detained, or the community in which the deceased lived at any relevant time, should be examined to determine whether any material relevant to the terms of reference of this Royal Commission should be tendered.

The transcript, evidence or other records relating to any trials, disciplinary proceedings, review or investigations relating to the death of the deceased should also be obtained and examined for relevance.

2.13 Media Reports

Any media reports, including press clippings relating to the death of the deceased, subsequent investigations or any other relevant subject should be examined.

3. RESEARCH MATERIAL

The Commission at its Canberra office and in each regional office has gathered a substantial collection of reports, books, articles and documents of general relevance to the terms of reference. Commissioners may have regard to this material and to material obtained from other sources as background information.

4. LEGISLATIVE MATERIAL

Each regional office should hold a general library of relevant legislation and procedural rules and directions relating to prisons, other places of detention, police, coroners, ambulance services, hospitals and other medical institutions.

5. GENERAL SUBMISSIONS

The Commission's National office maintains a list and copies of submissions made by interested bodies and individuals to the Commission.

Some of the authors of such submissions may, in due course, be called to give evidence before one or more Commissioners and their submissions would then be tendered as general exhibits (see Section 6.0). Any Commissioner may, however, choose to inform himself generally by having regard to the information contained in general submissions.

6. GENERAL EXHIBITS

In some cases, the submissions made to the Commissioner are so plainly relevant that the Commissioner determines that it is appropriate to declare them to be an exhibit.

From time to time, the evidence or written submissions of witnesses giving evidence in particular cases (especially expert witnesses) will be regarded by a Commissioner as being of broader interest than merely for the individual case. In those circumstances the evidence or submissions will be given a General Exhibit number and a copy of that material will be held at the National office. A list of general exhibits is published by the National office.

7.0 INDIVIDUAL CASE DATA BASE

The computer system of the Commission will contain details relating to each death which will be important for research work being performed by the Commission. In Research Paper No 1 the Head of the Criminology Research Unit, Mr David Biles, provided a preliminary analysis of the data base. Annexed to that report was a two page list of the research data which was being gathered from the files relating to each death. That list of research data, which is supplemented from time to dine, forms the basis for the individual case data bank.

8. PRE-HEARING AND HEARING PROCEDURES

8.1 Availability of Files

After collecting all relevant files, Counsel Assisting and Commission solicitors will make those available to other counsel to consider. Whether a photocopied set of such documents will be supplied to counsel for panics is a matter for each Commissioner to determine. A case will not commence to be heard unless the Counsel Assisting advise that substantially all relevant documents have been obtained and made available to parties for inspection.

8.2 Availability of Statements

Counsel Assisting and/or staff of the Commission will identify witnesses from whom statements will be sought. Those witnesses may be persons who have given evidence on earlier occasions or they may be new witnesses. Those statements will be made available to counsel for parties.

8.3 Pre-Hearing Conference

At a pre-hearing conference, Counsel Assisting will confer with counsel for parties in order to identify issues, witnesses who should be called to give oral evidence, witnesses whose statements need only be tendered, witnesses whose evidence is not relevant or necessary for the hearing.

8.4 Calling of Witnesses

Only Counsel Assisting or the Commissioners call witnesses to give evidence. Where counsel for a party wishes a witness to be called he/she shall deliver to Counsel Assisting a statement from the witness and/or outline of the relevant evidence which the witness can give. Where Counsel Assisting still do not propose to call the witness, the matter can be raised for resolution before the Commissioner.

8.5 Non-Provision of Statement by Witness: Decision to call

Where a witness declines to provide a statement to Commission staff either in conference with them or with other counsel or solicitors, then the decision about calling him/her will be based on other material held on file. A witness cannot be compelled to participate in an interview or to supply a statement to the Commission. In an appropriate case a Commissioner could summon a witness to give evidence in Chambers, the record of which could then be treated as a statement.

8.6 Rules Of Evidence

The Royal Commissioners are not bound by the Rules of Evidence. They may take evidence or receive material or information informally, they may accept hearsay evidence, they may take evidence on oath in formal hearings or, on oath, in in-camera or private hearings. They may on occasions, when satisfied that previous investigations or inquiries have been sufficiently thorough to justify that course, rely wholly on documents and transcript tendered before them and without requiring any oral evidence to be taken.

Representatives of the parties will be consulted at the pre hearing conference as to the appropriate method of inquiry which should be adopted in any case.

The Commissioners will follow the requirements that:

(a) the evidence must be relevant to the terms of reference, and
(b) no party or witness should be denied natural justice.

8.7 Accessibility of Commission File

The Commission will provide open access to files of information relevant to the hearing. Thus, all files, documents, witnesses statements, notes of interviews, tapes of interviews and proposed exhibits will be available for examination and copying by any representative of any party given leave to appear. Where, however, material has been placed on file with a request by its author for confidentiality to be preserved or where it appears to the Commissioner to be reasonable and in the interests of the Commission to do so, then access shall not be given except with the express permission of the Commissioner. The working and administrative files of Commissioners and staff will not be available for inspection, save where specifically authorised by a Commissioner.

8.8 Availability of Files to Press/Media

The files, documents etc. of the Commission shall not be made available to the press or media, save for documents tendered without restriction in hearings of the Commission or save for documents available with the express approval of a Commissioner.

8.9 Recording of Formal/Informal Discussion

Commission staff who interview or hold formal or informal discussions with persons who may have relevant information should, at the time or shortly afterwards, note the contents of that discussion. A copy of these file notes should be retained on a file available, upon request, to counsel or solicitors for interested parties. Where this information has been provided on a confidential basis, it should be placed in a file of confidential notes to be retained by the Commission. Parties other than staff of the Commission should not have access to this file except with agreement or by direction of the Commissioner. Where it is proposed that information obtained from such an informant will be provided to the Commissioner, then it shall be supplied in a formal session, either in open or closed session, as determined by the Commissioner.

8.10 Notice to Witness

Where the investigations of the Commission suggest that the conduct of a witness may be the subject of criticism or may lead to a submission' that the conduct of that person be assessed adversely, giving rise to suggestions of serious and/or criminal misconduct then notice will be given to the witness and/or his counsel indicating those areas or factors of his/her conduct which may be criticised. Where it would not be readily up. parent from the conduct of the proceedings or material provided to the witness, this notice will be given in writing or orally during pre-hearing interview or conference, or if it is not known that such adverse comment may arise until after the witness has given evidence, then before final submissions, Counsel Assisting will advise either orally or in writing the areas on which such adverse finding may be made. This advice may be in general terms but it will be sufficient to put the witness and his counsel on notice of topics which should be addressed by them.

8.11 Proof of Evidence

Commission staff will endeavour to obtain proofs of evidence from witnesses which will be supplied to all interested parties before a witness gives evidence. It may be, however, that in some instances and where no up-to-date statement has been obtained from the witness, the Counsel Assisting will use either statements or evidence of the witness as supplied in a coronial enquiry or a statement supplied to the Commission by the witness or his counsel as the witnesses' proof of evidence. The parties will be advised in that event and a copy of the relevant material will be made available for inspection and copying prior to the witness giving evidence.

8.12 Determination of Need for Oral Evidence

As the Commissioner is obliged to perform his task expeditiously, it will be essential to avoid calling unnecessary witnesses whose evidence, although relevant, should not be contentious. Prior to the public heating relating to any death, or in other instances if it is the view of Counsel Assisting that a witness' evidence is relevant but need not be given in person, he or she will advise counsel for the parties of that determination. If counsel for any party wishes the evidence to be given in person they may request Counsel Assisting to call that witness. The reason for calling the witness must be supplied.

In considering whether the witness will be called, Counsel Assisting will have regard to all relevant matters, including:

(a) The relevance and significance of the expected evidence.
(b) The navel or other expenses which will be incurred in calling the witness.
(c) Whether a further statement could he taken to fill any existing gaps.
(d) If a further statement cannot be obtained, the likelihood that any additional evidence will be obtained through oral examination.
(e) If the purpose of calling the witness is to test credit, whether an adverse finding on credit is likely to affect the Commissioner's finding as to circumstances of death or would otherwise have an important effect.

If Counsel Assisting decides that calling oral evidence from the witness is not justified then he/she will so advise Counsel for other parties who may make application for that witness to be called and the Commissioner will rule accordingly. Should a witness not be called, Counsel Assisting may apply to tender that witnesses' statement.

Where the evidence of such a witness whom it is not proposed to be called has already been given an oath (e.g. at a Coronial Inquiry) then the relevant parts of the transcript may simply be tendered before the Commissioner who will be thereafter asked to treat it as if it were evidence given on oath before him.

Where the evidence of such a witness has not been previously given on oath but is, for example, contained in a statement made either before the Commission commenced or afterwards, he may be requested to swear an affidavit verifying the contents of the statement and his affidavit and statement shall be tendered before the Commissioner.

8.13 Copying of Commission Files

It shall be at the cost of and with personnel supplied by counsel or solicitors for the parties, that Commission flies are perused and photocopied. The Commission will endeavour to facilitate this task by arranging convenient times for this to be done. Procedures may need to be devised to allow for the situation of completing demands for file review at the same time. (Note: As stated earlier, some Commissioners may adopt different procedures relating to the copying and supplying of documents to parties.)

8.14 Order of Examination

Where witnesses are called to given evidence, they will first be examined by Counsel Assisting and then by each of the counsel representing parties, the last of whom shall be counsel who may be regarded as representing the interests of the witness. Counsel Assisting will then re-examine.

Where a party wishes to have a witness called to given evidence, that request (and a statement or proof of evidence must be supplied) shall be conveyed to Counsel Assisting. If he/she agrees that the witness should be called, then he/she shall be entitled to first examine the witness in the usual way. This procedure may, however, be varied if Counsel Assisting agrees that the interests of the Commission are best served by having counsel for the witness first examine that witness. Counsel Assisting would then follow second but would have the right to final re-examination.

Where the circumstances are appropriate, a witness or number of witnesses together may he examined in a less formal setting. The order of questioning and topics can be set as the Commissioner requires.

The order of examination and cross-examination of witnesses and the calling of witnesses is subject to change at any time by ruling of a Commissioner.

8.15 Consultation with Counsel for Parties

Counsel Assisting reserve the right to consult with counsel for any of the parties and without necessarily doing so in the presence of all other counsel. Wherever possible or where it may be unfair to do

otherwise, all counsel will be invited to participate in such discussions. Further (although wherever possible notice will be given) the staff of the Commission reserve the right to interview any person whether or not that person has a lawyer in attendance at this interview and provided that the witness is willing to be interviewed without the presence of a lawyer.

8.16 Identification of Material Etc.

Where witnesses will make reference to documents, publications or other material, such material shall be identified in the proof of evidence and unless unduly lengthy (in which case it will be available for examination and copying by parties) shall be annexed to the proof of evidence.

8.17 Basis upon which Evidence shall be adduced

Evidence shall be called or adduced in open session unless it appears to Counsel Assisting that the evidence should be heard in camera (i.e. in a cleared court) or on a confidential basis (i.e. not for publication). Where Counsel Assisting considers such a course may be desirable, appropriate notice will be given to other parties of the proposed course. Any counsel may, of course, request that a witness not be heard in public session. In the absence of agreement as to this, the matter will be referred to the Commissioner for ruling. The Commissioner may of his own motion receive evidence, in private session, subject to the principles set out in paragraph 8.6 (above).

8.18 Suppression Applications

From time to time, Counsel Assisting or counsel for a party will seek to have the names of witnesses or the evidence of witnesses suppressed from publication. Where such a course is to be sought Counsel Assisting will, where practicable, give notice to other counsel that such application will be made. Counsel for parties should whenever possible give advance notice to Counsel Assisting if an application for suppression is proposed to be made. In some instances the media may seek to be heard on a suppression application and advance notice of such an application serves to avoid unnecessary delay in consideration of the merits of such applications.

8.19 Notice of Objections

Counsel for parties given leave to appear should give advance notice of any objections to jurisdiction in any cases and of any legal issues which they propose to raise. Counsel Assisting will likewise advise other counsel if it appears to them that questions of law or jurisdiction may arise in particular cases. Similarly, wherever possible, (and it will not always be possible) questions relating to the admissibility of evidence or of privilege should be advised in advance to other parties. The intention of Counsel Assisting will be that no party is taken by surprise with any legal submission and, wherever possible, advance copies of an outline, at least, of submissions on law proposed to be made by Counsel Assisting (with case references) will be given to counsel for other parties.

9. APPLICATION OF GUIDELINES

In cases where parties given leave to appear are not legally represented, references in these guidelines to counsel for parties or like references will be read as intending a reference to the unrepresented party where the context so allows.

Appendix D: Sources of Information

Appendix D(i) 'Too Much Sorry Business' — The Report of the Aboriginal Issues Unit of the Northern Territory

The Submission of the Northern Territory Aboriginal Issues Unit of the Royal Commission into Aboriginal Deaths in Custody to Commissioner Elliott Johnston, QC, July 1990.

Prepared by Marcia Langton, Head of the Unit, and Leslie Ah Matt, Bonita Moss, Evelyn Schaber, Chips Mackinolty, Merle Thomas, Edward Tilton and Lloyd Spencer.

Introduction

The establishment of the Aboriginal Issues Units within the Royal Commission into Aboriginal Deaths in Custody reflects the widespread impact that Aboriginal deaths in custody has had on the nation as a whole. The Commissioners were clearly seeking a means by which Aboriginal people might throw some light on this tragic and apparently perplexing problem. As our work progressed it became clear that Aboriginal people wanted to know why these deaths were occurring. and particularly why fatal self-inflicted injuries are committed by Aboriginal people in custody.

The Northern Territory Aboriginal Issues Unit was created by the Royal Commission into Aboriginal Deaths in Custody on 2 July, 1989. The terms of reference were:

> *To write a substantial report to Commissioner Elliott Johnston on the views of Aboriginal people in the Northern Territory on the underlying issues leading to the disproportionate rates of custody for Aboriginal people and sometimes deaths in custody.*

The role of the Aboriginal Issues Unit was to report Aboriginal views with as little distortion as possible.

Later Commissioner Johnston decided that this report would take the form of a submission to him.

This Submission to the Royal Commission sets out the views of the Aboriginal people who spoke to staff of the Aboriginal Issues Unit in five chapters. Chapter 6 summarises the recommendations which are made in the body of the submission. There are five appendices, one of which lists the consultations. However, most of the text of the consultations remain confidential.

This Submission, *Too Much Sorry Business,* attempts to explain the problems of Aboriginal custody and deaths in custody in the Northern Territory in the context of high Aboriginal adult mortality rates, alcohol and other substance abuse, the conflict between Aboriginal Law and Australian law, Aboriginal relations with police, the experience of Aboriginal people with the prison system and non-custodial options. The concluding Chapter, *Kids and the Future,* warns of the consequences if the causes of high Aboriginal mortality and custody rates are not addressed by governments. Our children and their children will face these same problems to an even greater extent than those who have gone before them.

At the time of writing, there were ten cases of Aboriginal deaths in custody in the Northern Territory which were within the terms of reference of the Royal Commission. (Another two reported cases of deaths in custody were not within the terms of reference, because of the circumstances of custody.)

All of these deaths occurred in prisons, in police custody, police cells or in a hospital whilst in custody in the towns along the Stuart Highway: Alice Springs, Ti Tree (although the question of custody in this case has not been finalised), Tennant Creek, Elliott, Katherine and Darwin (including Beatrice Hill Prison). In other words, no death occurred in an Aboriginal community.

All were male.

Alcohol was involved in the majority of the cases.

Five of the cases involved Warlpiri and Anmatyerre people

With the exception of the one case (Case Number 11) who was from Ngukurr in South East Arnhem Land, no deaths in custody were reported from those cultural blocs which have always had a secure residency on their traditional land, such as Arnhem Land, or Port Keats or the Pitjantjatjara homelands.

There were no Aboriginal deaths in custody reported during the years of the terms of reference of the Commission from the statistical local areas with the two highest imprisonment rates, and the highest arrest rates, for Aboriginal people, that is, Groote Eylandt and Daly River (See Statistical Tables at Chapter 4, Table no. 4). However, there were Aboriginal deaths in custody from other statistical areas

with high imprisonment rates, for example Tennant Creek — Balance (ibid.)

While, the number of cases of Aboriginal deaths in custody is too small to allow statistically significant conclusions to be drawn., some arguments are possible.

Firstly, even if there is no statistical significance in either the fact of all the cases occurring in towns along the track, or in the number of Warlpiri and Anmatyerre amongst the cases, it is clear that alcohol is an underlying factor which makes sense of the distribution of Aboriginal deaths in custody in the Territory. In Chapter 1. on Alcohol Abuse especially, and in the remainder of this Submission, we have shown that there is a tendency for Aboriginal people, especially in Central Australia, where most of the communities are "dry" to be attracted to the towns along the track where alcohol is easily accessible, more so than anywhere else in the country, in Alice Springs, for instance. As stated in Chapter 1, alcohol was a factor involved in at least six of the ten deaths in custody in the period 1980 to 1989. Furthermore, protective custody detention and alcohol related offences are by far the greatest single reason for Aborigines being placed in one form of custody or other, and therefore placing those people at greater risk of dying in custody. The relationship between violence, general ill-health and alcohol abuse stacks the cards against Aboriginal people in custody, especially in police lock-ups. We draw your attention to the Recommendations which set out the urgently required steps to lessen the alcohol abuse amongst Aboriginal people in the Northern Territory.

The alcohol economy in the Northern Territory and the lack of controls over distribution and sale of alcohol. the problem of grog-running to Aboriginal communities and the many factors of this kind which make this substance so fatal for so many Aboriginal people and so debilitating for Aboriginal society is addressed at length in Chapter 1, *White Poison:* Aboriginal Alcohol Abuse.

It may well be argued that substance abuse by itself is not a cause of Aboriginal people dying custody, and that there are further underlying reasons or causes, for example, dispossession, poverty, lack of education, hostile police practices, and so on. Without doubt this is true in an absolute sense: we do not argue that substance abuse is a single cause. Clearly there is a complex of issues involved. Nevertheless, the Aboriginal Issues Unit has found 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.

To understand this, we have to step back from the issue of deaths in custody, and realise that those deaths are one category of the manifestations of problems with alcohol. Being in custody as such does not increase one's chances of dying. Indeed the available statistics clearly demonstrate that one has a far better chance of dying, particularly violently, outside the Northern Territory jail system than in it. On the outside, the chances of Aboriginal adults dying are three and half times that of the risk in a prison in the Northern Territory. The chances of meeting a violent — almost exclusively alcohol-related — end are higher. And, while no Aboriginal women have died in custody in the Northern Territory during the 1989 to 1990 period, more women have been killed in alcohol-related murders than there have been deaths in custody. Furthermore, statistics developed by the Road Safety Council of the Northern Territory indicate that far more Aboriginal people, of all ages and sexes, have died through alcohol-related road accidents than have died in custody.

While the Aboriginal Issues Unit cannot draw any statistical significance from the distribution of Aboriginal deaths in custody by cultural background, age, and place of arrest or apprehension, we can make this warning:

The Warlpiri and Anmatyerre are overrepresented in the reported cases of Aboriginal deaths in custody, but other cultural groups who have escaped the phenomenon of deaths in custody may not for very much longer. The Groote Eylandters, the Arnhem Landers, the Pitjantjatara, the Tiwi and others may be facing a future in which their children become the next generation of deaths in custody and far more numerously than at present. For instance the Aboriginal rate of imprisonment on Groote Eylandt rose from 1659 per 100,000 in 1982 (37 total prisoners) to 2274 per 100,000 in 1986 (52 total prisoners). It has subsequently fallen because of the Community Service Order Scheme on Groote Eylandt. But has the arrest rate

fallen? Has the rate at which young Aboriginal men are pot into police cells fallen.'? Certainly the number of police cells on Groote Eylandt has increased. In other words there has been a creative positive response by the Department of Correctional Services at the back end of the problem — to lower the number of Aboriginal people in prison in the Northern Territory. But there is no evidence that the number of arrests and apprehensions has fallen from year to year or that the responsible departments, the Department of Law and the Department of Police and others have responded to reduce "crime" at the right end of the problem — at the point of arrest.

On current statistics, it could be argued that the Aboriginal children of today will be adults with severe health and substance abuse problems. They could also be disadvantaged educationally. Many will be orphans. Many will have retained little of their culture.

The future of our children will be one consisting of the risk of repeated incarceration whether in police cells or prisons and a high risk of dying in custody while the present custody rates and mortality rates continue. Chapter Five explains the problem of petrol sniffing amongst our children and the role this plays in their breaches of both laws, Aboriginal and Australian.

The conditions of Aboriginal life in the Northern Territory today

There is much that we have not said in this Submission about the conditions of Aboriginal life. For many Aboriginal people, present living standards are utterly inadequate for a satisfactory life. Houses are inferior, hygiene and ablution facilities appalling, paid employment except in Aboriginal organisations virtually non-existent, diseases which disappeared in Australian society decades ago rampant, and relevant educational and training opportunities poorly provided, if at all. Violence, rape and child abuse occur in Aboriginal society more and more. Many Aboriginal people are desperate for an end to these deprivations and assaults on their lives. Daily conditions in many communities and in most town camps seem unbearable sometimes. If it were not for Aboriginal culture and the access which Aboriginal people have to their land in the Northern Territory these problems might be overwhelming.

It was necessary that we could not address all these problems in this Submission, in order to he able to explain those problems put to us by Aboriginal people which are essential to an understanding of Aboriginal custody rates and why Aboriginal people die in custody. Even though we were not able to examine these issues, we trust that the reader will keep in mind that Aboriginal people still live in 1990 in unacceptable conditions and that change is necessary to save lives.

The death rate for Aboriginal people

The Aboriginal adult mortality rates in the Northern Territory should be a major focus of government action on the problem of deaths in custody. It is the factor of such high mortality rates for Aboriginal adults through heart disease, respiratory disease and injury and poisoning, the highest causes of death, combined with high custody rates which makes custody a potentially fatal environment, if less so than Aboriginal environments, for Aboriginal people. The problem of Aboriginal ill-health was discussed with the Aboriginal Issues Unit by Aboriginal health workers. Other than in these consultations, we found the health problems of Aboriginal people such a complex issue, we hesitated to address them in any substantial way except in respect of substance abuse. The matters of Aboriginal morbidity and mortality rates remain in our minds as the key areas which must be addressed as a matter of urgency by governments and responsible agencies. Notwithstanding the development of the National Aboriginal and Islander Health Policy, expert medical and anthropological advice in a range of fields is required to achieve change where it is most needed, in Aboriginal homes and communities. Heart disease and respiratory disease rates must be reduced. Aboriginal health workers know through the difficulties in their work that healthy nutritional standards and safe and hygienic environments for Aboriginal people will be achieved through community education and development, which involves Aboriginal people in decision-making and service delivery in real positions of power and control.

We have addressed in Chapter 1 and Chapter 2, T*wo Laws:* Can There Be Justice? the need for the development of laws and rules by Aboriginal people to prevent the high rate of injury from alcohol related violence. As the third highest killer of Aboriginal adults in the Northern Territory, injury is a problem of enormous proportions which governments must assist Aboriginal people to address by recognising

Aboriginal Law and by working with Aboriginal Law and culture so that the problem of arbitrary violence can be overcome. This violence is based in traditional styles of conflict resolution but has been intensified by alcohol abuse so that it is now an almost uncontrollable problem in Aboriginal communities whenever alcohol is present

Aboriginal culture

We found that in writing this Submission that we had to explain a great deal about Aboriginal culture, both traditional and contemporary, so that we could report clearly what Aboriginal people were saying to us about custody and deaths in custody. We had to understand ourselves something of the history of relations between Aborigines and the ever rising tide of immigrants. The Northern Territory was a recent frontier. That Aboriginal culture has withstood the invasions is an amazing feat, considering the fate of so many Aboriginal societies which first bore the brunt of invasion in south-eastern Australia, and considering the pervasive influence of non-Aboriginal cultures through television, the consumerist life of townships, the education system and so many other institutions. In Chapter 2, we report the views of Aboriginal people put to us, primarily the argument for the need for Aboriginal Law and white law to work together, a view rarely heard in non-Aboriginal circles and a powerful symbol of the conciliatory nature of the Aboriginal response to the impact of Australian society. The failure of governments to act on the recommendations Of the Law Reform Commission Report on Recognition of Aboriginal Law is a sore point with many Aboriginal elders, and one which must be addressed as a matter of urgency. The conflicts between Aboriginal Law and Australian law are described as they were explained to us. Aboriginal people told us that they need to understand bow Australian law, or *whitefella* law, works, because they feel locked in by it, because it seems to have a law for everything. We felt hesitant about discussing some of the ways in which Aboriginal Law works, but it was made clear by person after person who spoke to us that we were given a mandate to explain these matters, so that, as so many Aboriginal people desire, they would he understood.

Aboriginal people and the police

Aboriginal people believe that *Force Doesn't Help and* in Chapter 3 on Aboriginal relations with Police in the Northern Territory we report the many complex objections to police behaviour and the need for more and better policing in some areas.

The voluntary community policing initiatives of the Julalikari and Gurungu Councils are an example of bow creative schemes developed and carried out by Aboriginal people can provide answers, in this case to improving police Aboriginal relations and to lowering crime, or rather the disruption caused by

Complaints procedures need investigation so that Aboriginal people are able to rectify problems with police before they get out of control.

The role and career conditions of Police Aides also require review so that their contribution to good policing and to their own self-development is enhanced.

Other recommendations have been made also, particularly in respect of the need for specialist training of police in dealing with Aboriginal people in community life in general, but in particular with those Aboriginal people in their care.

Prison and non-custodial options

Jail, whether as a punishment, deterrent or rehabilitative measure, is seen largely as a failure by Aboriginal people, especially by parents and ciders. Worse, jail is a school for more and more serious crime for Aboriginal youth. Most people firmly believe that our own culture provides the means to prevent anti-social behaviour if assistance is given by governments and if Aboriginal Law is recognised to enable people to retain respect from youth for Law and culture. Most Aboriginal offenders need to be taught the right way from the wrong, people said, and this can only happen in the family and community, not in jail.

This is not to say that Aboriginal people tolerate serious crime, such as murder, rape or assault. These are not considered minor and for serious crimes and for incorrigible repeat offenders jail is the only available option, it is believed. In some communities, Aboriginal people arc despairing because of their

own inability and that of the the Australian legal system to prevent crime.

The Community Service Order Scheme was widely applauded, with only a few reservations, because it keep Aboriginal people out of jail. However, it is the only non-custodial option which most Aboriginal people are familiar with.

Empowerment for Aboriginal people

The key to the many problems for Aboriginal people is empowerment. Aboriginal people in the Northern Territory see this very clearly. While some non-Aboriginal people have said that "throwing money at the problem doesn't work", they are not at the same time prepared to empower Aboriginal people to enable them to spend what money is available to overcome their life-threatening problems. It is a dangerous proposition that funding levels should be reduced. It has become very clear to the staff of the Aboriginal Issues Unit that there are many crucial areas which are underfunded, particularly substance abuse and delivery of health services. The problem is the failure of governments to deliver either the funding to Aboriginal organisations or to deliver the services. Some people to whom we spoke suspect that the funding which ought to be going to Aboriginal problems is siphoned off along the way by some government agencies and of course by the high cost of administration. While the formation of the Aboriginal and Torres Strait Islander Commission is an attempt to address this problem, people point to serious problems in getting federal funding through to the problem areas, through to Aboriginal organisations, or through to other responsible agencies in the Northern Territory These arguments bear great similarity to the debates in international aid circles about how much aid funding actually gets through to the starving past the gatekeepers and black markets which thrive on human misery. The Aboriginal Issues Unit has had neither the staff numbers nor the expertise or funding to pursue these problems. However, we believe that they are problems which underlie the slow pace of change in

How many Aboriginal people in the Northern Territory

There are approximately 34,000 Aboriginal people in the Northern Territory, or, about 22 per cent of the Northern Territory population is Aboriginal. Aboriginal people in the Northern Territory, because of their very high proportion of the population compared to other jurisdictions, and because the Territory was until the advent of the Self Government Act in 1978 under Commonwealth jurisdiction, have a great deal more political power than Aboriginal people elsewhere.

Aboriginal land in the Northern Territory

Aboriginal traditional owners through Land Trusts established under the Aboriginal Land Rights (Northern Territory) Act 1976 own approximately forty per cent of the Northern Territory land mass under two categories, former reserve land and successful land claims, granted as inalienable Aboriginal freehold title. Because of the strength of this title, only executive action taken by both houses of the Federal Parliament can remove these land rights. The land rights Act was promulgated before the Northern Territory Self Government Act. But two important powers were devolved at that time to the Northern Territory administration: the power to grant permits to enter Aboriginal land under the Aboriginal Land Act and the power to protect or to allow development over Aboriginal sacred sites under the Aboriginal Sacred Sites Protection Act, which was later repealed and replaced by another Act, less satisfactory 'in many Aboriginal people's eyes. Both these Acts are intended to be complementary to the Aboriginal Land Rights Act, but the hostility of the Northern Territory Government to Aboriginal aspirations has been an obstacle to the good administration and effect of the land rights system as it was intended.

Another important feature of the Aboriginal land rights system in the Northern Territory is the partial veto which Aboriginal people have in relation to proposed exploration, mining and other developments on their land. The Land Rights Act was amended in 1987 to remove much of the force of the veto power, and to !ink approval of exploration applications on Aboriginal land to any mining which arises from that exploration. There were also many other amendments to the Aboriginal Land Rights Act. Even so, Aboriginal power under the Aboriginal Land Rights Act remains strong if not secure.

There have been many critics of the land rights system in the Northern Territory, not least being the Northern Territory Chamber of Mines and the Australian Mining Industry Council. Their persistent complaint has been that Aboriginal land rights lock up the land and prevent development. That assertion

has been proven incorrect time and time again as the number of mines and approved exploration applications on Aboriginal land show.

Moreover, this is a case of powerful interests, many being overseas interests, refusing to accept the standards of Australian society, in this case the protection of the interests, indeed the future, of the indigenous people of Australia. The primary motives of mining companies are W enlarge their access to deposits an to obtain the most economical extractive arrangements. These motives are usually in conflict with the rights and aspirations of indigenous people.

Aboriginal political aspirations in the Northern Territory.

The continuing conflict of powerful economic interests with the rights and future of Aboriginal people is just one aspect of the polity in which Aboriginal interests are usually in jeopardy. The need for executive and constitutional entrenchment of Aboriginal rights to protect them against the seesaw of political and economic swings for and against Aboriginal interests is highlighted by the amendments to the Aboriginal land rights Act in the Northern Territory and other legislation to make it easier for non-Aboriginal interests to get access to Aboriginal land. Aboriginal people attending the Future of Government Conference convened by the Central and Northern Land Councils in 1988 argued that there should be a recognition by the Commonwealth Government of its fiduciary or special relationship with Aboriginal people in the Northern Territory. They resolved also that self-government by Aboriginal people is also occurring at the local, regional and Territory wide level and that formal arrangements for Aboriginal self government in the Northern Territory could be achieved through a fiduciary relationship with the Commonwealth Government which allowed for parallel Aboriginal government alongside the Northern Territory government and its subsidiaries. In the event of serious moves towards a Constitution for the Northern Territory leading up to full self government in the Territory, a development seen by many Aboriginal people as inimical to their interests, particularly land interests as described above, the conference participants resolved that Aboriginal people should negotiate with the assistance of the Commonwealth Government to have their rights entrenched in such a Constitution. This strategy was seen as secondary to the development a fiduciary relationship with the Commonwealth and of parallel arrangements for Aboriginal self government in the Northern Territory.

Local government powers of Aboriginal bodies in the Northern Territory have been criticised. The problems for Aboriginal people have been with the levels of Grants Commission funding, particularly to Aboriginal town camp organisations, which are in effect local government organisations, such as Tangentyere, Julalikari and Gurungu, in Alice Springs, Tennant Creek and Elliott, respectively. Local government is widely seen by Aboriginal people as the means by which they might gain more control over their affairs, particularly decision-making powers, but not in the form in which it is now available to Aboriginal communities. Aboriginal people have told us that they need more education and information about local government in order to make it work for them. Many would like to be able to design their local government systems and some have already attempted to do so, in order to retain their traditional decision-making styles and forms of representation and authority. There are many problems in this area, some which we are not competent to address. The message from Aboriginal people is that they need more power, more control over their own affairs, and attention paid to the problems of this nature at the local level of service delivery from governments to enable Aboriginal people to determine their own futures.

Other arenas of political power are of concern to Aboriginal people also. The poor representation of Aboriginal people *by* Aboriginal people in the Northern Territory Legislative Assembly is of concern to many. Many are not aware that their level of self-representation is better than elsewhere in Australia. However, proportionally it is still not good enough. Party politics, in terms of encouraging Aboriginal candidates, have been unsavoury across the political spectrum and this **is** has been a discouragement for Aboriginal people. The effort required in forming an Aboriginal party has always been overtaken by the urgent needs of community development.

Self-determination and an Aboriginal economic base

Aboriginal people have expressed the view that there is an urgent need for the formation of a policy which would provide for the culturally appropriate development of an Aboriginal economic base and Aboriginal

power and control in the management of community, regional and national Aboriginal affairs.

There is an urgent need for the development of an Aboriginal economic base which recognises the types and areas of economic ventures which Aboriginal people would make a success of:

- national park arrangements with Aboriginal traditional owners
- tourism the arts and crafts industry
- small scale pastoralism and agriculture

Some people are particularly concerned about the lack of consultation with Aboriginal people in respect of the new Commonwealth body ATSIC and bow it will operate. The role of this body in developing an economic base and improving the control which Aboriginal people want over their affairs is crucial.

Areas which require particular attention towards developing an economic base for Aboriginal people are:

- the Aboriginal Benefits Trust Account, statutory royalty equivalents, and negotiated financial payments to Aboriginal people in respect of economic development and related issues
- the economy of welfarism and the delivery of services in the area of their Australian citizenship entitlements to social security payments.

Many Aboriginal people have identified a range of problems in existing policy and problems in service delivery agencies, particularly Commonwealth and Northern Territory government Departments, Aboriginal statutory authorities, and other agencies. Particularly acute are the poor styles of consultation and lack of knowledge of service deliverers about Aboriginal society and culture. Because of the poor training of many departmental and agency staff in dealing with Aboriginal people, it is believed by many Aboriginal people that their ability to manage their own affairs and determine their own futures is severely hampered. They cite a range of agencies which have problems in implementing policy at the local level. Aboriginal people who understand these problems want:

- transfer of power, skills and funding to the local level in Aboriginal affairs to overcome the administrative and political problems at the local level and rationalise outside intervention in local Aboriginal affairs
- small-scale local autonomy for authority and decision-making and representation in negotiating for local policy, funding and service delivery needs; they want appropriate responses to the localism of Aboriginal affairs from government departments, Federal, State and Territory, and agencies
- the need for appropriate training of Aboriginal and non-Aboriginal staff at the local and community level to avoid the pitfalls of hidden assimilation, paternalism, malpractice and corruption amongst the representatives and staff of associations.

Again, although we could not address these issues substantially, political power, self-determination, an end to welfarism and paternalism and the development of an economic base underpin the needs which Aboriginal people have expressed in coming to terms with the constant risk of custody and the risk of dying in custody which an Aboriginal person in the Northern Territory faces.

A demonstration of acknowledgement and commitment

Aboriginal people want a demonstration of acknowledgement and commitment from Australia. The level of disappointment and cynicism in the Aboriginal community is high and further discouragement amongst Aboriginal leaden and workers, mostly the result of this constant disappointment in government inaction on known problems with known solutions, leads more and more to their inability and unwillingness to continue in the thankless, tiring task of rectifying the many serious problems which were not of our making.

Without the goodwill of Aboriginal people, the task becomes more difficult.

Much of the goodwill of non-Aboriginal people withers too as the problems seem more and more incapable of solution.

The Aboriginal voices

Sovereign and autonomous authority in the midst of interconnectedness is the typical feature of the Aboriginal person, especially in the older generations who have the experience and knowledge to understand who they are.

To humanise a continent through tens of thousands of years, through ice ages and dessication, extinction of megafauna and rising sea levels, our ancestors created a way of life which works for people and for their descendants. This personal sovereignty is the product of a powerful cultural past, remembered in the sacred icons which surround us in the landscape, each one belonging to a person or to a family. When our people share their thought with us in the way that we have experienced, we know it is because they know what they want

What people have said to us is not just opinion, although terms such as "view", "opinion" and suchlike are used throughout the text,

These are the sovereign voices of people who know who they are and what they want for the children and grandchildren.

They do not want, no-one could want, for their children the present conditions in which many of us have to live.

This Submission attempts to allow the many individuals who shared their time with us to be heard.

We hope others listen and act to make our lives worth living.

Marcia Langton,
Head of the Aboriginal Issues Unit,
Alice Springs,
Northern Territory,
Royal Commission into Aboriginal Deaths in Custody.
July, 1990.

How We Wrote This Submission

The Aboriginal Advisory Committee

The establishment and appointment of the Head of the Unit was undertaken only after the appointment of an Aboriginal Advisory Committee, consisting of Mr. Harry Nelson of Yuendumu, Ms. Sally Ross of Katherine, Mr. John Christopherson the Coburg Peninsula, Mr. Ross Williams of Tennant Creek, Mr. Hyacinth Tunguntalum of Nguiu, Bathurst Island, and Mr. Bobby Nunggumaijbar of Angurugu, Groote Eylandt.

The Aboriginal Issues Unit

The Northern Territory Aboriginal Issues Unit was created by the Royal Commission into Aboriginal Deaths in Custody on 2 July, 1989 with the appointment of the Head of the Unit, Ms Marcia Langton. Funding for two full time research and research assistant positions was available and advertisements for these positions were placed in regional and major daily newspapers and Land

These positions were shared by a number of staff both as full time and part time positions for periods of time. The staff were:

Mr Leslie Ah Mat, Research Officer, full time, 1990. Leslie or Sutty as he is known to his colleagues was based in the Darwin office and carried out consultations in the Top End communities. Sutty, from an old Aboriginal and Islander family of Darwin, was previously the Manager of the Field Operations branch of the Northern Land Council where he had worked for many years. He is a graduate of the Aboriginal Taskforce of the South Australian Institute of Technology.

Ms. Bonita Moss, Research Officer, both full time and part time, 1989 to 1990. Bonnie, a graduate of Sydney University in Science. started with the Aboriginal Issues Unit to assist in convening a Forum on Alcohol, and stayed to assist in compiling this report. She has also worked for a number of Aboriginal organisations in Alice Springs.

Ms. Evelyn Schaber, Research Assistant, both full time and part time, 1990. Bubs, as she is known, is a member of the clan which owns Watarrka to the west of Alice Springs and as well of a group to the north east traditionally associated with Alcoota. She was formerly Executive Secretary at the Central Land Council and also worked at the Northern Land Council in the Top End as well as a number of other Aboriginal organisations.

Mr. Lloyd Spencer, Field Officer, both part time and full time. Lloyd is a Warlpiri man who resides at a Western Arrernte outstation. He is a competent interpreter in Warlpiri, and often in Western Arrernte. He also hears other languages. His knowledge of Aboriginal Law, culture and local history is profound. He was formerly an Aboriginal Teacher's Aide at Ipolera.

Mr. Edward Tilton, Research Assistant, June to July, 1990. Eddie is a graduate in anthropology of the Australian National University. This was Edward's first experience in Aboriginal organisations.

Ms. Merle Thomas, Research Assistant, June to July, 1990. Merle, of the Thomas family of the Northern Territory which produced the Aboriginal designer of the Aboriginal flag, was formerly Permits Officer for eight years and Trainee Research/Administration Clerk at the Central Land Council. Merle is a graduate of the TAFE accredited Management course at the Institute of Aboriginal Development in Alice Springs.

Ms Patricia McRae, Secretary, 1989 — 1990. Trish transferred from the Darwin regional office of the Commission to work for the Unit. Trish entered most of the large amount of material listed in Appendices I and 2 and carried out secretarial duties.

Carol Muir, Secretary, June to July, 1990. Carol carried out secretarial duties.

The terms of reference

To write a substantial report to Commissioner Elliott Johnston on the views of Aboriginal people in the Northern Territory on the underlying issues leading to the disproportionate rates of custody for Aboriginal people and sometimes deaths in custody.

It was the view of Commissioner Johnston and Commissioner Wootten that the role of the Aboriginal Issues Unit was not to carry out research, but to report Aboriginal views with as little distortion as possible.

Later Commissioner Johnston decided that this report would take the form of a submission to him.

The submission

As a result of the Commissioner's instructions, this submission is not an academic report. This submission does attempt to place the views of Aboriginal people within the context of larger debates which are taking place within Aboriginal society and between Aboriginal society and the wider society.

We believe that we have reported faithfully the important views put to us by Aboriginal people in consultations held in the Northern Territory. We have tried not to distort the statements of Aboriginal people with sociological and other philosophical interpretations. Rather, we have constructed our arguments presented here from the views of Aboriginal people put to as. We have not been "objective" in constructing our submission in this way. We have drawn conclusions, because we believe that this is what Aboriginal people and the leaders and staff of Aboriginal organisations would expect us to do, because the situation of Aboriginal people requires effective change. We have tried to advocate the change which Aboriginal people believe should come about.

Just as we could not avoid drawing conclusions about many matters put to us, neither could we avoid reporting these conclusions in language that many Aboriginal people would not or could not use. For instance, we have tried to explain that Aboriginal Law is a cosmology, a body of unwritten, cultural beliefs and expectations of behaviour, while Australian law is a codification of social. moral and procedural standards.

Also, we have barely discussed racism in Northern Territory society, nor the nature of racism here, even through racist practices typify social, political and economic relations between black and white in the Northern Territory. This is because no Aboriginal person used the word "racism" or "racist" in speaking to us, although other terms were used in an attempt to explain to us the situation of particular people. For instance, people said, "they overpower Aboriginal people with language", or "they are not fair", or asked "Don't they like Aboriginal culture?". To use the word "racism" implies a certain type of education, a familiarity with a body of literature or experience with political and sociological concepts from the history of Western ideas, a history which few Aboriginal people in the Northern Territory know anything about.

Therefore the peculiar and specific racist and inequitous practices which affect Aboriginal people in the Northern Territory are the subtext of this submission. In the Introduction and in pans of Chapters do we make explicit some of the wider implications of what Aboriginal people have said.

Some semantic difficulties and abstract concepts arose in our many cross-cultural encounters during our consultations. We had to be sure that we understood what was being said to us. For instance, the widely used Aboriginal English terms, "killing", "kill 'em", do not mean what is meant in Standard English. Rather they refer to corporal punishment only. On the other hand, we were at pains to ensure that Aboriginal people understood what we were talking about. "Correction" as used in "the Department of Correctional Services" is not a term understood by many Aboriginal people. And this is only one example of the difficulties we faced in communicating our task.

We have written this submission to an audience which has never heard of the term matrilateral cross cousin marriage and yet so often marries in this way. In other words we have used as little jargon as possible to state what we mean.

As a consequence there is an almost total lack of references and citations of the enormous body of literature which might be read to further understand our report of what Aboriginal people have said.

We believe now, after consulting widely and comparing the views of Aboriginal people to expert opinion, for instance in the case of Aboriginal views on the need to recognise customary law and the previous work of the Australian Law Reform Commission, that solutions can and ought to be found in real negotiations with Aboriginal people, men, women and children.

Only occasionally did we speak to non-Aboriginal people and the views put to us by some of them were very helpful. We have cited a number of those interviews and believe that a great deal of knowledge rests in some members of the non-Aboriginal community. This is a resource which is consistently wasted and one which ought to be better used in a number of departments and agencies, such as the Northern Territory Police Department, the Department of Education and others. It seems that too often political interference and bureaucratic blinkers in the Northern Territory undo the good work of individuals.

Almost all records of consultations were placed on three computers and the word processing functions used to comb and sift through the material to amalgamate these recorded statements into subject areas. This process began in November, 1989 and was completed in July 1990. The obvious areas of major concern to Aboriginal people in the Northern Territory were alcohol, relations with police, the need for recognition of customary law, the problems presented by imprisonment, the Community Service Order Scheme which was welcomed because it keeps our people out of jail, and the effect of petrol sniffing on children. Hence we constructed the report into chapters which address these problems in the way that Aboriginal people put the problem to us.

The consultations

The team visited 30 communities in which 101 records of consultations were obtained.

How we approached the consultations

In a number of cases, letters, faxes and telegrams were sent to communities, while in other cases we telephoned, to ensure that community councils and other organisations were notified of the proposed dates and purpose of our visits and could alter the programme if they wished to. No community refused us entry, and every Aboriginal person we approached was willing to help us by talking to us, telling us of the history of their communities, of incidents which had occurred which relate to the deaths in custody problem and to give us their ideas on solutions to the problem. In only two Aboriginal organisations we found the non-Aboriginal staff unhelpful. Their ideological, or pseudo-ideological views, which were probably more a fashionable cynicism than a substantive critique, were a significant obstacle, not just to our task, but, we believe, to their own

Marcia Langton, Evelyn Schaber, Sutty Ah Mat and Bonnie Moss visited a total of 30 communities and conducted 101 interviews at the time of writing. T*he List of Consultations* in Appendix 1 is a list of consultations carried out up until the time of writing and a guide to the coverage of Aboriginal people and their organisations we were able to achieve in the Northern Territory.

Wherever possible, we attempted to meet with community councils or governments, board or executive members of Aboriginal organisations, and where this was not possible we met with the senior executive officers or other staff of the councils and organisations.

Organisations consulted included outstation resource centres, town camp organisations, Land Councils, Aboriginal-controlled medical, legal service organisations, alcohol rehabilitation and counselling groups, child care organisations, enterprise and contracting companies, a School Action Group of a Northern Territory school, and many others.

The availability of staff or leaders was a crucial factor in the coverage we were able to achieve. The constant demands of government and other bodies to consult with Aboriginal people results in even people in voluntary positions being fully occupied with meeting schedules. Understaffing and underfunding in many Aboriginal organisations means that the individuals called upon to talk to people like us are overworked, double booked and the immediate tasks of their positions in danger of being overwhelmed by irrelevant or less relevant and broad-ranging demands from outsiders.

Also, so as to get the widest range of views, we interviewed individuals who expressed an interest in speaking to us.

Sometime after the consultations had begun, we were instructed not to prejudice the consultations by preparing a list of topics which might be considered as underlying issues by Aboriginal people. The Commissioners wanted the views of Aboriginal people to he unfiltered by methodology. It became necessary to sometimes ask questions which might be considered leading. If we had not done so we might still be sitting in the bush listening to life stories.

Otherwise, we tried to allow free flowing discussions and only steered the conversations back to matters relevant to our inquiry when there was clearly no connection between what was being discussed and Aboriginal custody and deaths in custody.

The two exceptions to this approach were the questionnaires described below, the first relating to alcohol consumption and problems in communities around Alice Springs, devised before the instructions became clear, and the second on Community Service Order projects in Aboriginal organisations around Alice Springs, devised after this Scheme had become a major subject of Aboriginal discussions on how to keep people out of custody.

<u>The two questionnaires</u>

We constructed two questionnaires. One was to he used by contract Aboriginal field officers in July 1989 who visited communities around Alice Springs in preparation for the "Grog: Where to Now?" Forum, a major consultation on the issue of alcohol as an underlying issue leading to high rates of custody and sometimes deaths in custody. This attempt to use the questionnaire approach was dismally unsuccessful. The other questionnaire was a flexible list of questions asked of staff of Aboriginal organisations which hosted approved Community Service Order projects. This was rather more successful because it was carried out in January and February of 1990 by staff members of the Aboriginal Issues Unit who transcribed word for word tapes of interviews.

The two fora (forums)

In August, 1989, the Aboriginal Issues Unit worked with Tangentyere Council and Central Australian Aboriginal Congress to host a forum, entitled, "Grog: Where to Now?", to investigate alcohol abuse as an underlying issue in the high

rates of custody and deaths in custody for Aboriginal people in the Northern Territory. The Report of that Forum is a separate report.

In September, 1989, a similar forum, "Webula Talk long Grog", was organised in Katherine. The report of that forum is also a separate report

The Aboriginal Health Workers Conference

In October, 1989. the Head of the Aboriginal Issues Unit attended an afternoon session of the annual Aboriginal Health Workers Conference. The Conference participants separated into workshops and listed the reasons why so many Aboriginal people end up in custody and what they believe the solutions to be. The report of those workshops is in Appendix 1, T*he Consultations.*

Reports from Consultants

There were six consultants:

Ms Toni Baumann organised and documented the Webula Talk on Grog Forum held in Katherine.

Ms Jeannie Bell, visited Yirrkala and some outstations to report on Yolngu views on custody and deaths in custody.

Ms Bonita Moss was a consultant in her role as organiser and reporter of the "Grog: Where to Now" Forum.

Dr Jim Wafer was asked to examine the connection between initiation ceremonies and offending.

Ms Gertrude Stotz was asked to look at the cultural economy of alcohol in Tennant Creek and environs.

Mr Chips Mackinolty was asked to look at the connection between land fights and custody in the Northern Territory.

See Appendix 2 for a list of reports which our consultants produced and which remain confidential for the time being.

Fieldwork was carried out by Ms Barbara Bartells at Ngukurr as a consultant to the Aboriginal Issues Unit.

Fieldwork was also carried out by Mr. John Christopherson in Western Arnhem Land accompanied by Head of the Unit, Marcia Langton. The notes of consultations in Western Arnhem Land are in Appendix 5 by name of community.

Style

Wherever we have cited an Aboriginal person, the text is plain bold and indented.

The questions or comments of Aboriginal Issues Unit staff is in plain text and indented.

When citing non-Aboriginal people or literature, the text is *italic* and indented.

In rendering words from Aboriginal languages, we have tried to use the orthographies recommended by linguists in each case. Our imperfect knowledge of linguistic developments and non-linguist ears may have resulted in orthographic oddities.

White Poison: Aboriginal Alcohol Abuse

> **Couldn't sleep last night after listening yesterday. Thinking about how grog is killing people, family problems, culture dying; lost respect. Grog is a form of poison, can make a good man or woman go mad, kill, forget their kids .... Grog is tearing Aboriginal people apart. We don't know how to care for family now. In the old days, we were family, need to look back. There are a lot of good things there Before Europeans our life was spot on.**
>
> **Brother of one of deceased who died in custody in South Australian, speaking at Central Australian Aboriginal Congress, 1986.**

1.0 Introduction

One of the first civil liberties granted to Aboriginal people was the right to drink alcohol. Theoretically we became entitled to the same rights to drink as other Australians.

In 1964, the ordinance prohibiting Aboriginal people in the Northern Territory from buying and consuming alcohol was repealed. Previously, only those Aboriginal people who had gained exemption from the status of Ward of the Commonwealth had been permitted to buy and consume alcohol. However, many Aboriginal people had access to alcohol despite the law. The life story of water colour artist, Albert Namatjira, is one tragic example of those people who had access to alcohol and eventually died from its effects.

The impact of the sudden end of prohibition of alcohol on our people varied considerably in different parts of the Territory.

Prohibition, distance from licensed outlets, access to transport and the racist or other special commercial practices of licensees towards Aborigines were, and still are, the obvious factors which govern access to alcohol, especially in large quantities. In many of our communities today alcohol is again prohibited because in the intervening years since the last prohibition ended, our people have decided that the impact of alcohol on their lives is intolerable.

As little as two decades after fighting for the right to drink, Aboriginal people are fighting to '*Beat the grog',* and recognise that 'Grog: it's a killer' (Central Australian Aboriginal Media Association *Beat the Grog t*heme song 1987).

Many communities say that the introduction of alcohol consumption on Aboriginal people was disastrous. There was uncontrollable violence, heavy binge drinking, serious breakdown of community and family life and the collapse of authority structures.

In some communities, the situation has improved, but in many communities, it is the widespread Aboriginal view that alcohol abuse and petrol sniffing are the main obstacles to attaining good health, to

the orderly development of communities, and to the safety and welfare of women and children. They believe that hope for the futures of their communities lie in ways to *Beat the Grog.*

This preparedness of Aboriginal people in the Northern Territory to openly confront the epidemic problem of alcohol abuse is something of an embarrassment to Aboriginal people in other states who argue that to discuss the problem openly is to perpetuate the racist myth of the "drunken blackfella". There are those black and white, who have called for the closing of the Royal Commission before its term of appointment ends arguing that the alcohol factor is well known and requires no further comment. This stance is an important obstacle to the improvement of the alcohol problem as it is perceived by Aboriginal people working in this area in the Northern Territory.

Harmful levels of alcohol consumption arise where alcohol is easily accessible, and when people do not have incentives and motivation to occupy themselves, whether in paid employment, traditional activities or in other ways. Along with many other Aboriginal people to whom we spoke the position taken in this Submission by the Aboriginal Issues Unit is to dispute the popular belief that excessive alcohol abuse is largely a symptom of alienation and dispossession. As discussed later, the distribution of alcohol abuse varies according to type of community and access to alcohol. Many Aboriginal societies in the Northern Territory have never been dispossessed and yet the grog problem is crippling these same Aboriginal people. We argue that because alcohol is a powerful addictive chemical substance it is more causal than symptomatic. Once Aboriginal people are in the grip of alcohol they find it difficult or impossible to escape.

This substance has been incorporated into Aboriginal culture and is sometimes accorded almost the status of ritual object when it is bound up in traditional exchange. Also, It is required by kin that others drink with them as matter of good etiquette and obligation in many situations, including mourning.

This incorporation of alcohol into Aboriginal culture seems to have occurred independently in different regions. For instance, in North East Arnhem Land, *nganaji is the term* for alcohol inherited from the Macassans. It derives from the Dutch term for their aniseed liqueur. There are many other linguistic and cultural references to the Macassan long presence on the Northern coasts in their annual search for sea slugs, the delicacy which they traded with the Chinese. The Yolngu were exposed to the alcohol of the Macassans for hundreds of years, at least in small quantities.

However, even though alcohol has been adopted by Aboriginal people in particular ways described later, because it has not been a traditional feature of our life, unlike in many other societies, there have not developed in the quarter of a century that it has been available, the kinds of inhibitions and social rules for consumption and drinking behaviour which white Australia, particularly Anglo Saxon society, expects.

The incorporation of alcohol into the Aboriginal cultural economy which encourages harmful drinking levels amongst men is a powerful argument for financial and political support of the Aboriginal solutions discussed in this Chapter.

Most Aboriginal people the Aboriginal Issues Unit spoke to attributed most of their problems to alcohol abuse. In particular, alcohol abuse and petrol sniffing leads people to ill-health, to arrest and jeopardy in custody.

If alcohol as a factor in the deaths in custody were removed from the period which the Royal Commission's terms of reference cover (1980-1989), at least one, and probably more, of the ten Aboriginal deaths would not have occurred. One death was the result of untreated alcohol withdrawal syndrome: and in six other cases alcohol use or abuse was a factor contributing to the custody and medical problems identified in each case.

One might ask: "But wouldn't any ordinary Australian be able to expect to have a drink without coding up in custody or dying in custody?". But, Aboriginal Australians are placed in custody up to twenty times more than the average Australian. Not just racism and the traditional Australian pattern of incarcerating

Aborigines in the many different kinds of institutions we have filled since 1788 are responsible for this. The peculiarly Australian approach to alcohol, and the way in which Aboriginal people have adapted to alcohol use, are explained below in the Northern Territory context as a powerful factor in Aboriginal custody rates and the deaths in custody from 1980 to 1989.

1.1. Grog - it's A killer

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."

Doug Abbott, Grog Forum 1989.

When the Aboriginal Issues Unit for the Northern Territory began its work in early July 1989, the Head of the Unit approached a number of organisations in Alice Springs, including Tangentyere Council staff, the Aboriginal Alcoholics Anonymous group and Central Australian Aboriginal Congress to ask them to present their views on the underlying issues leading to the high Aboriginal rate of custody and sometimes to Aboriginal deaths in custody.

Much of the content of discussions related directly to alcohol problems and how to solve them.

After considering some of the initial views put by staff of Tangentyere Council, members of the Aboriginal Alcoholics Anonymous and others, the Aboriginal Issues Unit decided to focus attention on alcohol abuse as a major area of consultation.

Local experience suggests that many Aboriginal people are indeed sick of talking about grog. Invitations to merely discuss the "grog problem" are considered an inadequate response. Many people want to act to develop strategies to *"Beat the Grog".*

Representatives of Central Australian Aboriginal Congress and Tangentyere Council pointed out that they had been attempting to secure funding to convene a Grog Forum since 1986.

Renewed submissions for funding to organise the Forum had not met with favourable responses from the departments approached, despite the high priority accorded to the Grog Forum by the Combined Aboriginal Organisations, and by other organisations in the Alice Springs region.

For the Aboriginal Issuess Unit its involvement in assisting to convene this forum stared the first of what was to be a series of consultations concerning the biggest issue for Aboriginal people in the Northern Territory: *How to Beat the Grog.*

There exists evidence that throughout the Northern Territory many people are heavy users of alcohol. The aim of this chapter is not to present a summary of this existing information on alcohol abuse. It aims rather to present an overview of Aboriginal peoples' struggles to cope with, and overcome grog.

- A Tangentyere study of Aboriginal death records in Alice 'Springs
- from 1974 to 1988 indicates that about half of town camp deaths during the period were due to alcohol related disease, accident or violence.
- Nearly one in 6 (16 per cent) town camp deaths during that period
- were from fights and murders. Among women who bear the brunt of alcohol fuelled domestic violence, the rate was almost one in four (23 per cent), nearly double that for men.
- Alice Spring town campers die at a rate roughly three times that of the Territory population as a whole (which already is higher than the national rate) and one and haft to two times the rate for all Central Australian Aborigines.
- (What Everybody Knows About Alice. (Lyon, 1990: 1, Tangentyere Council)

II

1.2. The Way Our People Drink — We Need Rules

Might be good for the white people because I understand that they started drinking long ago

before generation born and grow and see that situation. White people they understand they killing by this alcohol. They said okay, alright, we got to be careful now, and white people they might be good people and maybe other black people understand that alcoholism situation is bad, it's killing all the people, not only Aboriginal people but all the nation.

Roy Marika, Yirrkala.

In many parts of the Northern Territory drinking and getting drunk are part of the local culture for black and white alike. Any examination of Aboriginal alcohol abuse must be set within this context. This context is correctly identified when it is recognised that European domination of recent cultural, economic and legislative developments have led to easy access, heavy use and a drinking ethos in which Aboriginal people consume alcohol.

In this context people say they now have the

right to drink ... whites smuggled it out to blacks at Wauchope ... that's how they started to drink

(Discussion at Munji Maria)

However, in the words of Aboriginal people who spoke to the Aboriginal Issues Unit, Aboriginal people do not drink socially: when they drink, they drink to get drunk: "fall down drunk". Any and all alcohol will be consumed in one "hinge".

Alcohol is integrated into the economic system of reciprocity and reflects the Anglo Australian pub culture of "shouting", as much as it does traditional values:

We learned from whites ... first we got shout from whitefella ... took it home to family to share it ... Today they are all drinkers so they share it, they can't (don't) offer to non-drinkers (they are now) grog friends.

(Rockhampton women)

We shout each other ... Yaps don't think that way, to save up money ... within twenty minutes, half hour all 'money is gone."

(Discussion at Mangarlawurru)

In the same way as we got used to alcohol, we got used to white fella food and everything.

(Alekerange women)

It is widely believed that non-Aborigines drink in a different way:

White fells drinking is reasonable. (Tennant Creek discussion)

Whites drink in bars, homes, after food, in good houses, good everything ... Aboriginal people don't have anything, we live outside, in dump .

(Alekerange women)

Some drinkers draw favourable parallels between their drinking patterns and non-Aboriginal people:

We come home like white fellas ... we have house, so it is alright.

(Discussion at Maria Maria)

In the Tennant Creek area, a researcher working for the Aboriginal Issues Unit (Stotz 1989) noted that:

A drinking group forms and reforms around a 'captain', the person who at the time has the money

and carries the grog. The group members protect the captain and prevent people from joining. The reasons for exclusion are failure to reciprocate: "We never see your money or grog."

The behaviour of heavy drinkers was described:

There is most definitely emerging a set of drinking practices that are aimed at controlling 'sickness' among drinkers. Wycliffe Camp drinkers drink beer only because beer "makes you eat", contrary to the '5 litre bummer' or 'moselle' as wine is called which destroys the appetite for food and which "makes you shake".

So, in order to stop the DTs, drinkers regularly leave some grog for when they get up in the morning. This measure allegedly also stops hang-over symptoms. Some assure me they do eat after that first 'shot' but binge drinkers go without food for up to 3 days. "They come back hungry, ask for food, and some get locked up hungry in order to obtain food .... they fight their wives, mothers".

1.2.1 Grog uses family and community money

Spending family resources to the detriment of others — to buy and distribute grog — is viewed as 'wrong'. Masking this distribution in terms of traditional obligations is viewed as questionable and an attempt to excuse lack of attention to other obligations. Recent studies carried out for the Northern Land Council (Williams 1990) suggest that Aboriginal people in the Northern Territory have Third World incomes, which dramatises the scale of spending on alcohol by Aboriginal people, as this account from Yirrkala indicates:

But both Arnhem Club and Walkabout bottle shop doesn't open, until 11. All the money is spent on nganaji (alcohol) before Woolies (food). That's only making more Yolngu buy more nganaji.

You know the man that runs the taxis, he was telling me that sometimes it costs $80 for one carton, and I said how come, cause there is about $30 I think in town. Cause they call the taxi out here that's one way, it costs $25 right, and then back in, they buy the carton for $30, they are back out again, so they've given him $50 and they give the hotel $30 so that's eighty dollars for one carton. For in and out $50 on taxi and $30 on the carton.

So that's nearly half a pension. One CDEP pay.

So the taxi drivers are helping everybody to get more drank? Mm, yo.

So that's money that's not being spent in the house, food for them and children ...

Yo yo, it's going to the taxi driver.

And the taxi's are always hanging around waiting?

Nawi, homelands ..... taxi, Dhalinbuy, $160

And the taxi's go to the homelands?

Yo. They call on the radio to call a taxi to do shopping when the helicopter breaks down.

(Discussion at Yirrkala)

This drain on family and community resources hits our people heavily, as these comments from Alice Springs suggest:

Drunks get all the money, what about the community and families?

In town we live in the middle of it. The few drinkers use up all of our resources.

(Discussion at Alice Springs)

Traditional family structures complicate the issue. It is very difficult for families to "enforce" non-drinking behaviour in a family member, despite the damage that is being caused to the non-drinkers:

What happens usually if a person is drinking they asking their wives or family to go and buy grog, and then they come back drunk and flog the wife and the kids, next day wife has got a black eye, and he's got a headache, so the wife gives him panadol and makes sure he's alright. So what's happening is that the family is helping that person become an alcoholic, helping him 'cause when he comes back drunk they'll put him to bed, they'll look after him, so you've got the dependent and the family is supporting the dependent.

Finally, there is a clear perception among our people that they do not benefit from this grog economy. The profits accrue to the grog distributors and owners of the outlets:

Yeah, because my understanding, how can we stop alcohol people they selling, might be that in law, legal already, you know law that's established all around Australia, alcoholics in business, they run, they looking for the money, they making business, they making money.

The transactions by retailers and hawkers in the Northern Territory in respect of Aboriginal social security cheques are accomplices in the grog trade and its drain on family and community resources. Some retailers, including licensed alcohol take-away outlets and hawkers, are known to "book up" or indebt Aboriginal customers for hundreds of dollars and then have them sign over their social security cheques so that they are posted directly to retailers' mall boxes. There are no public auditing and accounting of this Federal money nor it would seem any Federal investigation of these schemes which must surely amount to coercion.

Aboriginal people are afraid to make complaints to the Department of Social Security for fear that these ventures might refuse to cash their cheques and sell them essential food items. These are often the only way for Aboriginal people to cash their cheques and obtain food, especially in remote areas. Many retailers, licensed alcohol outlets and grog runners in the transport industry take the food out of children's mouths every week by buying and distributing alcohol, apparently without compunction. Entire weekly, fortnightly and even monthly family incomes are extracted in any one transaction in the grog economy.

RECOMMENDATION 1.1: There should be an amendment to the Social Security Act to prevent cheques from being mailed to and cashed by alcohol outlets.

RECOMMENDATION 1.2: That schemes such as Tangentyere's food coupon scheme, which allows people to bank with Tangentyere's bank branch but withdraw their savings only as food coupons and thereby avoid being coerced into buying alcohol, be supported and extended into other Aboriginal communities particularly into community stores by ATSIC and other Aboriginal organisations.

1.2.2 Grog is a white poison and we have no rules to deal with it

Alcohol is but one aspect of the arrival of non-Aboriginal people, yet there is a clear perception among our people that its effects are the most devastating. The introduction of alcohol is seen as a deliberate component of the invasion of traditional lands and the destruction of traditional culture and Law:

The Balanda people are poisoning the people alright, to destroy the Yolngu people, to kill all the people, they selling too much grog, after they selling too much grog and drunk, they are breaking our own culture okay. They are breaking our own culture because the Balanda people are giving a lot of that rubbish thing you know. Are they against our culture?

(Discussion at Yirrkala)

The effects of alcohol !rove physical as well as cultural dimensions:

I went to Births, Deaths and Marriages to see how ninny of our people had died since 1976, and that list was pages long, friends, relatives, drinking mates. Dying from strokes, cancer. I knew they all died from grog. I cried. We need to know why people are dying from alcohol-related diseases.

(Discussion at Alice Springs)

A researcher working for the Aboriginal Issues Unit asked many of our people "You have no law for that grog? Is this why you cannot make people stop drinking?". The reply to the question was always unambiguously "Yes, this is right." Yet, non-Aboriginal authorities have been entirely unsuccessful in creating "new rules". "Lessons" have not been available in or out of jail:

> **Aboriginal people have never learnt to drink grog. Should have taught them in the Jail while they in the jail, to give them a lessons, right, in the beginning when the pub been built at Nhulunbuy, right, I didn't see any lessons about alcoholic lessons, to taught to all the Yolngu people how to drink, how to behave, how to he drunk, how much they can drink, alright, they only taught them by the Balanda, buy the carton of beer, and a bottle of beer, and drink, carrying on the road, and Aboriginal people been seeing how the Balanda being buying the grog, carton or bottle or how much they been drink, the people been learning and they doing the same action as a Balanda. But in the beginning they never been taught this, nothing in the class, in Nhulunbuy. But whose the fault, Aboriginal people or Balanda people, who lead the way — Yolngu or Balanda, it could be Balanda lead the right, and not giving the lessons to the people, he have to when he come to the drink, "Drink, think of your family, your family, right." They never say that, except that person who been locked, and sitting in the yard, or accident in the road, and everyone can talk.**

The "grog culture" is a new one, and one that has thus far not been able to be dealt with under traditional Law. Many of our people acknowledge the need for

> **Now's the time to get talking about it again — we need to effectively stop drunks ruining our lives. We've got to learn how to get hard with our own families. Start making rules.**

The need for Aboriginal laws to be developed to control the crisis situation in communities, camps and in town has been emphasised:

> **Communities have to make laws. People can kill people and get away with it(because they are drunk). There are rules made by that community. People have to live by rules. When you drink, where are the rules? Nothing.**

Aboriginal people spoken to by the Aboriginal Issues Unit acknowledged the failure of Aboriginal Law to deal with substance abuse, as well as a variety of "solutions" imposed by non-Aboriginal authorities. As well as the urgent need for resources for anti-grog and petrol sniffing to be placed in the hands of Aboriginal-controlled agencies, the "new rules" have to be developed by Aboriginal people themselves:

> **Why can't we have a new version of traditional law? Adopt new l0 Commandments of Aboriginal Way — simple to understand but effective about real problems. Town camps should have their own security committees.**

The Tangentyere Social Behaviour Project addresses this problem. It is discussed in Chapter 2.

1.2.3 New styles of violence have developed from grog We never violent people. We real peace-loving people — when we drinking it's different story. It's real bad.

Traditionally or by Law, people are only allowed to aim for knees, arms, shoulders and the top of the head. As blows from a nullah nullah are blocked off with another nullah nullah, few injuries occur. However, when one receives a blow or when blood appears from a hit, the fight stops with the following words from the non-injured party: "You can hit me now." (Alekerange women).

The introduction of alcohol and other substance abuse has dramatically changed the style and intensity of violence. As with other areas in Australia, Northern Territory Aboriginal people have become subject to more violence than any other group in the country.

The kinds of weapons used have changed, and severe injuries and death are not uncommon:

What sort of injuries?

Head injuries, broken arm, accident and when they fight with white people's weapon, like knife, gun, especially knife and gun. Climb the electric pole when they're drunk.

Where do they learn that from, climbing the electric pole?

Maybe video. Movies.

You think people are learning things from videos?

Yeah, mostly videos. Alcohol is the main problem.

What sort of videos do you reckon they watch here?

Some silly videos like Rambo, punk. They can do silly things with grog. Grog is the main problem.

(Discussion with Tiwi people)

We had a fight the other day at Mt Nancy. Woman stabbed in chest and arms with knife — had to get ambulance — the blood is still there — my kids have to walk past it.

The effects on social and family life are devastating:

Jealousy is a cause ... about women, cars, friends, house, grog and money ... especially when gambling and drinking at the same time. A gambler can't walk away with the win; if there is grog and gambling, there is always a fight. (Homemakers, Tennant Creek)

At Alekerange only husband hits wife (when drunk); no other man can hit a woman ...

(Alekerange women)

According to a doctor spoken to at Tennant Creek Hospital:

Men mostly cause injuries with knives, broken bottles, fists; nullah nullah and stick injuries are mostly inflicted by women. Male violence against women is of major concern.

Unacceptable violence committed outside the Aboriginal rules for fighting is mainly the province of men. Women, as pointed out above, partly because so few of them drink any alcohol at all and partly because of the nature of Aboriginal women's Law, continue to fight according to traditional rules.

Such endemic violence among drinkers is of particular concern for our people who are being held in custody. As noted elsewhere in this Submission, the combination of heavy alcohol consumption and injuries — especially head injuries — can be a lethal combination if there is inadequate supervision by custodial officers:

Male violence is bad in Tennant Creek, prisoners should regularly be checked up. (Homemakers, Tennant Creek)

1.2.4 Culture is fading away.

My interests lie in children and young people. What kind of future is our kids going to have? Little kids starving. They got another 40-50 years to go. They going to battle with this problem all the way through. But that drunk has got kids. They starving — can't be good student. All them old people, they were proud people. They spoke with authority. That slowly drifting away.

Many people are concerned that the impact of European culture, especially the disrespect that being under the influence of alcohol manifests will destroy Aboriginal culture.

In discussions children and young people were described as being in two worlds and losing culture.

Culture fading away slowly. So many people think they're white these **days. Especially young people.**

Yeah, culture broken down. Yo, they running away from ceremony, because of nganaji [grog]. Young children, school age, they got to learn their culture. But middle age boy and girl they want to run away to the parks, they come back really drunk. Fussing about you know in the ceremony, they fighting, and talking wrong time, too fussy.

When they sober, like we today, we never be break up culture. When that happening, drinking business, they break and kick the culture. When people are making ceremony you know, then they come in and disturbing our ceremony and culture.

So they're not worrying about their cultural things but only nganaji.

Yo, yo.

But if they were sober, they would have respect?

Respect yo yo. Only when they are drinking. Young people speaking bad words, swearing Balanda words at the old men. They know all the Balanda swear words when they are drunk.

The situation created by excessive drinking creates young people who have not been taught to respect Aboriginal Law, or who move away from the Law that might form a structure for their behaviour when in they are on their own communities and sober, to a situation where they are outside the "Law".

However, the young are not necessarily blamed for this lack of respect, and in many cases it is acknowledged that children's role models — the parents — are also neglecting their duties towards the family and the Law:

Parents are too slack or drunk, can't get organised to get their kids to school.

The family relationship is our strongest tie, with our kids. Right from the start he learns from the example we set. Maybe the women could set the example for the children, if 80 per cent don't drink.

1.2.5 Alcohol, health, and deaths in custody

In August 1989, the Northern Territory Aboriginal Issues Unit organised a conference in conjunction with other Aboriginal organisations to allow discussion of alcohol as an underlying issue in Aboriginal custody issues amongst a group of Central Australian representatives. A workshop, *Why are Aboriginal people dying in jail?* revealed that Aboriginal people initially believed that police are responsible for the deaths in custody.

Initial introduction of the topic of Aboriginal deaths in custody at this workshop created murmurings and statements of resentment from the group. *"We all know who does it," one* woman said. It was held that police brutality was and is one of the underlying causes. Other comments made included:

The coppers will stop killing people when they know someone's watching them.

Some people reckon when they get picked up they don't go straight to the cells. They drive about town for an hour in the back of the paddy-wagon. A middle-aged man who's been drinking for 10 years, in the back ... could develop symptoms ... die.

When I smashed into police car — threatened not so subtly that I would be a possible death in custody. They told me I was a top candidate for the Bicentenary.

As the discussion continued more responses about contributing factors emerged. Alcohol increases problems (health problems).

One of cases at Katherine police cell. Guy from Alekerange died of withdrawal.

Police should know how to look for medical problems — to know to call doctor — put that with procedures.

Police should recognise alcoholism as different to health problems.

Most people commit crimes go to gaol. Always people who are drunk. They get depressed — hang themselves.

Need to pay attention to kids in remand centres — they are dying too — they have no support systems and preventative programs — they will be in the next generation of deaths in custody.

One response from an Aboriginal man, an alcohol worker, pointed to the main issues in many Aboriginal people's eyes: chronic unemployment and the absence of useful occupation resulting in alcohol abuse. He said:

We need a bus to pick up drinkers who want to stop. We need jobs. That's what we're doing at Tangentyere there --trying to give them jobs.

Aboriginal Issues Unit staff explained that 95 per cent of Aboriginal deaths in custody were males. It was explained that the types of "natural causes" of deaths in custody had been described as: heart disease, respiratory disease, cancer, infectious — diseases, multiple diseases, accidents — including alcohol.

It was pointed out by one person that:

Those people who die of lifestyle diseases, those develop over a period of time.

Another person said:

Alcohol increases health problems

It is clear that, while suspicions of police complicity in deaths in custody are widely and strongly felt, there is a growing recognition of factors contributing to the deaths, especially those relating to alcohol consumption and other health problems.

1.3 Lack of Appropriate Services for Aboriginal People

Can go anywhere you want to get a drink, but where do you go to get off the grog?

Alcohol services are very limited, insofar as they provide adequate access to Aboriginal people. There are three sobering up shelters, and only two rehabilitation centres in the Northern Territory. Services have actually decreased since 1986. As is explained in Chapter 3, there is a strong feeling that detention and custody are not the answers:

Throw them in gaol — that's no solution.

Shouldn't you get someone to counsel them rather than policeman?

Should be service to take drunks from here to rehabilitation place — not just put some people in there [sobering-up shelter] every night.

(Discussions in Alice Springs)

Previous Aboriginal attempts to develop appropriate facilities for people on the grog have been hamstrung by a lack of support from funding bodies:

Dry-out shelter in Alice Springs ... Congress Farm closed down because dry-out shelter didn't get started ... buggerised around for so long that Congress Farm ended up closing down.

Various proposals — which many believe would be appropriate — and more importantly, which many of our people believe would work, have indeed been actively opposed by Government. For example, the Social Clubs in Alice Springs have met with at best grudging and half-hearted support from the Northern

Territory government, and at worst, open hostility. The Social Club question is considered more fully in section 1.6.2 below.

RECOMMENDATION 1.3: That the Commonwealth and Northern Territory Governments provide the funding for alcohol rehabilitation and counselling services as a matter of urgency in Central Australia and in other regions of the Northern Territory where none presently exist

1.3.1 Uncoordinated policies and lack of support for Aboriginal initiatives

> **The process the government uses is what we're talking about. The process should come back down to Aboriginal community organisations rather than just come and talk to all those other services [non-Aboriginal services]. Those people . . . in Drug and Alcohol Advisory Council — how many Aboriginal people were at that Drug and Alcohol Advisory Committee meeting?"**

(Discussion in Alice Springs)

Participants stressed that current substance abuse policies were inaccessible to them and their representatives. There was an acknowledgment that this situation was partially the result of the division of areas of responsibility between funding bodies and departments, for example, Department of Aboriginal Affairs being responsible for substance abuse, Health Department for other health services in the Northern Territory, meant that many services fall 'between the cracks'. This was viewed as unacceptable.

Most (though not all) of the strategies which have been used in an attempt to confront the grog issue in a positive way have been initiated and carried out and through by the Aboriginal community. This problem is illustrated by the words of a worker at the Central Australian Aboriginal Congress (an Aboriginal-controlled health body):

> **The difficulty in dealing with various agencies, and the lack of understanding shown by them, was highlighted recently at a meeting called by Department of Aboriginal Affairs in Alice Springs. Central Office had recently expressed concern that there had been little activity in Alice Springs in the alcohol and drug field since the closure of the Congress Rehabilitation Farm [the Congress Farm shut after the Department of Aboriginal Affairs withdrew its funding in 1986]. The Director of Congress pointed out this organisation had recently submitted five projects related to alcohol abuse. Two had been rejected and there had been no response on the other three.**

Similarly, the prioritised allocation of government funding to departmental and even private initiatives, as opposed to Aboriginal community-based proposals, was questioned:

> **Congress wrote to Department of Aboriginal Affairs asking for information regarding HALT [Healthy Aboriginal Lifestyle Team], its program, etc. Department of Aboriginal Affairs took 7 months to reply. Now there's to be a meeting. They're a private company — 3 workers — $400,000 per annum (or more). They work with petrol sniffers. Sit down and talk to people about their lives.**

> **Therefore if we call ourselves 'The Helping Aboriginal Lifestyle Unit' or something similar, we can get money from the relevant departments for improving Aboriginal people's health.**

A central regional overview of 1988-89 funding to alcohol programs in the Northern Territory shows that of $464,000 allocated by Department of Aboriginal Affairs, only $40,000 — less than 10 per cent — went to Aboriginal organisations.

To Aboriginal organisations, this suggests that Aboriginal initiatives are viewed as less legitimate than the initiatives of the non-Aboriginal population:

We are sick of talking about these things and little or nothing being done. We have been saying these things for years. Aboriginal people seem to be the lowest priority and this is not good enough. We want action.

Aboriginal organisations feel there is need for Aboriginal solutions to be developed and to be supported by government with funding and resource commitments.. They question their available access to instruments of policy-making at a regional, Territory and national level.

This is further exacerbated by poor Aboriginal representation on policy-making bodies. On occasions it had been suggested that such representation as exists is mere tokenism. Specific examples cited in this context were the Alice Springs Town Council, the Liquor Commission, and the Drag and Alcohol Advisory Committee:

We need 2 or three on the Liquor Commission — not one. We get railroaded

I was on the Drug and Alcohol Advisory Committee I was the only Aborigine and I had to fight to be heard, It was one to eleven.

The lack of representation of Aboriginal people on mainstream bodies at a regional, Territory and national level directly results in the creation of inappropriate and inadequate polices relating to the situation of Aboriginal people.

Further, there is inadequate communication between government departments and agencies, and Aboriginal people and their organisations. Throughout the Northern Territory there is poor knowledge of governmental priorities or services and little knowledge of ways in which Aboriginal people might make use of these services. With respect to alcohol abuse, and consequent family breakdown, this has meant government departments are unaware of problems. For example, while "split cheques" are available, and theoretically allow for incomes independent of a husband who drinks, if the man fails to lodge his forms, the cheque is stopped.

This has led to a belief that for their own communities they "do all the work' '. At a local level this may be true. This places a great deal of stress on Aboriginal people working (paid or unpaid) in the substance abuse area:

We live in it 24 hours a day.

We gotta look at whole thing — why they drink and when they drink — we gotta do something about it — working, working — burn-out, finish. Get no support. Seen a little bit of help come. They've been doing it for years with no support. Need a support structure for alcohol.

The Statement of the "Grog: Where to Now?" Forum reproduced in section 1.8.2 sets out the agreed view of people at that meeting on how policies and programmes could be coordinated and be made to work.

1.4. Unemployment and Grog

Lack of education and training, discrimination against Aboriginal people in employment and chronic unemployment were seen by most Aboriginal people spoken to by the Aboriginal Issues Unit as contributing to poor Aboriginal self-esteem, lack of opportunity and the lifestyle of the grog culture:

Aboriginals frustrated. Just go to pub — get a drink — pub open — got money — grog — go down the creek.

For adult males, whose skill levels allow only limited or seasonal access to employment, lack of permanent work coupled with easy access to alcohol is often cited as leading to heavy grog consumption. The eviction of stockworkers (see section 1.0 above) from stations coincided with legal access to alcohol, and has thus established a pattern of drinking over a quarter of a century:

Concern about jobs — people are bored and that why they are drinking. I was a stockman. Hard work — but got posted back to town. Hard to get work. The grog is killing culture, people, language.

Stock-work days are over. All these people are in town now. Stations don't want them. Council used to employ a lot but now to all machines. Never see blacks working in stores. Where do kids work when they come out of school?

Can't help old people with jobs but need a rehabilitation program to get off grog. They were in cattle industry when at it's peak but now no work. Unemployable. They need a rehabilitation program.

Employment was seen by many as a means of improving economic and social situations and to get people 'off the grog'.

Lot of people say why we're drinking is because we've got no jobs.

We use Community Development Employment Project at Ipolera to get started on projects. But now we want to get away from that and go independent. Camels through valleys for tourists, etc. People stopped their big drinking. We're very strict — Ipolera is the best I've seen.

(Discussion at Ipolera)

And in many cases work activity *in itself is* seen as a way of ensuring people get off- and stay off- the grog as well as remaining in their home communities:

I work with people. Without jobs they just go back home, think about grog. When they work they keep their mind on the grog. So as people come into town they just go for grog. Even part-time work pushes them to stay at community full-time. Not much support for employment.

Now don't drink as much. Mind in control of worker — need something to do. Before they just go to pub — kids see that — get bored and get into petrol — get out of control.

In a broader sense, employment, especially for younger community members, is part of broader community development strategies whereby alcohol consumption may be brought under control. The Council, at Gunbalanya (Oenpelli) plans range from youth activities through to training and employment, despite frustrations over access to Government funding:

We going to get TV. If government won't fund us — let's do it ourselves. We can get donations from club and council. Youth, Sports and Recreation say they've got funding — and then when you ask for it — they send you to someone else. Let's do it ourselves. That's it with these government departments — they play tricks.

We need something like Community Development Employment Project — get everybody working. Let the young fellas find out what skills they've got. We've got a brick-making machine. *Injalak* — *t*he arts and crafts association — (will maintain our) culture. Lot of stories on that bark — try and hold right price. But try not to sell our own culture. Just that one — you teach young ones.

Employment is not a simple solution to the alcohol problem. In many cases it only provides money to purchase more alcohol and places even greater stress and pressure to drink on those who are employed.

He started his drinking when he started getting paid for that work. His mates used to tell him to go drinking with that money when he got paid .... I thought he would be better off not working if all he was going to do was drink. So I told him to finish that job. None of his mates had jobs. (Evidence to researcher in Case No S)

Work in itself is not viewed as the solution for people with drinking problems, but is perceived as part of a well worked out rehabilitation package:

Those you can't assist getting back into the workforce — dry-out out bush for extended periods — concentrate on the potentially employable — give them Jobs- self-esteem — get 'em off the booze (for 8 hours even).

Land management at Tangentyere ran a pilot work program for blokes who were on grog for 5 years — at least they off for 8 hours.

However, employment opportunities are limited. Community Development Employment Project programs have been suggested by a number of our people as a mechanism for providing employment as part of getting off the grog, but frustrations exist because of the huge backlog in communities applying for Community Development Employment Project:

Gives you both pride and if you work at least 8 hours — no grog. Only the Aboriginal organisations give work. Maybe Community Development Employment Project program.

There's a back-log of Community Development Employment Project — Department of Aboriginal Affairs/Social Security — lot of communities are asking to go on Community Development Employment Project but they are put on a waiting list. They should be priority.

1.5 The Failure Of The Liquor Commission To Stop The Grog

Throughout the Northern Territory, Aboriginal people were highly critical of the Liquor Commission. The Commission was seen to be acting on behalf of businessmen selling grog, and to be deliberately extending the availability of alcohol. The high level of availability of alcohol was seen to reflect Liquor Commission processes and policies. and the profit motive was seen as its overriding principle:

People selling grog — the enterprise people — are the ones getting support from Liquor Commission.

The Liquor Act, and this object to make money, to make more liquor outlets, to flog more of that poison grog to the people. Everybody is just trying to make more and more money from these outlets, and take the money from the people.

The history of trying to limit availability of alcohol, especially in the towns and roadhouses up and down the Smart Highway and out to Uluru dates back at least ten years, with community organisations and legal aid groups making representations to the Commission to oppose new liquor outlets and/or to limit the availability of takeaway alcohol In Alice Springs, there are roughly 70 liquor outlets for a population of only 26,000 people, or one for every 300 people:

These liquor outlets offset the good of what is being done at the Sobering-Up Shelter, and the people have to ask, are we real, are we fair dinkum, are we really trying to do something about the people, or just fool around? What we should be talking about is what we can do.

The reasons why other licensed storekeepers hadn't been opened was because Tangentyere and Aboriginal Legal Aid have put over $100,000 in employing lawyers and other experts to come here and oppose these take-away licences.

These battles have been a burden for Aboriginal organisations:

Attempts to keep the number of licences constant (not to increase them) have severely drained the resources of community organisations.

... these initiatives are being undermined before they even get going [by interests trying to increase access to grog while organisations are attempting strategies to reduce supply and minimum access to grog].

As is stated repeatedly in this Submission, the issue of alcohol is seen as being one of the most fundamental causes of community problems, leading right through to deaths in custody. Yet the Liquor

Commission's policies are seen as being completely antithetical to confronting the issues of alcohol abuse and its tragic consequences. A priest at Wadeye spoke along these lines to the Aboriginal Issues Unit:

> *Until the Liquor Commission stop being political and a bit more principled and take decisions that are really in the interest of communities and stop being seen w be politically activated. ! don't believe that the liquor problem will be seriously addressed.*
>
> *The Liquor Commission makes decisions that are crazy and false. At Port Keats [Wadeye] the pub was shut, and yet people — the irresponsible minority — are allowed to bring beer in there by the plane-load and-truck load and they take it to where they like and destroy the serenity of outstations ... the Liquor Commission may be [acting like this] because they are thinking of the revenue they are getting from the booze I don't know. I believe that those in government have the power to legislate towards an end result not just a legal regulation [but] they are all [behavin in a fashion that is] legalistic and not really not acting better for the community ....*

In July 1990 Tangentyere Council made a submission to the Aboriginal Issues Unit outlining changes to existing laws which should be made and proposing new legislation to reduce the amount of alcohol consumed in the Territory and the serious health and social problems which directly result from that consumption.

The Aboriginal Issues Unit endorses Tangentyere's recommendations, the full text of which are contained in Appendix 4.

Other suggestions were put forward by our people as being possible ways the activities of the Commission can become more responsive to community needs. The first was that there be adequate Aboriginal representation:

> **More Aboriginals on Liquor Commission so we can have some decision-making in applications.**
>
> **... Liquor Commission — we should have a say in how they channel funds.**

The second tack was that the Liquor Commission be involved in providing financial support for substance and alcohol abuse programs as a realistic strategy for recognition of the needs to combat the grog problem. The need for the Commission's policies to reflect public health policy was stressed.

Furthermore, the issue of money collected from tax and excise on alcohol sales, has been raised extensively. There were a number of suggestions — also reflected in the the National Health and Alcohol Policy — that a portion of government revenue be earmarked for anti-grog and rehabilitation strategies. The Northern Territory raises some $9 million a year through taxes on alcohol.

RECOMMENDATION 1.4: Given the widespread dissatisfaction with the composition and policies of the Liquor Commission, and its demonstrable failure to address the issue of alcohol abuse in the Northern Territory among Aboriginal and non-Aboriginal people alike, the Aboriginal Issues Unit recommends that a judicial inquiry be held into the composition, functions and policies of the Liquor Commission with a view to radical reform of the ways in which alcohol is marketed, distributed and sold in the Northern Territory.

1.6 Aboriginal Responses To The Alcohol Problem

The uneven nature of our people's experiences in the Northern Territory is reflected in widely divergent consumption levels, as well as differing responses to the threat posed to Aboriginal society from alcohol and other substance abuse.

These responses have varied, but have mostly relied on formal or informal use of the "dry community" provisions available through the *Liquor Act.* Over 50 communities have made use of these provisions to declare their communities "dry"; others have utilised geographic remoteness and local authority engendered through the outstation movement to seek prohibition of alcohol from their communities.

Nevertheless, as will be seen by the following case studies, use of these provisions has resulted in mixed and, at times, contradictory, results.

Over the last decade, a number of organisations have been attempting to develop a range of possible solutions to cope with the differing circumstances faced by different groups. These approaches are summarised by the most advanced statement of this approach in a strategy proposed by Alice Springs' Tangentyere Council.

1.6.1 Who drinks, how much, when and where?

- Fewer Aborigines than non-Aborigines are drinkers: nearly 60 per cent of our people do not drink, compared to about 25 per cent of non-Aboriginal people.
- Most Aboriginal women do not drink (79.9 per cent), while over two-thirds of men do drink (64.7 per cent).
- Those of us who do drink, drink at dangerous levels.
- Alcohol consumption in Alice Springs was nearly 40 percent higher than for Territorians generally, and nearly two-and-a-half times the Australian average.

Recent research confirms the views of Aboriginal people that Aboriginal drinking patterns are different from those of the non-Aboriginal population. Researchers Watson, Fleming and Alexander (1988) conducted a survey of drug use patterns in Northern Territory Aboriginal Communities in 1986 and 1987 the results of which showed that, despite popular misconceptions, fewer Aborigines than non-Aborigines are drinkers: nearly 60 per cent of our people do not drink, compared to about 25 per cent of non-Aboriginal people.

Nevertheless, those of our people who do drink, axe far more likely to have serious problems. That is, those of us who do drink, drink at dangerous levels.

However, the results of the researchers' work shows that drinking patterns are not even: alcohol consumption depends on:

location, community type, liquor status and the size and sex distribution of the drinking population.

On larger Aboriginal communities nearly half the people drink grog (43 per cent), but in communities with canteens 70 per cent drink grog. Outstations have lowest proportion of drinkers — 39 per cent in open outstations, 26 per cent in dry outstations. Only 23 per cent of people on cattle stations drink.

More Aboriginal people consumed liquor in the Katherine/Centre regions than in the Top End, with the exception of town camps. The majority of drinkers lived in town camps, while the majority of abstainers lived on cattle stations or outstations. More people living in communities with an open liquor status or a club drank alcohol compared with communities having a permit system or complete restriction on alcohol consumption. The highest percentage of male drinkers (83.6 per cent) was found in communities which had a drinking club, and the highest percentage of female drinkers was found in open communities.

Most Aboriginal women did not drink (79.9 per cent), while over two-thirds of men did drink (64.7 per cent).

Throughout the Northern Territory, most Aboriginal drinkers (97.5 per cent) consumed full strength beer, over half (58.6 per cent) also drank wine, and about one-third (31.7 per cent) also drank spirits. It is of concern that 1.5 per cent of drinkers reported drinking methylated spirits.

Six different patterns of frequency of drinking were found:

- *About one quarter of drinkers drank daily or on most days of the week.*

- *A small number drank one to three days each week.*
- *Another group of drinkers drank liquor for a few days each fortnight associated with receiving money in the form of salary or social security.*
- *Another pattern of drinking was to consume alcohol two or four days each month — a result of either alcohol being available during this period or the person choosing to drink only on pay/pension day. "Session" drinking was reported most often by people who lived in communities with restricted liquor access or on isolated cattle station or outstations. These people drank when they had the opportunity to drink, such as when visiting towns or unrestricted communities or communities with clubs, either occasionally.*

The recent report What everybody knows about Alice (June 1990) by Pamela Lyon for Tangentyere Council was released too late for us to be able to incorporate much of the important information it contains in our report. This report presents new data and research, including the results of a survey conducted with the Menzies School of Health Research. The report must be studied by all concerned in the area of alcohol abuse and its impact on society.

1.6.2 Social Clubs and canteens

The "dry" provisions of the *Liquor Act* have enabled a number of communities to establish exclusive drinking facilities, that is, liquor prohibitions apply except via the local canteen or club. These clubs have met with mixed success, and in many cases have done little to control over-use of alcohol, as such communities constitute localities where consumption is at its highest, especially among men (see section 1.6. 1 above).

These clubs regulate alcohol consumption through a combination of restricted opening hours and limits (such as "can limits") on consumption.

Proposals to increase available consumption have often met with opposition. Women at Nguiu (Bathurst Island), successfully opposed increased consumption at the Club there after the murder of a member of that community through a grog-related fight (1989). The children ate also opposed to alcohol in their community and wrote letters objecting to the proposed extension of hours of the club.

More dramatically, non-drinkers at Wadeye united to physically destroy the club there as a protest against alcohol consumption (1989). This action, was subsequently — perhaps surprisingly — partially endorsed by a Northern Territory magistrate.

Other clubs have operated with a fair degree of success, although as the following example shows, the success has been uneven, and often achieved only after a considerable time.

RECOMMENDATION 1.5: That the "dry" area provisions of the Liquor Act remain in place and that the Liquor Commission provide Aboriginal communities and organisations in the Northern Territory with more information about how these provisions work and assist more communities Aboriginal town camps to apply for dry status if they wish through full consultation.

The debate on how to restrict access to alcohol and prevent alcohol abuse is divided between those who support total prohibition, mainly women, and those who support canteens or social clubs with controls and limits, mainly men. Each of these strategies in isolation seem not to be successful.

RECOMMENDATION 1.6: In order to enable Aboriginal people to make informed decisions on how to overcome alcohol abuse in their own communities, the Drug and Alcohol Bureau of the Northern Territory Department of Health and Community Services should work with the Aboriginal and Torres Strait Islander Commission, the Land Councils, Aboriginal controlled-service organisations and community councils and associations to develop educational programmes and community development strategies to inform Aboriginal people of the range of opinion, strategies and outcomes of schemes (operational and proposed) designed. to reduce alcohol abuse.

1.6.2.1 Gunbalanya Social Club

An uncontrolled system of grog distribution and consumption near Gunbalanya (then Oenpelli) in the 1970s led to the establishment of the Gunbalanya Sports and Social Club. as is explained by one of the women from Gunbalanya:

> **We used to get grog before social club from Border Store. It was unlimited. The drinking was bad then. Few of them drowned. The council had a meeting about the Border Store We went to court in Darwin to get its licence taken away from it. We got funding from Aboriginal Development Commission for club in 1978 or 1979. The club has had its ups and downs — but the Council has mastered it now. Bringing it here from Border Store, the real main reason was so we could control it and look after our drunken mob and sober mob.**

Now, importation of grog is prohibited, with alcohol only available through the Club, with take-away alcohol only available to those with permits.

The police at Gunbalanya work with the Gunbalanya Social Club to ensure that the Club rules are enforced, The club bans people who commit misdemeanours for various periods of time. The club workers write offenders names on a public blackboard and the dates of their ban periods. The police independently write offenders names on the blackboard if they have committed alcohol-related breaches outside the club after it closes. This arrangement is supported by the

There is disagreement from the women however that the lunch-time session is appropriate. Workers, especially young workers, drink too much at the lunch time session to be able to work properly in the afternoon. The men argue that at least they don't drive to Jabiru anymore and simply fail to return at all.

> **Woman: At first used to be only evening sessions — that was much better then. Now there is a lunch-time session.**
>
> Man: **Another way of looking at it — used to-be only afternoon then they went to Jabiru in the morning and lunch-time and come back drunk. That's why we changed it and opened it at lunch-time. They still go if they got vehicle — but we got no vehicle — we stay here.**

The Town Clerk, a Thursday Island man, added:

> **This morning session really gets us down because a lot of the workers are drunk after lunch — they know it's only opened for I hour.**

There are provisions for some take-away beer on Saturdays, though the take-away rules, and indeed the rules of consumption on the premises have been adapted over the years. Initiatives such as meals have also been introduced:

> **Twelve cans is the limit on Saturday for take-away for members — no trouble. Each person has to apply for take-away permit. The council considers it and says "yes" or "no" — but final decision is by Liquor Commission. Good bloke — council says yes. Bad bloke — Council says no. It works well. We used to allow a whole carton but we stopped --fighting and too much trouble. We stopped six pack and carton at lunch-time. The only take-away now is twelve cans on Saturday. The council thinks that is a good system. When you go to bar you only allowed to buy 2 cans. We used to allow 6 cans. We cut it down — or you're allowed to buy 1 jug and I can. You have to be a member — fee $25 for a new member — and then $20 a year. People who have been drinking outside — say at Jabiru — are not allowed in club.**

> **Meals served there. A new take-away — it's not properly open yet — only sell pies and hot dogs. Meals — stew, chicken, pies, hot dogs — stew, etc. bought from service station and sold at club.**

The Gunbalanya Club has been investigated by groups from as far away as Alice Springs to find out what bow the Gunbalanya model might be adapted for other circumstances

The Gunbalanya "model" is being considered by some men who reside at Minjilang (Croker Island) for example:

> **People in the bush don't know how to drink in moderation. They sit down and drink everything. They don't know how to keep it for later. It will take education for people to learn how to drink. On Croker (Island), that's a dry community, but it's the wettest dry community I've ever seen.**
>
> **We're trying to set up a canteen so that workers can have 6 cans a night and non-workers 4 cans a night.**

1.6.2.2 Drinking at Maningrida

Maningrida, a remote community on the north Arnhem Land coast is not "dry" as such: permit holders are allowed to import alcohol once every two weeks with the barge that rims other supplies into the community. It was not always such, as a non-Aboriginal worker at Bawaninga Outstation Resource Centre recounts:

> *At first grog was unrestricted--plane-loads of rum, whiskey- the grog problem is better now. I've seen some bad days when whole communities was wiped out. In 1977-1978 there was a period when it was totally unrestricted for charters- people could order as much as they could afford. Fights involving 20 people in one street and fights everywhere. That was when Council first banned charters. Charters have never really got off the ground since. People cheated so much when permit system came in --flying it in. Now only comes in by barge. People used to order 10, 20, 30 cartons on barge — everyone used to chuck in. One man would have 20 cartons — a lot of it was for countrymen — not just him.*

The system that now operates is that people can order two canons of beer or two casks of wine, or one of each — no bottled alcohol. Permits to import are controlled by the Council, with the Liquor Commission not moving unless there is a recommendation from the Council, although police can revoke a permit if the holder offends. Most of the Council members are drinkers and all are permit holders:

> **Sometimes 400 cartons per barge. Sometimes only 100 or 80. Depends on whether people get their orders in — ordering system inefficient — money disappears.**

Nevertheless "barge night" is notorious:

> **The majority of problems in this community with the police are generated by alcohol or petrol sniffing — substance abuse. Usually it's a really nice quiet place to live — then once a fortnight the barge comes in and causes trouble.**

From discussion with women at Maningrida, most problems occur on barge night, with the Babbarra Women's Centre shelter 'filling up" on the night. In reality, although it is called "barge night". the drinking continues over a period of two to three days. Sometimes the community store shuts for the two days and most non-drinkers hide in their homes or go bush for the duration. Despite this, it is a system that works better than at other places, if only because of the remoteness of Maningrida, and its inaccessibility for much of the year by road:

> *Council can revoke anyone' s permit — and they do revoke them — even Balanda' s — there is a list of quite a few people whose permits have been revoked. There is some that gets in illegally — not that much — only dry season. A lot of anxiety out bush — truck-load of drunks pour into camp. Headache for old people. Safe and quiet in wet season. Our experience is that in the whole of Arnhem Land- the best system there is. In theory, the whole area of Arnhem Land from Oenpelli to Liverpool River, western bank is dry — can transport unopened, but can' t consume...*

People take risks — and law is tough — can lose their truck. People in the bush tend to use Maningrida — like Maningrida people use Darwin — if people want to have a real booze up. Some outstation people come in here on barge nights. Some take it from the barge to their outstations. Of 30 communities — only one (Cadell River) has grog on a regular basis --because it' s large, has access to a vehicle and efficient literate orders and a good road. Most other people don' t.

Although the impact on Maningrida is significant, albeit once a fortnight, the system has provided a buffer for those on outstations:

A lot of people have decided not to drink- not just outstation people and not because they're Christians — those people just decided not to drink. People moved to their country. People tend not to drink on their community in the bush. Maningrida is a much quieter place now. ! hear some Balandas getting upset about barge night — it used to be barge night every night. Now it's just beer too, — not like before. It's just the humbug and arguments that people don' t like.

1.6.2.3 Angurugu — an attempt at prohibition in a larger community

Angurugu is a large Aboriginal community on Groote Eylandt, surrounded on three sides by the GEMCO manganese mine, a few kilometres from Alyangula, the largely white mining township. The Aboriginal population of Groote has the highest imprisonment rate in the world: much of it is directly linked to alcohol abuse and petrol sniffing. After community meetings community leader,

Jambana, imposed a ban on Aboriginal people going to the Alyangula Social Club in an attempt to curb this alcohol abuse:

Jambana . . . He's trying to address the problem of alcohol, and the problem it causes within the community by stopping people drinking here, just simply to make them think about it, and he knows in due course that they'll go back [to authorised club entry to drink alcohol.

Murabuda, an elder at Angturugu, explains the impact of grog on his community:

That's old days, past, but now when the GEMCO's comes in, and they brings a lot of good things and bad things into the community. Mainly I say, my from heart is the grog. I heard about grog in those days but I never been in touch in my mouth, so what it looks like you know, I don't know, they bring a good things and a bad things into community mainly on Groote Eylandt people. And they began to understand what's going on in the world society, you know white and black, and you know gradually the people just you know the drinking because they think they are funny to have those things you know, to make a fun with them, but it's not funny and they have a touch of the grog, it gets a worser, drag them away from the traditional things. And gradually the people just going to just pouring out into the grog you know, just come along, they own will. So the people began to see the two way of world, black and white world. It seem to be it look like me is a stranger, like me you know, the world is like a stranger to me. Wonder what sort of a life is they going to go for you know, just like walking in a forest trees, no map on it, a compass, just gradually just going through the grass, you don't know where you end up, maybe in the gully or in the tip.

The ban has not worked. According to Alan Wright. GEMCO liaison officer, much of the ensuing "soft" crime such as breaking and entering, stealing, car theft and vandalism has resulted from the ban, with young men seeking thrills and stimulants stealing alcohol from non-Aboriginal houses at Alyangula.

This level of crime, particularly the stealing of alcohol from Alyangula houses, creates tensions between the Aboriginal and non-Aboriginal communities on Groote Eylandt. The residents of Alyangula voiced their concerns last year, telling the company and the police to do more. There is a new cell block at the Alyangula Police Station being built, apparently in response to the Harding Report to the Department of Correctional Services.

This case study is another example of bow outright prohibition as a proposed solution to Aboriginal abuse of alcohol does not seem to work. However more questions need to be asked: for instance, does the social and financial cost of soft crime committed by youth, intoxicated by stolen alcohol, including

imprisonment, the financial cost of vandalism and theft, outweigh the social and financial cost of permitting controlled alcohol consumption in a context of teaching moderate drinking by linking it to nutritional and health education and education programs aimed at fulfilling and satisfying family and community life?

An unseen effect of the ban has been that a significant number of Angurugu residents have moved to drink at Nhulunbuy and Yirrkala. Women from Yirrkala

> **What's happened at the moment is they have closed the club at Groote Eylandt, no Yolngu are allowed to drink there as Jambana closed the club to Yolngu.**
>
> **Big mob from Groote here now drinking. So a lot of people from Groote are coming over.**
>
> **Yeah, big mob.**

Thus the action at Angurugu has added to the problems being experienced on another community. Local attempts at solutions, therefore, often seem to be responsible for shifting problems elsewhere, a phenomenon that has been noted elsewhere in the Northern Territory.

1.6.2.4 Bulla Camp — an attempt at prohibition in a smaller community

Bulla Camp is a small community west of Timber Creek just off the Victoria Highway. It is situated in the heart of pastoral country, an area where there is virtually no Aboriginal freehold land, and was established as a community after many local stations evicted workers and their families from the 1960s. The only employment is still in the industry, which is highly seasonal.

About five years ago the community declared itself "dry" through the auspices of the Liquor Commission in an attempt to curb the excessive disruption caused to community life by grog. However, the prohibition has not been fully successful:

> This here is a dry community hey? How long has it been a dry community?
>
> **Five years.**
>
> Has it stopped people from this community drinking?
>
> **I don't think you could say that.**
>
> How come? Do they bring it back to the community?
>
> **Yeah.**
>
> Do they drink it inside the community or outside?
>
> **Most of the problem is outside. They drink outside and come in drunk, that is just the same as you bringing grog in.**

Disruption in the community still occurs. Much of it reflects the time-honoured tradition of the Australian stockmen "blowing" their season's pay at the pub after the work runs out:

> So you are saying the workers, when they come off the season, they get their pay and just go in there and drink it till it's finished?
>
> **No matter how you can look at it, somebody like station manager got a job going now in station. When they have time off they go into a pub and I reckon more better to limit the grog, give it to those people that are working, not too much. When you give them too much when they come home they still not in, behaviour side, lost control.**
>
> **When they get paid wouldn't mind maybe a couple of dollars spent on the beer and that's it. It's no good every day, first day that they go in there with cash and when they come home they have a little bit of money in their pocket and they still go back again.**

It is felt that the publican should hear at least some of the blame:

> **I think our publican should recognise that too the people that are working, why make them people stand up all morning in the pub till they run out of money. Soon as they run out of money the publicans try kick them around. The main problem is why they just can't give them little bit, to the people that drink.**
>
> Before this was a dry area, was there a lot of problems here with grog?
>
> **There been a lot of problems here with grog, that is the reason why we've been try to make it dry area, try to slow the problem down but I think the problem getting more worse and worse. I call it a very big disease, people life and kidneys and livers and brains and heart — you can name it all. Look at some of our alcoholic people now, these days they don't look so healthy like other people that don't drink. They drink too much and they go skinny, like a greyhound dog.**

1.6.2.5 Julalikari Council, Tennant Creek — dry camps in a major town.

In November 1989 the Julalikari and residents at two Tennant Creek camps --Nyikanyinyi and Ngalpa Ngalpa — were declared dry after a meeting with the Liquor Commission. At this stage, it is too early to asses its success or otherwise. Given the success of the Julalikari policing patrols discussed elsewhere in this Report, there is a strong commitment to making it work. As the following discussion shows, the two aims of the bans are to stop drinking by under age people, as well as set an example to the youth through setting an example by limiting adult drinking:

> Total prohibition?
>
> **That might be hard little bit.**
>
> ***That might be hard. There should be some legal heads getting together on how to control grog for Aboriginal people.***
>
> **The biggest problem — all the Aboriginal people find it hard to get young people to have respect — weaker parents — not much control of children. The Council must put up to make these things recognised. This Council is trying to let young people know who they should look up to. It's a new thing, it's a long process to try to get people to understand — white people and black people on grog side.**
>
> ***How to get people to drink little bit. It's just too much. Too much grog.***
>
> **People have to be stricter in stopping underage drinking. As soon as they spot them "Right out they go." "You're underage." They should be harder. I'm very strict on my kids.**
>
> ***Man : Should be old rule — only over 21.***

1.6.3 Grog running

Attempts to establish prohibition on communities and camps has raised the problem of grog running, which is endemic on some communities:

> People were saying today, that everyone is bringing in grog, this is not a dry area anymore.
>
> **Policed for a dry area, should be still a dry area. No not a dry area anymore no. They were stopping them before Christmas, last year, but not now.**
>
> How come?
>
> **Well, how come? Taxi's running four times a day, the taxi, four or five times today, overnight sometime. Even own vehicles, private vehicles or government vehicles carrying or bringing the grog.**
>
> **(Discussion at Yirrkala)**

Many people believe that police are only policing in the European-dominated towns, and are reluctant to concentrate their efforts in enforcing the provisions of *the Liquor Act:*

> **What they are doing is picking up the drunks in town but they are not stopping them bringing nganaji in here.**
>
> **When like I rang the police to report that somebody been brought in grog, Beach Camp, I rang the police, that police answered — could you ring back in about ten minutes time.**
>
> **If they stopped the grog out there (limit) then the kids in here, or the young ones wouldn't get drunk would they.**

However, there may be problems for the police with respect to policing the "dry" provisions (see 3.4.5).

1.6.4 How outstations are used to beat the grog

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 people. 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 educational, often make life unattractive or impossible to maintain. Nevertheless, it is a preferred option for a large proportion of our people in northern Australia.

One of the longest established outstations in Borroloola and Ryan's Bend, was started up as a way of getting away from the problems in town. The escape from grog problems, however, is not wholly possible:

> **There used to be a lot of fighting and killing in Borroloola. They may need laws to stop it. People are moving out of Borroloola to avoid the fighting and killing, and to drink moderately.**
>
> **But it's pretty bad on outstations too, if you have bad young fellas, they get grog and hurt people, you a long way from policeman. I got trouble here with a young fella got rifle running around in the bush yelling, got bad sleep. Then we could be want a policeman here quick too, but we haven't got a radio.**

The old people are scared of the young men who fight with the old people and forcibly take their pension money to buy alcohol.

> **The old people are worried about more alcohol becoming available to Aboriginal people, because even in this area, where there is not much access to alcohol, it causes deaths, injury, and lack of care in daily life towards the person, the family and community.**
>
> **We old people worried about old people getting hurt. Even here with not much grog, they go mad. People get hurt, run over on public roads from people driving drunk. Same thing all over the communities. Can't look after themselves. I been cook my leg when I was drunk. (Discussions with Gordon Lansen, Ryan's Bend)**

Not uncommonly, compromises between "drinking times' and sobriety are reached within small outstation communities. It is a pattern common throughout the Northern territory for people to live most of the time on "dry" outstations, and then head to town for drinking. This is often characterised by binge drinking, and consequent trouble with the police.

Wanyunula outstation neat Borroloola, which was established five years ago, and has a school, has banned alcohol. Any residents who want to drink must do so in Borrooloola, and will be picked up on Monday morning to be returned to the outstation to work. As a consequence of this ban, Dinnie believes that they have no problems in their outstation:

> **They all know that we don't have any drink or trouble out here, they stay in town.**

Dinnie talked about how people are happy in the outstation:

> **· . . they 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.**

The leader of Kulminminya outstation, also in the Borroloola area, sees the anti-grog role of his outstation as being of prime importance:

> **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.**

Powder Punch is a Christian and wants to live away from grog. He used to be a drinker once but gave it away. Some times he has young people who want to get away from grog come and stay out there and bring their families so there are some young people and kids. He takes all the kids to town in the bus for school. A young man that is helping him was on a Community Service Order but has now worked it off. He was having lots of grog problems, but now is good and doesn't want to go back to town. He has remained at the outstation after doing his work order.

Some remote outstations are not formally "dry", in the sense that they have been legally declared as such by the Liquor Commission. A number of these outstations, such as Jimarda neat Maningrida, might be classified as "wet/dry" communities. That is, alcohol is brought in from time to time, but is not available at all times. Charlie Godjuwa from Jimarda explains that his community has avoided the problems of "barge nights" in Maningrida (see section 1.6.2.2 above):

> **That's why — when we from Jimarda — every time when barge comes in or other people from outstations start fighting and arguing with one another — at Jimarda we just sit down and turn the radio on and just listen. They say "This one and this one had a fight." We say "That's their business. Doesn't worry us. We happy here."**
>
> **Most communities and outstations — when we had our general meeting before — some communities said they turned their outstations into dry areas. Because if they bring — take grog out there — they start abusing old people. But in other places like Jimarda, we decided to keep that place wet. What I mean — during Christmas period they can go get couple cartons and drink it there, even New Year's Day — like that, you know. Sometimes people bring grog in — every three or four months. Sometimes they drive — go as far as Jabiru --some people say you go get us some beer.**

1.6.5 Getting young offenders off the grog and back to country

Harold Anderson's outstation at Nardidi is a direct response to the grog problem at nearby Wadeye (Port Keats):

> **See my mob asked and I said no we not going to have grog because [said we're only a few here and I said a lot of our family has been split up and a couple have died from the grog. I said we want to try and keep them alive. I said if you blokes want to drink you can drink but**

not here, not in your country, you can going drink somewhere else because I said we want to try and get people back there And they always live here, I don't care what anybody says.

In recent times, Wadeye has gained national notoriety over the issue of alcohol abuse. Ironically, it hit the headlines — not became of drinking problems — but when members of the community banded together and physically destroyed the Social Club. Harold recounts the events:

Yeah, well see there's about four or five families here that was involved in the incident that happened there in the Club. Now they all got together and said well alright we don't want the drunks telling, they reckon they were sick and tired of the drunks going on, fighting and all that, so they all got together, five or six of them and smashed the Club. There's a lot of couples there now that don't drink and they just hate what's going on. And they said you don't come from here this is not your place so they overpowered them and threw them out — that was the non drinkers.

Harold's outstation is one of the most successful in the Daly region, and indeed won a Tidy Towns competition in 1989. Harold thinks, with hard work, outstations can be successful elsewhere:

But you know how many other places can do the same if they really tried, anybody can. You know its a lot of hard work but if you went to do something its your country yeah I know there's a bit of work there for us.

Harold has also been involved for some time in getting younger people off the grog, many of whom have been repeat offenders under the influence. He has a number of men on parole or Community Service Orders working at the outstation. One of the men is on parole after a history of drinking which ended up in in him killing a relation while drunk. The man escaped from jail at one stage, but is now working with Harold at the outstation:

Since he has been out this time he has been good. I got him early. It's just a place like this, it's not the same again. No-ones' the same with alcohol but in his case he is not the same person gets into trouble.

He sums up the philosophy of what he is trying to achieve for the future of the youth and their culture:

What I'm doing is that all the kids from there you know to their own place so that they can see for themselves their country, what we 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 not learning anything, anything about their country like earlier they 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 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.

1.7 Grog And Education

The need for education, especially for the young, was raised by our people throughout the work of the Aboriginal Issues Unit. The following points summed up the feeling of many of our people, especially the women:

- *Education to start at preschool age and continue through adulthood.*
- *Education programmes must be widespread in schools — Northern Territory education policy and resources must be improved*
- *Education programmes must be in Aboriginal languages.*

Many people commented that, while there was education about illicit drugs aimed at a non-Aboriginal people, grog and petrol sniffing was too often ignored:

> **What about educating kids about grog- just like they advertise on TV about drugs — what about grog? Start with the younger ones. Before young people took notice of Law because of Law. Now children grow up wild. Parents are weak, can't control children. They like to take control of children but they can't understand these present times.**
>
> **(Discussion at Tennant Creek)**
>
> **The schools are not dealing adequately with the urgent need to establish comprehensive education:**
>
> **I don't think our school has any programmes about petrol sniffing, alcohol or legal studies. Not part of curriculum. We as the Women's Council should put pressure on the school to get this curriculum into school.**
>
> **We need more education system. We've talked about using our media — our local video centre. We can use it to get some messages across.**
>
> **Slowly slowly trying to talk to people. We have to try to make parents and children love each other. Lot of young people dying from grog.**
>
> **(Discussion at Babbarra Womens Centre, Maningrida)**
>
> **Do the have and substance abuse education in the school, do they talk about the harms of petrol sniffing and drinking alcohol. Are the children taught about petrol sniffing?**
>
> **They are in some of the schools, my kids are taught what smoking does to you what alcohol does to you, what drugs do, Balanda kids are taught that.**
>
> So do you think that if there isn't anything, these awareness programs should be incorporated into the curriculum. Do you think they should be teaching the kids at school about nganaji and petrol sniffing.?
>
> **Yo yo, if they have a program like that they will know when they are young that would be good.**
>
> **The health workers go up to the school and they tell the kids about that.**
>
> So the health workers work in with the school?
>
> **They have posters and things like that, petrol sniffing and AIDS, posters at school. But they only talk about AIDS at school, they should talk about petrol sniffing and alcohol too.**
>
> **They need a program for the boys that are on it too. (Discussion at Yirrkala)**

An oft-repeated complaint was that such education programs as existed were often short term, or folded after a short time because of a lack of continued

> **They had some people come to the women's resource centre last year and they were talking about starting programs and have a building where the alcoholics and drunk people could go and maybe the sniffers could go and be given something to eat, and stay there, and sleep there, and drunk people could sleep there and sort of have a bit of rehabilitation. That's what they talked about but nothing happened.**

Were people wanting something like this?

But it didn't work because of no money.

Do you think something like that would work at Yirrkala?

Yo yo, mm.

So you would have counsellors working in the evening and night, to talk to them?

Maybe some of the counsellors could teach some of the

Yolngu people too how to counsel. To run programs during the day.

Just talk, no action.

In the meantime there's more sniffers and more drunks.

1.8 Aboriginal Organisations' Strategies To *"Beat The Grog"*

In the face of indifference from governments, both Federal and Territory, Aboriginal organisations have devoted significant amounts of time and resources to developing their own strategies t*o "Beat the Grog". In Alice* Springs, the Tangentyere Council has worked on the issue for 11 years, and other organisations such as the Central Australian Aboriginal Congress and the Central Australian Media Association have, despite meagre resources, adopted the *"Beat the Grog"* as one of its most important campaigns.

The Aboriginal Issues Unit has followed the work of these and other organisations.

1.8.1 Webula talk on grog forum, Katherine

In August 1989, the Aboriginal Issues Unit convened with Aboriginal organisations in the Katherine region a Grog Forum. It was the first major community meeting on the issue ever convened. We reprint the statement that came from the Forum below:

FORUM STATEMENT

Aboriginal people from Katherine and bush communities at this forum talked about how alcohol holds back the Aboriginal communities in and around Katherine; we recognise that alcohol causes serious illness, violence and death, destroys Aboriginal culture, family and community life.

We resolve that Aboriginal people must face up to alcohol as the number one problem and that government departments and agencies, both Federal and Northern Territory, must assist the Aboriginal and other organisations with enough funding and resources to overcome the problems of alcohol abuse. The most urgent problems are:

- **·land title for town camps, particularly Warlpiri camp and provision of essential services**
- **more land for town camps particularly for visitors' camps**
- **appropriate accommodation for particular groups, for example, housing commission housing and flats, and hostels**
- **a detoxification unit in the Katherine Hospital and medical policy on intake of patients requiring detoxification**
- **more funding for comprehensive rehabilitation programmes, trained Aboriginal alcohol workers, and special provision for women alcoholics**
- **more funding for alcohol education programmes**
- **training of police and hospital staff to understand and respond appropriately to the medical and social conditions of Aboriginal people from alcohol abuse and in particular in respect of Kulano referral procedures; staff of these institutions should be trained to assist Aboriginal people not hinder them and to desist from their unnecessarily harsh and sometimes brutal treatment of Aboriginal people**
- **·better communication between Aboriginal organisations and Government departments and agencies, police, hospital staff, the Katherine Town Council and other institutions in Katherine**

- **better cooperation between the police and Aboriginal communities in policing the restricted areas provision of the Liquor Act to prevent taxis and buses from taking alcohol to restricted Aboriginal communities**
- **cooperation from the Department of Social Security to prevent Aboriginal social security cheques being mailed to liquor outlets and stores**
- **amendments to the Liquor Act to prevent alcohol being bought on credit or with social security cheques**
- **an Aboriginal-controlled women's shelter and support for women and children suffering from the domestic and social effects of alcohol abuse**
- **a women's resource centre**
- **the establishment of the Combined Aboriginal Organisations to represent our interests as the Katherine Aboriginal Action Group once did,' particularly to represent our interests in the wake of the all the promises to us about the Tindal base**
- **adequate Aboriginal representation on the Liquor Commission and the Drug and Alcohol Advisory Committee from the Katherine region**
- **two Aboriginal positions on the Katherine Town Council two Aboriginal positions on the Katherine Hospital Board**
- **·development of the Sobering-Up Shelter so that agencies other than the police can refer intoxicated persons to the shelter and provide proper follow up**
- **action from the Commonwealth Department of Employment Education and Training to establish Community Development Employment Programmes in Aboriginal communities and town camps; and to provide funding for**
-
- **training local Aboriginal people and provision of funds for trainers and for funding positions**
- **training schemes to be introduced with the aim of training people without burdening Aboriginal organisations with the requirement to provide positions of employment at the end of training**
- **Aboriginal training programmes to be longer than many are at present, that is to be extended from three months to two years, to enable Aboriginal people to be trained properly to step into positions**
- **·training positions to be made available to both Aboriginal men and women**
- **·special scholarships to be created to train Aboriginal people in specialist fields**
- **Aboriginal organisations, government departments and Tindal to provide jobs for local Aboriginal people and particularly after training**
- **the establishment of Aboriginal youth programmes or traditional communities and outstations and for Aboriginal youth of Katherine both in town camps and in other housing**
- **cross-cultural programmes for employees of Aboriginal organisations, government departments and agencies to be established with Aboriginal input**
- **more Aboriginal police and police aides from the local communities to be employed**
- **the urgent staffing and training requirement of the Katherine Regional Aboriginal Legal Aid Service to be funded, in particular, one role and one female legal field officers, and proper training of field officers including addiction education to enable them to work with alcohol prevention and rehabilitation programmes**
- **·inadequate consultation by government officers must be improved by cross cultural and professional training**
- **· training must be made more local and the training of local young people alongside substantive positions established to allow them to take over these positions within a firmly established period of time**
- **the Remote Area Teacher Education scheme should be extended to provide Aboriginal teachers on communities in Katherine and in the surrounding Aboriginal communities**
- **there is an urgent need for larger, more appropriate housing in communities to allow Aboriginal people to live according to their cultural and social rules, particularly in respect of housing their adolescent children**
- **there is an urgent need for an effective town resource base for bush communities, that is we**

want Yulngu to function as it did before

- **properly trained environmental and essential services of officers to be placed in Aboriginal communities and local Aboriginal people to be trained alongside the substantive positions to enable them to take over these positions within a firmly established period of time**
- **the problems identified here must be recognised and dealt with appropriately and urgently by the Aboriginal and Torres Strait Islander Commission when it is established.**

We had many problems to discuss at this meeting and did not have enough time. A few years ago we used to have meetings where everybody in the Aboriginal community got together, especially at the Yulngu Annual General Meeting. This is the first opportunity we have had this chance to talk and need more forums such as these.

We also feel that proper attention is not paid to traditional ownership in this town, both from Aboriginal organisations and non-Aboriginal institutions and we would like to have a meeting to discuss this.

1.8.2. Grog Forum — Where to Now?, Alice Springs

In 1989 Alice Springs Aboriginal organisations also participated in what was for their organisations the second organised Grog Forum. We reprint the statement

Forum participants resolved that there is an urgent need for an overall strategic policy on alcohol and substance abuse.

For almost 15 years, reports, reviews and planning committees have been stressing the need for a comprehensive approach to the grog problem in Alice Springs, including concurrent funding of interdependent services such as a pick-up service, night shelters, rehabilitation facilities and counselling services. Funds have been granted for the development of one service at a time. A succession of failures has damaged the Aboriginal community's confidence that anything can be done.

Co-operation and funding from the Department of Aboriginal Affairs, the Northern Territory Drug and Alcohol Advisory Committee, the Drug and Alcohol Bureau, the Northern Territory Department of Health and Community Services, and relevant agencies for this proposal for the Joint development of a comprehensive policy and strategies, are essential to maintain Aboriginal confidence and to achieve substantial improvement in the levels of alcohol and substance abuse in the Central Australian community.

The commitment of the Federal and Northern Territory Governments to provide funding to implement these policies and strategies is the paramount need for their success.

We propose:

(A)

- **That the Northern Territory Drug and Alcohol Bureau and the Department of Aboriginal Affairs commit funds to a Central Australian Aboriginal Working Party with co-opted representatives of Government agencies to develop an overall strategic policy on alcohol and substance abuse. The working party to consist of representatives of the combined Aboriginal organisations of Alice Springs, of major Central Australian Aboriginal communities, and community organisations providing services related to alcohol and substance abuse.**
- **That this working party he provided with sufficient hands to employ a full-time coordinator.**
- **That the role of this Central Australian Aboriginal Working Party be:**

  ⇒ to represent Aboriginal communities on the Northern Territory Liquor Commission

  ⇒ to represent Aboriginal communities on the Drug and Alcohol Advisory Committee

⇒ **to represent Aboriginal communities in the Drug and Alcohol Services Association**

⇒ **to ensure ongoing genuine representation of the Aboriginal people on these bodies**

⇒ **to co-ordinate and evaluate existing and proposed programs relating to alcohol and substance abuse in Central Australia**

⇒ **to develop a coordinated rehabilitation strategy towards the establishment of adequately funded:**

⇒ **rehabilitation centres**

⇒ **mobile drying-out facilities enabling people to return to their own country for rehabilitation**

⇒ **an Aboriginal counselling service**

⇒ **an Aboriginal vocational and training support service and job creation programs**

⇒ **a family support service**

- · **To review the attitude of the Department of Aboriginal Affairs to community-controlled alcohol programs.**
- **To co-ordinate Aboriginal objections to new liquor licences.**
- **To call for a public enquiry into the operations of the Liquor Act and the Liquor Commission.**
- **To call for amendments to the Liquor Act so that it operates as an instrument of public health policy in relation to alcohol.**
- **To consult with Aboriginal communities to review the new amendments to the Liquor Act.**
- **To encourage appropriate training to occur for alcohol program workers and for other community members and workers.**
- **To enable monitoring of the performance of funding agencies.**
- **To campaign for more funds for programs relating to Aboriginal alcohol problems to go to Aboriginal community controlled organisations in Central Australia.**
- **To to-ordinate public education and information campaigns relating to Aboriginal alcohol problems in Central Australia.**
- **To help prevent the poaching of alcohol workers by government agencies.**
- **To encourage Aboriginal people to become community- based alcohol workers.**

(B)

- **That during National Aboriginal Observance Day week, a workshop be convened to finalise the alcohol and substance abuse policy, to raise awareness of the policy and the problems, and to launch a campaign to achieve the agreed goals by oiling for:**

  ⇒ **- funding for the coordinated rehabilitation strategy more employment programs and in particular, government funding to enable Aboriginal communities to have the option of adequately funded CDEP programs on town camps, in communities and outstations**

  ⇒ **- certain education programs**

  ⇒ **- appropriate social clubs**

  ⇒ **- programs to train Aboriginal alcohol workers**

  ⇒ **- more support for Aboriginal initiatives against alcohol problems, e.g. Ngkarte Mikwekenhe, Al Anon, the Aboriginal Alcoholics Anonymous group, especially in**

respect of its need for a bus, Aboriginal objections to new liquor licence applications and renewals.

(C)

- **The formation of an Aboriginal Steering Committee to achieve these goals**

  The resolve of the forum participants and their stated demand for urgent and coordinated action to reduce alcohol and substance abuse in Alice Springs and Central Australian communities was translated into action by the formation of an Aboriginal Steering Committee to achieve the goals of the Forum statement.

1.8.3 Tangentyere Council and the Central Australian Aboriginal Congress Grog strategy

In response to the statement of the 1989 Grog, Forum Aboriginal Organisations in Alice Springs have been compiling a strategy to combat Alcohol problems. We reprint below an extract from their Strategy Discussion Paper. This strategy is one that they are hoping to have endorsed during consultations in July 1990.

We must first accept that there is a grog problem of large enough proportions to require support and action from all sectors of the community. Action should he based on an agreed set of principles to provide a co-operative approach toward tackling alcohol abuse.

There are three levels of problems related to the abuse of alcohol. The first level of problems relate to the feelings of powerlessness by Aboriginal people. These feelings stem from the loss of traditional lands, deterioration of culture as well as the impact of an alien culture which have combined to result in a loss of identity, security and self esteem. Lack of employment opportunities for Aboriginal people continues to feed this feeling of having no control over their lives. It is at this level that alcohol is often seen as a quick fix. It is well known that people drink more if they feel sad or lonely or useless. Alcohol helps to relieve those problems which poverty stricken Aboriginal communities suffer from on a daily basis.

Consequently excessive consumption of alcohol is visible in many Aboriginal bush and town communities. This abuse results in a range of secondary problems. Problems at the second level include violence, an increased incidence of alcoholism, vandalism and destruction on town camps and other crime and people acting 'outside traditional law' and beyond the reach of community control.

These problems lead to a third level of problems which include a strain on medical and counselling services, particularly those dealing with crisis care, absenteeism, family and community disintegration and a growing feeling of fatalism. It also compounds the problems of communities who are unable to exercise their own law or cope with problems. This increases the feelings of depression and alienation.

Often the social and economic factors associated with Aboriginal alcohol consumption are not recognised, therefore services are limited to one specific area for example rehabilitation or one specific treatment e.g. crisis health care. Obviously treating one level of problems alone will provide some relief but will not result in an overall solution to continued alcohol abuse. There is a great need for a more comprehensive approach to funding and service provision.

While recognising the need for acceptable and accessible facilities for detoxification and the vital role groups such as Alcoholics Anonymous play in rehabilitation of some, our strategy is also concerned with prevention the further implementation of strategies that will facilitate structural change in the wider society that will in turn empower Aboriginal people and begin to address the underlying causes of the high prevalence of excessive alcohol use in some Aboriginal communities.

PRINCIPLES

Any strategy must address the economic, social, cultural and legal issues that govern Aboriginals.

Where appropriate initiatives aimed at combating alcohol problems should focus on maintaining Aboriginal culture including traditional law.

All strategies should be designed and provided for both bush and towns people in an integrated approach.

The overall must be undertaken with a bipartisan approach involving a positive and co-ordinated effort from both Aboriginal and non-Aboriginal organisations and people.

The overall programme needs long term, secure funding to ensure that alcohol programmes are not simply "kneejerk" reactions revolving around short term crisis situations or intermittent political pressure, There needs to be adequate security to ensure planning and initiation of long term strategies to overcome alcohol abuse.

The programme needs to be controlled by Aboriginal people themselves through representative Aboriginal organisations,

The above principles are the basis for a broad range of objectives. These objectives relate to the reduction of alcohol abuse as a whole. Specific objectives and related strategies are presented in another section.

PROGRAMME OBJECTIVES

To reduce the amount of alcohol and alcohol related problems in Aboriginal communities in and around Alice Springs.

To strengthen the place of Aboriginal culture and law in communities.

To increase the awareness of the effects of alcohol at individual, family and community levels.

To develop a range of initiatives and programmes to deal with alcohol problems are primary, secondary and tertiary levels.

To develop appropriate facilities for the diagnosis, treatment and rehabilitation of those suffering from excessive alcohol consumption and alcohol related problems.

To provide and support initiatives which provide Aboriginal controlled counselling for children, families and individuals.

Where desired, to foster appropriate drinking behaviour.

To remove alcohol from an everyday item and return it to its position as a special substance, a drug which must be treated with caution.

The process by which these objectives can be achieved have been divided into six areas. Policy and Planning, Education and Information, Treatment and Rehabilitation, Community Action, Family Support and Reform of Control Measures.

2.0 Introduction

Aboriginal people in the Northern Territory have consistently raised the problems created for them and their communities through the interaction and conflict of Aboriginal customary laws with the Australian law.

Many of these issues have been recognised, and raised repeatedly, by Aboriginal people and their representative organisations in the past. Our people have told us that constructive changes in the interactions of Aboriginal people with the criminal justice system will only begin to occur when there is legislative and other kinds of recognition of Aboriginal Law from police officers, magistrates, legal counsel, and others.

Many elders were annoyed at having to repeat their concerns to the Aboriginal Issues Unit, especially because they deal with these kinds of consultations and issues continually. An elder at Ryan's Bend Outstation, near Borrooloola, said:

> **But a lot of white society they don't know anything about Aboriginal society, no matter how many meeting you have at the Resource Centre, they don't care about us. 'That's another reason in the local side it's political. We have the meetings to make them try and understand our ways. We custodians and we got to answer things that white fellas want to know again.**

The problem of the recognition of Aboriginal customary laws by Australian law has already been thoroughly canvassed by The Australian Law Reform Commission (See Volumes 1 and 2, T*he Recognition of Aboriginal Customary* Laws, AGPS, 1986). The Law Reform Commission took the approach that

> *.... problems of recognition can be minimised by approaching the Reference in a functional way, issue by issue .... it maximises the extent to which Aborigines may retain control over their laws, and enables proposals to be formulated that reflect the fact that Aboriginal customary laws continue to be subject to external pressures, and that they vary from community to community, both in strength and content. Functional recognition also avoids creating separate systems of laws.*

The Law Reform Commission dealt with specific areas and proposals for recognition of Aboriginal customary law in the fields of family law; the criminal law; evidence and procedure; local justice mechanisms; and hunting, fishing and foraging rights.

The Law Reform Commission found that it has been considered sufficient to identify customary laws in general terms for the purposes of recognition, without the need of a single all-purpose definition, and that there have not been any particular difficulties with this practice. Even though there are no written accounts and no codes of Aboriginal customary laws similar to those found in some other cultures, there is general agreement among anthropologists and others that traditional Aboriginal societies had, and continue to have, a definable body of rules, norms and traditions which are accepted by the community.

However, with a few minor exceptions, the Commonwealth and Northern Territory Governments have not acted on the Law Reform Commission's recommendations systematically. The body of recommendations and discussion of the Law Reform Commission, thus, "have gathered dust on a shelf' and many of the practical problems raised here by Aboriginal people, it is feared, will fall on deaf ears again. Systematic policy formulation and implementation in some of these areas where Aboriginal people have made practical suggestions could lead, as Aboriginal people themselves recognise, to real improvements in crime rates, Aboriginal alienation from the social and economic institutions of the dominant Australian society and assist in the reconstruction of Aboriginal society after 200 years of dispossession, near-genocide and ethnocide.

The Law Reform Commission proposed a first step, which Aboriginal people have also suggested would bring about a substantive change in community relations with Aboriginal people (Law Reform Commission, Report No 31, Summary Report: 20):

> *Recognition as Acknowledgment. Acknowledging the existence and significance of Aboriginal customary laws for Aboriginal people is clearly a first step. A declaration to this effect, combined with a declared commitment that Aborigines are entitled to retain their identity and traditional lifestyle, would be one form of recognition. The consequences might then be left to the courts, governments and legislatures to work out. However the differences between Aboriginal customary laws and the general legal system are such that specific rather than general forms of acknowledgment are necessary. These may take a number of forms ...*

The Law Reform Commission interpreted Aboriginal perspectives in its consultations with Aboriginal people, but made it clear that it was not representing Aboriginal viewpoints. However, the Aboriginal Issues Unit has the specific brief of reporting to Commissioner E. Johnston Aboriginal views on the underlying issues which lead to the disproportionate rates of Aboriginal custody and sometimes deaths in custody. It was put to us by Aboriginal people that the recommendations and consultations of the Law Reform commission were "unfinished business", an outstanding matter of great importance to our people.

RECOMMENDATION 2.1: The Northern Territory and Commonwealth Governments should commit themselves to the implementation of the recommendations of the Australian Law Reform Commission's 1986 report concerning the recognition of Aboriginal law.

RECOMMENDATION 2.2: A taskforce be established consisting of representatives of the three Aboriginal Legal Services, the three Land Councils, the Aboriginal Areas Protection Authority, representatives of communities, the Northern Territory Department of Law, and the Commonwealth Attorney General's Department to further the recognition of Aboriginal Law and to find ways to reduce the conflict between that law and European law.

Aboriginal peoples' own perceptions, the Aboriginal Issues Unit believes, may contribute to a better understanding of behaviours that lead Aboriginal people to be in conflict with justice systems. These perceptions **may not** correspond with the standard anthropological or sociological viewpoints. Anthropologists, for instance, tend to describe anti-social behaviour amongst their subjects as "functional" behaviour, without addressing the distress, violence and unnecessary death in Aboriginal communities, and going on to suggest ways of reducing unacceptable behaviour. The views of Aboriginal people we have consulted do indicate the problems which Aboriginal people face in grappling with a little understood, alien system of European law, whether or not it metes out justice, and what justice is perceived to be.

In many instances, justice is not seen to be done by Aboriginal people, because punishment imposed by a Northern Territory court is often too lenient. Australian Institute of Criminology statistics on lengths of sentences for most serious crimes bear out precisely the Aboriginal view that sentences imposed by Northern Territory courts for homicide, rape and other serious crimes are too lenient. For instance, the average length of a Northern Territory sentence for homicide is about 10 months in comparison to numbers of years in other states. Walker (1987:114) also concluded that the courts are lenient in sentencing Aboriginal people and that the serious crimes committed by Aboriginal people are often ignored or overlooked in criminological analyses.

Many Aboriginal people have become so disappointed with the leniency of courts in respect of serious crime, as to now want even these serious crimes dealt with by Aboriginal law. This would involve corporal punishment such as spearing, and some might even insist on a return to the traditional capital punishment for some crimes. Such customary measures are regarded by the Australian system as "repugnant", however, and there is little likelihood of recognition of such extreme punitive measures which might be taken under Aboriginal law.

A real distinction is drawn by Aboriginal people between minor offences and serious offences. Most offences for which Aboriginal people are arrested and imprisoned are considered under Aboriginal Law to

be trivial and would probably not constitute an offence under Aboriginal Law at all. Many minor motor vehicle offences, while they might not be seen by anthropologists or lawyers to come under the jurisdiction of Aboriginal law at all, all the same are not an offence under Aboriginal Law.

Motor cars and other western technological objects do in fact come under Aboriginal Law now, especially as highly prized gifts in ritual exchange. Destruction of a vehicle in a road accident would be very annoying, and so long as there was no damage to life, would be a matter of bad luck rather than an offence. Swearing also is another example of what would not constitute an offence unless it were the kind of sweating which is specifically forbidden by Aboriginal Law, that is swearing to certain kinds of "poison relations"--- in-laws; or a sister swearing in front of a brother.

Aboriginal people have made it very clear that for many of these trivial offences their people should not be sent to jail.

Also it was made very clear to us that jail is not a deterrent because it does not teach anything to young people to prevent them from behaving antisocially. Aboriginal people are adamant that their own Law and the pressure of families would be a far better deterrent and would work to prevent crime if there were considerably more assistance from Australian institutions in preventing alcohol and substance abuse, better education and more recreation facilities.

Aboriginal people have their own perspectives on the relationship between their own body of laws and the Australian law and the problems engendered by lack of recognition for their customary laws and the inability of both legal systems to rehabilitate wayward Aboriginal people.

2.1 The Dominance Of The Australian Legal System And The Consequences

> **We think our laws are not being respected. There are white laws covering just about everything. I'm not saying it s bad but our laws are just about dying, You can't do that because they are white man's law. You just can't get out anywhere --just locked in by white man's law. Young blokes now days think that our laws are not worth [anything], see, sort of watching out for white laws.**
>
> **Port Keats man.**
>
> **We got rules, our cultural rules of disciplining the young people, but it is now that we got this technology, like lights, vehicles, air planes and whatever, mining coming up, money, you know and people start to think the opposite way because of Balanda influence coming up. But in olden days, you know if one breaks down, one little thing, he's dead, you know speared, just like that. But now people got that thing and because we got Law, white fells law coming up. And we are facing two laws now, we facing Balanda law and our own Yolngu Law, and that's I think deeply we are asking questions you know.**
>
> **Banambi, Yirrkala**

Aboriginal people are subject to their own laws as well as Australian law

Many Aboriginal leaden feel that part of the solution to the high rate of Aboriginal custody and deaths in custody is action on their repeated requests for recognition of Aboriginal Law by the white legal system. In particular, this should include practical ways which allow elders, with the support of the white legal system, to institute their traditional laws, which amongst other things, deals with daily law and order and family and community fights and obligations.

They say that Aboriginal people should be responsible to their own Law first:

> **Like that Mandela he said "I here judge me by a white man's court and I'm a black man I should be judged by black Law.**
>
> ***We should be Aboriginal to Aboriginal affairs like white to white affairs because we don't***

know what's involved in white society. We can't know those things. We only charged by those things because they know.

Punishment is gonna be Aboriginal way in camps, not police.

Gurungu Councillor Elliott.

Many leaders feel that most petty crime would be better dealt with by traditional Law — and worked out within the family — than by European law. They feel that the procedures of European law make their youth worse, not better, and encourages lack of respect for traditional culture and Law.

The relative strength of both Laws and their order of recognition was often

Aboriginal Law has been here for a long time and it's worked. Balanda law comes and says it's the best and blocks Aboriginal Law.

Aboriginal people believe that in the Northern Territory today, white law is strong but that there could be another way.

European law was seen as a stronger law, in some respects, than Aboriginal Law, possibly because of the lack of recognition of traditional law in many institutional settings, and the authority and power used by police and correctional authorities to enforce Australian law. However, because Aboriginal Law is seen as rehabilitative in that it teaches the young, while European law is seen as merely punishing without effect, many instances were given where Aboriginal law would be more appropriate and effective than European law:

Yolngu Law and Balanda law come together. We can say, "leave this matter to us. We can deal with it. If it gets serious, we'll call you in". Your law and my Law can work together to fix it. We have to be fair dinkum.

Aboriginal Law should be recognised, but most elders argued that the two laws should work together:.

Why can't Balanda law recognise Yolngu law, like police, why can't they recognise us and yet we recognise their law. We recognise them you know because court, one of the you know if spear and fight it has to go to Balanda law all the time you know, because we are Australian citizens as you mob call it eh, and yet they don't recognise our law, that's the question that always comes up with me. It should be on both ends, both sides, they should recognise our law and we should recognise their law.

A Male elder at Yirrkala.

Elders presiding at a meeting of the Yuendumu Tribal Council and the Community Council, told the Aboriginal Issues Unit, that young offenders have to face the two laws — Yapa and whitefella's. They want to work with the Magistrate and police so that the two laws are working together.

Magistrate don't listen to people — he only listens to police — one side, not Yapa.

He was talking about he was in Alice Springs. [Name deleted] was in jail [Name of magistrate deleted], ask what you gonna do about this fella "take him out

Yuendumu or put him back in Jail?". I bin tell him, "! tell

his father and mother to take him out to outstation. It's better".

[A man] stole bus. Think they 'hung' him with rope tied to two cars. Pay-back it's a vicious circle. Police liken them to whitefella's turn-out. They should take him to Anangu [Aboriginal people] first. But if he was drunk when he did it, he gotta go two ways- Yaps and whitefella's jail.

Some leaders have spoken clearly about the need to set the terms underwhich both laws operate along side each other. Clearly, they feel that offenders in Aboriginal society world respond better to the dictates

of their own Law and Culture than to those of an alien one. Aboriginal people argued to us that European laws would work better if there was an attempt to work with the support of traditional Aboriginal Law. After all, why should Aboriginal people accept that a strange system of law, instituted by strangers, is better than their own and deserving of the respect and compliance which they accord their own law implemented mostly by loving, if strict, kinsfolk? Moreover, if Aboriginal people cannot understand the Balanda (stranger) system, what is the point?

> **Aboriginal Law has been here for a long time and it's worked. Balanda law comes and says it's the best and blocks Aboriginal law.**
>
> ***We need strong people — Aboriginal Law — send lenders --to pinpoint those Balanda lawyers — we can talk to — to explain that it's not good enough people going to jail That's from the government — can give us more help — so we can hold our way and whitefella's law — and push for it ... laws gotta be level — bring them together. Very good. Number One.***

Aboriginal people don't understand white law. It is a different world view:

> **Yes, work together, because jail is a new idea you know, they never been involved in it before, all the Yolngu. And we don't know what kind of law is making, if the Yolngu *takeover* for making the law ourselves for punishing people, we don't know this time, we still learning, all the Yolngu, you know, only Balanda, understand all this, Balanda idea, Balanda start up all this law you know. The Yolngu people have their own Law.**
>
> ***They was saying that you know because with Balanda laws because it change every time, all the time, it change, change, change and in our Law it never change it always stays the same.***
>
> **Elders at Yirrkala.**

Many elders frankly admitted to the Aboriginal Issues Unit that they are baffled by the Australian system of law, that they do not understand it, and that no one should expect them to understand it in the circumstances. Some did say that Aboriginal people must become lawyers and judges so that there would be greater understanding and actual justice in their own cultural terms administered. This is discussed later.

Many elders, because of the stringency of their traditional Law and because of their experiences of police in the early days in the Territory, feel that "humanitarian" European laws provide no deterrent to Aboriginal offending. Indeed Aboriginal Law seems to have worked to prevent breaches by the threat, if not the actuality in most instances, of severe corporal punishment and even death.

> **Traditional Law should be brought back in, the way we do it ourselves. Because we do it much different than whitefellas do. They break you down, they take you away, they do all sorts of things. They lock you up for years and years. It doesn't do any good. They only come out and get worse ...**
>
> **Galarrwuy Yunupingu**

Mandawuy Yunupingu also commented on the use of traditional law for punishment and discipline.

> **There should be more Traditional law practised. Ways of discipline and all that is still practised. Some of those rules have died down now against the bigger system. But I think it carries the same weight as the Balanda law. The other things are, in areas where it's seen as punishment. But in the process of that punishment, the person learns something in a bigger way. That's like going to restricted ceremonies and staying there for a period of time. If that could be arranged and the people in authority in the Yolngu communities. Whether they hold a position of a ceremonial leader, the person who manages all the ceremonies. They should be given that job, so that people who are seen as causing mast of the damage, or are a nuisance to the community can be then disciplined in that way. That's the Yolngu way of discipline and that's learning through ceremony, not neglecting their own culture. But**

learning through the process and having pride, that as well. That's my thinking,"

(Mandawuy Yunupingu Principal Yirrkala Community School).

2.2 Aboriginal Objections to features of Australian Law

2.2.1 Previous convictions are "finished business"

Under Aboriginal Law, once an offender is punished, the matter is finished, and there is no conception in Aboriginal Law of that person having a "record". However, under Australian law, an offender is sentenced and undergoes some form of custodial or other punishment. If thin person offends again, or repeatedly, the previous convections and sentences, will be raised in each new case as "the record" or "priors". This information bears on the new sentence required and it is clearly understood that Australian punishment becomes more severe with more "priors". Aboriginal people find this refusal of Australian law to regard a sentence completed as "finished business" incomprehensible. This is a clear conflict between Aboriginal Law and Australian law.

I would like to see when the man is free of paper he shouldn't be guilty that should be rubbed off and 'he can start new one again and that's the only point I'm getting at because be got in a role of his criminal paper be feel guilty all the time — to himself- now I'm a trouble maker, I'm a jail bird this is the expression you get from those people but the courts should say to the person you are a free man unless he record finish in front of his face, you are free man finished and don't cause any trouble. If the court does that and you will feel free — oh well I'm a free man.

This is the time we're talking about young boys that is free.

That paper should no longer be in police custody or police office or maybe is court but the court should say you are free man....

2.2.2 Trivial offences under Aboriginal Law

It is the Aboriginal perception that many offences for which Aboriginal people are arrested are basically trivial This was confirmed by imprisonment figures, and acknowledged during beatings on the Criminal Justice system by Doug Owston and Richard Coates. They both recognise that in communities such as Groote Eylandt, Aboriginal youth ate being charged with trivial offences, and that while both the Aboriginal community and the magistrates might regard them as trivial, the non-Aboriginal community is said to regard the theft of their alcohol and vehicles as serious. They suggested that these offences would not occur if non-Aboriginal people resident on Groote Eylandt secured the "material possessions" that young Aboriginal people could misappropriate. In the view of the Aboriginal Issues Unit, no complicated reasons are more responsible than alcohol and substance use and the deprivation, including hunger, which Aboriginal children and youth experience relative to the Australian population. Boredom and unemployment are also the reasons for this behaviour.

Many offences which involve criminal charges would not be readily identified as relating to Aboriginal Law, and involve non-traditional elements, such as motor vehicles, and alcohol.

People say that because the offenders are mostly young, they will grow out of the problems, especially if they take on the responsibility of marriage and a family.

It seems to Aboriginal people that Australians have laws for everything, "so you don't have to try hard to do something that is breaking the law":

We should be Aboriginal to Aboriginal affairs like white to white affairs because we don't know what's involved in white society we can't know those things we only charged by those things because they know.

Can't do that you will be punished. You can't do that , you can't do that , does not matter which way you face, does not matter who you are there is that white man's law — we got no where to go — see we can't make laws now cause if we do no one respect that law because on top of that, that white man law pointing at you — to go jail if you break that.

I respect that white man law if I don't I might go to jail if you break it you will be charged and go to jail. If told they me not to jump over that fence I won't do it, if I do it I will go to court. We're frightened.

2.2.3 The failure of prison as a deterrent

Jail was rarely acknowledged as being effective in deterring offenders from reoffending.

As for the offender, a sentence was received, and stoically accepted.

It was made very clear to us by many Aboriginal people that jail is not a deterrent because it does not teach anything to young people to prevent them from behaving antisocially. Aboriginal people are adamant that their own Law and the pressure of families would be a far better deterrent and would work to prevent crime if there were considerably more assistance from Australian institutions in preventing alcohol and substance abuse, better education and more recreation facilities.

Roy Marika, Council President, Dhanbul Association at Yirrkala said:

Jail is a good and and for people, a lot of people say that Jail is not good, same of the people lock them up in the Jail, but they come hack from the jail after they locked them up, when they come hack to the community, family they do the same thing.

Why do you think they do the same thing.

Because they never been learn, they never been taught things properly, they should have taught them in the jail while they in the jail, to give them a lessons...

Daymbalipu Munungurr, Chairman of the Laynaphuy Resource Centre. and Wirrilma at Yirrkala, said:

Mm mm, but we don't like to think about it because when they go in the jail, person eh, or maybe for 12 months for 3 years in jail, and behind there might he same family, close family die, that is the hard part, worrying his mother you know, -. but we got homeland now, this time, to punish the person.

So you think jail is not a good thing.

Mmm, it's a good thing only for a short term, not long term. They go to an isolation area, that's good for away from like Nhulunbuy or Darwin or any other area, they got to live in the homeland tribal country, it's alright, hunting, enjoying their job, that's alright. Because Yolngu talking about this ant we got a home, in the homeland, we not like in the Balanda way, we got a tribal country, that's why we want Yolngu to go back to own tribal land you know, because the police will lock up the person, Yolngu, because that's Yolngu from the homeland you know, that what the Yolngu think about.

At Maningrida, the Aboriginal trainee Town Clerk said:

We need strong people — Aboriginal Law — send leaders --to pinpoint those Balanda lawyers — we can talk to — to explain that it's not good enough people going to jail.

An elder, Jack Rialla at Maningrida said:

Every court I sit next to lawyer. And I tell him he not going to jail — he gotta do community work. People are being sent to jail too much. That no blackfella jail — that whitefella jail. They gotta go lash — our sacred site for 1 year. Make no understanding [if] you go to Jail for one year. But people are given more in bush — hunting, fishing, walkabout. We not lock him up like whitefella. We give him more understanding. In people are not helping. Can't walkabout, hunting. I'm not happy with whitefella way. Blackfella way is really good — helping. It's up to parents — this man gotta go for three or four months or one year to make them understand whitefella way. I did it this way three or four times — go to jail. We can 'punish them or lock him up. Really talking about teaching people to be responsible out bush.

It's not good for Aboriginal people to go to jail. It doesn't matter if lawyers say he gotta go to jail — we say — no". We need someone to talk hard. People have to try. How long do we have to keep trying- I year, 3 years, 10 years, 12 years? No jail — gotta be job done for the people. Too much money for fines. People going to jail for months. People are not happy. We are not happy. That's how far I'm talking. You go back home and tell them what we are saying. If they come here or I go to Darwin I'll talk to make them understand — make department understand what we think.

The Aboriginal perception that the Australian legal system is too lenient on Aboriginal offenders who commit serious crime arises not so much because of the actual length of sentence, although this is a factor, but because of legal ethical standards under which a lawyer defends his or her client, even if the consequences for the victim or victim's community or any others are detrimental. A serial killer (and it has been alleged to the Aboriginal Issues Unit there has been such a case recently in an Aboriginal community in the Northern Territory) could be represented in the Australian legal system by a competent lawyer and receive a fight sentence, especially if previous incidents did not come before the Australian courts. The community and community interests under present arrangements are not represented. Such community interests would include for instance concern for other children at risk in child abuse cases, other women at risk in sexual assault. domestic violence and rape cases, and the community at large in some manslaughter and murder cases. This lack of representation is because the Aboriginal legal aid service would be doing a disservice to its client if it were to arrange for this representation, and breaching legal ethics, if it were to represent any other party in the case at the same time. Another body, whether it is the Department of Law or another Aboriginal legal aid service, should step into this area and ensure that the community interest is represented. This arrangement seems to occur from time to time in South Australia where the Aboriginal Legal Rights Movement sometimes represents the community interest in court for cases arising from communities in the Pitjantjatjara homelands.

RECOMMENDATION 2.3: The Department of Law or an Aboriginal Legal aid service, other than the one defending the client, should ensure that community interests are represented in cases involving serious crime which places people in small communities at risk.

2.2.4 Aboriginal people want to use Aboriginal law to reduce imprisonment and fines

Although there is no consensus view on this matter, objections were expressed to the Aboriginal Issues Unit, not only about the number of people going to jail for trivial matters, but also about the effect of fines. Some Aboriginal people are doubtful that fines constitute a deterrent to antisocial behaviour and would prefer that instead of the first fine, Aboriginal elders be given the chance to deal with offenders by sending them out bush. If sending them out bush doesn't prevent their antisocial behaviour, elders are ready to concede that frees, jail or other corrections under the Australian system should be resorted to. A concern is that the offender is not often the one who actually pays the fine. His relations pay the fine, and so it is often the very people offended against who "chuck in" or contribute from already small incomes to keep the offender out of jail.

Fines, according to the views put to the Aboriginal Issues Unit, are a cause of impoverishment in many communities, and particularly hard hit are the elderly who pay the fines. However, it must be said, that Aboriginal people have always under their own Law exacted fines or compensation for harm, traditionally

in kind, but now in cash. Below, an elder at Maningrida explains the way he thinks it would work:

> **.... why are people going to jail? Why they locking people up? Should be the Council, We make our own decision. We can come back to Council and tell them have a look at different parts. Want to give a letter what they think — to government — say like lawyer. If we don't help our own people — we not helping our people going to jail for whitefella's law. We think on idea. OK friend, this is what I'm thinking. We can do it our own way. Like anything happen — people stealing money or somebody fighting — really hurting somebody — before we take to court — somebody there and somebody out there for them — we can tell "OK". If lawyers say — "this man sending to jail". We say, "No, this man not going to jail. We punish him our own way". Punishing mean sending them bush, say for 3 or 4 months. It's like when you send to jail. We do same thing. They are not going to jail. We do our way.**
>
> **We gotta send them back to families, for say 3 months or one year. If it's the same person causing trouble and police grab it; police say — "he caused trouble last year" --stealing or fighting somebody. We say, "OK, we take to court; he can get fine". "Pay fine", [we say to him], [and then] let him out to walk around again. Again he pick same person again. He come back to some family. He causing family problem again. We say, "This man causing trouble 3 or 4 times." We happy to send him to jail. That kind I've been looking at for a long time. That my own thinking. Many Aboriginal people from other communities going to jail too much. We looking at money side — we're paying too much money — $100, then go back to court again — might be $200 — then again might be $300 or sometimes $1,000.**

2.3 Aboriginal Law

2.3.1 How Aboriginal Law works

Much has been written in the anthropological literature about the body of norms, rules and beliefs which our people call "Law", or "Tjukurrpa" or "Tjurruka" or by a number of other terms. It has been described as a system of rights and obligations adhered to by members of the group, partly because of the threat of penalties and punishments, but also to avoid the more common, everyday pressures of social life which induce people to behave socially and properly: the gossip, ostracism, banishment, withdrawal of services and cessation of exchanges. Some Aboriginal people discussed with us particularly important features of bow Aboriginal Law works in the hope that we could convey to the authorities some understanding of these matters and thereby bring about some respect and tolerance for Aboriginal Law.

What our people mean when they talk about their Law; is a cosmology, a worldview which is a religious, philosophic, poetic and normative explanation of bow the natural, human and supernatural domains work. Aboriginal Law ties each individual to kin, to "country" — particular estates of land — and to Dreamings. One is born with the responsibilities and obligations which these inheritances carry. There are many onerous duties, and they are not considered to be optional. One is seen to be lazy and neglectful if these duties are ignored and the respect, authority and advantages, such as arrangements for good marriages, opportunities for one's children, are not awarded. As many of our people observe, Aboriginal Law is hard work.

2.3.2 "Payback" — reciprocity in punishment

Perhaps the most onerous of all, and perhaps the most well-known outside Aboriginal society, and thus often distorted in its important, is the tradition of "payback", mostly involving corporal (or physical) punishment in front of witnesses, and rarely involving capital punishment. When Aboriginal people say in English that they intend to "kill" someone, they mean only corporal punishment. We discuss this issue first to put it in perspective before dealing with the other more common aspects of Aboriginal Law. It is, however, this aspect of the Law which most often brings Aboriginal people into conflict with Australian law, and not simply because the corporal punishment required is an offence under Australian law.

One young man gave to the Aboriginal Issues Unit his view of a "payback" crisis which was beginning in Alice Springs and extended into another community. The text of his statement is quoted below. The events began with the killing of a young man from one western Arrernte clan allegedly by a young man

from a neighbouring western Arrernte/Luritja clan. He was arrested by the police and held in remand. Soon after two senior men from the latter clan were killed, allegedly by members of the first. These senior men were, in the eyes of Aboriginal people, victims of the payback tradition gone wrong in the hands of drunken youths. The deceased were leaders, not only traditional Law leaders and highly respected, but leaders of a local, historically specific cultural and political movement, sometimes dubbed by Northern Territory Government officials, who were keen to use this movement against the statutory Land Councils, as a "breakaway land council".

It was the view of many Aboriginal people that the young man who had unwittingly started this "payback" feud should have been released by the police into the hands of his family who would then arrange for the proper payback --corporal punishment only — to be executed by the family of the deceased. Under Aboriginal Law it was the duty of his mother, a widow, to ensure that he was released from police custody. She had tried, but unsuccessfully, but this was interpreted by the grieving family as her unwillingness to do her duty. At this stage, many people believe, the police should have explained to the grieving family why they would not release him for payback: it was not possible under Australian law to release him. After the alleged murders of the two senior men, leaders of the Aboriginal community called an urgent meeting with senior police to explain to them that more payback killings and assaults would take place and that their assistance was requested to stop the anger and grief from getting out of control. The police explained that under Australian law there was nothing much they could do but later offered the use of the conference room at police headquarters for the two opposing sides to be brought together to conciliate. This meeting did not take place, and more assaults and killings occurred. At the time of writing the paybacks continue, apparently worsened by the influence of alcohol. Some Aboriginal people regard the consumption of alcohol by persons involved in these events as not just distorting Aboriginal Law but breaking the Law. Later at the community the police explained to community members and the families involved why they were unable to release the young men involved in

The young man who spoke to us hoped to alleviate the sadness and horror of losing more lives because of traditions gone wrong in the ways described above, by bringing about understanding:

> **Only thing, according by the Law, Aboriginal Law is . . . payback, that's the only thing that will give the family satisfaction, and everyone will be satisfied. Making payback in front of the family at the [name of community deleted] oval, so everyone would know that the trouble has been finished and won't he carried on when they leave the oval. That shows other families recording with their own eyes telling them that is a tribal way that the Law is being finished and there will he no more troubles what-so-ever with other families it's been disgrace by the Law Department by not releasing the accused . . . in the first place. If it was organised by the Law Department and by the court saying, release the man who has been stand trial in the eyes of the court... He still have to face responsibility through Aboriginal Law. People in the Centre have their strong Laws — Laws how to deal if any Aboriginal people do the wrong thing in the eyes of the ancestors because all Aboriginal people know they have been looked down, watching over, every move what a man, a woman, a boy, a girl does on this earth. It was told by the great, great, great grandfathers that doing the wrong thing have to be sort out by the tribal ways so that the great ancestors will be happy and be free that the Law is still going, generation by generation, the Aboriginal Laws means lot, not only by [payback], also means land, Aboriginal people cries out to their ancestors if there is a sacred sites, mining, stock routes, that's one of the big things in the eyes of the elders, doesn't matter if it is a Warlpiri, Pintubi, Luritja, Pitjantjatjarra, Arrernte, Kaytetye, Warumungu, even on the top end tribes, they was born with it. These other things, the Court and the Law Department have to understand. This is a message I'm giving it to help not only Aboriginal people, European as well to understand what they mean about their culture .... I wanted to share this to help our people in peace, white and black.**

2.3.3 Makarrarta — peace keeping ceremony

A famous example of the "payback" which settles the score and brings peace to the community is the *Makarrarta* of Arnhem Land, the name of which was adopted by the National Aboriginal Conference in the

early 1980s as the title of the treaty document which Aboriginal people desire with Australia. The *Makarrarta* is described by Stanner in *After the Dreaming* as a battlefield over which a flag of reciprocity hung. One case of the *Makarrarta* ceremony which involved cooperation by police, was explained to us by men at Maningrida:

> **Back in 1979 — Makarrarta peace fight here at oval — with Aboriginal elders and police. This copper, [name deleted]. There was a good agreement — nobody get badly injured --only arguing and threatening. Nephew hit his uncle on neck in Darwin — death in family.**
>
> ***[A deceased elder, Silas Roberts] was involved in it. Everyone was there watching just like footy match. Police was watching too. It was very well organised. It was a good way of Balanda law recognition [of] Aboriginal Law. Afterwards everyone shook hands.***
>
> **Men at Maningrida**

2.3.4 Mortuary rites and the Aboriginal coronial inquest

To understand payback, one must understand the Aboriginal view of death and the cultural requirements surrounding death. Death, in Aboriginal society, must be explained. Death, at one level, might be attributed to a malevolent spirit or even a sorcerer, but at another level, a person who will be sooner or later identified by the Aboriginal coronial method will be found to be responsible for the spirit, sorcerer, magic or other media involved in the death. The mourners, sometimes involving up to one or two hundred people, reside in a specially created camp, a "sorry camp", to conduct the various rituals following the death. The name of the deceased becomes taboo. Women kin and in laws wail frequently throughout all the proceedings. Meetings are held to ascertain the circumstances of death, and decisions are made as to who is considered to have breached their duties and contributed to the death. Corporal punishment is executed at the funeral against those persons. Gertrude Stotz, consultant to the Aboriginal Issues Unit, explains this process in the following way:

> **The ritual inquest into the circumstances of death is part of a 'sorry camp's' ritual structure to establish the social cause of death which will in time** lead to t**he self-incrimination of a person.**
>
> **While the .ritual denies the physio-mechanical causality of** death from sickness, injury or homicide, even suicide, it does not necessarily exclude them either, for behind each of **these causes are social causes.**
>
> **The inquest: "goes back from when *it staffed trouble".* In the case of death by alcohol abuse: "*How* many was *drinking with him? if i die and someone been drinking with me they go back to when first time i started making (and getting) trouble... they pick on him."* His deceased oldest brother's latest wife was beaten up badly by his mother for *"not looking after kin properly".* However *"eventually somebody will talk and then we know"* who killed him.**
>
> **An Aboriginal man at Maria Maria)**

The Aboriginal coronial method is sufficiently a threat, if only of being 'shamed' in front of kin by the serious accusations made in such circumstances. This is the most powerful mean under Aboriginal Law of controlling the behaviour of individuals.

If the Aboriginal coronial method is allowed to take place with police cooperation before the arrest and removal into custody of any person alleged to have committed murder, manslaughter or grievous bodily harm, then two advantages accrue:

- the proper paybacks are executed and the anger and grief are controlled, and unnecessary deaths and injuries from further paybacks
- blame placed on the policy by Aboriginal people is avoided, because the kinfolk have executed the necessary inquiry and punishments under Aboriginal Law. The matter will be settled and not raised again in the Aboriginal domain.

... the blame for the death could be deflected from the police and these grave responsibilities would be returned back into the commu*nity where they belong, that is witnessing of circumstances of death can be secured and the social causes of death can be investigated according to Aboriginal Law. T*his does not at all imply a call for any brutal form of retribution, for once a culprit is found he or she will obviously deny the accusations and the blame will fall upon the whole group. From then on it will be a collective effort to maintain forthwith law and order.

Aboriginal people are well aware that they face the likelihood of being punished twice — both under Aboriginal Law and under Australian law, but they are two different laws and the offences and punishments and subsequent social consequences are entirely different Aboriginal Law must be carried out first for the sake of peace and order. Mayhem follows if the necessary payback ritual is not carried out.

2.3.5 Witnessing under Aboriginal Law

"Witnessing" is crucial in resolving the mystery of a particular death and the grief and anger of the kin. If "witnesses" are removed by the police, the process of resolving death under Aboriginal Law cannot occur. In the words of Stotz:

> *If is necessary that a witness be called, a person who was physically present or close by at the time of death and who could give an eye witness account of the circumstances at that time. A causal explanation is not needed. Rather, a circumstantial account has to be presented so that a social cause of death might be established. It is then up to the close of kin to investigate further into the personal history of the deceased. Such a witness might be blamed for not having 'looked after' that person properly in that he/she has failed to ward off an invisible and malevolent intruder ('somebody') who came on the behest of an actual person with the order to kill.*
>
> *Hence to learn that a person was left alone to die in a cell or a hospital room only confirms with what indifference non-Aboriginal persons and society treat the life of the individual and in particular that of Aborigines, for there is no reason for any member of the community to be ever on their own, no matter what.*

2.3.6 Compensation under Aboriginal Law

Aboriginal Law imposes heavy fines for breaches or failures to perform duties. If a man marries a woman betrothed to someone else, he must compensate the betrothed man for all the gifts and payments made to the woman's parents since the betrothal, which usually is announced in infancy or early childhood, but only ritually confirmed during initiation ceremonies. Even breaches of etiquette

> **Important djunggayi man says — "you step out of line and I'll fix you". Message got around very quick. When I was involved in family dispute, I hod to pay $50 fine — that's Yolngu Law to keep the peace so that I didn't go on blacklist.**

2.4 Land And Law

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 Aboriginal owners living nearby them and carrying out the ceremony for them. All other aspects of the welfare of Aboriginal society depend on this.

At Yirrkala, it is clearly recognised by the 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 consultant to the Aboriginal Issues Unit, 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 given 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 were 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 w their Homeland Centre as the 'promised land' ...

I don't know what the government people think about it now, why we here on the homeland. That why we get the homeland, get the land right, we got the land back, and we can look at the Balanda law from our own land. What Balanda coming along and asking us for the mining and exploration thing, that's another problem. Same thing, a long time been happening, and they keep pushing us, pushing us. Government people, asking us more things. They gonna take things more from the ground, because they need the money. But Yolngu we can't get off the line, we are on the one line. In the one Law. Gambali Ngurrwutthun, Baniyala.

When Yolngu spoke of Homeland Centres, they generally also referred w the use of traditional Law under the control of Yolngu leaders. Some said that it wouldn't be as hard now for lawbreakers as it was in the old days, but it was a much better way of doing it, rather than always using the Balanda law. As I mentioned above this is happening in some situations, but obviously when the crime is a serious one there is no provision made for the use of traditional law.

Other elders told the Aboriginal Issues Unit when we visited Yirrkala that the homeland centres were better than jails for their wayward youth:

So your saying that you should be able to work in with the police and say this boy has done something wrong let us, we will punish him.

That's it exactly, for example, we could send them out to the outstation, we could do that.

For Aboriginal people, the Law binds kin. even distantly related, together. These relationships are not fixed in time but are constantly renegotiated within the hounds of the rules. But at any time, a person may call upon kinsfolk to make decisions and take actions about breaches of proper social behaviour and Law. Kinfolk are obliged to respond, if only to defend their own interests in the future. People who are related through "one country" whether as traditional owner or manager custodian from the mother's side are particularly obliged to deal with these matters when called upon.

Do you try and prevent people from appearing in court by trying to handle the matter locally?

Yeah, if it can be handled here, we handle it here but say if there's an assault charge, it's up to that person who's been assaulted to determine whether he or she wants to press charges then it goes through the police. But if there's any potential problems within the families we meet straight away. We talk to people, we go out and talk to them and ask them what happened and as a result, people have got used to the way the Council does things. And it's not a hard line approach it's a matter of sitting there and talking to people and finding 'out what there problems are. Once you identify the problems there's always an answer, there's always a number of alternative solutions to the problem.

2.5 Why Aboriginal Law Does Not Work In Some Areas

2.5.1 Concessions to Australian Law

There are a number of reasons why Aboriginal people are prepared to work in conjunction with Australian law. We discuss here the serious problems which prevent Aboriginal people from applying their Law.

Some communities may very well be able to reinstitute their traditional Laws successfully, but many

people have reservations and regard some ideas as nostalgia. The Law Reform Commission noted that there in areas where there had been a reintroduction of traditional authority there had tended to be a reduction in the crime rate. However, there is no simple correlation between allegiance to Aboriginal customs and Laws in a traditional community and lower crime rates.

There have been two different arguments about the use of outstations and "bush camps" as methods of reinstituting traditional teaching and traditional punishment

For instance, at Maningrida, the staff at the Bawaninga Outstation Resource Centre take the view that proposals by the Maningrida Council to have offenders sent to outstations are in contradiction to what the residents of outstations feel would be best. The outstation people feel that they cannot refuse an offender if there is a kin relationship but they are put in a difficult situation because they cannot keep the offenders in the outstations, who easily hop a truck or boat and return to Maningrida. Nor do they want alcohol abuse, petrol-sniffing and antisocial behaviour in the outstations which they have established to escape the trouble in the community. The view is held that parents are abrogating their child-raising and caring duties by sending their difficult to handle children to other families. Often the parents have alcohol problems themselves.

Outstation people would prefer that there were more assistance from the Department of Correctional Services if Department of Correctional Services schemes, such as Community Service Orders, Home Detention, Parole and Probation are to continue or be extended into the outstations.

There was a recognised need for the wishes of the community to be taken into account in the sentencing of offenders. The community itself was Viewed as being best able to comment on the past and present behaviour of an offender and the possible impact any further behaviour would have on the community. This was not always reflected in offenders' previous records of conviction, but is done informally through the Aboriginal Legal 'Aid Services.

RECOMMENDATION 2.4: Where a Magistrate considers it appropriate and not in breach of human rights, and where elders present sufficient evidence that they can hold an offending youth to ceremonial obligations without breaching human rights, he or she order the offender to attend a ceremony or number of ceremonies in addition to a sentence, fine or other correctional order imposed by the court, to enable elders to rehabilitate the offender according to their own culture:

In respect of the recommendation above, we have no evidence that human rights have been breached by Aboriginal Law men or women in respect of their treatment of youth at ceremonies, but there remains the possibility that youthful offending to avoid ceremonial obligations under Aboriginal Law is, perhaps not just a result of the traditional fear instilled in youth, but a form of "voting with their feet" on Aboriginal Law in favour of the easy life in Australian society. If that is the case, it is not our right to object to their decision. Nor should it he the right of anyone else. Youthful escapades or escapes on the part of young women to avoid traditional betrothals and marriages, which they choose not to engage in, is also a problem reported in past years by some observers. It is not a problem which was raised with us, although our consultations were not designed so as to make it easy for Aboriginal women to make any such comments to us, given our terms of reference. These features of Aboriginal Law and culture, it must be said, have been undermined by a range of factors discussed in this Chapter. We are therefore hesitant, although it is clear that the human rights agenda, internationally and domestically, is not one which has addressed indigenous issues or helped Aboriginal people in any remarkable way, to draw conclusions from what has been said to us which might ignore the fights of youth.

> What about the view that Yolngu Law should be recognised like sending boys to bush?
>
> **Bawaninga staff: We deal with outstations. I agree with Magistrates often sending boys to outstations happens without consulting people at the outstations properly. They might not want that person there. It won't stop them coming back into Maningrida. Magistrates at Maningrida don't do that any longer because we've told them. Who's going to supervise CSO in bush? I can't think of anytime when that has been successful — nearly always break**

their bond. Was tried for years but didn't work.

It works if they are sent to ceremonies — that's the only time when it's really like a jail — the kids can't get away. In this area — has to be a certain ceremony and certain time of year. Only certain ceremony where they lock boys up.

There seems to be no formal recognition by the Northern Territory Education Department that Aboriginal ceremonial requirements should not be regarded as conflicting with western education schedules. Sensitive negotiations on these matters between the Education Department and Aboriginal elders might lead to positive change both in terms of reinstituting the authority of traditional law and enabling more Aboriginal youth and children to continue with schooling.

RECOMMENDATION 2.5: The Aboriginal education consultative group (FEPPI) should consult with the Land Councils, the Aboriginal Areas Protection] Authority and Aboriginal elders to develop a policy on the recognition of] Aboriginal ceremonial obligations for school-age children. Negotiation should take place with the Northern Territory Education Department to adopt the policy

2.5.2 Grog and petrol sniffing

Grog and petrol sniffing, especially in larger communities, where people from different traditional groups are mixed up in someone else's country, worsen tensions and result in violence which elders are unable to stop. As much as they would prefer not to, the elders must call the police to keep law and order. They realise that Aboriginal Law is not working in these situations and it is a distressing problem for them:

Boyfriend and girlfriend fight. Police come along — "You two stop." More fighting, more fighting — sometime they pick up anything — dangerous weapon. Sometime we, council, say to people — get out'. Sometimes we gotta call police. What happen if people fighting — people getting cut, spear, shooting — we gotta call police. We Aboriginal people — we doing mere fighting. One person fight — everybody fighting. Aboriginal people different kind of feeling — keep on fighting. They say — "it's our fight, you get out". They knock Council when Council tells them to stop. When there are two blokes fighting --somebody might get hurt if Council doesn't call police. Council will get into trouble. More drinking — everyone starting trouble. Someone drink two or three cans of beer. But young people drinking too much grog.

An elder at Maningrida

As the elders have explained, the problem is one which requires the assistance of Australian law. There is an urgency in their requests for help which should not be lost in the enormity of the problem:

Don't forget. Take him back — show him — here. This is what Council is thinking.

At Laynhapuy Resource Centre, Daymbalipu Mununggur, Wirrilma Mununggurr, and Banambi Wununmurra, pointed out that alcohol was preventing their children from learning their culture:

Daymbalipu: Yeah, culture broken down.

The young kids don't want to know?

Daymbalipu: Yo, they running away from ceremony, because of nganaji. Young children, school age, they got to learn their culture. But middle age boy and girl they want to run away to the parks, they come back really drunk. Fussing about you know in the ceremony, they fighting, and talking wrong time, too fussy. I know myself because I never drink eh . . . We got a grog problem, we got a kava problem, we got sniffing problem, lot of people are sort of getting away from our cultural ways.

So traditional ways of punishing people aren't working anymore because people are saying I don't want to know about it.

Banambi: Yeah, that's the problem, the real problem to my understanding of two

laws, both laws you now we facing the Balanda law and the Yolngu Law. For example you see different, grog wise you see, because they get crazy, when they drink, they are drunk, they don't know where they are.

Daymbalipu: White people, you know Yolngu, the Police Commissioner should be understand. Leave the Yolngu alone, let our leadership looking after our own people, that person eh. Let the elder talk to him all the time eh, help him calm down, the nganaji law does not belong to the Yolngu, nganaji law is belong to the Balanda eh. Mm mm, leave the Yolngu alone, let the leaders talk to them. Like my son you know, if he get drunk and get into trouble, I'll talk to him eh, take him right away until he understand, because if they stay out in the homeland, I'11 protected my boy, my son the outstation, he stay here all the time eh, and he can learn fishing, hunting, spearing, he will understand, something you know, hers thinking you know, and it might change himself you know, himself. Mmm, women like that too, the ladies. With eke mother, some mothers are good, talk to their kids eh, but the boys won't listen because they drink a lot eh.

Wirrilama: We got a big problem in Yirrkala eh, on this nganaji, and also homeland is being affected by all this community and they making problem more for the other people. Like they starting like pointing at each other with a gun eh, this time by Yolngu. Yolngu, when they drunk, when they drunk, some on the road, some on the home, I don't know where they get that idea from, might be from Balanda, but I don't know. I'm going to talk with the police department so they know a program for all that because in past in one homeland they already been shooting himself in Gurrungu area.

2.5.3 The effect of missionaries

Some missions were clearly responsible for the ethnocide in some areas of the Northern Territory. Some missionaries banned Aboriginal marriage rules or traditions, such as polygamy, betrothal of young women to old men, the prescriptive cross cousin marriage rule, and ceremonies whether for initiation or funerals. Where this happened some Aboriginal groups retained their culture by practicing its overt features secretly. However, many ceremonies and traditions have not survived, although they have often been replaced by similar ceremonies from another group.

Do people still follow the traditional way here, Law and that?

Few, I think few people. In some ways some Aboriginal people have these pay back. We're not really like the people from desert country, [it's] more like that [at] some other places. They have their pay back business. Here and Garden Point, you don't have that.

Is the culture still strong there?

Oh yeah, it's strong but it's, they seem to, people complaining about how they have to mix religion with it. You see our ceremony and you see, go over to Garden Point, especially Snake Bay, you see their ceremony, and their ceremony is true Tiwi culture because that's really, they're Catholics but not as strict Catholics like the ones at Bathurst.

So there's a mixture at Bathurst between the Aboriginal culture and the Church?

I mean they have dancing in the Church, but the woman who have strong, like those woman we met the other day, if she's a widow and you know how we're always saying that the widow is not allowed to he undressed, she's not to he half naked, strip of thing to cover or grass, they use to just paint on their body, they paint but now they don't because they reckon it's not Christian like.

Because mission stations were largely set up in the Northern Territory in the twentieth century, there has often been a more enlightened attitude than elsewhere in Australia.

For instance, Aboriginal languages were not banned as elsewhere in Australia. Twenty-five or more languages survive in the Northern Territory today of the original fifty, whereas elsewhere in Australia a retention rate of one language for one hundred or more original languages is the norm. Many

missionaries have learnt Aboriginal languages fluently and developed orthographies, or writing systems, as well as school primers and other reading materials, even if much of it is biblical or scriptural.

However, their worst acts against Aboriginal people, and the ones which most embitter Aboriginal people towards them, were the enforced removal of people from their original country to mission stations and the removal of children from their families, particularly the children called by the racist terms "half caste", "coloured", "quadroon" or "octoroon".

> **Missionaries — they moved people all over. Put them all here. They didn't understand that some people don't live together.**
>
> **(A member of the Northern Land Council in Arnhem Land)**

2.5.4 The problems for Women's Law

None of these ceremonial alternatives to jail as rehabilitative measures discussed with us referred to females. This is-because women's Law is different from men's, in that its secrecy is much more strictly observed in respect of outsiders, especially non-Aboriginal people, than is men's Law. No woman suggested that magistrates ought to cooperate with their Law. This is not to say that they would not find this an attractive idea. They do assert strongly however that young gifts need their Law as much as young men to make them responsible women, towards their children, husbands, family, country and Dreaming.

For instance, at Tennant Creek and environs, women explained how living in or near Tennant Creek had had a detrimental effect on their daughters and the authority of Aboriginal law and culture over their upbringing:

> **Friends make them drink. Disco makes them drink.**
>
> ***These kids reckon they are 'free now' like white fella.***
>
> **They don't want to dance (dance at women's rituals), they want disco.**
>
> ***They only go bush to make babies.***
>
> **They don't want to get their clothes dirty in the bush. Good clothes they got them today.**
>
> ***Promise wife him married along someone else now ... not promise for nothing!***
>
> **Even though some are grown up, you (need to) keep on telling them all the way.**

It is clear too that the appalling level of domestic violence against Aboriginal women is not being addressed by Aboriginal Law. Many women are hesitant to speak about it, but the daily parade of women with bandaged heads and broken arms, especially in towns and larger communities where there is access to alcohol, is plain for all to see.

In a number of communities, women have gone as groups to police stations to request their assistance to prevent the violence. In Tennant Creek, Inspector O'Meara works with the Domestic Violence Committee because this violence is the worst crime problem in the community for black and white alike. As Judy Atkinson, author of the report and video, *Beyond Violence, Finding the Dream,* on domestic violence in Aboriginal communities produced for the Office of Status of Women, Department of Prime Minister and Cabinet, has stated, the death of women and constant assault, both sexual and physical, of women and children, in Aboriginal communities far exceed in sheer numbers and the enormity of suffering the problem which custody and deaths in custody pose for men.

A woman in a northern community, explained that Aboriginal Law does not help with domestic violence and that, for the women. the police are the only answer..

> **Another thing, our way doesn't solve any problem with the police. Population is really, I mean there's a !or of people on [name of community deleted]. They should have a police.**

That's what the women were saying, remember. They should have a full time policeman there.

In another northern community, a woman said:

Most of them around here are not major offenders. The worst crimes, like attacks on women, don't get reported.

2.5.5 Western style autocratic control of councils by elders and lack of consultation with leaders of the subclans

Aboriginal land-holding corporations are called clans by some anthropologists and it is a convenient term. It implies it patrilineal societies, where rights are inherited from the father, that an ancestral father and all his patrilineal descendants are members of the clan. However, living descendants may identify themselves in relation to their immediate male ancestor, whether living or dead, rather than through all his brothers and their descendants. This may occur to secure their rights in the land which they inherit from this ancestor. This fission away from the larger land-holding kin group occurs throughout Aboriginal society whether the principle of land tenure is patrilineal, or matrilineal as amongst the Tiwi, or cognatic (or bilateral) as amongst many desert groups. In one community, some senior members of subclans pointed out that Aboriginal Law does not work because the right people aren't consulted. Specifically. all the beads of the subclans, should be consulted and their decision ought to take primacy if any matter impinges on any particular subclan's territory. In some communities, elders have adopted an autocratic approach to running community councils, probably copying the Northern territory Government style used with Aboriginal people. Great bitterness and even long term feuds have been engendered by decisions taken by Council Presidents without outside agencies such as mining companies, the Department of Transport and Works and such bodies which seek to develop or use Aboriginal land. Examples were given to us of particular developments, already underway by the time of our visit, which involved subclan land approved for the development on the decision of a Community Council President only. Officers and staff of outside agencies consult only with the President and push for hasty decisions knowing that wider consultation will take more time and may result in a refusal by the appropriate people who speak for the land in question. The Land Councils seem unable to prevent this because of the remoteness of many communities and their disinclination (unlike Government) to "interfere" with local politics.

We thinks that's one of the things that's wrong with this Council ... that you yourself have got to abide by white man law too along with, I don't think our way is working now, like it used too in the old days, it's not working that way. That's how I see it anyway, not working.

[Name deleted, Council President] can say, "old men's decisions", but I know not really any old men in the council at all, he's making all the council's decisions.

2.5.6 Some aspects of Aboriginal Law are not popular

In one Central Australian community, young men explained to the Aboriginal Issues Unit, during the discussion which their elders had held about the need for recognition of Aboriginal Law, that one aspect of their Law was "hard". They implied that it was unfair in comparison to the way in which European law treats such matters. The problem, they said, is that under Aboriginal Law if someone is passing a car accident and stops to help the wounded, even to take them to hospital, then that person is considered under Aboriginal Law to be implicated in any death or injury. The social cause of death takes priority over the actual cause of death in the Aboriginal cultural explanation of death:

Long time ago when British law and Australian law had made agreement — people used to get hanged, dragged by ropes tied to their head, they used to burn them, treat them real guilty. He is looking way back. This year lots of people died in jail. But Yapa Law, we know we all respect our Law — if someone comes in drunken-driven, if there is an accident, when bloke passed away, the people, all the people in the accident got punished. It's still hard now. Sometimes in Aboriginal Law it's hard, wrong — even people who bring someone to hospital is wrong --whiteman's law he is only a witness. Pay-back — Yapa Law, should

come first before the police law (recognising Aboriginal Law). Sometimes people are involved but they didn't have anything to do with the actual 'accident' --rather they came along and took people where they died. So they were only trying to 'help' — but became involved. They do the same thing over and over.

A woman in Northern community, where the effect of missionaries has weakened Aboriginal law, explained two contradictory features of corporal punishment in her community: it is both too severe and yet it often is not effective in preventing further transgressions.

> [Name deleted], you're saying road accidents, are the people when they have these road accidents are they usually sober or what or just normal?
>
> **Police are involved with it anyway but I know from one incident where a man died and the mother of the man saying that he should be punished our way too. But I don't understand because they mean our way they want to flog them to death first before they hand over to the police and the police prevent them from doing that. That's one of the reasons why the police have to intervene, say, when that man raped that little girl the father of that little girl wanted to shoot him but he got a hiding there, with a rubber hose and everything.**
>
> When you say flog him to death you don't mean actually kill him, people don't mean to kill people, just give them flogging.
>
> **Yeah, as a punishment but I don't think that controls them either not like Central Australian, they were talking about how they believe they should have their own Law, Aboriginal Laws dealing with crime and punishment and all that. I think theirs are more effective than ours. They really do it, they really punish the person, they ban them from this and isolate him from other relations and people, whereas we don't. We just give them flogging and that's it.**

2.6 Aboriginal Law And Offence Patterns

2.6.1 The relevance of Aboriginal Law to offending

Many diverse explanations for the committing of offences were discussed, a number of them directly relating to Aboriginal Law.

These centred consistently around the issues of the specific problems of young men and juveniles; problems created through a lack of knowledge of the Australian law and its implementation; and the trivial/conflicting nature of many crimes committed. Those that often do not have a parallel punishment in Aboriginal Law, are taken from the hands of Aboriginal communities.

Before the impact of white society, children were brought up indulgently and entry to adulthood occurred at a much younger age, when responsibilities worked to instill appropriate behaviour in Aboriginal youth. In modern times, this indulgent child rearing pattern continues but schooling, the lack of responsibility, lack of jobs, etc, mean that youth often do not pass through stringent rites of passage into adulthood. Elders complain that they are berated by Europeans if they take their children out of school to teach them traditional ways, and particularly if their sons are absent for initiation. Young initiated males tend not to return to the school system because their initiation phase continues for some years and it would be shameful for a newly initiated man to rejoin his uninitiated younger colleagues in school.

The actual ceremony for taking boys from their mothers in many parts of Aboriginal Australia, involves the ritual crying of the mother and the hiding of younger boys. Everyone in the camp must cover their heads, the wailing of the mothers of the novitiates begins, and the men walk through the camp taking the boys. After a boy is taken from his family for initiation the immediate family unit of mother, father and siblings is not the location of disciplining of young males. For a long time after initiation, mothers do not admonish the new initiates. Rather this is the concern of the fathers, fathers' brothers and all those who took responsibility for the young men in the ceremony.

When men with parental and other responsibilities for male youth are heavy drinkers, their ability to

provide discipline, care, example and advice are diminished, resulting usually in the youth getting into trouble with the law.

Some elders realise the importance of this process, and the harm that weakness amongst the ciders can cause, as explained by this man at Port Keats:

> **We got our own place to build we built already for punishment so we can move in and put all the youth boys there (ceremony). We give them this one month until he settle down might be and think properly we can let him go think about it we given him lot of instruction when he get there, here (Wadeye) ton many people you know but we got it there now all the time long time ago when old live there years ago we still go it that place.**
>
> **I think about it, the elders got no power over the young boys I reckon if they have enough power to control the young boys they can do it they can stand over them maybe they can understand but you know too slack to easy. The elders they can't stand up and tell them off tell him what to do nothing, let them free.**

Or as often happens. the youth avoid completing the initiation rituals for fear that they will not be properly looked after, or simply out of fear of the actual ritual. A guaranteed escape from these more advanced ritual is imprisonment, deliberately sought through acts of violence, breaking and entering and motor vehicle offences.

Jim Wafer. consultant to the Aboriginal Issues Unit, explains that for a Warlpiri male there are three stages of manhood, each of which involves initiatory rites. These are the rites surrounding circumcision; the rites surrounding subincision; and "high school business" (a ceremonial cycle variously known as **kankarlu, marliyarra,** or kajirri). In interviews he conducted while a consultant to the Aboriginal Issues Unit, he found that offending related to ceremonial stages of Warlpiri man-making in two ways:

> *According to [names of two Warlpiri men deleted], three quarters of the young Warlpiri men who get into trouble with the police in Alice Springs have only been through stage one. Their apparent lawlessness is not purely youthful bravado; they are in fact seeking to be imprisoned so that they can avoid being subincised and having to spend time in the "bush camp" of "high school business". [Names deleted] contrasted this group with men who have been through all three stages. When the latter end up in custody, it is usually only for alcohol-related offences.*

Much of the "crime", which contributes to the statistical peaks in the months of November, December and January, is not simply alcohol related but coincides with the Aboriginal ceremonial calendar:

> *The pattern of youthful rampages is related to the seasonal cycle in Warlpiri communities. The subincision rites usually take place just before "high school business", which generally occurs during the Christmas holidays, when people have time off work and school. So in the month or so before Christmas, young men are likely to make trouble so that they can spend the festive season behind bars. Often they will have heard from others who have been in jail that it is a good place, where the prisoners are looked after and well fed. It thus provides an attractive alternative to "bush camp"*

The following recommendations were made to Jim Wafer in respect of these problems. The Aboriginal Issues Unit submits to the Commissioner that these recommendations if acted on would greatly reduce juvenile offending at particular times of the year and give more authority to Aboriginal Law and its capacity to

> *[Warlpiri men] made a number of suggestions for dealing with this situation, at least as it applies to young men at Yuendumu:*
>
> *1. Have cases involving young men from Yuendumu adjourned from Alice Springs to Yuendumu, so that the elders can talk with the magistrate, and ensure that the young men do not avoid going*

through the second and third stages of manhood. (This would mean that whenever lawyers are dealing with young men from Yuendumu they should routinely advise the elders, so that the latter can request an adjournment to Yuendumu).

2. In cases where young men from Yuendumu end up in jail in Alice Springs, the parole officer should advise the elders of the time of the release of the young men, so that the elders can ensure they are put through the second and third stages of manhood.

It should be noted that both [names deleted] regard the three stages of Warlpiri initiation as being an effective means of transforming brash young men into responsible members of their community, and that, by implication, they do not regard prison as having this "corrective" outcome

RECOMMENDATION 2.6: Magistrates and legal counsel for Aboriginal offenders should consult with the tribal elders and community councils of l Aboriginal communities, to take into account in sentencing Aboriginal people's ceremonial obligations, and in particular, the importance of Aboriginal men attending initiation ceremonies.

2.6.2 Funerary rites and offending patterns

The high adult mortality rates for Aboriginal people in the Northern Territory have a devastating impact on traditional culture and ritual practices, as well as the people who mourn the loss. Death, constant, inevitable and random deaths of loved ones, friends and acquaintances, shapes Aboriginal life and approaches to life in the late twentieth century. Every Aboriginal adult person can count the deaths of people in their lives many times more than an ordinary, non-Aboriginal Australian. Aboriginal people attend more funerals and repeatedly confer together to find some person(s) or agent(s) to blame for a particular death and engage in more cultural and ritual activities which mythologise death and normalise social relations amongst the living. Those aspects of culture which deal with death, such as ceremonies, Aboriginal coronial inquiries and the necessity for punishment (see 2.3.2 and 2.3.4 above) have become intensified by high Aboriginal death rates, with the highest being amongst young to middle-aged Aboriginal men.

The particular ritual behaviours which have become intensified by the high adult mortality rates in the Northern Territory are prescribed violence, such as violence between female cognates and in laws at funerals, the heavy alcohol consumption which is required of relatives after a death to help close male kin mourning, and the concomitant violence which accompanies such drinking, and the "payback" assaults and homicides which occur usually because some act has gone too far because of intoxication.

The way that death is dealt with in Aboriginal culture, in the context of high adult mortality rates caused by heart disease, respiratory disease and alcohol-related violence, produces a never-ending state of anxiety, more injury and more death, despite the best intentions of ciders to keep the peace. The invisible physical toll on those suffering from heart disease and respiratory disease may be well understood by health workers. However, there are many traditional Aboriginal people would not be able to accept that such diseases were, by t*hemselves, the* cause of death.

2.6.3 Imprisonment as a substitute for initiation?

Aboriginal people talked about what people say after they have been in jail.

They just might say when they come out fat "I'm a jail bird". Try to big note themselves.

I've never heard anyone bragging about jail — only one crazy one.

Some petrol sniffers when they come out of jail to Maningrida again, we hear those boys saying they miss their friends in prison. They have lots of good fun in there, especially with friends from other communities. "I'm a jailbird", I heard one drunken man say that when he got out of jail. Sometimes they say that.

One ex-prisoner dismissed the idea of Aboriginal people choosing to go to jail:

No-one goes into jail just to sit down.

Some anthropologist and criminologists (See Biles, 1989; Edmunds. 1990) have proposed that Aboriginal youth seek out imprisonment as a substitute "rite of passage" for young men to manhood. No Aboriginal person to whom we spoke agreed that this was the case though as discussed in 2.6.2 above, some male respondents were confirmed in their belief that some young men did deliberately seek to be imprisoned to avoid advanced Aboriginal initiation rites. Other reasons were given for some youth seemingly finding imprisonment attractive, but this was not borne out by the comments of youth who had spent time in prison. It is more likely that their bravado in front of peers after spending time in prison is an attempt to avoid shame.

Jim Wafer (1989), consultant to the Aboriginal Issues Unit, suggests that imprisonment is used by Warlpiri youth as a means of access to white cognitive and institutional structures.

> *In sum it seems that for many young Aboriginal men, prisons provide an important clue as to the way the white world works- in much the same way as the army did for an older generation of Aboriginal men during the Second World War. There are, of course, other ways that young Aboriginal people could come to understand white cognitive processes, for example through education in white schools and employment in white institutions. But this is a long and tedious route.*

> *Prison provides a much more immediate means of access into the white man's way of thinking and organising the world, and also, paradoxically, has some of the features of traditional Aboriginal communities that other white institutions lack. It is, for example, sex-segregated, and it is also where one is looked after.*
>
> *Imprisonment, then, may he a kind of status symbol for some young Aboriginal people--but probably not, as is often assumed, as a sign of defiance of the white world; rather, perhaps, as a sign of having come to terms with, or gained a foothold in, that world. This may be particularly true of people from bush communities, such as the Warlpiri, whose opportunities for access into the white world, through education and employment, are even more limited than those of the Aboriginal residents of Alice Springs.*

Many people to whom we spoke, particularly non-Aboriginal people, felt that there is a need for young offenders to become aware of the consequence of their actions. This is seen in the Katherine Justice Panel.

Many respondents acknowledged that there are mitigating circumstances involved in offences. Most offenders were acknowledged to be oblivious or unaware of the consequences of their actions. Most are under the influence of petrol or alcohol at the time of the offence. So offences could not be committed with the sole intent of a consequent detention.

Some offences are committed because of the need to get food. (See Chapter 5 on the problems faced by children and youth.) Many youth in Aboriginal communities are hungry, if not all the time, at least during the alternate weeks --the "miler weeks" — after pension or unemployment cheques arrive. With some proportion of male incomes where there are split cheque arrangements, and some proportion of all incomes, where there is no arrangement for women with children to get separate cheques, are spent on alcohol and gambling. The money is not distributed far enough for young men to get enough food to eat. In many communities, most people, especially those with no other source of income, are hungry a week after the social security cheques arrive, surviving only on tea and damper in some areas.

Besides, many Aboriginal youth have not registered for job allowances or unemployment benefits, and thus they have no independent income and are unlikely to be able to get food from anyone else either.

Owston, commenting on the theory of offending which attributes it to a new form of initiation, in the Heating held by the Royal Commission on Aboriginal Deaths in Custody on Alternatives to Imprisonment,

said in evidence:

> *They've got no idea of the consequences [young men from Groote Eylandt]. They either want some transportation or they want some goods or they want some more alcohol or petrol. They don' t even think about the consequences and I've spoken to hundreds of them in detention centres and prison. They may brag about it when they come back and they may be healthier because we feed them well, and so we should, but its really a myth ..... they don't enjoy being in prison and they certainly don' t think about it before they break the law.*

2.6.4 Punishment under Aboriginal Law — offences under Australian Law

> **You know for example if somebody takes somebody's wife, well black fella way is kill him, straight away eh, that's our Law, but now if we do that, if we tell that to the police well it's a police matter, finished. Yeah it's a police matter, but that belongs to our way eh, and some other special business, Yolngu business, something happens, finish, kill him, it's Yolngu business completely. Should work together. And if something happens like that well leave it to Yolngu and they'll work them things for themselves eh.**
>
> But what about traditional killings, payback?
>
> **They will go to jail too, for a little while, until we got to sort it out ourselves, and might be we will call later on, we will talk to might be the court to get bail.**
>
> **(Elder at Yirrkala)**

Aboriginal elders are well aware that capital and even corporal punishment administered to offenders under Aboriginal Law are serious offences under Australian law. This illegality of aspects of Aboriginal Law does not mean that these practices have ceased nor that elders agree with Australian law. On the contrary, we can only report that they are adamant that this is "blackfella's business" and nobody else's.

It does mean however that some of the arrests for serious offences in this category are for actions taken, indeed required, under Aboriginal Law. Recently in Alice Springs, a woman who had assaulted a man from another clan was given a suspended sentence, because bet counsel explained the involvement of customary law, and because of her good record.

Mr. Justice Toohey has argued that substantive evidence of an anthropological nature ought to be given to demonstrate that customary law is factor in the offence before the court takes customary law into account.

RECOMMENDATION 2.7: Funding to Aboriginal Legal Services in the Northern Territory be increased so that anthropologists can be employed as full time staff or contracted in special cases. In this way, conciliation between the parties may be possible and if not, the customary law background to such cases can be presented to the court.

2.7 Aboriginal Law And The Police

The relations between our people and the police are discussed at length in Chapter 3, but it is also necessary to consider areas of conflict between the role of Aboriginal Law and its upholders, and that of Australian law, and its upholders: the police

2.7.1 Police intervention leading to distortion of customary dispute processing

Police were seen to intervene sometimes in matters so that they obstructed the course of traditional Law. For families of those offended this only creates a situation where more tension is created, through the obstruction of traditional dispute processing procedures of the "inevitable" punishment or settling of the dispute through public corporal punishment or admonishment. There is nothing that the Australian system of law can do to protect from traditional punishment. For instance, offenders cannot be incarcerated for longer sentences for protection. So for many traditional offences against Aboriginal Law offenders face double punishment.

The consequences for Aboriginal kinfolk involved in a dispute following a breach of Aboriginal Law by an Aboriginal person when the police intervene and, wittingly or unwittingly, prevent Aboriginal dispute processing to take its course, can be very serious over a long period of time. For instance, if there is a homicide, the person charged by the police will be held in remand. Often unbeknownst to the police, the family of the deceased will be calling on the family of the accused to bare the person in remand released for "payback". Aboriginal punishment in such circumstances may involve the traditional spear in the leg. If that punishment were able to occur, the two disputing kin groups would regard the matter as settled. However, because the police will not release a person from remand for such purposes, because of the requirements of Australian law, the requirements of Aboriginal Law will be carried out in any case resulting in more and more "assaults" or "paybacks". This puts pressure on the accused family to give someone else for punishment in lieu of the obligation of the person in remand. If this does not happen, the aggrieved family might attack a close relation of the person in remand. The family of the accused will then argue that such "payback" was wrong, and demand further "payback". Such "paybacks" can go on and on till the accused is released from prison, sometimes after a long sentence. "Payback" will still be required of him, and this is quite likely to be carried out if be returns to the community or town where he first committed the offence. If he does not return, the feuding continues.

> What about if someone did something wrong. What you mob think of the white fellow law, like if someone do something wrong do you reckon the way he should be punished is the Aboriginal way?
>
> **Yes, Sometimes the police get their first before us.**
>
> You reckon if you mob don't punish your way do you reckon he'll do it again?
>
> **Yeah, he'll do it again. If someone do something wrong here the police come and take him away and the other family can't do anything? No we can't do it our way.**
>
> **Like if two black fella have fight they should be left to black fella — between like before when two people fight we have to get not only two leaders but different area's group say like that seven tribal group here — get every use of this and judged by different area. So if be guilty he got to work that hard to every people the leaders and pays the first and he pays his people after material like that. Similar like policeman then he free everyone forget that business.**
>
> **Police pick up somebody for doing one eking wrong. But if there's no policeman, those two men have to fix it up in the morning.**

A group of women described the community control process in their community

> **That happens when there's a fight — other people intervene. Mary (Deputy President) — will go around stopping people from shooting themselves. A couple of people will go around collecting guns and lock them up whenever there's a big shipment of grog. Rachel collects keys to cars —** and **get in middle of fights with Mary.**

Both Richard Coates, at the time of interview a Magistrate in the Darwin Court, and Doug Owston, Secretary of the Department of Correctional Services, acknowledge that the communities often must settle their own disputes. The contrast of two communities, Groote Eylandt and Galiwin'ku on Elcho Island, demonstrate the effecting on offending, arrest and imprisonment rates when there is formal assistance to Aboriginal people to assist them to keep law and order according to the dictates of their own culture.

Groote Eylandt, which had in 1986 the one of the highest recorded imprisonment rate in the world, had had little formal assistance from either police or magistrates in this respect Later, the Department of Correctional Services established a large number of Community Service Order projects on the island and significantly reduced that imprisonment rate, but this by itself, does not prevent the youth from stealing food, alcohol and cars in the first place.

Galiwin'ku, on the other hand, was the location for the first Community Justice Project established by the

Department of Law. Although it is hardly in existence now, the offence rate on the island fell to almost nothing:

> *The 1983 imprisonment rates for Elcho Island was approximately 4.2 times the national rate. The 1984 rate for Elcho Island had dropped to 2.5 times the national rate and was comparable to the imprisonment rate for Darwin and considerably less than that for the town area of Alice Springs.*
>
> (Davis, Stephen, The Aboriginal Community Justice Project)

A contributing factor to the high rates of offences, arrest and custody in some regions of the Northern Territory is the high level of policing. Again, the contrast of Groote Eylandt, the location of a wealthy mining town, Alyangula, and two relatively impoverished neighbouring Aboriginal Communities, and Galiwin'ku, a remote Aboriginal community on an island some distance from Nhulunbuy, the mining town on the mainland, is salutary. At Groote Eylandt, Alyangula, the mining town, 20 kilometres from the Aboriginal community at Angurugu, there are eleven police stationed. At Galiwin'ku, there are no police. However, there was one Aboriginal Police Aide who recently resigned because of the fatal shooting of a behaviourally disturbed Aboriginal man on the island by the special police taskforce from Darwin.

On the other hand, in some communities such as Maningrida it is readily admitted that without police, Aboriginal fighting would be difficult to control.

> **Milak: Our people like to take law into their own hands too.**
>
> Would there be more trouble if there were no white police?
>
> **Yes, more trouble.**
>
> **Third World**

The woman's point of view is often no different from that of the men. Although as is made clear elsewhere women are adamant that unhindered police involvement is required to control domestic violence:

> The community is solving it's own problems?
>
> **They are in a sense that they solve little crimes like fighting, brawls and they think, the community seem to be controlled there but when there's heavy things like rape, actually we were talking about when they believe that they should, they don't want police to, interfere, they believe that our way is better, our custom, that our law should be, they should carry on out custom, it's better than having to involve police, Oh yeah, there's a lot of rapes that happen there that people hush up about it but the more obvious ones they can't shut up.**
>
> So because people don't report it they store it up and when they get angry they start a fight and people would then probably be..
>
> **That's when big trouble starts, everybody get hurt and the police are involved. Like with a case like a murder as well, like attempted murder, not murder when you're killed, it doesn't happen much there, but !!!**

2.8 Formal Attempts To Establish Community Justice Mechanisms

There have been a number of attempts to establish or provide formal community justice mechanisms in the Northern Territory. These are discussed below.

2.8.1 The Aboriginal Community Justice Project — Galiwin'ku

In 1982, the Northern Territory Department of Law established a Community Justice Project at Galiwin'ku through the Magistrates Court. The Government has described this project as its major initiative in acknowledging their commitment to community justice principles. Stephen Davis, the consultant on the project, has described the project in a paper:

> *The Aboriginal Community Justice Project was initiated with the aim of providing a justice program*

which sought to accommodate wherever possible, Aboriginal law and social control mechanisms within the present judicial system of the Northern Territory.

This has been implemented by involving senior Aboriginal custodians with the magistrate in discussion prior to sentencing an offender after close and detailed pre-court consultation with the defendant's nuclear and extended family to support existing social controls evident in the community and strengthen such mechanisms within the contemporary life of the community.

Owston, Secretary of the Department of Correctional Services gave evidence on the project as a significant initiative of the Northern Territory Government at a Royal Commission Hearing:

The Dept of Law picked it up and did a very comprehensive genealogical study so they could identify the significant relative or responsible relative of a particular Aboriginal offender .... Significant members of the community and responsible relatives of the normally young offender went to court and [gave] ... the advice or evidence about what the community thought of the offender and what might be an appropriate sanction

Cases where offences had been committed in Darwin, were heard, not before Darwin courts, but before the community court at Galiwin'ku. The defendant's family and social control group were directly involved in hearing the case before senior Aboriginal leaders and the magistrate. They were able to make their wishes known to the court in regard to rehabilitation of the offender and to use traditional methods of social control with the backing of the court and the magistrate in particular. In the words of Department of Law consultant, Stephen Davis:

This may make possible a situation of positive social control which otherwise may not occur. Such support may prove to be a critical factor perpetuating methods of social control which at present might be inadequate in some clan groups, or further enable modifications to traditional social control mechanisms to be effected, such as to make them more functional at the Aboriginal/non-Aboriginal cultural interface.

If reasons are to be found for the failure of the project, it is the view of the Aboriginal Issues Unit that they lie in the conception of the structure of Aboriginal society devised by Davis in his identification of "the lineage authority

In every case brought before the community court no structure beyond the lineage was recognised as having authority over the individual and thus was not considered in terms of either the responsibility of the defendant for his actions or as a mechanism for controlling the individual. The family or lineage then is the focal structural authority unit to which the individual is responsible and is the seat of the authority structure within any clan.

His "tool" for identifying those traditionally responsible for the punishment of offenders was a "genealogical index" aimed at:

precisely identifying a defendant and then tracing, through genealogical links, specified kin whose traditional responsibilities toward the defendant included the exercise of specified Aboriginal social controls. This data is then selectively made available on a restricted basis to effect consultation with the defendant's family prior to court and to provide detailed social background reports to the magistrate.

Anthropologist, Nancy M. Williams, criticised in technical anthropological terms, assumptions underlying these procedures:

Most critical are those concerning the nature of genealogies and what may be inferred from them. In his report, Davis conflates genealogy, which usually demonstrates in same graphic form actual or putative biological relationships, and kinship terminology, which the set of terms that people use to address or refer to one another in ways that Europeans usually consider to indicate biological relationships (real or putative) or affinal relationships Difficulties manifest themselves at a number of

points when linking biological connectedness to genealogical relations and imputing fixed patterns of reciprocal behaviours to those links .... For insiders, the people who use the system, it is the substance of the relationship that is at issue: needs, desires, affections, and how to realise their satisfaction. Fictions may alter the nominally biological relationship (adoption, for example); marriages, births and deaths may affect the appropriate terms of kinship that people negotiate. The terms are negotiated to fit a desired, or even reluctantly accepted, relationship. The process is, of course, not simply governed by individual whim or ambition. All those whose interests are, or may be, affected by a change in relationship . . . must agree to it . . . The implications for... magistrate' s use of 'genealogical data' are serious... Genealogical diagrams cannot convey the information relevant to particular issues of social control. Moreover, without adequate understanding of the relationship between genealogy, kinship and clanship, errors... are likely to occur frequently... The clans at Galinwin' ku are patrilineal, that is, each person is a member of their father' s clan... mother' s brother is usually a member of yet another clan. These kin-defined others may or may not be expected by a defendant (or person related to the defendant) to exercise a particular kind of control over him/her... All this is not to suggest that genealogical relationship is not pertinent to social control. It must be, by definition, in a society with a universal domain of kinship, and if structures of authority are present. Both conditions exist in Aboriginal societies. But to assume that once charted they can be causally linked in terms of precise behaviour, and then subsequently presumed to operate in uniformly predictable ways is to miss the mark. The result is that their use will have no meaning to Aborigines in particular cases, or that communication between magistrates, police and Aboriginal defendants and their families may proceed on different, even contradictory, assumptions. If Aboriginal social control is to be supported, what is relevant is first w ascertain the individuals who are responsible for a defendant, then to ask what roles they will play in the implementation of sanctions and/or rehabilitation. These roles may be specified in kin terms. At that point it may be fruitful to make inquiries in terms of genealogical relationship if the interrogator has an understanding of the local conventions of kin usage. (Williams, 1987: 235-237)

Despite this acute and serious criticism from a senior anthropologist, Davis was confident enough to recommend that the scheme be extended to other communities. The scheme at Galiwin'ku no longer functions, however.

The project was later adapted to Groote Eylandt. It was not perceived to have the same success rate as reported by Davis for the Galiwin'ku project.

During the Hearing of the Royal Commission on the Criminal Justice System in Darwin, the status of these projects was discussed. Richard Coates, a Stipendiary Magistrate in these communities at that time, noted that enthusiasm for the project was very low and his understanding was that the project had not operated formally or informally at Alyangula during recent months.

Coates has mentioned that Galiwin'ku has fewer problems than Groote Eylandt.

The Town Cleric at Galiwin 'ku said to Aboriginal Issues Staff when asked about the scheme:

> Why did it stop?
>
> **I wouldn't have a clue .... Might be just that [there] might be [need for] more practice.**

The programme is not allocated any financial or administrative resources to ensure its implementation. Nor does the Department have any policy to clarify its position concerning the implementation of Community Justice programmes as a matter of general principle.

It appears that magistrates are not informed of the project' s operation, past or present, and this must contribute to the lack of participation by community members.

Doug Owston suggests that it is primarily a Departmental initiative and consequently they will have to

> *. . . look at it in terms of whether the Council President or other significant community members*

want to be involved. I think it is something that has to he pursued.

As the Department consistently cite the project as one of their major initiatives, a reappraisal of the means to "pursue" the implementation of this project may be overdue. Most importantly, communities would have to feel that the project is still relevant in 1990, five years after the initial "Report" by Steven Davis on the project's progress.

The Department of Correctional Services submitted to the Royal Commission (Overview Session, p. 29) that the Aboriginal Community Justice project originated from magistrates who sat at Yirrkala and Port Keats in 1985:

> *in terms of getting significant Aboriginal community members to sit with them on the bench in order to provide community views about the views of the nature of the offences and what the community perceived was the situation of the offender*

RECOMMENDATION 2.8: A formal independent evaluation of the Northern Territory Department of Correctional Services Community Justice Scheme is required. It should examine, with the assistance of anthropologists who qualify as experts in the field, options for enabling indigenous forms of social control to operate in Aboriginal communities with the formalised cooperation of the Australian legal system, specifically the visiting magistrate and the Department of Correctional Services.

Questions which ought to be asked include:

> *At how many places has the scheme operated and for what periods?*
>
> *How many cases have community members been actively involved with the scheme to the extent of advising magistrates on particular cases or resolving disputes?*
>
> *What categories of offences and offenders have been before the courts under this scheme ?*
>
> *Is there a measurable effect on sentencing ? Has the process affected offence rates ?*
>
> *What are the indicators for success apart from reduced offence rates and sentence periods ?*
>
> *Is it primarily a juvenile community justice programme in terms of the ages of the defendants who have been assisted by the scheme? If this is the case, it should be treated, analysed and developed as a juvenile programme.*

Magistrates who have participated in the scheme, whether in its informal stages, or in more formal situations, could contribute to the state of knowledge about the project by providing details of cases which give the ethnographic information about specific communities where the scheme has operated, about how Aboriginal Law works in practice in this joint arrangement, how communities or community members participated, and why participation falls away.

In particular, if such an independent review were to be carried it is the view of the Aboriginal Issues Unit that the scheme proposed by Dr. H. C. Coombs for Yirrkala, and submitted to the Australian Law Reform Commission ought to be reconsidered.

The Coombs' proposal arose out of the most vital concern of the Yolngu clan leaden who were village council members in the early 1970s: "the unilateral intervention of police in Yolngu disputes" (Williams, 1987:233).

Coombs' proposal formalises the system developed by the Yolngu clan leaders over the years in their dealings with police and magistrates:

> *The leaders attempted to maintain their authority by asserting their jurisdiction over 'little trouble' and by proposing a number of procedures for acting jointly with the police. The Council' s aim*

was to have the police function as an adjunct to their own authority, rather than to create mutually exclusive jurisdictions. When trouble arose they wanted police to attend their meetings at their invitation, and they wished to remain involved in any matter that concerned a Yolngu person as prisoner, defendant or witness. These aims were consistently expressed through the succession of council structures that came into existence during the ensuing fifteen years

(Williams, 1987: 233)

By 1976, the town council of Yirrkala, the Dhanbul Association, had incorporated as a business and trading association. When this became the Community Council, the annual election of officers and members became a problem for the traditional leaders of the Yolngu clans. The clan leaders used a number of constitutional devices to ensure that membership and representation accorded with Yolngu principles of authority and decision-making.

When disputes arose, they were dealt with by traditional Yolngu means, and only involved members of the Council in terms of their responsibilities (or liabilities) as kin in any particular case.

The leaden also met to consider matters of social control which had been put to them by members of parliamentary committees and the Law Reform Commission.

Williams (1987: 237) lists the essential criteria of community justice mechanisms which are met by Dr. Coombs proposal:

The viability of Aboriginal community justice mechanisms depends on Aboriginal autonomy. At the most basic level this means that police and other Australian law enforcement agencies will not intervene unilaterally in offences involving Aborigines, but will intervene at the invitation of Aboriginal community leaders. They will keep the leaders involved at all stages of dealing with a community member charged with an offence if the matter is dealt with outside the community, and within the community will act to support the authority of community leaders... Where Aboriginal communities suggest mechanisms of articulation or joint operation with Australian law enforcement agencies, these must be seen as means of providing support for Aboriginal authority, not of superseding it.

2.8.2 The Tangentyere Social Behaviour Project

In May this year the Tangentyere Council submittal a detailed proposal for what it called the Social Behaviour Project to the Northern Territory Attorney-General, Mr. Darryl Manzie, and requested that his officers meet with the Acting General Manager to discuss funding and other matters, including the priority which the project ought to be accorded to ensure that it commences operations in the near future.

The submission itself sets out clearly the need for a new approach to the question of indigenous law, especially where this law has been weakened by such problems as the migration of remote Aboriginal people to the township of Alice Springs, alcohol abuse and the social problems it engenders. It proposes a process of re-establishing the law of the traditional inhabitants of Alice Springs and integrating the rules of the Australian institutions in Alice Springs by ensuring that all visitors know and understand rules for social behaviour which have been devised by Aboriginal people.

The scheme envisages joint cooperation with Aboriginal Police Aides and Aboriginal Corrections Officers and the mainstream Australian law enforcement agencies, but importantly, retains Aboriginal autonomy and authority in decision-making and policy-making. A holistic approach to social control is taken, with specific regard to the disorder which arises from alcohol abuse. Recommendations are made on social and environmental problems which must he addressed for Aboriginal people to he able to take some control over the problems of law and order in their daily lives.

Barb Shaw, Acting General Manager of Tangentyere, detailed the proposal in the following way:

The problems in question include:

- **violence amongst the drinkers;**
- **violence towards tenants on the leases;**
- **families being kept awake all night;**
- **bad examples being set for children;**
- **sexual offences;**
- **public health problems;**
- **increasing alcoholism;**
- **vandalism and theft;**
- **family and community disintegration under the stress of all of the above;**
- **marriages occurring which break tribal rules and which cause problems in communities.**

I believe that many of these problems occur because the visitors are "outside the law". They are away from the laws and restrictions of their own communities and do not understand the "whitefella" law that applies in Alice Springs. Nor do they understand the rules of life on town camps.

Tangentyere is proposing to assist in the creation of awareness of the rules and laws of Alice Springs amongst these people and also to assist in the application of these. We are calling this our Social Behaviour Project.

We believe that this can best be done by fostering a widespread identification with and commitment to the rules and laws by elders, family leaders and ordinary people in the bush. For this to happen successfully, there needs to be a process whereby the bush people can learn about "town law", work out their own approach to understanding, teaching and applying that law, and place it in the context of their own laws and customs. Hopefully this could lead to a maximum integration of the two sets of rules, at least in the Alice Springs situation.

It is hoped that the bush people could come up with some constructive suggestions for changes or adaptation of either town or bush law in the process, and this could assist the Government in its own legal planning.

This Social Behaviour Project is not meant to be all-encompassing, but to be firmly focused on areas of day to day life in town. The kinds of topics which could be addressed would be:

- **- is it OK to be totally uninhibited when you're drunk?**
- **what behaviour by drinkers is acceptable, and what is not?**
- **how are disputes to be resolved without using violence?**
- **what public health standards are needed in town?**
- **who is responsible for getting individual family members, who have become stranded in town, back to their homes?**
- **who is responsible for taking action when people stay in town and start causing trouble?**
- **where should people camp when they visit town, particularly drinkers?**
- **what is disrespectful and unacceptable to the permanent residents of Alice Springs?**

<u>Phase 1</u> of the Project would have to include workshops with concerned people — Aboriginal and non-Aboriginal, town and bush — which would extend the above list and clearly define the issues. Later phases would he designed to develop as much agreement as possible amongst Aboriginal people from the bush about what is acceptable social behaviour in Alice Springs and what is not. After that we should he able to improve the situation.

Detailed planning will he necessary for the later parts of the Social Behaviour Project, which could he divided into 4 phases:

<u>Phase 1.</u> Consulting with leaders and members of bush communities about the

problems, and letting them know about the concerns felt by all Alice Springs residents about drunken behaviour by some of their people when in town. (A video of town leaders speaking out about the problems from both Aboriginal and non-Aboriginal points of view would assist this phase).

Phase 2. Getting consensus amongst Aboriginal elders and leaders in Central Australia about what the rules for social behaviour should be when outsiders visit their communities, including Alice Springs, investigating how such rules could best be related to traditional Aboriginal laws and customs; and working out processes by which these rule can be realistically made to apply, particularly in Alice Springs. (This phase will need to include gatherings of traditional Aboriginal law men and law women in each regional area; it would also need to include close consultation with non-Aboriginal authorities, such as police, magistrates, politicians, pastors, public servants and teachers).

Phase 3. Publicising these rules and processes to all Central Australian residents and trying out methods of enforcement in Alice Springs and in other "open" communities.

Phase 4. Seeking backing from Federal and Territory Governments and bush communities for implementing support services which would further help to prevent and resolve the problems, and enable the Social Behaviour Project to achieve its gaols, e.g.

(a) provision of intensive and on-going Aboriginal alcohol education and counselling services in Alice Springs and throughout the bush;

(b) provision of adequate, Aboriginal controlled alcohol rehabilitation services on a decentralised model, in Central Australia;

(c) provision of other well planned Aboriginal services and employment generating enterprises in all areas of the bush where there are significant numbers of Aboriginal people living;

(d) provision of government-assisted, well managed community centres in bush communities;

(e) provision of an affordable transport system for unemployed people from bush communities to be able to travel to and from Alice Springs and other communities without the risk of being stranded;

(f) provision of more Aboriginal Police Aides and Aboriginal Community Correction Officers.

RECOMMENDATION 2.9: The Tangentyere Social Behaviour Project be funded by the relevant government departments and agencies, included the Northern Territory Department of Law. Funding and policy support should enable the project to be established effectively, to achieve its aims, and to be able to monitor its effectiveness in this new and exciting approach to the question of indigenous law in an urban environment.

2.8.3 Informal arrangements between Aboriginal people, magistrates, police and others

At Pularumpi on Bathurst Island, an elder had participated in an informal version of the Community Justice Project and believes that the scheme ought to be reinstitute in his community:

That's right, probably you should have a qualified barrister in our communities, even a magistrate. I think people should sit with the magistrate every time they have a court in Darwin, Garden Point or Port Keats that's where the court house is to have in the community. That's the reason why because you get no proper security.

What about that community justice system, have you heard of that?

No I never heard that.

That was developed on Galiwin'ku, Elcho Island, where someone goes *to court t*hey get the family representatives to come up there and maybe the senior people from that community to sit with the judge, the magistrate, when the case comes up. They discuss that person's case and they advise the judge on what son of sentence W give that person.

Yeah, well that's like JP is it?

Well sort of yeah, it's a little more like ...

Elder Well that's what you need, if they do that kind of system the people will appreciate that.

Is there any other reasons why you think Aboriginal people are getting locked up?

Well like I said, the same thing, no proper judge, no lawyer but no magistrate. What every people should do they should he more involve in the court house, sit with the magistrate every time they, people go to court. I think people should think that. We should talk about more than that business.

How would you see that operating?

They operating would he good if the white people should work with Aboriginal Laws, everybody following European law and check our law sometimes, some people, that's the way I see it.

Is that something with this community, do you see any further changes

There's a lot of changes to this community. Sometime ago I sit with a magistrate round about five years ago, we sit with a magistrate before, while he hold court in Garden Point. I appreciate that job you know, we never got paid for it. I was sitting with .....

What was your job there?

Council and I use to go to court everytime people get court case through the communities and I use to sit with the magistrate. We decide from there, they said some people good some people bad.

How did you help that magistrate?

Magistrate and myself were sitting together in the one table side by side, it was really good and we like to see more happen to day.

What did you do, did you translate for him or was it all in English?

All in English.

The Town Clerk of Garden Point was also questioned on the matter:

What we were just talking about before that he used to sit with the magistrate before, does someone do that now?

No, not really. If there's a special request from the courts or the police or someone . . may be a lack of communication between the courts and the person.

Why has it stopped?

Well it's never been a situation where someone's said, well okay we need someone to go and sit in court and help the court out in terms of communication. It's only been the odd one occasion, I think Robert was talking about that case he had to go in to Darwin into the Supreme Court and give information, because he was one of the witnesses, he was one of six or seven people.

He's saying he use to go and sit up with the magistrate down at ..... before.

Maybe on a couple of occasions he might have, if there was family involved. I know his, one relation at Garden Point, he had to go and sit in, not only at Garden Point but also in the Supreme Court. So it's not a regular occurrence.

One magistrate and a lawyer at CAALAS have raised objections to even the minimal recognition of customary law which has so far been practised by the Northern Territory courts (excluding the Anungu Rules and allowing of expert evidence on customary law), that is, magistrates bearing the advice of elders on sentencing. The magistrate, to whom Aboriginal Issues 'Unit staff spoke at a Yuendumu court hearing, was concerned that such advice was not always impartial, and while be had no objections to their advice being given at the court bearing, be was not prepared to accept it in all instances.

At this court bearing, a youth who had committed a large number of offences, possibly in an attempt to

avoid initiation knowing that be would be in jail during the initiation period for these offences, was publicly nominated by one of his grandfathers for initiation in the court room. The elders asked that he not be in prison during that period. The magistrate asked for a report on the offender from the Corrections officer.

Following a meeting with the Tribal Council, the Aboriginal Issues Unit had assisted the elders in attending the court to speak to the magistrate as they once used to. The magistrate was unsure as to why they had ceased to attend the court for a period of time, but the Aboriginal Issues Unit consultations reveal that this is possibly *because* CAALAS does not meet with the Tribal Council and encourage their attendance at court. Fifteen years ago, in the formative days of CAALAS, lawyers did have meetings in the communities prior to court sittings. It is probably also the result of the elders' main concerns being with sentences which might conflict with the obligations of men and boys who should be involved with ceremonial activities. In other less serious cases, the elders reprimanded the offenders in the court room after the magistrate handed down sentence. The elders also tried to rectify what they believed to be a false impression given to the police by a non-Aboriginal complainant about one man charged.

The CAALAS lawyer who objected to the recognition of Aboriginal customary law argued that the lack of impartiality and other principles in Aboriginal Law was in direct contradiction to the spirit of European law. They could not work together, he argued.

Some Aboriginal people mentioned that they felt that the magistrate system itself was flawed through bias towards police evidence.

> **Magistrate don't listen to people — he only listens to police -one side, — not Yapa.**

It was also pointed out in Yirrkala that European Magistrates would not necessarily easily understand Aboriginal Law:

> **That's true the Yolngu law man should sit along side and the magistrate, they will understand each other, because he and Yolngu got s culture, same thing they will understand each other, and Yolngu will explain to magistrate.**
>
> ***Yeah,* yeah. *Or might be Balanda don't understand eh, we Yolngu know.***
>
> **. . . and that's what I was saying. If they should do like that, as long as they should realise something, you know, respect each other, respect our law and we should respect their laws. Even with the court case, you know, something happens like that because Yolngu goes in there, he's a traditional law man, if he goes to the court. Well the court have to respect him, because he is a traditional man.**
>
> He has got the same powers as that magistrate.
>
> **Yo.**
>
> And magistrate could listen to that man?
>
> **Yo, and if he talks, he's talking, not only by him but he's talking as Aboriginal and as well as he's got law man too, he's got taw man backing.**
>
> So you think like in the courts there's this system, there's this new program where you can have the Aboriginal Law man sitting with the magistrate and advising him, working together on what they think that person should get.
>
> **Yo.**
>
> Would you like someone to talk to the leaders about this program?
>
> **Yo.**

2.9 What Do Aboriginal People Want?

All over the Northern Territory, Aboriginal people recalled the Australian Law Reform Commissions' consultations concerning traditional Aboriginal Law and community justice.

Aboriginal elders in the Northern Territory were not aware of any implementation of the recommendations

of the Aboriginal Law Reform Commission. Because there has been no action on this Commission's recommendations, they believe they are saying the same thing over and over again with no effect. Nevertheless, these issues are of such great importance that many elders have yet again given advice in an attempt to obtain some recognition for, and cooperation with, their Law.

People talked about need for follow-up of Law Reform Commission.

> **I've looked at that report — there's been a lot of research done. Some Aboriginal law should be brought into white law — how to punish people. But there's been no follow-up. I know for sure there is a system. We all know there is an Aboriginal tribal law system. It can work — it's a good one if it can be supported. It must be introduced so we can punish people who have done the wrong thing.**

However, some any Aboriginal people are cynical about the prospect of change occurring. One bitter comment from a person who has obviously had enough of the Australian legal system was:

> **Go talk to Legal Aid. They know all about custody.**

However, the likelihood of such changes to the Australian system occurring depend on the available resources. The solicitors at the Central Australian Aboriginal Legal Aid Service were considerably less than enthusiastic about involving themselves in reform of the present system:

I think the way CAALAS is set up, I think we are pretty well tied into the system. I feel like a rubber stamp sometimes... How could you expect a Legal Service, without the backing of a government that was serious about implementing those sort of reforms to go about initiating it, say from the end of the next financial year, this is the way we'll attack things. Because the basic structure won't have changed. The people who are our clients who we are coming into contact with one way an another, how could you do it? I mean, its all very airy fairy in the sense that we're not addressing specific recommendations. How could a service go to the cabinet in particular saying 'well, this is the way we want this service to be conducted'. It's all very well to have some lawyer, or two or three or four or five, who think the recommendations are worthy of adopting. And they say, 'well, we won't be going down to court to look at drunks today, we'll be doing this and that and the other.' What do they do, the couple in custody, when they say, 'where' s Legal Aid?'

Some agency has to take responsibility for pursuing the recommendations made here. Aboriginal organisations and communities would want to be involved in any developments of this kind.

2.9.1 The need for Aboriginal judges and lawyers

Aboriginal elders want to continue the arrangements whereby Aboriginal councils or elders give advice on sentencing and punishment, but they want training, or indeed they want an Aboriginal magistrate. The late Silas Roberts was an Aboriginal Justice of the Peace at Maningrida, but the Aboriginal perception of his role, because of his enormous influence, intelligence and ability to advise magistrates on the requirements of Aboriginal law, was that be was a magistrate. People in North East Arnhem Land remember this appointment and desire senior Aboriginal people to be appointed as magistrates in their communities.

In Central Australia, Harry Nelson and Wenten Rubuntja were Justices of the Peace also, and because of their already high standing in Aboriginal Law, their appointments were perceived by Aboriginal people to be a real recognition by Australian law of their standing and capability in Aboriginal Law:

> **You would like to know and we would like to know. Here it's another Territory. In my life, I've 'seen people come and work in police force. We'll have blackfellas — like lawyers — that part people gotta get jobs and do work. People just do Police Aides work. People haven't done lawyer work yet. In America, other places — they've' got lawyers — here Territory only working training Police Aides. Other places they've got own people working for them. All the time it's whitefella lawyers. He can't help our people. Some people don't understand — talk their languages — understand what is going on. We gotta talk to department to get our own**

people to talk. That's how people go to jail.

We are looking for people to come and sit down with us — we'll think about these things.

(Discussion at Maningrida)

There is an urgent necessity for access to appropriate para-legal training so that people who are vested with community powers can better represent their people.

RECOMMENDATION 2.10: Courses should be developed to train Aboriginal people in understanding the Australian system and to give them skills which they could use in positions such as Police Aides, Aboriginal Corrections Officers, Councillors, advisers to Magistrates, and prison and police cell liaison officers. These courses should be taught at the Institute of Aboriginal Development in Alice Springs, and at Batchelor College and the Centre for Aboriginal and Islander Studies at the Northern Territory, University.

2.9.2 The need for legal education

There were also requests from many communities that legal education be introduced into the schools. so as to introduce Aboriginal people to both Aboriginal and non- Aboriginal legal ideas.

RECOMMENDATION 2.11: The Northern Territory and Commonwealth governments should take urgent steps, in consultation with Aboriginal Law men and women and educationalists, to design and introduce legal education courses using Aboriginal languages as the medium where necessary.

2.9.3 Aboriginal Liaison Officers

Aboriginal people want to be informed by police, court officers and lawyers the outcomes of arrests and sentencing. They urgently want procedures for contacting families promptly regarding imprisonment, fines, community service orders, arrest, autopsy, death.

RECOMMENDATION 2.12: Each court in the Northern Territory should have an Aboriginal Liaison Officer whose duty it is to inform families of the outcome of each matter involving Aboriginal people before the Court, including imprisonment, fines, community service orders, and coronial inquiries. Such a position could be jointly funded by a number of departments and agencies.

2.9.4 The need for interpreters

Aboriginal people need interpreters if they are to enjoy human rights under the Australian legal system:

And some of the things I believe when white people deal with Aboriginal people they use unreal force and very high language that Aboriginal people can't understand.

They over-power Aboriginal people with their language. They don't understand Aboriginal culture and language. It's like travelling through Europe.

(Discussion at Barunga School Action Group)

One of the ideas raised by elders at Groote Eylandt is for the appointment of an Aboriginal magistrate who could speak to offenders in their own language.

The Groote Eylandt elders also explained the need for interpreters in the court. Material from cases reinforces this view that the availability of interpreters would prevent miscarriage of justice and enable more understanding amongst Aboriginal people of how European law operates, There is very little formal use of interpreters in the Northern Territory, despite many government departments recognising the value of interpreters for specific projects, for example as in the 1986 Census. Providing interpreters to offenders in all cases might be a costly exercise, but qualified interpreters in some cases are essential. While it might seem to many non-Aboriginal people, that Aboriginal people seem to be able to speak and hear

English, the assumption is wrong, Nuances of meaning are often missed, the meaning of concepts is not understood, and a great deal of meaning can be missed if an Aboriginal person has not learnt how the European calendar works, how expressions of time and tense are used and so on. It is the Aboriginal Issues Unit view that providing offenders in some cases with interpreters is a matter of human fights, and that the cost ought not to stand in the way.

RECOMMENDATION 2.13: A comprehensive strategy for incorporating Aboriginal interpreters into the Northern Territory Interpreters Service should be created. This strategy should be developed through negotiations between the Northern Territory Interpreters Service, the Institute for Aboriginal Development Interpreters Service (Alice Springs), all .of the Northern Territory Aboriginal Legal Aid Services, and the Northern Territory Department of Law.

Force Doesn't Help: Aboriginal Relations With Police

3.0 Introduction

Aboriginal people in the towns of the Northern Territory live with police and prison as dally and inevitable parts of theft lives. Their experience of the police in these towns is as common as catching a bus to work might be in the cities of Australia. Here in the Northern Territory, however, there is very little work for our people, and instead they frequently find themselves getting a ride to the local police station in a paddy wagon. Their detention is usually associated with drunkenness and the violence connected with it.

Unnecessary repeated arrests and the staggering rate of detention in protective custody are the most significant police actions towards our people which should be changed urgently. Older Aboriginal people voiced their concern many times that if young people are repeatedly arrested they might become depressed and kill themselves.

Many Aboriginal people in the large centres (such as Alice Springs, Tennant Creek and Katherine) and the larger communities (such as Yuendumu) do not have the confidence which non-Aboriginal Territorians have that the police force exists for their benefit in keeping law and order and implementing the laws of the land. The Aboriginal Issues Unit staff were told many stories of police violence and harassment of Aboriginal men, women and children. This leads to both spontaneous and organised protest and stress-related behaviour. The police, by their frequent confrontationist behaviour contribute to the poor self-image, stress and sense of defeat which arguably contribute to excessive alcohol abuse of many Aboriginal people.

Many Aboriginal people rely on the police to enforce the provisions of the Liquor *Act* relating to 'dry' areas and to prevent the violence and disorder that accompanies drunkenness. However, there are many complaints of police bias, of their refusal to attend calls, of their frequently improper and heavy handed behaviour, of the fact that they have little or no understanding of our culture and living conditions. Again, while there is some sympathy with the police for having to deal with excessive and dangerous drunkenness, there is a great deal of protest at their treatment of Aboriginal people in general, which seems to he based on the assumption that all of our people are uncontrollable, criminal, and deviant. As one person from Alekerange put it: "Whites think Yaps stupid (and that we are) only hungry for grog".

In those smaller communities where a police station is located within or near the community, it is often the case that individual police officers have developed good working relations with Aboriginal people. They have made an attempt through Police Aides or Community Councillors to understand the local culture: the kin groupings, the language, the avoidance relationships, the old feuds which flare up occasionally and other matters which bear upon the life of such communities.

However, in many of these communities, police often experience life in another culture for the first time and their training for this experience is generally inadequate. Unfortunately, interviews with police indicate that many still rely on the uninformed and, indeed, racist popular wisdom of the Northern Territory to understand Aboriginal people in the late twentieth century. Police need a better understanding of

anthropology and the place of the Aboriginal people in world history; of the history of relations between Aboriginal people and Europeans; and of the Land Rights movement, the Land Councils, and general Aboriginal and citizenship rights.

In more remote communities, the large distances to police stations mean that there is no immediate access to police assistance to prevent or stop breaches of good order. By the time that police arrive, Aboriginal people in these communities have usually dealt with the problem themselves. Here there is a greater reliance on Aboriginal Law to ensure good order in the communities.

The official replacement of indigenous systems of law in the last century by European ones has not meant that the Aboriginal people agree that the police have the automatic right to supplant Aboriginal Laws and law-keeping. Aboriginal people in many places recognise that a police presence is essential because of the mayhem caused by abuse of alcohol and petrol sniffing. However, it remains the view of many of our people that the police and the laws they represent are alien institutions; the failure of the police to inspire widespread 'respect for European laws can be attributed to this fact.

Aboriginal people have taken a number of creative initiatives and made many suggestions to improve policing arrangements and Aboriginal relations with police. Examples of such initiatives are the voluntary night patrols by Julalikari and Gurungu Councillors in Tennant Creek and Elliott and the Barunga School Action Group proposal for community-based teaching on police and courts. In Alice Springs, Tangentyere Council has made tireless efforts to tackle the real problems which underly alcohol related contact with police and to challenge the Northern Territory Government to address these problems. These are signs that Aboriginal people have their own ideas on how peace and good order can be achieved, and that their confidence in conventional policing practices has worn thin.

Despite all this, a few senior police have won the respect of Aboriginal people. In one case this is clearly because he has reduced the custody rate through cooperation with Aboriginal and non-Aboriginal organisations. Some of our people indicated that relations with police have improved over the last ten years or so, but that these changes have been slow in coming and that some police at least have not changed their attitudes or behaviour over this time.

Although the Police Aide system has made very little difference to Aboriginal peoples' perception of white police, Aboriginal people relate well to the system because the Aides are Aboriginal. Many constructive recommendations were made by Aboriginal people to improve the Aides' standing and respect in the community and their training and conditions within the police force.

Aboriginal perceptions of and responses to the police have been shaped by the long history of brutal and racist policing in the Northern Territory. These perceptions and responses are part of modern Aboriginal culture. Thus, the small and gradual changes in policing practises in the Territory over the last few years have had little impact on Aboriginal views of police.

Many Aboriginal people told the Aboriginal Issues Unit that in order to improve Aboriginal-police relations many changes need to be made to policing practises in the Northern Territory. These suggestions are outlined in this chapter, however as will be seen, all of these suggestions from Aboriginal people in the Northern Territory have been made before.

Aboriginal elders said to the Aboriginal Issues Unit that they are "sick of saying the same things over and over again". Indeed, following our consultations, it became clear from literature that this is exactly what has happened.

THE AUSTRALIAN LAW REFORM COMMISSION RECOMMENDATIONS ON POLICING IN ABORIGINAL COMMUNITIES

Many of the issues raised with the Aboriginal Issues Unit in consultations were also thoroughly canvassed by The Law Reform Commission, which in its Summary Report of its body of work made the following

recommendations (1986: 74):

- *There needs to be better communication between police and local; Aboriginal communities about policing arrangements for those communities. Police liaison committees can assist, but they should have broad terms of reference and access to senior police on issues of policy.*
- *There should be greater encouragement for some forms of self-policing, as an adjunct to regular police, including in urban areas.*
- *Police training on Aboriginal issues should not be confined to initial or induction courses. The emphasis should be on post-induction and further education courses (especially after officers have had some experience of policing in Aboriginal areas).*
- *Police Aide schemes should be seen as essentially temporary measures, with the longer term emphasis on self-policing, on increasing the number of Aborigines in regular forces, and on other measures.*
- *In particular, police Aide schemes should not be introduced without:*
  - *clear local support;*
  - *a clear articulation of needs and aims.*
  - *If they are introduced, there should be:*
  - *some facility for promotion of Aides (after any necessary training) into the regular force;*
  - *provision for periodic review.*
  - *Police Aides should have adequate police powers and support, and should not be seen as second class police.*
  - *There should be careful selection of police officers to serve in areas with large Aboriginal populations, including efforts to increase the number of women police officers serving in those areas.*
  - *Aboriginal legal services have a role in community legal education, which they should be encouraged and assisted to perform [para 880].*

The Aboriginal Issues Unit has found itself repeating the work of the Law Reform Commission in respect of reporting on Aboriginal views put to us about Aboriginal police relations and reiterating the same recommendations that the Law Reform Commission put to government.

It is clear that action must be taken on the Law Reform recommendations and that governments be urged to follow through with well-considered and resourced programmes in all of these areas as well as in the further recommendations which the Aboriginal Issues Unit is making on behalf of the many Aboriginal people who put their ideas to us.

Unfortunately, although some sections of government might be able to point to piecemeal reforms, governments (local, Territory, and Federal) have failed to act on these recommendations in an effective way. Almost a decade has passed since the Law Reform Commission staff began their consultations; four years have gone by since their final report. The Aboriginal Issues Unit is hearing the same suggestions and complaints from Aboriginal people who feel that what they say is being ignored. This government inaction is part of the reason for the only slight improvement in the relationship between Aboriginal people and police during the 1980s.

3.1 The History of Aboriginal-Police Relations

The Northern Territory Police was formed in the late nineteenth century, and its early relationship with Aboriginal people was often violent. Initially, police violence towards Aboriginal people was sanctioned, even encouraged, by European authorities intent on 'opening up' the Northern Territory. 'Quietening the mobs' as it was called, involved the police in many brutal practices, including the killing of Aboriginal men, women and children.

One of the most infamous of the mass killings of Aboriginal people took place on the Coniston pastoral station in 1928. It is estimated that Constable ..... * of the Northern Territory Police and his followers killed nearly 150 Warlpiri in two expeditions to the area although officially only seventeen dead were acknowledged. The excessive nature of these crimes stirred even the government of the day into setting up an inquiry. The three men heading the inquiry were a police inspector, a police magistrate, and the

man who had sent Constable ..... ' on both expeditions. Their conclusion was that the police action was entirely justified.

* Name suppressed.

Obviously, not all Aboriginal-police meetings were as bloody as this, but they were often marked by lesser forms of brutality and injustice. 'Due process of law' was simply unknown in police relations with Aboriginal people. As one non-Aboriginal man said regarding the Northern Territory Police in the 1930s:

> Some were mighty strange characters**, but unless you happened to be an Aboriginal** you could expect your fair share of justice from them.
>
> (quoted *from Far Country, Alan* Powell 1982, p181, emphasis added)

Such violence and injustice is remembered keenly by many Aboriginal people. In the Aboriginal Issues Unit's consultations with Aboriginal people, historical relations with police were recalled on a number of occasions. It was explained to us that even before people came into contact with police, they were afraid of them. Stories of violent incidents travelled the country ahead of actual contact with the authorities. After contact, the reason for that fear became obvious. The police were armed, and when they arrested people they walked them in chains away from their country and kin to a far distant police station. Police trackers played their part in "quietening the mobs". They were also armed and any outlaws were hunted. The Coniston Massacre and the excesses of Constable Willshire in Yangkunyatjarra and Pitjantjatjarra country are remembered by people who lived through those terrifying times. The fear of such violence echoes in Aboriginal reminiscences about police recorded by the Aboriginal Issues Unit.

The memories of an elder on Groote Eylandt are typical. He explained how before white settlement of the area, the Aboriginal people would go to the mission station to trade; the missionary "used to frighten 'am with the police". After the Second World War, though:

> **gradually Aborigine people just came into the mission ... after a while they used to be fighting each other with the Aborigine people ... they used to [take prisoners] to Roper Bar. And they used to have a work there very very hard in that area at Ropers Bar, slashing stone, cutting timber ... just as a punishment.**

Another Aboriginal man, from Bickerton Island, recalled the fear people had of the police and the sight of prisoners chained together.

> **You know in front of that mission house ... all the men been tied under that tree, sleeping outside, with neck to neck with the chain ... boat chain, heavy one.**

The period of Aboriginal-police relations marked by the excessive violence of massacres did not last as long as it did on the east coast of Australia. The fact that the 'frontier' arrived in the Northern Territory much later than it did in most of Australia meant that whites and their police arrived armed with advanced revolvers and rifles rather than the inefficient muskets that were used to conquer the east coast. Aboriginal armed resistance was rapidly put down.

The South Australian Government created the Northern Territory Police Force under the German-born Paul Foelsche in 1870 and the fact that no Native Police force was created, as had been done in Queensland and Victoria, may have been due to the deadliness of the weapons available and the reputation for brutality that such forces in other States had acquired.

By the 1930s white settlers were firmly in control and much of the Northern Territory's land was taken by them for pastoral stations. Aboriginal people worked on these stations — it was their work, in fact, that made the existence of the stations possible. They were almost always employed on a 'work for tucker' basis.

The era of North Australian pastoral feudalism came to an end in the 1960s with pastoralists putting workers off their stations and mechanising with trail bikes, helicopters, and road train transport. Changing

technology meant Aboriginal workers were no longer needed in anywhere near the numbers as previously, and the introduction of equal wages in 1968 accelerated the removal of many Aboriginal people from their traditional lands. In many cases the removals were forced.

This new situation created new problems for Aboriginal people, and new relationships with the police and the authorities. Unemployment amongst Aboriginal people caused a great deal of poverty and a dependence on government institutions for their survival. This 'institutional dependency' was remarked upon by several Aboriginal people during the course of the Aboriginal Issues Unit's consultations:

> **People deliberately get themselves locked up so that they can get a feed and a warm, safe place to sleep. This has become a habit. A lot of Aboriginal people have spent most of their lives in institutions — children's homes, juvenile detention centres, prisons, hospitals, other institutions and can't cope outside of institutions.**

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 Echo 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.

3.2 Arrest and Detention

At any one time there is a very large number of our people in police custody in the Northern Territory. However, the statistics (see break out) can only hint at the reality of the situation. Our people live with the possibility of arrest or detention for protective custody all the time, a risk that non-Aboriginal people do not experience. As one young man at Minjilang put it:

> **It's easier [for the police] to pick up blackfella than a whitefella. Police: "Come on, you're coming with me". Aboriginal: "Oh, alright". Whitefella: "What! What's the charge?**

3.2.1 Protective Custody and the serving of warrants

A good example of the inability of statistics to present the whole picture, and of the gulf that often exists between theory and practice, is that of protective custody. 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.

As noted previously, the decriminalisation of public drunkenness and the police powers of detention in protective custody were intended to reduce the number of arrests and imprisonments. In practice, unfortunately, a protective custody detention often turns into an arrest. This happens because the police use the opportunity of having a person in protective custody to carry out checks to see if they have any outstanding warrants for arrest. If there are any outstanding warrants, the police serve these upon the detainees as they are released from protective custody.

An explanation from a solicitor working at the Central Australian Aboriginal Legal Aid Service on the effect of warrants made the following observations and:

> • *... the intended purpose of the Protective Custody sections in the* Police Administration Act. *S.130 of this Act states specifically that a person in custody after apprehension for protective custody under s.128 shall not be (1) charged with an offence, (2) questioned by a member in relation to any offence, or (3) photographed or fingerprinted.*
>
> *• · It seems then that the practice of executing warrants (of commitment and apprehension) after one is detained for protective custody goes against the intention of this section.*
>
> *• · What happens in fact is that before a detainee is released, the police will do a check of their outstanding warrants register, and if warrants exist, the result is that the person initially in the police station "for his own protection" is suddenly not free to leave!*
>
> *• · What the police do to get around s.130 is that the detainee having been entered into the 128 Register is, in the morning, noted as having been released in that journal and is then entered into the warrant journal as having had the warrant executed against him.*
>
> *•·· Case No 5 case illustrates the problem which may occur if the warrant is a warrant of commitment. The detainee becomes a* ***prisoner*** *because if he doesn't hove the money to pay the fine/bail monies outstanding, he must do the time. There is no need for him to be brought before a Magistrate because execution of warrants of commitment are an administrative matter, and if he doesn't request it, Legal Aid won't be notified (so that perhaps the money could be found). Finally, whether or not the police call Correctional Services to see if he can do community service (in the case of fines), is really up to them.*
>
> *•·· If the executed warrant is a mesne warrant, an inevitable result is that the detainee will not be given fresh police bail and will remain in custody up to three nights (if initially taken in for protective custody on a Friday night) before he comes before a court.*
>
> *The upshot of the above is that the protective custody provisions become a very useful tool for "arresting" people, and if not laying charges, at least for clearing police books! It gives police a valid reason for keeping a person suspected of having outstanding charges at the station whilst they make the necessary inquiries. In this sense, protective custody is punitive and in this sense also it widens the police powers of arrest. Note also the effect such consequences have on the person initially detained "for his own protection". Most Aboriginal people speak of being "arrested for being drunk". For the people meant to be protected, it really is just a period of custody without*

As it presently stands, protective custody in the Northern Territory, especially on the weekends, amounts to custody without trial. It is the view of the Aboriginal Issues Unit that for the protective custody provision of the *Police Administration Act t*o truly represent the decriminalisation of drunkenness, warrants should not be served at the end of the protective custody period. The Aboriginal Issues Unit has made a submission to this effect to Commissioner Johnston.

The argument has been raised that if police cannot serve warrants on protective custody detainees, they will have to seek them out and that this will increase police contact with our people. With the current poor relationship between police and our people, this is obviously undesirable. However, in reality, the police rarely seek out our people to serve outstanding warrants if they are unable to serve them at the end of a protective custody.

The Aboriginal Issues Unit has also submitted to Commissioner Johnston that he recommend an amnesty on warrants issued prior to a certain date. This date could be determined by the Commissioner after receiving information and advice from the NT Police. The Aboriginal Issues Unit received information that at the time that the Fine Default Scheme was introduced in 1986 there were 30,000 outstanding warrants.

Protective custody, while representing a reform in providing an alternative to custody for our people (to the extent that sobering up shelters exist) is used by the police as a mechanism of social control and to serve outstanding warrants. In this way, rather than decriminalising being drunk in public, it is in fact a used by police to arrest our people.

The Aboriginal Issues Unit recommends that there be a conference on the use of the Protective Custody provisions of the *Police Administration Act b*ecause of its overuse by police. Aboriginal organisations ought to develop, in conjunction with the Northern Territory police, a specific position on the implementation of Protective Custody so that the extraordinary number of detentions is reduced.

In addition, the Aboriginal Issues Unit recommends that, unless there are persuasive reasons for doing otherwise, police should proceed by summons rather than summary arrest.

3.2.2 Protective custody: a revolving door for drinkers

The Aboriginal Issues Unit recommends that there he a conference on the use of the Protective Custody provisions of the *Police Administration Act* because of its overuse by police. Aboriginal organisations ought to develop, in conjunction with the Northern Territory police, a specific position on the implementation of Protective Custody so that the extraordinary number of detentions is reduced.

It is well documented that there exists a 'core group' of alcohol abusers, people to whom detention in protective custody is a common and repeated event. The Chief Minister, in a statement to the Legislative Assembly on 9 April 1990, admitted to the existence of this group whose abuse of alcohol is obviously not cured by their repeated detention in protective custody:

> *... figures from the Alice Springs sobering up shelter show that ... in the twelve months w June last year [1989] ... one hundred and twenty nine people were admitted 10 times or more during the course of the year and one individual spent one hundred and twenty three nights in protective custody during the same year.*

For this 'core group', who need detoxification and rehabilitation rather than repeated incarceration, protective custody is a revolving door.

The need to create services specifically for this core group of drinkers creates a paradox for many of our people who also want services for the sober proportion of the population, especially those at risk such as children and women. As one Aboriginal person told the Aboriginal Issues Unit:

> **That shelter is looking after the guy's habit. He has his habit taken care of. He's fed, he's sheltered.**

Others likened it to supporting heroin, and objected to the continued support for alcohol abusers which assists their continued drinking and associated antisocial behaviour. Despite these doubts, the existence of this core group of drinkers was a problem that our people felt could not be ignored. The existence of safe sobering up facilities outside of gaols is recognised as essential.

Aboriginal people commented unfavourably on the way the problem of repeated drinking is being dealt with by the authorities. It was felt that the police were substituting detention in protective custody for actually dealing with the problem of alcohol abuse. As one Aboriginal person told the Aboriginal Issues Unit:

> **They're dealing with a police problem. They're not dealing with an Aboriginal drinking problem.**

As it stands protective custody procedures are used by the police to warehouse Aboriginal people who need jobs, shelter, treatment for alcohol abuse and other changes in their social, economic and physical environments rather than **mass** incarceration.

Suggestions for specific programmes to 'beat the grog' were offered. It was agreed at the Alice Springs Grog Forum that the core group of drinkers, who constitute the repeat cases in protective custody, ought to be targeted to provide them with treatment for their alcohol problems, rehabilitation and training, and jobs:

> **We should get to the core group, people in their late 30s and early 40s. If you can get the potentially employable drinkers, you could change their drinking lifestyle, moderate their**

drinking, give them jobs.

Those you can't assist in getting back into the workforce, send them to dry-out places out bush for extended periods...

At present it is perceived that sobering up facilities are ineffective unless there are detoxification, rehabilitation and counselling services available to Aboriginal people. At the moment, the shelters are essentially detention centres with little or no role to play in helping the alcohol problem. The recidivism rate amongst a core group of detainees highlights the problem identified by many of our people: the sobering up shelters in some respects make the alcohol problem worse by assisting some to continue their habit of excessive alcohol abuse. With proper back-up services to Aboriginal people, sobering up shelters could be a powerful weapon in the battle against alcohol abuse in our community.

3.2.3 The need for more sobering up shelters

In the Northern Territory there are only three sobering up shelters: in Alice Springs, Tennant Creek and Katherine. The Darwin shelter closed in 1987, though not because of excessive cost as was claimed in some quarters, but because the police found it inconvenient to drive to the shelter.

The custody figures for our people are inflated by the absence of sobering up shelters in major centres of Aboriginal population in the Northern Territory where they are obviously needed, such as at Elliott; Nhulunbuy or Yirrkala; Alyangula, Angurugu or Umbakuma, Port Keats; Bathurst Island; and Yuendumu.

Even where shelters are located, they are not able to cope with the number of detentions. In Alice Springs, for example, 40 per cent of the protective custody detentions are still held in police cells. This is not because the detainees sent to the 'drunk tank' at the police station are violent and unwilling, as is sometimes claimed, but because the sobering up shelter lacks bed capacity.

The Alice Springs sobering up shelter should have its bed capacity increased to the level where it is no longer necessary for Aboriginal people to be detained in police cells. It should have two separate facilities, one for sleeping intoxicated detainees and one for noisy "half drunk" detainees. Only those detainees who are a genuine menace to others ought to go to the "drunk tank" at the police cells.

RECOMMENDATION 3.1: As a matter of urgency the number of sobering up shelters should be increased from the existing three. These additional shelters should be set up in consultation with Aboriginal communities; agencies involved in the fight against grog; and the police. All sobering up shelters Should be backed up by well funded programmes for detoxification, rehabilitation, and counselling.

3.2.4 Aboriginal alternatives to protective custody

Almost without exception, Aboriginal and non-Aboriginal people interviewed by the Aboriginal Issues Unit expressed the view that the present system of protective custody is not an effective decriminalisation of drunkenness. The involvement of the police, the continued use of 'drunk tanks' as places to lock people up, and the serving of warrants on detainees as they are released, mean that most of our people regard detention in protective custody as the same thing as being arrested. Our people do not consider that the present system helps to cure the problem of alcohol abuse in their communities.

Aboriginal people made a number of suggestions to the Aboriginal Issues Unit about the kind of programme that they think will help 'beat the grog'. One example is from a young leader from Hermannsburg, who proposed that there should be at his community:

a Congress Farm — lot of things to do out there — *not like a prison*. Some people drinkin' for a long time — they go mad.

The importance of proper funding for such programmes was also thought to be important:

unless they've got back-up through counselling, and employment. That's why Congress (farm) failed --- no back-up services.

Other Aboriginal people made comments about the problems to do with the 'core group' who ate repeatedly in protective custody: For example:

People in sobering-up shelter are there half the year. There should be rules so that people can only go out there 10 times a year. ^

In particular, the use of sobering up shelters solely as places of police detention, rather than places where anyone could go for help with alcohol related problems was raised:

Only the police can use it. I can't take someone there.

It [the sobering up shelter] was set up for Aboriginal people. At the time of Drugs and Alcohol Services Association and the setting up of the sobering-up shelter it was not to be only for police pick-ups but referral could take place from many places, like churches, for instance. I have had to take people to the police station just so they can get into shelter.

3.2.5 Police discretion in using protective custody

Many cases have been reported to the Aboriginal Issues Unit by our people of police detaining people when they were in fact sober. Confrontation of police by our people in these situations in many cases has resulted in their being charged with offensive behaviour and similar charges. The potential for police to abuse their powers with this provision is arguably a weakness with this aspect of police powers.

There is evidence to suggest police behaviour can play a large part in reducing the number of detentions in protective custody. Evidence from the Elliott Police Hearing Transcripts show the police, with the cooperation of the Aboriginal community, are capable of drastic decreases in the number of Aboriginal people placed in detention. Detentions in protective custody in Elliott were decreased by a third without any significant increase to the level of apprehensions for other crime.

Police training and discussion with Aboriginal groups could therefore contribute to reductions in the number of people detained in protective custody.

3.2.6 How legislation reinforces the pattern of Aboriginal drinking

Aboriginal people in Alice Springs find that a combination of legislation on drinking and local attitudes increases the likelihood of confrontation with police. Aboriginal drinking is forced into the open in Alice Springs by widespread discrimination against Aboriginal people. There is only one hotel bar which makes Aboriginal people feel welcome, and this hotel is a centre of police activity in Alice Springs. Therefore, many of those who drink alcohol have little choice but to do so in public. Having been forced to drink in public, fear of being put into protective custody, or breaching the two kilometre law, or running foul of the law in some other way, then encourages Aboriginal people to drink quickly before being caught, and thus, excessive, binge drinking.

Lawyers of the Central Australian Aboriginal Legal Aid Service (CAALAS), Alice Springs, were interviewed by the Aboriginal Issues Unit about protective custody and how legislation, police practices and unofficial apartheid arrangements in Alice Springs contribute to the pattern of Aboriginal drinking:

I mean ... most people buy grog to take away from bottle shops, people don't drink in pubs. There aren't bars where people can drink ... only one ... really ... and it's far from ideal ... So people have to drink either in a public place in the creek bed or wherever. That' s against the law as such, or the alternative that you go and take it to one of the town leases, which has ... disastrous effects on people who live there permanently, who don't want people coming in ...

The Tangentyere Council proposal for an Aboriginal social club appears to be one long term solution to the interrelated problems of alcohol abuse and police harassment. The Northern Territory Government has funded one club, to be finished in July 1990. The opening of this club should allow Aboriginal people the opportunity to learn to drink moderately and to buy and consume alcohol in circumstances where they

are not forced to drink to excess by the presence of police and the two kilometre law.

Interestingly both the CAALAS lawyers and the Assistant Commissioner of Police based in Alice Springs, McNeill, believe that the two kilometre law, is a pointless piece of legislation and achieves very little. McNeil takes the view that the statute gives the police so few powers, simply that of being able to confiscate alcohol in an opened container and the power of arrest. The CAALAS lawyers note that the police have blitzes occasionally but that the effect of decreasing drinking in public places, particularly the Todd River is nil.

> *They have blitzes with the 2 kilometre law. They decide we' re going to give people tickets, which people invariably don't pay and that's the only way it comes to Court, when there' s a summons in regard to it."*

3.2.7 Wider policy implications

The changes required would involve not just the police, but other agencies of the governments as well. It is a destructive exercise, for individuals and society, to continue to expect that the protective custody apprehension powers of the police

will remove the eyesore of Aboriginal public drunkenness, without also having the expectation that public drunkenness can be ameliorated by limiting access to

alcohol, providing jobs to keep people gainfully occupied, by providing alcohol detoxification, rehabilitation and counselling services, and a range of other strategies detailed in Chapter 1 of this Report.

3.3 Aboriginal Views on improper Police Behaviour

Throughout the Aboriginal Issues Unit's consultations with our people, they raised the concerns they have about direct and indirect police violence. Our people emphasised that police harassment still occurs, although to many of them this harassment is such a normal part of life that it is not labelled as such. It is what we expect from the police. Some communities outlined the situations that they believe exacerbate police verbal and physical abuse, for example when Aboriginal people are 'cheeky' or answer back to police or even demand their recognised rights.

Many of our people complained during the consultations with the Aboriginal Issues Unit about the way that police behave with our people. The police swear at them and insult them. People complain about the physical treatment they receive while being arrested.

The use police made of their paddy wagons was cause for complaint:

> **Aboriginal people shouldn't be driven around in the cages of police vans for hours — should be promptly taken to a lockup --they get cold and get bumped around — this could be dangerous tot sick people and people who are really drunk.**
>
> **I mean that's the whole process of being put in the wagon. It looks like you're being arrested. To call it detention, or whatever, its arrest in any other name.**
>
> **Mrs ..... was definitely humiliated, one of those ladies that was (wrongly) arrested at the Show.**

Other police behaviour is resented, especially bad language and name-calling; people complained about the police from ..... :*

* Name suppressed.

> **"What's your fucking name?"**
>
> **"Where is fucking such and such ...?"**

Aboriginal women are addressed in a similar manner.

"Mongrel", "Aboriginal Dog", "Fuck off inside", "You smell stinking".

Our people naturally find such behaviour humiliating and damaging to their self-esteem. Thus:

Sometimes people iget angry ... you start worry about yourself too.

However, the humiliation of being arrested then being driven around for several hours in a police paddy wagon, and of being sworn at, are less important than the routine use police make of physical violence in their dealings with Aboriginal people.

People are being choked with 'baton stick', when complaining the regular answer they get from police is — they were swearing. (Alekerange women)

Some police are rough, especially if someone put up a fight; some [of the arrested] are cheeky; some are quiet. There's lots of bashing by police.

The seriousness of this type of police behaviour was emphasised by one of the workshop groups at the Aboriginal Health Workers Conference. They attributed bad Aboriginal police relations and the depression of Aboriginal people in custody to police harassment

Commissioner Johnston on 19 October 1990 issued a suppression order prohibiting publication of three paragraphs which appeared at this point in the report.

Aboriginal people whom we consulted pointed to conflicts of interest amongst the police force. For instance, in Elliott, the senior policeman serves occasionally behind the bar in the hotel and after closing time detains intoxicated people for a range of matters. The hotel is owned by two former police officers who were once stationed at Yuendumu. A number of other hotels along the Smart Highway are run by ex-policemen.

3.3.1 Aboriginal views on police attitudes

Strangely, it was non-Aboriginal people who were best able to describe or characterise the racism amongst police or other authorities. Racism is a concept developed in European thought rather than Aboriginal thought

I think the over-riding influence would be racism, I think that's a motivating force for the way Aboriginals are viewed by some Europeans in communities and I think that' s a really unfortunate situation because strangely enough and I've encountered this more and more since I've been up here, for some unknown reason working in the bush seems w attract in areas of education or community development or contracting or whatever, seems to attract a group of European people that are often extremely racist. You/mow they work with Aboriginals but on the other hand they are very racist.

At .....* the racism of the police in carrying out their duties is recognised merely as "unfair", and the label of "racism" not used. This was our experience throughout the Northern Territory: Aboriginal people refer to experiences like that described below as "unfair", rather than racist or improper. Equality is demanded, but the root cause of the inequality is unstated.

Perhaps racism is so all pervasive it is difficult to identify and isolate. Perhaps, as described below, when the police allow tourists to bring alcohol through Aboriginal land, their reasons are economic rather than simply racist Economic reasons for racism are ancient. After all slavery was only abolished when it became uneconomic.

It should be pointed out in relation to the problem described by a young man from ..... ' below, that ..... * is not Aboriginal land and tourists are perfectly entitled to take alcohol there. What would happen if Aboriginal people had alcohol at ..... * as opposed to on Aboriginal land where it is certainly illegal to bring alcohol? On Aboriginal land, in contradistinction to the treatment meted out to Aboriginal people, whitefellas are merely given a ten minute warning to do something about their grog.

They're not doing their job sometimes, not sometimes, all the time they just, I don't know

what they do.

We should be treated equally when people bring in grog, Aboriginal people, their cars get confiscated and they get put

in jail. When European people brings grog in, they know which people bring grog in, white people.

* Name suppressed.

The police know which people bring grog in?

Cause I caught them lot of time in * ..... , they were drinking there, and that's not fair.

So your saying it's one rule for the white fellas and another rule for the black fellas.

If you could call it that, they should be treated equally.

Are you getting very many cars confiscated here because of grog?

Yeah.

And them white fellas getting their cars confiscated?

They just tell the police, I seen the police come up to one white fella's car, it had grog in it, the police said you got about ten minutes or a half an hour to get out.

If an Aboriginal fella brings in grog from any community you know his car gone. Straight there in the compound, but the white fellas are given ten minutes. Sometimes they just ell them to get out, might be tourists.

Some tourists bring grog in as well?

Sometimes, sometimes the rangers and our workers here, white people here, they get their friends to bring it in and they don't even know about all the things.

The police don't know about it, or they do know about it but their not doing anything about it?

No they're not, they're not doing anything about it. We should get another policeman. A good one to work out here.

3.3.2 Inappropriate police responses to Aboriginal life styles.

Aboriginal people are forced into living, drinking and fighting in public areas by apartheid practices in towns. A researcher employed by the Tangentyere Council in Alice Springs, Dr Paul Memmott, found that, for example, a significant portion of "Todd River dwellers" are not drinkers, but use the river bed are there for a wide variety of other reasons. Nevertheless, the harassment of the "blitzes" referred to in 3.3.7 affect drinker and non-drinker alike.

* Name suppressed.

3.3.3 Indications of improvements in Aboriginal-police relations

Present police behaviour as described by our people appears to arise more from their attitudes towards our people as much as the stresses of their work, the latter for which Aboriginal people have some sympathy for.

The history until recently of widespread, common police brutality, maltreatment and threatening our people had lead to a climate of mistrust. Many people commented that they know police from past interaction — sometimes brutal ones — but question that although outright brutality may have gone, attitudes have not changed.

In Alice Springs, Yirrkala, Borrooloola and other places people recalled police brutality of some years ago and explained the dependency relationship which Aboriginal people developed with *police* in the past in that some Aboriginal people deliberately breached the law to be locked up for warmth and food.

There are signs of there being a change in police attitudes to our people:

> How long has this sergeant been here?
>
> **2 years.**
>
> What was one before like?
>
> **He was rough that one.**
>
> This one is a better man?
>
> **Yes.**
>
> **(Discussion at Elliott)**
>
> **[Name deleted] talked about attitudes of police and how they take so long to change. He mentioned an incident where the police had him and his brother and were saying to them "go on and run, we need the shooting practice". "The temptation was there to run . That copper is still here (on the force in Alice Springs). In some ways it's changed, but it doesn't happen overnight."**
>
> **(Discussion in Alice Springs)**
>
> **Years ago coppers were taught how to bash a black so that it didn't show up (no signs — kidney punches — bruise doesn't show up — all inside).**
>
> **(Discussion in Alice Springs)**
>
> **Common to be bashed in '60s. You'd say, "I been yarded last night." Blokes would laugh.**

They punched me up in ..... * once because ! wouldn't call sergeant "sir". Took my money $200 and let me out in morning- no charge.

***(Discussion at Alice Springs Forum,* Grog: Where to Now?)**

3.3.4 Regional differences in Aboriginal relations with police

The Aboriginal experience of police in smaller communities and remote areas is somewhat different from that in the towns where police experience the situation of being outnumbered by Aboriginal people and surrounded by Aboriginal culture and lifestyle. Also, outstations provide a haven from, not just alcohol and the pressures of living on large communities, but also from police interference and sometimes harassment.

Where the police have not developed good relations the community elders have some simple, practical suggestions to make to the police:

> **If there's a big problem, the police fly in and they drive out. [We want] only the President [to] call the police, and that's better. We want that here. Only the President call the police — for serious trouble. When there's warrants they should come in and ask President.**
>
> **I layed some charges with the police. The police didn't notify President through 2-way radio — didn't notify old people and young people. He just came in. Everyone got a surprise . . . These police don't do their duty like coming to Nyirrpi every week to see if everything is alright. This settlement is an incorporated community.**

Those places where there are as yet no police stations, such as Kintore, Cobourg Peninsula, Minjilang and other such remote places rely almost completely on the mechanisms and rituals provided by Aboriginal culture to deal with disputes and maintain social order. People son problems out themselves. From time to time, this is a dangerous exercise, and some people want a police presence in their communities if only for the duration of a particular crisis.

In some of the very remote areas people often voiced their demands for more police and more policing on a permanent basis.

Indeed people asked that the police help them to develop programs and to understand why there is more and more crime in their communities. An elder of Groote Eylandt explained:

> **We are sitting, elder people, sitting like in the big fog. We can't see what's going on. What they think, or what they want, you know. We given them as much as we can to our young people, but what more they want? And these are the things. We can't understand them, today, our generation. We know it's the people on this island. We are getting more crime, getting worser and worse. I don't know why. What the police, what they mainly? Where they? Do the police and somebody else to helping us to wade through out from the big barrier or to reach the other side of the wall. But we Can't see em.**

* Name suppressed.

This is not as straightforward as it might seem: law and order in the communities is breaking down, but in complicated patterns and as a result of historical factors.

Missions and Christianity, police, law courts and other European institutions have replaced the direct authority of Aboriginal Law in mundane daily matters, so that only the religious aspects of the Law continue in many areas. As a result our people find that they are dealing with two systems of law. Many of our people stated that they understand little about the European system of law. Further, social disruption from alcohol abuse and petrol sniffing lead to disturbances, violence, excessive noise, vandalism, absenteeism, etc, which Aboriginal Law is not equipped to cope with in modern-day communities. Residents must rely more and more on police in these situations.

In some communities, older people are frightened of their youth because young men terrorise them to take their money to buy alcohol. Older people are unable by themselves to provide leadership and authority without assistance from the police and other authorities in these situations.

On Groote Eylandt, an elder told us,

> **And when you ever go on the night, see the childs, 16 or 18 year old boy with a big knife, with the big belt, hanging, knife in the, you know, and pouch with the knife, big long knife, then the rag in the knee and rag in the head, just go about just around, just make you frightened eh, and because some of them young lad is very, very savage, they can kill you any minute.**

People want police assistance, assistance which is in sympathy with the problems which the communities face. Our people want policing, in conjunction with the elders' authority, not mass arrest and incarceration. They want appropriate police intervention which prevents and reduces crime, not intervention which creates criminals as the present system does.

At .....*, one man said,

> **A lot of police, they're from the old school, they're authoritarian. You know they believe that problems should be met by far more authority of force rather than some kind of counselling and I wouldn't really know if a policeman on the community has been given a brief by his department to become involved in community development. They probably actively discourage them doing that I think. Community development could be consultation, counselling, trying to get involved in programs, you know actively involve community members. I don't see much evidence of it, but maybe that's beginning.**
>
> **A friend of mine has been working as a community police officer in Katherine and he works primarily in the schools and he spends a lot of time actually discussing the issue and talking through problems and also generating after school programmes. I think that's something police are becoming a bit more involved in. But unfortunately they're special officers they're not the main stream police.**

* Name suppressed

At Yirrkala, there is a new police station, apparently partly built with community funds, yet there are no police or Police Aides stationed there. The building is empty, while the leaders plead for police to be stationed there. The police, it is rumoured, have failed to cooperate with the Yirrkala elders because of their outspoken views in the Northern Territory media on vehicle confiscation for bringing alcohol onto a dry area.

The leaders complained in the media on behalf of a teacher whose vehicle was confiscated. The teacher argued that he did not know that a person who had been offered a ride back to the community had brought alcohol into his vehicle. Because of the ciders' public view on the unfairness of vehicle confiscation in situations such as this, a view which prevailed in court, it is rumoured that the police interpreted their statements as withdrawing support from their strict policing of the *Liquor Act* provisions for the dry area. According to rumour, the police have since slackened off in their policing of the dry area provisions.

This interpretation may be wrong. If the police take the view that anybody driving a vehicle containing alcohol into a dry area can argue in court, with the support of the community leaders, that he or she did not know the alcohol was there, the police may regard such arrests as a waste of time if a conviction becomes difficult to obtain. If this is the police view, it pays little regard to the many non-drinkers in the community, especially women and children, who have the right that the law be enforced for their protection and welfare.

In contrast. in small remote communities such as Minjilang and Murganella, the people feel that they have no reason to call the police. They are able to handle situations themselves. Even if they did call the police at Gunbalanya it would take the police two hours to drive to Murganella and longer to travel by vehicle and boat to Minjilang.

Rangers do some of the work of police where there are no police stations, such as at Cobourg Peninsula:

Would there be more police if there were more tourists?

> **More rangers not more police. Rangers' powers same as police — can arrest them and confiscate beer.**

> ***We hope they (the tourists) stay on boat all the time. We don't want them walking around here all the time.***

In some outstations, people do not have radios to call the police and the travelling distances are long. Even though the leaders at most outstations have banned alcohol and petrol sniffing, and indeed established outstations to avoid these problems in the communities, there occasionally arise situations which require a police presence.

A few police have developed better relations with our people because they have made an effort to communicate well and to cooperate with the needs expressed to them by the people for policing and changes in policing practices.

It is notable in the Northern Territory that the police force, in contrast to the Department of Correctional Services, has initiated very little in the way of creative, responsive schemes to reduce the Aboriginal custody rate.

Except for a few senior officers, such as Inspector O'Meara of Tennant Creek who cooperates with the Aboriginal council patrols in that town and in Elliott, the majority of police continue exercising a police system which is in many ways inappropriate to the Aboriginal law and order problems in the Territory. The protective custody situation is the most extreme case.

3.3.5 Complaints against police

Despite apparent improvements in Aboriginal-Police relations in recent times, serious allegations of continued ill-treatment or lack of response to community needs persist. A number of these complaints were given to the Aboriginal Issues Unit, and were passed on to the Royal Commissioner, the Central Australian Aboriginal Legal Aid Service and/or the Commissioner of Police.

In Tennant Creek, despite Inspector O'Meara's best efforts in cooperating with the Julalikari patrols, a voluntary policing arrangement organised by the Julalikari Council in the Tennant Creek town camps, it is alleged by Aboriginal people that his officers have the traditional behavioural patterns of police towards our people gratuitous, arbitrary violence and automatic arrest:

Aboriginal Issues Unit met at ..... * in 1989 with the Community Council and Tribal Council. The Councillors and elders explained in their own words incidents allegedly involving police violence towards ..... * Aboriginal residents. These allegations of arbitrary, unwarranted police violence are disturbing; it seems that the police were alleged to he physically abusing children in some instances. It seems also from these allegations that violence was alleged to have been perpetrated not only by non-Aboriginal police officers, but also by Aboriginal police aides.

* Name suppressed.

The Councillors and elders invited young men with complaints against the police to the meeting to make their statements to Aboriginal Issues Unit staff in front of the fully convened Councils, both Community and Tribal.

The community asked one of their members to make complaints to the Central Australian Legal Aid Service and reported to the Aboriginal Issues Unit that they were disappointed with the outcome. The elders at this meeting understood that nothing had been done by CAALAS lawyers about these complaints. This may not be so but may reflect the poor communication between Central Australian Aboriginal Legal Aid Service and the remote community councils as opposed to their relationships with individuals who come in contact with the service as clients.

Complaints from * residents continued into 1990. A complaint from onerespected man from * to the Aboriginal Issues Unit involved an allegation of police violence against his son. He alleged that this was the second time that his son had been assaulted by police. The Aboriginal Issues Unit immediately referred the complaint to the Commissioner of Police in Darwin, Mr. Palmer, who arranged an investigation into these complaints. The Aboriginal Issues Unit at the time of writing has no information on the outcome of this investigation. Commissioner Palmer wrote to inform us that the matter had been referred to the Department of Law. The AIU wrote directly to the Commission in this instance because of the difficulty in finding out the outcome of complaints lodged by the Central Australian Aboriginal Legal Aid Service. This experience of complaining directly to the Commissioner has been a positive one: the Commissioner's response was immediate and thorough. But is this because the Aboriginal Issues Unit of the Royal Commission made the complaint? Would an Aboriginal individual or even an Aboriginal organisation receive the same attention? We were unable to find out.

Nyirrpi is a small community approximately 150 kilometres to the south-west of Yuendumu. It began as a small outstation and because of the sizes of the families associated with the area and their success in establishing an outstation, it has grown into community in that it has a number of facilities not usually seen in the average outstation, such as a store and a school. The Nyirrpi Council and residents met with Aboriginal Issues Unit staff in the grounds of the school and gave authority to a number of individuals to explain the events of a recent incident which allegedly involved police making a raid on the community to confiscate alcohol and apprehend ten or eleven people.

According to the allegations made at this meeting, it seems that a building contractor was affronted by a behaviourally disturbed Aboriginal boy who taunted him with "racist" comments. The contractor called the Yuendumu police without informing the Nyirrpi Council President. The police arrived in a number of

vehicles, including paddy wagons, confiscated alcohol, and apprehended a range of people, apparently arbitrarily, including two very old women, dragging them out of their houses, threatening wives, dragging people off sandhills where they were sleeping and, it is alleged, assaulting individuals.

As with the incidents reported to us from .....* these allegations were reported to both the Central Australian Aboriginal Legal Aid Service and the Royal Commission into Aboriginal Deaths in Custody. The Council instructed the Community Adviser to make complaints to CAALAS. He did so and attempted to ascertain from the senior legal officer the outcome of the complaint without success. The Aboriginal Issues Unit has likewise had no success in getting information from CAALAS on police responses to the complaint.

A number of allegations were made about police by ..... * Councillors and the Aboriginal residents of ..... * concerning: failure of police to attend at complaints, rough treatment of Aboriginal people during arrest, swearing, .not feeding detainees in the cells, and spotlighting camps at night and police using their vehicles with spotlights to chase Aboriginal people "like rabbits".

Relations between Aboriginal people and the police at ..... * are in a parlous state. The community is dissatisfied at police use of force, failure to act on complaints and other problems. Aboriginal people at ..... * have used violence against the police themselves in retaliation. Aboriginal people say that the police regard ..... * as a place where the police can go to have a rest. Violence and disturbance from alcohol abuse and petrol sniffing are continuing problems in the community and the people complain about police failing to carry out their duties to quell disturbances resulting from substance abuse.

Appendix 4 gives details of some of the complaints given to the Aboriginal Issues Unit during the course of its work.

There seem to be problems in the handling of complaints by Aboriginal legal services. The Aboriginal Issues Unit cannot determine whether this is because of underfunding and understaffing, the remoteness of many communities and difficulties of communication, or inadequacies in complaint procedures. Attention ought to be given by the Commission to ways of making complaints by Aboriginal people about police more effective.

RECOMMENDATION 3.2: Commissioner Johnston seek submissions from the Aboriginal-controlled legal services in the Northern Territory, CAALAS, KRALAS, NAALAS, the Australian Legal Aid Office and other bodies on the efficacy of complaint procedures about the Northern Territory Police. Matters which ought to be addressed include the number of complaints received by these organisations during the period of the Commission's Terms of Reference or some lesser period, the nature of such complaints, the results of making complaints under the present procedures, and whether some other procedure (or procedures) for making complaints is necessary.:

* Name suppressed.

3.3.6 Aboriginal suspicions of police complicity in deaths in custody

In most consultations conducted by the Aboriginal Issues Unit, Aboriginal suspicions of police complicity in Aboriginal deaths in custody were raised.

We have concluded that these suspicions are based on police practice in the recent past, one based on dehumanising and brutal treatment of Aboriginal people. This has changed in the last ten years, and now reports of arbitrary, unwarranted, police violence are rare, or at least, emanate only from a few communities. Whether this apparent improvement in police behaviour towards Aboriginal people is the result of police training; the existence of the Royal Commission; media reporting; or the increase in Aboriginal power in the Northern Territory since the advent of the *Aboriginal Land Rights Act,* we cannot say with any confidence.

Nevertheless, recent experience from the killings such as the 1928 Coniston Massacre through to

memories of bloodstained police cell walls in the 1970s still colours the contemporary Aboriginal view of the police force and their purpose:

> **Old Sydney Cook long time before 'im bin die. He told me about what happened to him in .....* cells. He was chained by hands to wall and feet to floor and police got stuck into him punching him. It's not on. It's supposed to be lucky country. We supposed to have freedom. No wonder when people bring back these stories it's no wonder our young people get threatened by police. It's a frightenin' thing.**

Often, during our discussions, many of our people broadened their perception to the health problems; alcohol and substance abuse problems; and the characteristics of the Northern Territory cases of deaths in custody; unemployment; and the general problem of law and order in a society where a dominant group has forcibly attempted to replace the indigenous law system with its own.

Some Aboriginal people remain unconvinced however that the deaths of Aboriginal people in custody can be attributed to anything other than police complicity, because of their terrifying experiences at the hands of police.

> **Police kill them; some (Aborigines) have witchcraft inside and this increases the danger. (Alekerange women)**

A non-Aboriginal Police Officer is cited:

> **-He is roughest, bends people's necks backwards, that is how you kill a person.**

And elsewhere:

> **Sometimes police kill them, sometimes suicide ... Police too smart ... Police sometimes take them by themselves but don't tell what they did to the fellow, they simply say — they die from grog.**
>
> ***Grab people, chuck them into car, they get hurt and no doctor called.***
>
> **We frightened about people with some kind of heart disease. Somebody might die in that lock-up next time they bust him up.**
>
> **(Discussions at Tennant Creek)**
>
> ***That brother bin finish from Roper- he was sick in gaol then took into hospital then died. We know for sure that was not a sick man. And I was talkin' to his family about illness during his childhood — he was not a sick man --they must have done something to him there.***
>
> ***(Discussion at Barunga)***

Nevertheless, as has been discussed at 1.2.6 above, extended discussions on this issue among our people led to responses about other contributing factors. Foremost among these factors is substance abuse as both a major contributor to reasons for arrest and detention; and long term health problems which increased the possibility of death while in custody.

* Name suppressed

3.4 Aboriginal Ideas For Improving Aboriginal-Police Relations

Throughout the consultations carried out by the Aboriginal Issues Unit, a number of necessary reforms were identified by our people. In particular, Aboriginal people wanted:

- Police to respond flexibly and innovatively in situations involving Aboriginal people, especially in areas which might involve apprehension and

- Where practicable, apprehension and arrest to he replaced by warnings, directives to leave a public place; assistance to go home, to a hospital or to a relative's place.

In more specific terms, our people want changes to policing practices in the following areas:

- An end to intrusive surveillance, spotlighting camps at night and breaches of privacy and peace;
- An end to unnecessary arrest and violence;
- Notice of intention to arrive at communities with warrants or to arrest people. This means a working relationship with police as is enjoyed with other Government departments (notification of visits, reporting to Council offices, properly arranged meetings and courteous behaviour);
- The stationing of older, experienced (and preferably married) police in
- Police with whom community's have developed good relationships to remain rather than being transferred after two years;
- Negotiation and counselling to replace resorting to force;
- Fairness and impartiality in policing rather than doing the bidding of particular powerful factions in the community;
- Better training for police in Aboriginal culture and community life;
- Police to have respect for Aboriginal rights, including land rights, and to understand and respect features of Aboriginal culture and social life.
- Aboriginal leaders to be able to open channels of communication with senior police. This would enable complaints about unacceptable police behaviour to be dealt with promptly and solutions to unsatisfactory policing practises to be made quickly.
-

RECOMMENDATION 3.3: The issues raised by our people' with the Aboriginal Issues Unit regarding the improvement of policing in the Territory should be investigated by the Law Department and the Northern Territory Police with a view implementing procedures to solve the problems raised..

3.4.1 The need for police training in health and medical aspects of dealing with the Aboriginal population.

At the Aboriginal Health Workers Conference workshop on Aboriginal Deaths in Custody, one session was devoted to the issue of Aboriginal custody, deaths in custody and adult mortality. This session highlighted the health workers' concerns about the need for police training in health matters.

The concern was raised that if people are ill, with heart disease, diabetes and other illnesses which are difficult for non-medically trained people to detect, arrest and arrest procedures, for instance being thrown around in the police vans for long periods of time, refusal by police to let them have access to medication, etc, would place Aboriginal people in jeopardy.

> **There are (even) a lot of health workers who can't recognise alcohol problems. People are picked up but they're not drunk, but diabetic.**

Further, Aboriginal people who are aware of the ill-health of Northern Territory Aboriginal people generally, voiced their concern that police and prison warders seem not to understand the fact of high Aboriginal morbidity rates and treat people as if they were as healthy as non-Aboriginals.

RECOMMENDATION 3.4: Northern Territory Police need training not only to recognise illness, but to seek medical assistance and to refer prisoners to medical assistance when necessary. Formal procedures need to he developed to ensure that detainees who require medical assistance are promptly referred to the appropriate agency.

The Aboriginal Issues Unit endorses the Alice Springs Grog Forum proposal that Congress examine the Victorian Aboriginal Medical Service's submission to the Royal Commission Into Aboriginal Deaths In Custody to develop police procedures in cases requiring medical attention relevant to the Central

Australian situation for presentation to the Northern Territory Royal Commissioner.

However, health worker training or medical training for police poses problems, in that police ought not to believe that they are capable of diagnosing or dealing with a medical problem. The training should alert them to the danger of potential medical problems, especially in dealing with Aboriginal people.

In the Northern Territory, all police have undertaken or are undertaking St. Johns first aid courses. These courses provide a different level of training from the kind recommended by Aboriginal health workers and Aboriginal-controlled medical service staff.

At the hearing of the Royal Commission into Aboriginal Deaths in Custody held **at** Elliott on police, (p 26 of transcript), an example of an area where more specialist training of police is required is provided: unconsciousness while severely intoxicated. Mr McDonald of the NT Police Department considers experience sufficient to deal with this problem, an attitude which has tragically been part of the problem in at least one case of an Aboriginal death in custody in the Northern Territory [See Case No. 3].

> *Mr Charles: What about the signs of severe intoxication lapsing into unconsciousness?*
>
> *Mr D. W. McDonald: Yes, i suppose that comes with experience in the police force with apprehending a lot of Aboriginals or Europeans in relation to intoxication and levels of intoxication, but you can't be instructed on a level of intoxication. That comes with experience.*

Dr. Joblin, a psychologist, who has dealt with forensic matters in cases involving Aboriginal people in the Northern Territory for many years, explained to the Aboriginal Issues Unit staff that the symptoms of alcohol withdrawal syndrome are easy to identify:

> *.... a lot of them were going through an alcoholic withdrawal syndrome, which in the past has been referred w as DTs, when they were locked up. As one comes out of an alcoholic state they are very prone to depression and it may very well be what is happening with a lot of them — that they are drying out and not being either medicated or looked at appropriately. In that state of depression, they contemplate suicide.*
>
> *The situation with the alcoholic withdrawal syndrome is that it can easily be medicated for and the symptoms are very obvious and you don't have to be particularly well trained to observe the symptoms so that I think that any police officer, for example, who holds a person in custody, black or white in fact, should be able to assess whether or not that person has the symptoms of alcoholic withdrawal syndrome, or indeed a symptom of any psychological disturbance, including depression. Police have on call a police surgeon, police doctors and it seems appropriate to indicate that maybe they should be more readily used when those symptoms are identified with offenders in custody. It is very easy, in my opinion, as of SID to identify those symptoms. They are very destructive symptoms.. .. if the alcoholic withdrawal syndrome is causing the depression or the depressive state which is preceding the suicide, then i think that the responsibility is back on those people who are holding the person in custody to try and 1) recognise the symptoms and, 2) do something about it, in terms of appropriate medication or treatment.*
>
> *! am not saying, on the other hand, that all Aboriginal people who are locked up who have to be in custody are alcoholic and that must be clearly understood. ! think that there are a number who simply feel a considerable shame about being in police custody, behind bars for whatever type of offence ...*

A consideration which complicates this need for specialist training in identifying unconsciousness, alcohol withdrawal syndrome and other medical problems which may be masked by severe intoxication, is the view expressed by the late Dr Trevor Cutter, who did not believe that police, however well trained, can substitute for medical assistance:

The late Trevor Cutter specifically said police shouldn't be trained medically but made to refer prisoners to

doctors; police aren't a substitute for medical attention and proper procedures need to be issued.

This view is supported by Aboriginal people for obvious reasons:

> **Police should recognise alcoholism as different to, or a specific, health problems.**

> ***Get people from Congress going into the cells — there should be liaison for [with] the prison***

Until Aboriginal people, and the non-Aboriginal staff in the organisations who see at first hand the problems which Aboriginal people are grappling with, are able to observe a substantive change in police attitudes to Aboriginal people, there will be a great deal of reluctance to rely on their goodwill or good sense. Formal procedures and protocols are required to ensure that detainees who require medical assistance are promptly referred to the appropriate agency.

3.4.2 Recommendations

The suggestion was made that medical alert bracelets ought to be issued to Aboriginal people for medical conditions, e.g. diabetes, allergies, asthma, heart problems, etc., and should be issued to vulnerable cases by the **Central** Australian Aboriginal Congress (Aboriginal-controlled health clinic in Alice Springs). It was suggested that Congress train police to understand the significance of the bracelets and to respond appropriately to the need for medical attention.

RECOMMENDATION 3.5: Medical alert bracelets be issued to Aboriginal people with a range of medical conditions requiring treatment and monitoring.

There is an urgent need for residential and treatment facilities in Central Australia for the behaviourally disturbed. Many people with behavioural problems have been arrested or detained in protective custody for offenses committed due to their behavioural problem, whether from brain damage, cerebral palsy or other disease.

If people with these conditions were properly cared for in the kind of facilities which Australians elsewhere expect for the behaviourally disturbed, they would not be arrested by police for breaking windows, exposing themselves in public, shoplifting, and the other minor offences which are sometimes committed.

It ought not be expected of the police that they should deal with people with behavioural problems. Centres are required for caring for disabled, intellectually and physically and behaviourally disturbed, so that they are not arrested or put into protective custody in police cells.

RECOMMENDATION 3.6: There is an urgent need for police to be trained by specialists to recognise particular health problems, such as bead injuries, and mental and behavioural disturbance

RECOMMENDATION 3.7: There is an urgent need for residential and treatment facilities in Central Australia for the behaviourally disturbed to which police can detainees with such problems

3.4.3 The Need for Aboriginal Liaison Officers in the Police Stations and Prisoners' Friends Schemes

Trained Aboriginal Liaison Officers are required for police lock-ups and prisons

> **No blackfella is goin' to talk to a copper in the cells. We need Aboriginal workers on call and independent from cops, not these "yes mister" types. The coppers will stop killing people**

when they know someone's watching them. A lot of these deaths in custody could be stopped right away.

Liaison officers to come and check to make sure everything all right, that medication is available, etc.

(Discussion at Alice Springs)

There is a great deal of cynicism about Aboriginal Liaison Officers working effectively with in the police system, as the following extract from the discussion shows:

All they've got is bloody blackfellas up front answering the telephone instead of carrying out the substantive duties of a liaison officer.

Based out of the dry-out centre?

I reckon they should be based at police station.

But then it'll get stuck in the police system.

Another man said later in the plenary session to the police officers participating in the forum:

There's my friend over there (name deleted). I've spent a few times in the tank myself and I'd like to speak to some Aboriginal person if I've got to have medication and that, right? Instead of a police officer. But in the cells ... there's lots of Aboriginal people who won't communicate with you guys, say if they're asthmatic and all these other problems, wouldn't it be better to have a Liaison Officer?

RECOMMENDATION 3.8: There be an evaluation of the feasibility of the placement of trained Aboriginal Liason Officers for police lock ups and prisons.

3.4.4 Cross cultural training for police

Many of our people are worried about the lack of understanding among police of Aboriginal life and culture. It is important, one woman said,

. . . to get rid of redneck mentality in dealing with Aboriginal people.

Police attitudes to Aboriginal people will require long term training to disabuse them of their backward perceptions of Aboriginal people, especially in relation to alcohol:

Police need better training session — police think Aboriginal people are trouble and when they're drunk they're bigger trouble.

This issue was also commented on by Galarrwuy Yunupingu.

I blame inexperienced police, they've been prejudiced against us. That s no good for any of our communities. The police force should be asking those questions of their cadets before they actually accept them ...

RECOMMENDATION 3.9: Police need to attend cross-cultural courses with Aboriginal input. The Alice Springs Grog Forum workshop and Katherine Forum suggest that these could be held at the Police Academy in Darwin through an Aboriginal Unit to be established in the Academy,.

3.4.5 Police protocols need to be developed for entering communities where there are no police stations

This was mentioned as a problem in consultations with Bathurst and Melville Island, Groote Eylandt (since the taskforce report) and more recently raised as an issue after the death of a behaviourally

disturbed man on Elcho Island this year.

> **They gotta get permission from me and from Council. They gotta call up. Police should only come when there's serious business — rifle, drunken-driving, knives, anyone wounded, or warrant issue or check-ups every month or week.**

The issue is also raised in the case studies outlined in Appendix 4.

Similar recommendations were made by the Law Reform Commission, in its Report No 31, on the Recognition of Aboriginal Customary Laws, (1986: ?3).

3.5 Aboriginal Initiatives in Community Policing, Education and Crime Reduction

Aboriginal people, disenchanted with the police system and its practices, have established and proposed a range of community-based schemes. These include community policing; curricula in schools to educate Aboriginal children about the police and court systems; and strategies for crime reduction, especially through

The initiatives of Aboriginal people in providing their own policing. whether at Tennant Creek or Elliott where police cooperate with the Aboriginal councillors who volunteer their time, or in other communities where less formal and often traditional policing and dispute processing takes place, are evidence of the extent to which Aboriginal people are dissatisfied with the conventional police system

These Aboriginal initiatives and views speak also to the concern of Aboriginal elders and parents for their youth and young adults, especially in ,some places, such as Groote Eylandt, where their level of contact with police, courts, correctional services and prison presents a crisis for the communities.

Aboriginal people recognise that, as well as the individual offenders, families and clans, communities, cultural traditions and the prospects for their collective future are at serious risk.

To take action ourselves is the last resort. Non-Aboriginal society and its institutions, in this case the police, have failed us in ,solving the problems of alcohol abuse, anomie, alienation and the resultant crime, vandalism, domestic violence, rape, assault, homicide and affray.

So far, we have observed that these cooperative arrangements between police and Aboriginal communities, such as at Tennant Creek, Elliott and Oenpelli, occur at the instigation of the Aboriginal Councils.

The police ought to be able to extend these cooperative arrangements to other communities through careful consultation and policy planning, ,so that the development of working arrangements between communities and the police occur

as matters of planning rather than accident.

RECOMMENDATION 3.10: The voluntary community policing schemes established by the Julalikari and Gurungu Councils be funded and supported by both the Northern Territory and Commonwealth Governments. These schemes should be examined with a view to extending them into more Aboriginal communities because they have the potential to improve policing and to improve Aboriginal police relations rapidly and substantially, lower crime rates.

3.5.1 Alice Springs: The Tangentyere Council Submission to the Fight Crime Committee

The Alice Springs Town Council established a Fight Crime Committee in response to the inordinately well-publicised complaints of the Todd Mall traders. Their complaints amount to only four per cent of complaints to police in Alice Springs, yet their problems. mainly vandals smashing shop windows at night, have become the main focus of the Town Council's attention in dealing with "crime" in Alice Springs. The appalling levels of crime which Aboriginal people suffer **at t**he hands of drunks in the town camps has not

even rated a mention.

Tangentyere Council, the federation of town camp associations in Alice Springs, has set out in its submission to the Fight Crime Committee a ,sophisticated, well-researched strategy aimed at ,solving the problems. The Councillors and their staff are confident that these strategies will reduce crime.

RECOMMENDATION 3.11: The Aboriginal Issues Unit endorses Tangentyere Council's view that the goal of the Fight Crime Committee should not be to fight crime just for the sake of fighting crime. The Committee must look seriously at the underlying social and cultural factors at play which lead to the kind of crime we are now seeing.

The call by one Alice Springs Town Councillor for the police to use police dogs in their patrols of the Todd River, on the other hand, is not aimed at solving crime, but rather at intimidating and terrorising Aboriginal people. Even the police recognise that it is not the river-dwellers who smash the windows of the small business premises in the Todd Mall, but Aboriginal and non-Aboriginal youths from housing in the town. Youth vandalism, the main problem for the citizens of Alice Springs, is also addressed by the Tangentyere submission.

We include it almost in full below because this submission provides the answers for Alice Springs in the considered view of the Tangentyere Council executive and staff:

> *if lasting impact is to be achieved it will only be through an approach to crime which focuses on long and short-term strategies which target these underlying forces which, if not tackled, ultimately emerge in the shape of crime.*
>
> *It is essential if a lasting impact is to be made on Aboriginal (and non-Aboriginal) crime, the Committee has to come to grips with and show respect for the social and cultural reality of Aboriginal people. This reality is :*
>
> *-- low Aboriginal employment*
>
> *-- few Aboriginal employment opportunities*
>
> *-- family, and traditional value breakdown*
>
> *-- high alcoholism*
>
> ***--** high crime rate*
>
> *-- a dominant non-Aboriginal culture that does not accept Aboriginal people as they are and provide tokenistic solutions which require no painful change by non-Aboriginal people*
>
> *-- a reluctance by non-Aboriginal people to get behind Aboriginal people in sorting out their problems, preferring to blame them for their problems. This is clearly demonstrated by the fact that Tangentyere has been trying to launch measures to prevent the crime problem for many years without much support from government, the media, etc.*
>
> *-- lack of accommodation options for many people from bush when visiting Alice Springs*

LASTING STRATEGIES

> *All these factors combined create a climate ripe for Aboriginal alcoholism and crime. The logical thing is not to further alienate Aboriginal people but to develop complementary strategies and actions aimed at addressing them.*
>
> *At a minimum, Tangentyere contends that this Committee support immediate action on all of the following:*
>
> *I. Greater financial and community support for Aboriginal development in the bush,*

especially outstations, so people can get jobs and decent lives there and not be so tempted to migrate to town for long periods and become alcoholic.

ACTION: Lobby N.T. government and Federal government. (Tangentyere has been promoting Ibis idea since 1982 by helping bush groups with shelter and landscaping problems. But the bush groups need more resources and help).

2. More serious attention to training and employment of Aboriginal people by the business community of Alice Springs. (Tangentyere has been promoting this since 1984).

ACTION: lobby private sector leaders. Organise seminars to teach them how to improve their performance in this area.

3. The introduction of CDEP on town camp communities for training and employment of town campers. (Tangentyere has been applying for it for 3 years).

ACTION: lobby A.T.S.I.C. and give Tangentyere practical support in implementing it.

4. Development of at least 4 transient camps for visitors from bush communities to camp at when they are in town. (Tangentyere has been applying for these since 1981, and has lined up support from Aboriginal Hostels to develop and manage them. One near Karnte, one on Undoolya Road, one near Hoppy's, one near the Abattoir.

ACTION: lobby N.T. government ministers to grant these pieces of

5. The immediate development of at least one further Aboriginal Social club near Arunga Park. (Tangentyere has been trying to achieve this since 1983. At one stage Lands Dept was willing to grant the land, then it was blocked by politicians).

ACTION: Lobby for the land to be granted for this purpose.

6. Adequate funding for long term alcohol education counselling and rehabilitation programs for Aboriginal people. (Tangentyere has been lobbying for these for several years).

ACTION: Lobby N.T. Department of Health and Community Services and Minister Hatton. lobby A.T.S.I.C. and Minister Tickner,

SHORT TERM RELIEF

In addition to these measures there are also a number which will help contain the problems and give short-term relief to the Community.

These include:

•More local Police Aides, especially from Anmatyerre, Arrernte and Pitjantjatjara/Luritja groups (Tangentyere has written several letters to the Chief Minister and Police Commissioners in the last couple of years requesting this).

ACTION: Lobby Chief Minister for immediate action

•at least two Aboriginal Community Corrections Officers based in Alice Springs to intervene in community law and other problems on the camps. (This will assist in reducing the frequency of people leaving camps to escape violence and camping in the river). Tangentyere has put in a submission to achieve this, but hasn't heard back yet.

ACTION: Lobby the N.T. Minister for Correctional Services and the Minister for DAAIA.T.S.I.C.

•A Womens Recreation Officer for Tangentyere to work with young town camp women who are unemployed and need to he involved in activities rather than at risk of getting into trouble or drinking. Tangentyere has been applying for funds for such a position for six years.

ACTION: Lobby N.T. Minister for Recreation Mr Hatton and Federal Minister for ATSIC/DAA,

Mr Tickner.

- *A Child Welfare Worker to he based at Tangentyere to assist in ensuring that town camp children are properly looked after and not be in risk of getting into trouble and drinking. Tangentyere is in the process of applying for funding for this position.*

ACTION: Lobby N.T. Minister for Health and Community Services, Steve Hatton.

- Reductions in the hours of sale for take-away *alcohol. Tangentyere has been lobbying for this for several years.*

ACTION: Lobby N.T. Minister for Liquor Commission, Fred Finch.

- Strong white lights *(not yellow) around the Old Alice Inn and adjacent park and river environs to make it safer.*

ACTION: Lobby Town Council.

- No sales of take-away grog to people on Sundays *unless they're in vehicles.*

ACTION: Lobby Old Alice Inn and Liquor Commission.

- *Withdrawing take-away grog licences from grocery shops and garages.*

ACTION: Lobby Minister Finch and Liquor Commissioner Rae.

3.5.2 The Barunga School Action Group proposal for a community-based curriculum on police and courts

The Barunga School Action Group, a group of Aboriginal teachers, teachers' aides. parents and traditional owners, meets regularly at the Barunga School to discuss the educational needs of their children. The Chairman of the group, Mr Peter Miller, and the other group members took advantage of the Aboriginal Issues Unit visit, accompanied by the Secretary of the Royal Commission and Sergeant Eddie Josephs from the Katherine Police Station, to explain their views of Aboriginal relationships and particular interactions with police and courts in their community.

Cultural differences and misunderstanding were at the core of the problem, the Group argued. Their solution is a community-based curriculum taught from primary school through to high school which would educate Aboriginal children about the Australian legal system, the role of courts and police and bow to deal with them. This curriculum would be an essential part of their children's education, because difficulties with police and courts are a serious problem for Aboriginal people, and will be a continuing problem for their children in the future, unless action is taken.

Their idea is to have Aboriginal interactions with the police and courts as a major subject in an Aboriginal school. While it is a positive response by Aboriginal people to Aboriginal offending and custody problems, it reveals the extent to which Aboriginal people in the Northern Territory accept as inevitable, and regard as a normal part of their lives, arrest, court appearances and custody.

Discussion at the meeting immediately turned to the cultural distance between Aboriginal people and the police:

> **They over-power Aboriginal people with their language. They don't understand Aboriginal culture and language. It's like travellin' through Europe.**
>
> ***White people they don't understand hidden curriculum*.**
>
> **Aboriginal people, we got different sets of values and understanding, different world vision. Different people should be employed in the police force ..... How do you expect an old man who don't know white man's world [to get on]? They haven't got a hope in the world.**

By no means did the Group's members perceive that it is only Aboriginal people and their children who should undergo education and training. They 'made it clear that police should also undergo training:

> **They get very little Aboriginal culture taught to them. When they thrown, into say, Maranboy, they don't understand nothing about our culture. What do you do with a new policeman who don't understand anything about our culture? You don't expect anything. They just do their job straight up. A lot of it's force. I don't know what they are taught. It's scary. They talk down. You can't have a man to man talk. He acts as if he's a superior being like a computer program, a *robot* — one way process — no give and take. You not talk t**o a **human being — to a machine. What we would like to see — we all qualified trained teachers — we should make sure that the training that police** do — **we demand that they get some kind of Aboriginal studies developed into the program. We suggest NT Police do a training program for their people and, too, we develop a community-based curriculum in our school so that our kids grow up knowing what to do.**

A woman provided an example of how easily police misunderstand events in the community. A police officer stepped in to prevent a man disciplining his twelve year old daughter for drinking alcohol. The policeman was on the verge of arresting the father:

> **My cousin he was there — his daughter got into drinking --underage. She called the cops. Policeman got him and shoved him, twisted his arm, threw him in cage and not even asking why — I went over. "Hey, can I talk to you? What is he going to gaol for?" [The policeman said], "He flogged his daughter." "No, you got it wrong. She was drinking** --12 **year old," [I said]. They let him out. Cop said, "I would belt the daylights out of you if I was your father" Bad experience. If I wasn't there he would have gone it for summons and everything.**

The Chairman explained to Sergeant Josephs the aim of the group in coming to terms with Aboriginal police relations through developing a curriculum at their school:

> **At the education level we want to develop a curriculum for our kids.**
>
> **We are mainly concerned at bringing white culture and black culture where they can operate in harmony with each other. We see that as an important process that will make a difference with the outcome of our students coming out at the end who can cope in two worlds and live effectively in two worlds. In the past, [Aboriginal people] haven't come to grips with living in two worlds because they haven't been given a position in the curriculum. But now because we have trained teachers, we have a chance to come to that conclusion . . .**
>
> **We want to see some kind of curriculum supplied by your institution and our's — curriculum that is designed to give input to kids in school to come out knowing how to deal with police. We have found that a lot of our people haven't yet seen or heard of a curriculum being taught on police --not in NT or anywhere in Australia.**
>
> **We would like to suggest that a curriculum on that principle be described by people in communities and by Police Aides and by constables at the police station and people up on top so that we have a flow-on of resources. Our people need to be on education programs that is second to none — that will help them live in 2 worlds. We want our kids to be able to live in Katherine, Darwin and in Sydney and Melbourne and deal with people around them.**

Sergeant Josephs said that he found that the varying language types from area to area was one of the major set backs in formal training for the people in the police force, and also the fact that they, the policemen, are moved around from area to area, instead of staying in the one area for a number of years.

An Aboriginal man, agreed with his comments saying that it is the same with the teachers, who get thrown around here there everywhere, they seem to stay in a community for a couple of years and then get moved to another community. This can cause a lot of difficulties with the stability and teaching in a community.

An Aboriginal woman pointed out that the whiteman learns the languages and bow the Aboriginal people eat and live, etc, but still there is something there about an Aboriginal person that a white man will not

understand.

An Aboriginal man explained that they were now working on a policy of Aboriginalisation at the Barunga Community. It is a policy that is not only locked into the Barunga situation, but is a Territory-wide policy being put into effect by the Northern Territory Education Department, as a result of requests put to them by people in communities. He said:

> **When the kids grow older and finish school, they will be able to cope and deal with the Whiteman's world. Or at least they should be able to if we do the right thing now.**

He added that its no good waiting until the child is 22 years old. By then it's too late for education programs, so it should be taught to them while they are still young children.

3.5.3 Tennant Creek: the Julalikari Council patrols — voluntary community policing by Aboriginal people

The Aboriginal community at Tennant Creek has has attempted to overcome a number Of problems with police and policing by establishing council patrols which attend disturbances in the camps at night and which attempt to resolve conflicts at rooming meetings in the camps. The Julalikari Council insists that people should bring their complaints to the Councillors on patrol, rather than the police, and that the police should not attend at disturbances without the presence of Councillors to explain the problem to them.

The involvement of Aboriginal Councillors in voluntary policing of their communities, and their preparedness to use their own vehicles and money to patrol the streets and camps every night, points to their dissatisfaction with policing in their communities. The Councillors state that the main factor in Aboriginal offending is alcohol, disrespect by Aboriginal youth and the white community for Aboriginal Law, and the inadequacy of essential services, alcohol rehabilitation services, and general standards of living in the community. They are concerned that the police do not understand what they are dealing with, nor how they are used by protagonists on one side of a dispute against the others. They are attempting to resolve conflicts in an Aboriginal way rather than having the police simply arrest a person or persons, sometimes the wrong person, without solving the problem. Councillors are able to speak to Aboriginal people and reprimand them with success. Police reprimands may not be successful in some situations, especially domestic violence situations. The use of Aboriginal language as the medium in these patrols makes an enormous difference to their success.

Inspector O'Meara at a meeting of the Domestic Violence Committee in Tennant Creek said that in the previous two months, of the 162 disturbances reported to the police, over 50 per cent were domestic violence and 95 per cent of them were alcohol-related. Many of the reports were generated by Julalikari patrols and their contribution had increased the disturbances reported to police considerably. He attempted to involve representatives on the Domestic Violence Committee to work t*ogether with the police* when the new legislation on domestic violence was introduced at the end of that month, enabling police to remove offenders from homes and detain them for four hours.

When the Aboriginal Issues Unit met with the Julalikari Council to ascertain their views on the underlying issues leading to high rates of custody and sometimes deaths in custody for Aboriginal people, the discussion turned to the problems with the patrols. It is very important to the Councillors that the patrols work, and that relations with police improve.

Aboriginal Issues Unit staff observed rooming meetings convened by the Councillors to bring about resolution of conflict between disputants who had caused disturbances during the night.

Councillors work with their constituents on their night patrols to diffuse arguments and prevent disturbances. Camp residents do not call police themselves. They call the Council to attend a dispute and if residents feel that police are required, the Councillors call on their behalf. This means that heavy-handed police surveillance is minimised, and that police attending complaints are met by Councillors who explain the problem. This avoids misunderstanding by

Examples of particular actions taken by the Councillors on patrol are provided by an Aboriginal Issues Unit consultant. In this case, the Council called the police:

> **One old man who annoyed several neighbours during the night at Maria Maria was taken to the Dry-Out Shelter by police whom the Councillors had called upon the request of Maria Maria residents.**

In another example an argument between two young men on the main road was successfully diffused by the councillors:

> **The old get sometimes hit by their sons and daughters ... old hit young too ... but police is only called for the young offenders, the old sort their problems out within the family.**

3.5.4 Gurungu Council, Elliott

Gurungu Council at Elliott, a two hour drive north of Tennant Creek, has followed the lead taken by Julalikari Council and also instituted Council night patrols. As well, the Council has been working towards establishing rules or laws for camp residents to fill the vacuum left by the partial displacement of traditional laws by the largely irrelevant body of law enforced by the police. Gurungu Councillors explained it thus:

> **We'll have meeting on Friday to make Council rules — if you don't like rules — you say so. We not flash — we trying to keep this place going good. You all have to obey Council rules. You have to tell us if rule is no more good one. At the moment. If you agree with that rule you got to obey it — you can't say it no more good one afterward. If you mob fight at night — at next day you gotta finish it up next day. No good going to pub fighting in public area --it's dangerous. That's one of the rules. When they drunk one person fight — no good. You gotta fight sober. You gotta learn to drink properly like kardiya (white people). Say it to our face — don't say it behind our back. We gotta make it hard. That's the only way we can help our people. What if you killin that man dead — what you gonna do then?**
>
> ***Punishment is gonna be Aboriginal way in camps — not police.***
>
> **We gotta rubbish in camp. They can clean up camp. Aboriginal way so strong. When they go to court and get punishment they have to work in town — not in camp. We want them to work in camp — in Aboriginal way.**

Once again, the elders of this community made it clear to their constituents that they are to bring their problems to the Council first, not the police:

> **If people make trouble they have to see Council — not go to police. Council goes to police. People to complain to councillors- not police. Council patrols at night.**

The drain of personal resources which this voluntary policing involves is just one of the problems with the system:

> **One bloke was using his car to run around — using his own money for petrol — other people should help. Mark should be using Council truck — not his own vehicle.**

All the old men said people should support Mark (the Council President) when he is driving around:

> **He needs help from others. He can't do it all himself-other people have to do patrol too — men and women and old men — they can pick up kids at pub. Young men can be trained up.**

These voluntary community policing schemes established by the Julalikari and Gurungu Councils require funding and support from both the Northern Territory and Commonwealth Governments.

3.5.5 Gunbalanya Social Club, Gunbalanya (Oenpelli)

The police at Gunbalanya work with the Gunbalanya Social Club to ensure that the Club rules are enforced. The Club bans people who commit misdemeanours for various periods of time. The Club

workers write offenders names on a public blackboard and the dates of their ban periods. The police independently write offenders names on the blackboard if they have committed alcohol-related breaches outside the Club after it closes. This arrangement is supported by the community.

The cooperation of the police with the Gunbalunya Social Club Committee and Gunbalunya Council to ensure that rules laid down by the community representatives on these bodies are enforced seems to be a rare case. Other canteens, especially in the Top End where limited access to alcohol is favoured over total restrictions under the dry area provisions of the *Liquor Act,* seem in comparison to the Gunbalunya Club, to he unruly affairs. Their rules seem to change from week to week, and bans by particular offenders not completed, especially if the offender is related to a committee member.

The Aboriginal Issues Unit suggests that, given the good management of the Gunbalanya Club and the concern of the community to have rules enforced to maintain order in the community, police cooperation is the crucial factor in maintaining long term stability in the enforcement of rules and a commitment from the general community to the good running of the club. The community is well aware that because they have worked hard at finding a solution to uncontrolled alcohol abuse through establishing a well run club, they have met with a measure of success not often seen in Aboriginal communities in the Northern Territory. Their success is recognised by the Tyweretyere Social Club of Alice Springs whose members visited the Gunbalanya Club to see its operations at first hand.

3.6 The Aboriginal Police Aides

The model of police cooperation with some Aboriginal communities, and that of absence of police, contrasts with that of the Police Aide system. Three different points of view have been put to us about Police Aides.

1. Some people say that Aboriginal police must be fully trained police with the power of arrest.

2. Some people do not comment on the adequacy of the concept of the Police Aide, but rather argue that people should have more respect for their Police Aides, and that there should he women Police Aides, albeit well trained to cope with the violence of the policing problem.

3. One community has made it very clear that their police aide does the bidding of Councillors to whom he is related and does not arrest them or their sons for bringing alcohol into the community, while other residents and their children have the full force of the law brought on them for minor offences.

We have some less clear indications about this concern about the lack of impartiality of Police Aides in carrying out their work from a number of communities and individuals interviewed.

The Police Department recognises the important functions fulfilled by Police Aides. Superintendent Maley, in the NT Police submission to the Royal Commission of lnquiry, states:

> *Police Aides are held in great esteem by community members and are regarded as "our policeman". As the Aides have an extensive knowledge of clan groups, local traditions and customs, they are able to work within the community with greater success than regular police members.*

This success is not, however recognised in increased career opportunities or improved salaries commensurate with the specialised skills they must have, and was raised as an area that troubled many communities. In all consultation regarding the status of Police Aides the comparative low status and powers of their aides was an issue.

However, Aboriginal people still perceive the need for more Police Aides, and in particular local people, not outsiders, as Police Aides.

A constant request was:

Aboriginal policewomen and policemen. We need them.

For the same reasons expressed by the Department, Police Aides are seen as being capable of performing in a manner more valuable to the community than that of their non-Aboriginal colleagues:

> **My grandson told me when he got punched by police in guts for no reason. Aboriginal police aide, he don't do that — he understand our culture. He don't use high language.**

Police Aides have to be given the assistance of the Police Department and the Department of Law to begin determining methods of appropriately administering the law.

The conflict for individual Police Aides of service two cultures was raised. For example Sergeant Josephs stated that:

Aboriginal Aides encounter a lot of stress with their family relationships in this cross culture situation. A good Aboriginal Worker was not able to do what his family wanted him to, against the Policeman, so he had to 'turn his back on everything' (against the Police and his family). This was brought about by the man's own skin-group pressure upon him.

However, the contradiction of applying Australian law to an Aboriginal situation and allegiances of Police Aides to this law was not seen as a insurmountable problem for Aboriginal people, as it has been viewed by others:

> **Police Aide not working with Aboriginal people, he got to be with police rules. Not us.**

Communities view Police Aides as an under-utilised resource:

> **Force doesn't help — beatings and everything. We should have somebody there to train. How can you have interpreters? They on call 24 hours. They should get someone from community, not Legal Aid, from town. They are not even using the Police Aide (mime deleted). I haven't seen him at work for a long time.**

The view was expressed that part of the role of Police Aides was to give police feedback about both the cultural appropriateness and the success of their general interactions with Aboriginal people and their communities. However the power dynamic of a predominantly white policing force and a few Aboriginal Aides mean that the facility for respecting Aboriginal Police Aides opinions in practice is difficult to achieve:

> **The police were threatening the people. The police started a lot of fights. The Police Aides were too frightened to tell the police that we are not animals to be treated like dogs. (Discussion at Nyirrpi)**
>
> ***Even in town my father (an ex-police aide) he also tells police they human --pick them up carefully because he's working with his own colour. He still tells police that we are not animals to be dragged. Because one day he might pick up someone who's on medication and he might end up being involved with the Royal Commission into Aboriginal Deaths in Custody.***
>
> **(Discussion at Yuendumu)**
>
> **All Police Aides should tell him to pick him up good way -not punch him. They threaten Yapa — they not mad. Police should pick people up gently.**
>
> ***(We want to) train an Aboriginal Police Aide to help [with enforcing the rules of the proposed Tangentyere Social Club]***

Cultural sensitivity must be recognised by the Police Department and the knowledge of individual Police Aides respected so that a two-way interaction can develop, where Aides are able to point out if Police expectations are excessive or their intervention inappropriate. One example is reported here by a consultant to the Aboriginal Issues Unit:

It relates to a case reported to Tennant Creek Police in mid-1988 on behest of three girls and a boy. A male Aboriginal Police Officer was sent to interview the mothers of these girls who were allegedly pack-raped. This is a most compromising topic for an Aboriginal woman and an Aboriginal man to talk about; if not impossible if the policeman is affiliated or related to any of the women. It came as no surprise that he could not elucidate anything from the women which could have amounted to laying charges against several youths whose names were given by the girls and which had been passed on to the police.

Yet. in another situation:

> **We need a Police Aide out here if there's a ceremony out this way and if there's a fight over there, Police Aide, man, can go down there.**
>
> So you are saying policeman can't?
>
> **No, he's not allowed to, no one allowed to go unless they are initiated man. Like if something's going on, fighting or something, I go down there and have a look because I'm an initiated man, I go down there and have a look and come back and tell this mob, the police here. (Discussion at Hermansburg)**

Specific recommendations from communities relate to the extension of the duties for Police Aides, so that they could better fulfil community expectations:

- Surveillance

  Police Aide don't do duty. There's no Police Aide watching to make sure people don't hang themselves in cell.
- First point of contact

  How many blackfellas in gaol talk to police? Police Aides should be there at the first instance (in the cells) not behind the desk answering the telephone.

  (Alice Springs discussion)
- Community relationships

  Police Aides they know people down the river they know better than these young fellas who should go to the sobering up shelter.

  (Alice Springs alcohol worker)

RECOMMENDATION 3.12: Police Aides should be involved in developing better community relations between police and our people through participation in clearly, defined programmes.

RECOMMENDATION 3.13: Police Aides to speak to and check on the condition of Aboriginal detainees when they are first brought to the police station.

- Community liaison

There has been a long term expectation that Police Aides perform a community liaison function in maintaining relations within their communities.

- Advisers to Non Aboriginal police.

Police Aides should tell other police and non-Aboriginal community groups when it is or is not appropriate to intervene in community business, or when they should enter a community. For example, the Police Aide at Galiwin'ku has resigned until some resolution has been reached with the Police Department's Tactical Response Units intervention in an incident that led to the death of a mentally disturbed offender.

- Aboriginal Trackers

The position of Trackers should be evaluated along with the Police Aide Scheme with respect to their impact and future direction.

Recently police have responded to calls for increased levels of Police Aides on an internally identified (through their own Department examining community requests) priority needs basis. This method of often competitively assessed needs was criticised in the recommendations for the Final submission of Counsel Assisting Case No. 6 regarding the placement of an Aide in the Elliott community. The submission stresses that there should not be a situation created where:

> *communities are in sharp competition of need with each other (but rather) once a recognised threshold of need is established, a Police Aide (where an appropriate candidate is available) should he appointed.*

The Police Department have responded to this situation, and to the static allocation of 24 Aboriginal police Aides being employed over the last five years, by formally requesting approval to increase the staffing level of Aides to 34. This has been approved in principle by Parliament but NO allocation of extra funds will be given to compensate for such an increase in staffing. Possibly this level for staffing will be reached through a decrease in the enrolment of non-Aboriginal police.

RECOMMENDATION 3.14: The Police Department should recognise the valuable work that Aboriginal Police Aides perform, by improving staffing levels, salaries, career structures, and training.

RECOMMENDATION 3.15: Aboriginal people should develop more respect for Police Aides and the work they are doing. This might be achieved through the commencement of community based policing strategies like the Julalikari Council community patrols working with their local police.

RECOMMENDATION 3.16: The number of Police Aides should be immediately increased. Their duties should be reviewed to improve their value to the community and their own self-development. Aboriginal women Police Aides are urgently required.

RECOMMENDATION 3.17: The position of Trackers should be evaluated along with the Police Aide Scheme with respect to their impact and future direction.

Jailanguru Parkarnu! #: Prison And Non-Custodial Options

'Out of Jail!'

4.0 Introduction

This chapter is concerned with jail and its alternatives in the Northern Territory. There is a large amount of statistical data on Aboriginal imprisonment, both from the Northern Territory and from Australia as a whole. However, quantitative information relating to imprisonment cannot by itself reveal the impact that prison has on Aboriginal peoples' lives in the Northern Territory.

In recent years, a considerable amount of data about Aboriginal imprisonment has been collected in Australia. However, it may be counterproductive to continue collecting data without explaining it and

without using it to bring about the *changes* in Australian prison systems and sentencing of Aboriginal people.

> *·.. it is time to move from description to explanation. While we are adding to the figures on microsociological studies... we are neglecting the macrosociological context in which these events occur and hampering our abilities to ask questions of fundamental importance which might help us see how much basic social change might be implemented. We tend to focus on bandaid or cosmetic measures which merely cover 'existing 'sores 'for a short time. (Hazelhurst, 1987: 138)*

There is no doubt that changes which reduce the Aboriginal imprisonment rates are required as a matter of urgency. In interviews conducted by the AIU, Aboriginal people talked openly about their experiences and the disruption that jail causes personally, and for the family and community. Our people feel that it is essential that there be change for the better in the sentencing of Aboriginal people and in the prison system. The detrimental impact of imprisonment on the health, culture, society and economy of Aboriginal people in the Northern Territory must be halted. At the moment, to our people imprisonment, is not extraordinary, but a normal, inevitable and wasteful part of life.

Our people in the Northern Territory believe that jailing people is, except for repeated or serious crime, a waste of time. Jail should only be used as a last resort. People want to be 'able to rehabilitate offenders themselves. Clearly, they will not be able to do this without considerable government assistance.

The Northern Territory Department of Correctional Services has in the last few years introduced reforms which have started to reduce the Aboriginal imprisonment rate in the Northern Territory. In particular, the Community Service Order (CSO) scheme has shown some success and shows greater promise. Not only does it avoid the imprisonment of our people, but it could be used for the genuine rehabilitation of offenders. In this way, our people will be able to rehabilitate their own people in their own communities and, most importantly, in ways much more in keeping with traditional ideas about punishment:

> **They should be given that job, so that people who are seen as causing most of the damage, or are a nuisance to the community can be then disciplined in that way. That's the Yolngu way of discipline and that's learning through ceremony, not neglecting their own culture. But learning through the process and having pride, that as well. That's my thinking.**
>
> Mandawuy Yunupingu Principal
>
> Yirrkala Community School.

RECOMMENDATION 4.1: More funding is needed by the Community Service Order scheme if it is to be able to realise its full potential: CSO projects must be set up in more Aboriginal communities and organisations, and the integration of the scheme into the communities and the structures of Aboriginal law must be encouraged.

However, any effective drive to reduce Aboriginal imprisonment rates must also include programs which address the deeper social causes of crime. Unemployment, boredom and alcohol abuse are the major problems to be tackled to effectively reduce the offence rate. Aboriginal people have said this to us repeatedly and emphasised the need for government programs which work. with Aboriginal people and our organisations to enable them to do this.

> **Maybe these people that are committing these offences you know haven't got anything, and maybe if you do sort of blend them into the work force, maybe they might have a different outlook on life. What's sending them to jail going to do, they'll come straight back out and do the same offences then next night.**
>
> Ron Satour

RECOMMENDATION 4.2: Any program to reduce Aboriginal imprisonment must include funding for schemes to tackle unemployment, poverty and alcohol abuse.

4.1. Imprisonment And Sentencing For Aboriginal People

The Royal Commission into Aboriginal Deaths in Custody Research Paper No. 6 by David Biles (1989), titled "Aboriginal Imprisonment - a statistical analysis" provides some useful data on Aboriginal imprisonment in the Northern Territory for the period 1982 to 1987. Some of the conclusions that can be drawn from this source are:

- the Northern Territory has by far the highest level of imprisonment of any State or Territory in Australia. The number of people in prison (311 per 100,000 population) is over four times the national rate (75 per 100,000 population). (See Table 1 in Statistical Tables section below)
- The imprisonment rate of Aboriginal people in the Territory is 961 per 100,000 population. This is nearly. thirteen times the national rate, and over three times the rate for Territorians in general. (See Table 1)
- Aboriginal people are nine times more likely to be in prison than non- Aboriginal people.
- The average age of Aboriginal prisoners is 24. They are the youngest prisoners (Aboriginal or otherwise) in Australia.

Aboriginal people are over-represented in all Australian prison systems; this over-representation is highest in South Australia and Western Australia and lowest in Tasmania and the Northern Territory. (See Table 2) In discussing the apparently low level of over-representation, however, Biles adds a note of caution:

> *the figures . . . are conservative as even higher levels of over-representation would be indicated if only the adult community were considered. There is evidence to suggest that the structure of the Aboriginal population is markedly different from the non-Aboriginal population such that the proportion of the Aboriginal community who are adults, or of potentially imprisonable age, is considerably smaller than the proportion of Aborigines in the total community. Thus the calculation of over-representation levels based on adult populations only will produce higher figures. This approach is not pursued here, however, as the inherent unreliability of the Aboriginal population statistics is increased when that population is considered in smaller segments. Nevertheless, the general principles of the approach that leads to even more dramatic figures should be understood.*

The statistics above were taken from a survey carried out between 1982 and 1987. (See Table 3) Over this period, the number of Aboriginal people in prison in the Northern Territory (as at 30 June of each year) rose from 198 to 334, an increase of over two thirds. In the same period, the proportion of Aboriginal prisoners in the system rose as well - from just under two thirds (63 percent) to nearly three quarters (72 percent). However, after 1987, the Department of Correctional Services data indicates a decline in the Northern Territory prison population, largely due to the introduction of alternative punishments to imprisonment such as the Fine Default Scheme and the Community Service Order scheme (These schemes will be discussed later in the section on alternatives to jail).

This picture of Aboriginal imprisonment in the Northern Territory does not tell the whole story. Imprisonment rates for particular regions may be far higher than the average for the Territory as a whole. (See Table 4) For example, Groote Eylandt had an imprisonment rate of 2274 per 100,000 in 1986, one of the highest ever recorded in the world. Several other places have had imprisonment rates approaching or exceeding one person in a thousand - Daly region, 1986 had a rate of 1323 per 100,000; Tanami region 1983 rate was 912 per 100,000. See Table 4 below for more details. There is no doubt that regions of the Northern Territory have amongst the highest rates of imprisonment ever recorded, and the vast majority of the prisoners would be Aboriginal.

The survey indicates that at any one time there are likely to be several hundred of our people in jail. This does not tell the whole story, however. Aboriginal people tend to be put in prison often; these periods of imprisonment are generally for quite a short time - about two in five (38 percent) of sentenced Aboriginal prisoners get less than 28 days in jail; about three-quarters (74 percent) get less than 150 days (See Table 5). The large number of imprisonments of our people for relatively short periods means that the number of our people who have to go to jail during one year is likely to be higher than indicated by the usual methods for surveying jail populations.

The Northern Territory Department of Correctional Services has the data to carry out the kind of 'flow estimate' analysis to give a more accurate picture of the flow of prisoners through its jails, to correct the snapshot view that prison census material provides and which emphasises the hoarding of prisoners serving longer sentences for the most serious crime categories. Given the relatively short sentences served by Aboriginal prisoners in the Northern Territory, the result of this flow analysis may demonstrate that, over a period of time, the flow of Aboriginal prisoners through jail is less a flow than a flood. This torrent of Aboriginal prisoners through the system, consists largely of young, male, unemployed, Aboriginal offenders re-entering the system over and over again.

When we look closer, not just at the numbers of people in jail but at who they are and why they are there, some interesting points emerge. In 1985/86, the prison population in the Northern Territory was profiled by the Department of Correctional Services and the following results were found:

70% were Aboriginal.

95% were male.

60 % had been previously imprisoned.

74% were unemployed.

60% admitted that their offences were alcohol related. 54% were single

45% had a primary or lower education level.

The usual offence categories were driving or property offences

48% of the prisoners were under the age of 25.

34% were in prison for unpaid fine for an average of 7 days.

64% of convicted prisoners served less than 3 months

The prisoners came equally from rural and urban areas

These statistics clearly show the connection between Aboriginal imprisonment and the twin problems of unemployment and alcohol abuse. As noted in Chapter 1, unemployment amongst our people is a major source of problems. Poor education, discrimination, and the genuine shortage of jobs lead to chronic unemployment amongst our people; this leads to boredom, lack of self-esteem and frequently to alcohol abuse. With alcohol abuse comes arrest and, inevitably, imprisonment.

Any discussion of offences leading Aboriginal people to imprisonment in the Northern Territory must emphasise the context in which these offences occur. The single most contributing factor to imprisonment is alcohol. For example, on 30 June 1987, out of a total of 334 Aboriginal prisoners in the Northern Territory, nearly three quarters (70.6%) admitted that they were under the influence of alcohol at the time of the offence that put them in jail. This conclusion is supported by statements made to the Commission and by our people in their consultations with the AIU:

The typical offence at Groote Eylandt ... is the quest for more alcohol they will have been drinking ... they' II seek more grog. They'll either break into a European house and get it from the grog fridge underneath, or they'll break into the club or .... the golf course .... They'll get a carton or two of grog. They borrow, without permission a motor vehicle to go to either Angurugu or Umbakumba. They will be apprehended in 85% of the cases.

(OUSTON 12/89, Darwin)

· . . its all alcohol related crime, not serious crime ... Like people steal money or grog just to get more alcohol.

It is obvious that any serious long-term attempt to reduce Aboriginal crime and imprisonment in the Northern Territory must include funding for programs to 'Beat the Grog'.

Also clear from the profile of prisoners given above is the youthfulness of Aboriginal prisoners in the Territory. The problems for youthful offenders are recognised in Aboriginal communities as preventable, and many people work hard to prevent the youth from offending, and from re-offending. The problem is not just unemployment, but a lack of occupation. Employment is difficult to find, especially for unskilled

Aboriginal people, and the answer for youth may lie **in** providing them with useful occupations, education and skills, so that they know how to occupy themselves, even if the economic base and development of enterprises in Aboriginal Australia is unlikely to provide them with actual employment in the future. A good example of the kind of program that our people have in mind is the mud brick manufacturing venture at Amoonguna. This is an approved Community Service Order project, and the Aboriginal management are keen to try to provide training and skills to young people, including the young offenders who are sent there by the Department of Correctional Services:

> **Ron. Most of the kids that we get down here have never worked ... [as] soon as they start work out here, even if they're on CSO's you know, they're that keen and that, you can see them, they're on a high.**
>
> **Raymond: You feel sorry when you can't keep them on [be]cause you haven't got the funds.**
>
> Raymond Satour, Ronald Satour of Amoonguna Community.

Lack of parental control and care, often due to alcohol addiction, was seen by those of our people we consulted as a major reason that young people turn to crime. This view was put to us many times and is discussed in Chapter 5 on Kids and Culture. Poverty leads to crime directly as well as through the dependence it so often creates on alcohol - hunger can drive people, especially young people, to theft as effectively as can addiction:

> **Poor little kid. They're the mongrels that should be jailed the mothers and fathers, fair dinkum, they're not feeding their kid properly, that's why they are breaking in and that, cause they are starving ... And then motor car to get away from it.**
>
> **That makes it worse.**
>
> Barry Abbott, Wallace Rockhole.

Also clear from available statistics is the high proportion of Aboriginal prisoners who were in jail for offences to do with motor vehicles (See Table 6).

> *The estimates suggest that almost half of all persons sentenced w prison in the Northern Territory were motoring offenders. Their average sentence was about two weeks.*
>
> Walker (1988. Trends and' Issues No. 20: 3)

The high rate of motor offences committed by Aboriginal people has to do with a range of problems: the sale of second-hand vehicles to our people by dealers who do not provide warranties; the probably high levels of Aboriginal non-compliance with bureaucratic procedures such as obtaining drivers' licences, and registering vehicles; and particularly the fact that most Aboriginal motorists learn to drive in informal circumstances. Aboriginal people make repairs to their vehicles in unorthodox ways also, which' may contribute to the offence rate. The lack of adequate public transport in Central Australia contributes greatly to the problem.

Education programs, as basic as driving courses with special emphasis on teaching the meaning of road signs to Aboriginal people not literate in English (the IAD in Alice Springs provides such a course but it is not accessible beyond its own small student population in Alice Springs), car maintenance courses, and consumer fights and obligations programs especially in relation to buying of vehicles (See the Flash Attack video, produced by CAAMA productions for the Department of Consumer Affairs, in Alice Springs) would help to overcome the problem of high rates of motor vehicle offences in the Northern Territory.

Most importantly, however, it is questionable whether people committing motoring offences should be jailed at all, except in the most extreme cases.

RECOMMENDATION 4.3: The Department of Correctional Services in conjunction with other Departments and Aboriginal organisations should undertake a study to develop a programme or a number of programmes to decrease file number of motor vehicle offence prisoners in Northern Territory correction system.

RECOMMENDATION 4.4: As recommended by Tangentyere Council and by the Assistant Director of the Department of Correctional Services in Alice Springs, some form of cheap public transport should be set up to operate between Aboriginal communities and urban centres.

There has been much discussion concerning the offences leading to conviction of Aboriginal prisoners In the Northern Territory, most offenders sent to prison are burglars, people who commit minor assault, motorists, and those on justice procedures charges. This conclusion was largely confined to the AIU by Aboriginal views on what offences people go to court for.

> **Mainly they get picked up for consuming liquor, unregistered cars and old warrants, people breaking bonds, parole.**
>
> Bayden Williams, Hermannsberg

Sentencing of Aboriginal prisoners is another area that generates a lot of debate. A number of sources have recognised that there are significant differences in sentencing patterns for Aboriginal and non-Aboriginal offenders. (See Table 7(a)). Biles (1989) demonstrates, using 1987 National Prison Census figures, that there are more Aboriginal prisoners in all sentenced categories up to three years in the Australian prison system but above that figure non-Aboriginal prisoners become much more prevalent. Some researchers have concluded that the lower average sentence for Aboriginal prisoners reflects the actions of a justice system that is more lenient to Aboriginal offenders. It is more likely, we believe, that the minor nature of most Aboriginal crime is the primary reason why they are sentenced to less jail on average than non-Aboriginal people - even where it appears that Aboriginal offenders receive less jail than non-Aboriginal for the same offence. The fact that the Northern Territory has the lowest average time served by prisoners in Australia (See Table 8) is a reflection of this - the majority of prisoners are Aboriginal and are in prison for short periods for minor offences. In particular, the large proportion of Aboriginal offenders who arc in jail for justice procedure charges, which attract low sentencing, is significant (See Table 7(b)).

Two important recommendations are made by Tangentyere Council in their submission at Appendix 3 in respect of sentencing alcohol-affected offenders, which the Aboriginal Issues Unit endorses:

RECOMMENDATION 4.5:

- a way be found to lessen the attractiveness of using drunkenness as a 'mitigating factor' in the sentencing of alcohol affected offenders.
- offenders who act under the influence of alcohol undergo compulsory alcohol counselling or education.

However there are problems in the sentencing of Aboriginal offenders charged with more serious offences. The courts hand down both lenient and heavy handed sentences depending on the case and the mandatory life sentence for the charge of murder in the Northern Territory Criminal Code is also a factor about which there is now much debate. The quality of legal representation for Aboriginal people on serious criminal charges is a matter of concern. The Aboriginal legal aid services, it appears, have insufficient funding for briefing out cases to experienced counsel, such as barristers and Queen's Counsels.

RECOMMENDATION 4.6: The funding to the Aboriginal legal aid services for briefing out cases to experienced counsel, including barristers and Queen's
Counsels, he increased and guidelines he established for senior officers of these organisations to decide when cases should he briefed out.

There are no statistics available, as far as we know, on recidivism rates in the Northern Territory. If this is so, this is a glaring gap in the criminological knowledge. Broadhurst and Miller calculated that Aboriginal people in Western Australia (See Table 9) get put in prison often - Aboriginal prisoners in that state can expect roughly four times the number of prison terms over their lifetime as white prisoners.

Broadhurst and Miller (1989) suggest that there are effects of repeated imprisonment:

> *Almost certainly it will be more than just the accumulated exposure time of an individual w prison that accounts for the risk of dying in custody: the repeated trauma of arrest, trial and conviction, not once but perhaps dozens of times, any produce profound effects on the mental state of prisoners, and especially for Aboriginals with their demonstrable high repeat conviction rates .... Some insight into one result, at least, of such continued incarceration may be gained from, where repeat offenders are shown to progress which high probabilities (considerably higher for Aboriginals) to more serious crimes with each successive imprisonment. Inasmuch as this indicates frustration with and alienation from society it may be expected to produce ever more tension within the prison regime.*

They ask a question related to the impression that the statistics produced on the phenomenon of deaths in custody gives:

> *A related point is the timing deaths. Do suicides, in particular, occur soon after entry to prison or police lockups, representing the effect of a shock, or do they occur after longer periods in custody, perhaps representing increasing disillusionment and discouragement?*

The response of Aboriginal people to whom we spoke about custody is of fear for the young who are repeatedly jailed:

> **If they keep locking up [name deleted], people - over and over again - they might hang themselves**
>
> Elder at Gurungu Camp, Elliott.

Broadhurst and Miner (1989) conclude that the implications drawn by some from statistics that racist custodial practices do not contribute to the Aboriginal deaths in custody defy commonsense:

> *For Aboriginals, such a view will be seen as yet another conjuring of white man's medicine (or another version of 'lying with statistics') against the real experience of the Aboriginal world. Custodial authorities must at the very least assure the community (especially the Aboriginal communities) that where such racist attitudes exist they have no bearing on the quality of custodial care. Justice may demand imprisonment but it does not demand a higher risk of death.*

The view Aboriginal elders put to the AIU concurs roughly with the criminologists' view that the most serious crime categories are murder, manslaughter, serious assault, sex offences and burglary. As we shall see in the following section, our people believe that jail should be reserved for people committing these serious offences or for people who habitually offend; trivial offences should be punished with alternatives to jail.

4.2. Jail Is No Good - Aboriginal Views On Jail

Aboriginal people's attitude to jail vary. Some reckoned that jail was too easy and that:,

> **After gaol you came out fat and well ... People deliberately get themselves locked up so that they can get a feed and a warm, safe place to sleep.**
>
> **...they know they can eat in there and have a rest.**
>
> Bayden Williams, Hermannsberg.

However, these comments were in a minority, and as one Maningrida woman told the AIU:

I've never heard anyone bragging about jail, only one crazy one.

Those who had actually been to jail might say that the three meals a day and the reasonably comfortable place to sleep were the only advantages of life behind bars. Generally they concluded that the lack of freedom and the denial of human rights made it an unpleasant experience.

They got you behind bars ... All the rules - put your hand up! Have shave! You locked up from 4. They cheek up 8 o clock, 10 o'clock, 12 o clock, 4 o clock in the morning.

Nyirrpi man who had been in jail

Being separated from one's kin and country caused unhappiness; some prisoners even went so far as to discourage visits or even letters from their family and community because of the distress that this caused them. Depression and boredom were often the result of this separation from the family

It's really hard - single cell behind bars - they think too much - about family matters ... you worry. Where's my mother? Where's my brother? You feel like killing yourself

Nyirrpi man who had been in jail

Severe stress is placed on prisoners sometimes by family and community members. In one case which came to the attention of the AIU, sisters of the prisoner were writing to him accusing his wife of being unfaithful. The marriage was a wrong way marriage and the aim of the sisters was apparently to break it up once and for all while their brother was in prison. During his term of imprisonment, be was transferred from the Alice Springs prison to the Berrimah prison. The young man had a history of disturbance and when be returned to the community, be was prescribed a medication which had side effects which caused his face and neck muscles to stiffen and distort. He was accused by some members of the community of being a malevolent being. All these stresses became too much for him and soon after he committed suicide in his home

Many Aboriginal prisoners do not have any visitors. Their home communities may be hundreds of kilometres away and as women whose sons had been in Berrimah told us, the family just did not have the money to travel the long distances to visit family members in jail.

Another reason for friends and peer group kin failing to visit is on account of there being outstanding traditional punishment for the prisoner which he must face when be is released. Some people have expressed the view that if they visit the prisoner, they may be implicated in the "payback".

Young men have said that they lie awake in prison at night worrying about payback business which they must face when they are released.

In two communities, Maningrida and Angurugu on Groote Eylandt, we were told about earlier proposals to have small prison farms or prison facilities located in or near these communities. In the case of an outstation near Maningrida, when petrol sniffing was epidemic in the region, a man whose sons were repeatedly before the courts asked for a prison facility near his outstation so that his sons would not be in jail in Darwin. The Department of Correctional Services apparently replied that the project would be too expensive. People occasionally raise the idea at Maningrida as one worth considering again. In the case of the proposed jail on Groote Eylandt was recommended by Biles in his 1983 report on Groote Eylandt Prisoners as an answer to the problem of young men seeking imprisonment to gain a trip to Darwin. It is true from our discussions that they seek to be near their brothers and friends in jail, but one experience in jail seems to be enough to teach them that there is nothing to be gained from it There was disagreement amongst the elders on this proposal, but they did agree that if a jail did exist on their land it should be under their control. They were disappointed that jail seemed to consist of watching television and playing pool and reminisced about their experience of incarceration many years ago when they were shipped to the mainland and forced to cut down trees with blunt axes. This was punishment, they said, not the jail which their sons talked about. The Wilderness Project, as a prison farm for juvenile offenders was approved of by those Aboriginal adults who mentioned it to us.

On one point, however, all the people consulted on the matter agreed: jail as we know it is no good for people. As discussed in the chapter on Aboriginal Law, traditional Aboriginal notions of punishment are inseparable from the teaching and rehabilitation of the offender. However, the often-stated European concern that jails serve as places for rehabilitation as well as, or even instead of punishment, was in stark

contrast to the reality as revealed by our people. Even those who went to jail believing that they would somehow be 'reformed' by the experience, soon learnt otherwise:

> **Some people in jail they think they get rehabilitated but they don't get treated the proper way... Jails - they're there to help people. I used to think like that. But the screws give them a rough time. So they wonder what they gonna do when they get out.**
>
> Yuendumu man who served time in prison.

We were told over and over again that jail was useless - people came out of jail without having learnt anything, being just as likely to commit crime as before their imprisonment.

> **they come back from jail ... they do the same thing ... because they never been ... taught things properly, they should have taught them in the jail ... to give them a lessons** Roy Marika, Yirrkala.

To others, jail was worse than useless, it was positively dangerous for the community, a 'school for crime' where first offenders would soon learn all the tricks of the criminal trade.

> **They lock you up for years and years. It doesn't do any good. They only come out and get worse...**
>
> Galarrwuy Yunupingu, Butjumurm

> **What's sending them to jail going to do, they'll come straight back out and do the same offences then next night. ... they teach them how to hot wire cars in jail.**
>
> Ron Satour, Amnonguna Community.
>
> **[It will] teach them to be real bloody rogues, real rogues mate, they learn all the tricks in there, what chance they got when they get older in jail all the time, going back and forth what hope they got.**
>
> Barry Abbott, Wallace Rockhole.

It is this widely held view amongst Aboriginal people that jail is no good; at best useless and more often dangerous. This is the reason for their unanimous approval of schemes which keep Aboriginal people out of jail, particularly the Community Service Order scheme.

4.3. Alternatives to Jail

During the last few years, the Northern Territory Government has created several schemes to try to reduce the very high level of imprisonment in the Territory. These schemes (often referred to as non-custodial correction) provide alternative punishments to locking people up in jail. They are administered by the Correctional Services Division of the Department of Health and Community Services, and include the Community Service Order (CSO) scheme, the Home Detention scheme, and the creation of the Aboriginal Community Corrections Officers positions.

The Department of Correctional Services (1989:2) has argued that as a result of the introduction of such schemes, imprisonment rates and long term involvement of offenders with the criminal justice system have been reduced:

> *On the basis of daily average holdings, the prison population in the Territory has started to decline. This reflects the progressive effectiveness of community-based offender programs aimed at diversion from prison at the same time diversion policy recognises the need to have an imprisonment sanction but sees it being applied only in last-resort situations.*
>
> *The concern is that prison can be a seriously damaging experience perhaps leading to permanent involvement with the criminal justice system. It is also costly to the community in terms of lost income, family support, and of course the direct costs associated with keeping prison inmates*

The Department claims a reduction in the prison population of 33 percent in the last two years. However this figure is not calculated on Total daily Average numbers of prisoners rather on a comparison of the

highest numbers of prisoners ever received by the system, a figure of 500 on 16 May 1987. This figure tends to overemphasise the percentage reduction by approximately 8 percent.

Nevertheless, these schemes have met with widespread approval from Aboriginal people consulted by staff of the Aboriginal Issues Unit. Such approval comes from the members of Aboriginal Community Councils and service organisations. These schemes are desired by Aboriginal communities because they help reduce the high rate of Aboriginal involvement in the criminal justice system.

4.3.1 Community Service Orders

Under the CSO scheme, people who have been convicted of minor crime are required to do unpaid work for the community rather than go to jail or have to pay their fine. According to a report on the services provided by the Department of Health and Community Services:

> *More than 8267 offenders have passed through the Community Service Order Scheme after ten years of operation. The CSO success rate is currently at 84 %. Five advisory committees throughout the Territory assess and approve suitable work projects for offenders. Close attention is paid to the suitability of offenders for the CSO program, in the interests of community protection and safety.*
>
> *The CSO Scheme has been broadened to accept fine defaulters. This required amendments to the 'Criminal Law(Conditional Release of Offenders)Act which came into effect in January 1987. Since the start of the fine default diversion program, people guilty of minor offences have undertaken community service work instead of going to prison for unpaid fines.*
>
> Hazlehurst and Dunn (1989: 4)

The type of work done by CSO offenders is reviewed by a committee consisting typically of an Aboriginal person or representative of an Aboriginal organisation, a union member, perhaps one or two other local residents, and a Departmental officer as Chairman. They are supposed to ensure that, amongst other things, the work the CSO offender does benefits the general community, the-person or organisation that the work is done for, and, of course, the offender. Approved projects under the scheme give young people experience of work, and sometimes young offenders continue to work with the Aboriginal organisation or enterprise where they completed their community service orders.

There are two ways that a Community Service Order can be applied in the Territory. Firstly, there are court-ordered CSOs, where a court will order that, instead of paying a free or going to jail, an offender will have to perform so many hours of community service. This is a direct alternative to imprisonment. The types of charges that attract Court ordered CSOs are those involving a contempt of a court order, such as drive disqualified and DUI (perhaps the fourth offence). Under a court-ordered CSO, fines can he 'worked off at a rate of $,50 for every eight hours of community work.

The other way CSOs are done, since January 1987 as mentioned above, is as a fine default option: offenders themselves can choose to perform community service instead of paying a fine imposed by the court. Eight hours work on a community service order as a fine or fine default option equates to $100 of a fine. This is a statutory provision under the Criminal Law (Conditional Release of Offenders) Act.

The Community Service Order scheme offers the Aboriginal people Aboriginal organisations and enterprises the opportunity to rehabilitate their own.

4.3.1.1 CSO Projects

A list of approved CSO projects has been supplied to the Commission in the Department of Correctional Services' submission of January 1990.

There are thirty approved projects in Alice Springs, six of which are based in Aboriginal organisations:

- Aboriginal Child Care Association
- Central Australian Aboriginal Congress
  - Child Care
  - Grounds Maintenance

and Rehabilitation Farm

- Institute of Aboriginal Development
- Tangentyere Council

Of the other twenty-four, the projects at the Drug and Alcohol Service and the Women's Community House would have particular relevance to Aboriginal offenders because of their large Aboriginal clientele.

Approved projects in Darwin to which Central Australian offenders are transferred when they decide to reside in Darwin are also listed: of the eighteen listed, one or two are in Aboriginal community organisations.

Of the four at the township of Elliott, one is at North (Gurungu) Camp and one is at the TAFE which has a significant Aboriginal involvement. The Health Clinic also has a significant Aboriginal clientele and the local Aboriginal communities might deem that to he a project relevant to their offending population.

Of the twenty-five projects at the township of Tennant Creek, five are in Aboriginal organisations:

- Anyinginyi Congress
  Arts Centre
  Language Centre
  Maintain Houses
- Julalikari Council
- Jumkurrakur Resource Centre

At the Ali Curang (Alekerange) community, there are five approved projects; at Amoonguna Community, two; at Areyonga community, *four, at* Docket River community, one; at Finke (Apatula Community Inc.), one; at Hans (Hartz Range; Atitjerre Community Inc.), three; at Hermannsburg (Ntaria Community Inc.), five; at Kintore (Wallanguru Community Inc.), one; at Mt. Allen (Yuelumu Community Inc.), one; at Mt. Liebig, one; at Napperby, two; at Neutral Junction, one; at Newcastle Waters, one; the Ngalikidangu Pastoral Company at Nyirrpi, one; at Papunya, eleven; at Santa Teresa, four, at the Ti Tree Puraiya Cattle Company based at the old homestead, one in the Training Centre; at the Pmara Jutunta community on Ti Tree Pastoral Lease, one; on the Utopia Land Trust, four, at Wallace Rockhole on the Uruna Land Trust, four; at Willowra community, two; at Yuendumu Community, eight. The traditional owners of Ayers Rock and residents of Mutitjulu community would benefit from the two projects listed for the Yulara Australian Parks and Wildlife Service, involving maintenance of tracks in the National Park.

4.3.1.2 Problems with Community Service Orders

Order scheme by our people, a number of problems with the scheme as it stands at the moment have become clear.

There are a number of problems with court-ordered Community Service Orders. Under a court-ordered CSO a person will end up doing twice as much work as if they decided to do community service instead of paying their free. For example, a magistrate might impose a fine of $1000 on a person, but order that it be worked off as a CSO. At one day of community work for each $50 of the fine, the offender would have to do 20 days of work. However, if the magistrate had just imposed the fine, the offender could sign up with Correctional Services under the Fine Default scheme to work the fine off at a rate of $1 00 for each day of work, therefore only having to do 10 days work.

Also, in some cases a court-ordered CSO will be imposed where it has little chance of success. About one in eight court-ordered CSOs are breached by the offender. In these cases it is obvious that some other method of punishment should have been used as a breach of a Court ordered CSO automatically results in a minimum of one week's imprisonment in addition to the sentence for the original charge. In this way, the imposition of a Community Service Order by the court leads to longer periods in jail for offenders, and also prevents that person from obtaining a CSO should they be sentenced for any other offences in the next twelve months.

Sometimes Aboriginal people have to do CSOs that require them to work away from their homes.

Magistrates should not give an order which effectively bans an Aboriginal person from his or her own country because of the ceremonial obligations people may have.

Community Service Orders have helped reduce the Aboriginal prison population in the Northern Territory. However, the 1989 figures for the Northern Territory confirm that a lower proportion of Aboriginal offenders are given community service orders than non-Aboriginal offenders. This trend is also reflected nationally:

> *·.. what stood out was the lesser comparative use of non-custodial correctional orders for Aborigines..To illustrate'. in Western Australia, at time when the Aboriginal rate was 20 times higher than the non Aboriginal rate, the Aboriginal non-custodial correctional rate was only five times the non Aboriginal rate. Thus it can be seen that not only do Aborigines come to the attention of the criminal justice system disproportionately, but once they have come into the system they are disproportionately imprisoned rather than dealt with by a lesser alternative means.*
>
> (National prison census of community based corrections, 1985 p10)

A number of factors may be responsible for this disproportion. In some cases the limited services available to help alcoholic or behaviourally disturbed Aboriginal offenders in Central Australia may lead magistrates to impose jail terms rather than have the person serve some form of non-custodial punishment out in the community. Similarly with the lack of appropriate support services and placements for juvenile offenders. Also, a sentence served outright in a prison does not contain the potential for breaches as in community service orders. Indeed, some Aboriginal people who have served time and been given the option of non-custodial orders say that they sometimes prefer a straight sentence to "get it over and done with" to a non-custodial order, particularly, parole or probation. Also to he taken into account is the high rate of conviction of Aboriginal offenders on relatively minor offences which result in fines, bonds, and suspended sentences with good behaviour bonds; breaching of such orders very often results in short-term imprisonment. As noted above, a relatively large number of Aboriginal prisoners (12 percent in a 1988 survey) are in jail for breaches of various justice procedures.

Although most offences leading to a Community Service Order (Court-directed or not) are in fact alcohol-related, and although Correctional Services can recommend that offenders are not suitable for a CSO due to 'obvious alcohol dependency', the Department will approve a CSO for a person with this problem if there is a vacancy in an alcohol program approved as a CSO project. The Drag and Alcohol Services Association (which manages the Sobering Up Shelter) is an approved CSO project for instance.

Unfortunately, there are not enough resources in Central Australia for people with alcohol problems. There is a proposal for a residential facility for such people to be managed by the Tangentyere Council. Such a facility, where Aboriginal people with grog problems can go to be assisted in beating their dependency, is urgently needed.

Aboriginal offenders with behavioural and mental illness problems who should he diverted from prison, but are not provided with appropriate facilities, is a problem for Correctional Services in Central Australia. However, facilities are not available in Central Australia to deal with those with mental health problems.

RECOMMENDATION 4.7: There is an urgent need for residential and counselling facilities for those with alcohol or behavioural problems in Central Australia.

Concerns have also been raised to the AIU about the problem that on weekends, particularly long weekends, people may he kept in police cells for some days before a Community Service Order can he arranged with the Department of Correctional Services. It appears that in Alice Springs this is not a problem as every weekend is rostered to an officer of Correctional Services who checks every day at the cells. However, elsewhere it appears contact between the police and Correctional Services on weekends is an informal matter, it could be that in these areas people are spending unnecessary days in detention before being able to sign up for a Community Service Order.

4.3.1.3 Breaches of Community Service Orders

The breach rate in Central Australia for Court ordered CSOs is 13 per cent, or the success rate is 87 percent. Breach procedures are generally flexible and officers give people the benefit of the doubt on breaches. The criteria are the same for Aboriginal and non-Aboriginal offenders, but often special considerations are taken into account for Aboriginal offenders, both in assessments and after

> **People don't deliberately breach they just don't keep a note of their hours and don't come back where as in reality they haven't finished.**
>
> Mabunji Outstation Resource Service

In addition to this, the poor public transport system of Central Australia may lead to Aboriginal people on CSOs who have, for example, visited their family on a weekend, being stranded with little means of returning promptly to the their CSO project. Such public transport as there is often too expensive for Aboriginal people - for example, the Alice Springs taxis charge $400 for a trip to Yuendumu.

One obvious way to reduce the breach of CSOs by Aboriginal people from the bush is for an organisation to establish a public transport system to provide bus services around Central Australia (see Recommendation above), such as the bus system from major northern centres to bush communities in the Top End. This would also reduce the rate of theft of vehicles and other related offences and would result in less of our people being stranded in Alice Springs in the Todd River "grog culture" where, as we have seen in the chapter on police, they are in danger of being taken into protective custody and being charged with some offence.

4.3.1.4 Recommendations

RECOMMENDATION 4.8: The Criminal Law (Conditional Release of Offenders) Act be reprinted and consolidated. This would enable Magistrates, lawyers, police and laypersons to read the Act including all the amendments and give them an opportunity to understand the provisions of the Act

RECOMMENDATION 4.'9: The Police Administration Act should be amended so that detainees for warrants are held at major communities until assessed by a corrections officer rather than being brought into the Alice Springs cells by the police.

RECOMMENDATION 4.10: The discrepancy in dollar amounts per day of Community Service Order work should be removed. between court-ordered and fine-default CSOs

4.3.2 Home Detention Scheme

The Home Detention Scheme was started by the Department of Corrective Services in early 1988. Under the scheme, offenders can be ordered by a court to serve their imprisonment at home - leaving the home for essential purposes (work, health, essential shopping etc.) is allowed. but not otherwise. Offenders are almost always required not to consume any alcohol while on Home Detention. The offender's observance of these rules is monitored by random visits to their home by Correctional Services officers and also by electronic means.

As at the end of June 1990, there had been 156 commencements on the scheme: 31 of these (20%) were Aboriginal people. However, all but a handful of these were in Darwin. Despite the fact that a high priority has been given to establishing Home Detention scheme in Aboriginal communities (see Challinger 1989 *Alternatives to prison: the Northern Territory Home Detention scheme,* Australian Institute of Criminology paper), the Department of Correctional Services are aware of the difficulty of applying the

Home Detention scheme to our people. In many cases the communal living style in Aboriginal communities is not suited to Home Detention; in others poor housing and community facilities, and in particular the lack of suitable residential facilities for people with alcohol or other problems, mean that the scheme cannot he applied successfully.

RECOMMENDATION 4.11: The Department of Correctional Services should undertake a study to determine how the Home Detention scheme can better he applied in Aboriginal communities

4.3.3 Aboriginal Community Corrections Officers

Aboriginal Community Corrections Officers (ACCOs) are funded by the Department of Aboriginal Affairs the Northern Territory Department of Correctional Services and Aboriginal organisations. They are employed by Aboriginal organisations to assist the education of Aboriginal people in matters relating to law and crime. It is envisaged that the ACCO would act as a **liaison** person between Aboriginal people and the European justice system, largely through the Department of Correctional Services. According to a Correctional

> *The programme is based upon the concept of self-determination for aboriginals [sic]. It is intended as providing a real and tangible method of involving Aboriginal people in undertaking responsibility for the resolution of problems within their own communities ... These officers have direct and specific involvement in supervising and monitoring the behaviour of probationers , parolees, and persons involved in the Community Service Order scheme*

There is a full-time Aboriginal Community Corrections Officer at both Ali Curang and Hermannsburg; there is a part-time Aboriginal Community Corrections Officer at both Yuendumu and Papunya. Apparently, the Assistant Secretary of Correctional Services in Alice Springs has submitted to the Department of

Aboriginal Affairs for funds to employ full time Aboriginal Community Corrections Officers at Alice Springs and at Tennant Creek. The Department has approved the submission in principle but not in writing. There are as yet no female Aboriginal Community Corrections Officers, though there is a possibility that one might be funded at Tangentyere Council.

4.4 Aboriginal Views On The Alternatives To Imprisonment

The AIU conducted a series of consultations with Aboriginal people specifically to find out about their views on alternative punishments to imprisonment, in particular, the Community Service Order scheme.

Aboriginal responses to the CSO scheme were very largely favourable - the intent of the scheme (keeping people out of jail) was seen as most important and beneficial. Against this general approval, however, criticisms were made, based on lack of funding and backup for specific CSO projects or on some local dissatisfaction.

Given the very negative views Aboriginal people have of jail and its effects on offenders. it is not surprising that a scheme such as the CSO programme aimed at keeping people out of jail and in the wider community was viewed with approval:

> **Cause there are a lot of men with families and when they get locked up and ... things happen you know, they hang themselves and things like that, that's why we thought it would be better if CSO started out here.**
>
> Bayden Williams, Hermannsberg.
>
> **... people like the scheme because it stops them going into Katherine for court and jail.**
>
> Cliff Thompson, Nukkur Community

In particular, it was seen that the effect of jails as 'schools for crime' was avoided; people on the CSO scheme could be genuinely rehabilitated because they remained within their own community and culture.

Like the two young blokes we've got now you know they used to always get into trouble, but since they've been working out here, they steer clear of trouble.

Ron Satour, Amoonguna Community

For some CSO participants, especially the large proportion who were unemployed or had even never been employed, not only did the scheme keep them out of trouble, but it could lead to job skills and employment, even to a return to education. This is a reflection of the increased self-esteem that work gives people, and is obviously a major step in defeating the poverty and despair in which so much of Aboriginal crime has its roots.

And another fella that's working with me now ... he never worked in his life, he's working now, and this year when school starts he's going up to Batchelor.

Bayden Williams, Hermannsberg.

... a lot of them end up working casually for me anyway, because I decide I might as well keep them on. People here are quite happy working they are sick of sitting around on the booze.

Mabunji Outstation resource Service.

Most of the kids that we get down here have never worked ... most of the kids that we've had on CSO work are still here you know. There's probably four that have been on CSO work that are still here.

Ron Satour

The benefits were not only for the offenders having to undertake the community work. Organisations running CSO projects were generally pleased with the fact that they could undertake work that otherwise they would not be able to do.

[We were] **unable to do it ourselves because of lack of resources, both human and financial.**

BW ACCA

Benefit - at times it's a lot greater than others ... temporary shelters, demolition, fencing - when we need semi-skilled or unskilled labour - when we haven't got that kind of work. Tangentyore Council

However, another view was that, although an excellent idea to keep people out of jail, the actual benefits to the organisation were very small.

any extra work they do is useful but probably its very marginal the benefit it has, it takes up a fair degree of time ... So probably there's no net benefit for IAD, cost benefit you know.

Peter Samsa, Institute for Aboriginal Development.

In traditional Aboriginal law, shame and the fear of being shamed are powerful tools for maintaining social order. It was thought that perhaps CSO work might in this way prove to be more of a deterrent for young Aboriginal people than jail which, while hard, is not generally regarded as being shaming. However, Aboriginal people expressed a variety of opinions as to whether the CSO work was shaming or not:

...people are working they are actually quite happy, they work with our work crews, there's [no shame] maybe years ago when the police were doing there own thing people had to pick up rubbish for a day. We all work together, Mabunji Outstation Resource Service

...he never did a bloody days work before, as soon as he came under me and he had to do it, and that made him shame mate ... They got to do it, whether they shame or not, that's bad luck. Well it must affect them a bit they never even got back into strife again

Barry Abbott Wallace Rockhole

Some people get shamed especially if they are girls ...The fellas aren't shamed

Cliff Thompson, Ngukkur Community

The difference of opinion on whether CSO work is straining or not may well reflect the different tasks allotted to CSO workers at different places. Most organisations that the AIU contacted about their CSO projects reported that, unfortunately, they had little opportunity to provide their CSO participants with

anything more than unskilled labour:.

> **.... just mowing the lawns and such ... BW, ACCA**
>
> **... if its wet the grass grows so they have to cut it again. We don't have much other work they can do.**
>
> Cliff Thompson, Ngukkur Community
>
> **Mostly manual ... sweeping and garbage. We go out and dig trenches for water pipes we do big cleanup around the camps.**
>
> Mabunji Outstation Resource Service

It was in relation to this aspect of the CSO scheme that criticisms were made. With more funding and backup, it would be possible to set up more schemes where Aboriginal people could increase their skills and undertake tasks of greater

> **... there is so much money being spent on Aboriginal communities, housing everything, fencing and stuff like that. Why don't they get a little Aboriginal enterprise going for CSO's or people that go to jail, they can go and spend time in the enterprise.**
>
> Ron Satour, Amoonguna Community

Various other problems with lack of funding were also raised:

> **Last year I tried to get Correctional Services to help us with accommodation a couple of demountables we only got 3 houses - it does not matter what crime was committed ... So what we trying to do is get accommodation even tents for the dry season anything trying to get them to stay in their own section not like *outcasts t*hey can do what ever they want then.** Jack Rialla, Maningrida? Port Keats?
>
> **generally the only problem we have is trying to get out and go and work somewhere else. There is no vehicle to move around in, so we have to wait for a spare vehicle from council, we want to check up on the outstations its hard** Cliff Thompson, Ngukkurr

Sending people to work on outstations with funding to provide useful skills was one suggestion to increase the effectiveness of the scheme:

> **People should go and work out on they outstations, they could be doing fencing and cattle, more constructive.**

Once again it was emphasised however, that this would only be effective if the required funding was present. As one man said to the AIU:

> **... it's not good sending them to these outstations if there's nothing there for them to do there either you know.**

Another need was for the training of those people responsible for employing people on Community Service Orders in their organisation or community

> **its a job that needs training There is the things of working with people and the administration.**
>
> **Yeah, well it's like you know it's a game. You've got to try and find out what's available and go for it, and if that's not available you have to try for something else.**

RECOMMENDATION 4.12: More funding and backup are required for the Community Service Order scheme. It is important that projects are set up whereby Aboriginal people could increase their skills and undertake tasks of greater importance to the community. Training for those people in charge of cso projects should be provided'

4.5. Statistical Tables

Table 1:

Australian Imprisonment Rates, 30 June 1987 by Aboriginality and Jurisdiction (Per 100,000)
(from Biles 1989:9)

	TOTAL	ABORIGINAL	NON-ABORIGINAL
NSW	77.5	612.6	70.7
VIC	46.5	412.3	44.8
QLD	88.9	577.8	77.0
WA	110.3	1331.1	78.2
SA	63.4	1029.0	53.2
TAS	62.1	104.2	54.2
NT	311.3	961.5	115.4
AUST	**74.8**	**775.8**	**63.9**

Table 2:
Aboriginal Over-Representation in Prison by Jurisdiction, 1987
(from Biles 1989:8)

	% Aboriginals in Community	Prison	Level of Over-representation
NSW	1.04	8.24	7.92
VIC	0.31	2.69	8.68
QLD	2.37	15.13	6.38
WA	2.69	30.91	11.49
SA	1.06	16.81	15.86
TAS	1.54	2.82	1.83
NT	22.44	71.52	3.19
AUST	**1.46**	**14.76**	**10.11**

Table 3:
Northern Territory Prisoners, 1982 To 1987 by Aboriginality
(from Biles 1989:4-5)

	1982	1983	1984	1985	1986	1987
Aboriginal	198	162	127	214	289	334
Non-Aboriginal	114	105	122	120	140	133
TOTAL	**312**	**267**	**249**	**334**	**429**	**467**

Table 4:
Northern Territory Imprisonment Rates by Statistical Local Areas, 1982, 1983 and 1986 (Per 100,000)
(from Biles, 1989, Pers. Comm.)

	Total prisoners at 30 June			Imprisonment rate		
	1982	1983	1986	1982	1983	1986
Alice Springs, Town of	25	41	48	136	223	211
Alligator - Balance	7	3	6	156	67	141
Bathurst/Melville	3	1	3	189	63	166
Daly ·	8	4	33	437	219	1323
East Arnhem - Balance	10	9	19	232	208	415
Elsey - Balance	7	11	5	305	479	134
Groote Eylandt ·	37	31	52	1659	1390	2274
Gulf ·	6	4	12	538	359	708
Jabiru Crown)	2	I	4	196	98	284
Katherine (Town) ·	3	3	24	80	107	422
Nhulunbuy	3	2	2	77	52	57

Petermann	4	I	4	263	66	176
Sandover - Balance	9	0	1	398	0	39
Tableland	0	0	0	0	0	0
Tanami ·	37	12	23	912	296	489
Tennant Creek (Town)	4	7	5	128	225	143
Tennant Creek - Balance	7	3	16	335	144	922
Victoria ·	12	12	4	556.	556	148
Darwin, Palmerston, Outer Darwin, Vernon	73	98	150	119	160	185
Offshore or Migratory			18			
Northern Territory	257	244	429	210	199	277

Table 5:
Sentenced Prisoners by Length of Sentence 1987/88 and 1988/89
(from Department of Corrective Services) Aboriginal figures in brackets

	0-6 Days	**7-13 Days**	**14-27 Days**	**28-59 Days**	**60-89 Days**	**90 -150 Days**	**151 & Over**	**Total**
TOTAL1987/88	152(94)	119(101)	132(101)	142(105)	132(96)	122(95)	208(157)	1007(751)
As a%	15.09(9.33)	11.82(10.03)	13.11(10.03)	14.10(10.43)	13.11(9.73)	12.11(9.43)	20.66(15.59)	100(74.57)
TOTAL1988/89	115(83)	121(90)	90(76)	94(72)	113(95)	100(74)	233(170)	866(660)
As a %	13.28(9.58)	13.97(10.39)	10.39(8.78)	10.85(8.31)	13.05(10.97)	11.55(8.55)	26.91(19.63)	100(76.21)

Table 6:
Sentenced Aboriginal Offenders in the Northern Territory, 1988 - by most serious offence
(from Department of Correctional Services figures)

Offence	**Number**	**Percent**
Murder/Manslaughter	30	3.7
Assault	145	17.7
Sex	44	5.4
.Robbery	6	0.7
Break, Enter & Steal	155	18.9
Motor Vehicle Offences(see note)	221	26.9
Other Property	12	1.5
Stealing	39	4.8
Utter/ForgeFalse Pretence	7	1.9
Drugs	5	0.6
Justice Procedures	129	15.7
Weapon Related	10	1.2
Restricted Area	1	0.1
Other	17	2.1
Totals	**821**	**100.2**

Note Motor Vehicle Offences comprise Use Motor Vehicle, DUI/Exceed .08%, Drive While Disqualified, and Other Driving Offences.

Table 7(a):
Length of Sentence for Aboriginal And Non Aboriginal Offenders in the Northern Territory in 1988, by Aggregate Sentence
(from Department of Corrective Services)

Sentence	**No.**	**% Aboriginal**	**% of Total Prisoners**
Less than 3 months	163	26.65	27.89
3 to 6 months	108	14.34	22.48
6 to 12 months'	152	20.19	20.08

1 to 2 years	87	11.56	17.26
2 to 3 years	50	5.44	6.64
3 to 4 years	15	1.73	1.99
4 years or more	9.	1.19	2.52

Table 7(b):
Length of Sentence Served for Justice Procedures in the Northern Territory
(from Department of Correctional Services)

Length of Sentence	No.	% of JusticeProc. Sentenced	% of TotalOffenders
3 months and less	40	3.1%	4.87%
3 to 6 months	33	25.58%	4.01%
6 to 12 months	34	26.35%	4.14%
1 to 2 years	21	16.27%	2.55%
2 to 3 years	1	0.77%	0.12%
Subsequent Sentence Terms	0		

Table 8:
Estimated Average Time Served by Sentenced Prisoners Received During 1987-88, by Jurisdiction and most Serious Offence (Months).
(from Walker 1989 'Prison Sentences in Australia' in Trends and Issues in Crime and Criminal Justice)

Offence	NSW	VIC	QLD	WA	SA	TAS	NT	AUST
Murder	143.9	119.1	156.2	152.9	156.2		10.2	140.2
Other Homicide	10.3	15.8	35.2	19.6	24.5	20.3	17.4	18.0
Other Violence	7.9	9.0	12.1	6.0	6.3	3.2	5.8	8.2
Robbery/Extortion	23.4	17.8	30.4	20.8	27.5	12.4	12.7	23.6
Properly	6.3	6.8	6.4	4.6	7.8	5.2	2.3	5.9
Justice/Security	4.7	7.7	2.2	3.2	3.2	1.7	6.8	3.9
Other Good	4.8	4.0	.5	.7	.5	2.7	.6	1.1
Possession Drugs	4.3	5.6	4.4	1.7	.5	5.3	17.8	3.7
Trafficking Drugs	6.6	10.9	9.3	12.1	12.5	5.2	19.4	8.3
Motoring	2.6	2.4	2.0	1.6	.5	2.5	.5	1.6
All offences	7.2	7.4	6.0	3.9	3.0	3.7	2.1	5.3

Table 9:
Sex, Aboriginality & Expected Number of Prison Terms
(from Broadhurst and Miller, Law School and Dept. of Mathematics, University of W.A., Unpublished 1989)

Sex.	Race	Expected No. of Prison Terms
Male	Aboriginal	11.3
	Non-Aboriginal .	2.8
Female	Aboriginal	10. 1
	Non-Aboriginal	2.8

Our Kids *and the Future*

5.0 Introduction

Us women, our problems are all focused on our children.

The greatest fear expressed to the Aboriginal Issues Unit was that the experience of the last two centuries has been but a prelude to more of the same. The fear for the future of their children that many Aboriginal people feel finds expression in the many statements we have beard. It has been hard for us in the past, but the future for our children, unless we are able to take control of our lives, our communities, our institutions and our Law, may be worse.

For us, the family, whether the immediate parent-child relations or the wider kin network in which these are located, is an integral part of our society, traditional and contemporary. 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 and, as we all know, the danger of death in those jails.

While grog affects our people throughout the Northern Territory, petrol sniffing is something that is having a particularly disastrous effects on our kids and our families in many communities. As well as the other problems substance abuse has on our kids, this chapter focuses on petrol sniffing (see 5.3 below).

5.1 The Family

5.1.1 Changes to traditional ways

In traditional times, the normal number of offspring for any one woman was two children, carefully spaced. There were traditional methods for controlling population growth -- or at least -- family size. A woman had to be capable of carrying one child on one hip and food, water and gathering utensils and be able to travel quickly. All these factors mitigated against having more than two children: one which was large enough to walk and keep up with the mother, and one which could be carried.

The most fundamental feature of Aboriginal children's lives is that, from infancy through to late childhood, they are largely socialised by other children. A five year old might castigate a three year old: "Are you still doing *kuna* in the camp? What are you? A dog?" The peer pressure of the larger group of children who are often related, both closely and distantly, is the major force in shaping a child's sociality because it is amongst this larger group that a child plays and learns for most of any day. While language skills are taught by the mother in infancy, from walking stage onwards other children take over, and the shift from "baby language" to adult language takes place in this way. Until the formal break from childhood to adulthood takes place, for boys at initiation, for girls from formal betrothal, it is older children, especially elder sisters, who teach etiquette, proper social behaviour, cultural rides and the intricacies of language.

There are now many more children in any one family than there used to be, with a very large population under 25 years old. With sedentarism; easily accessible processed food; and missionary teaching; families have become much larger, with the norm in some Central Australian communities being around six children per woman.

The range of child-rearing resources have been considerably diminished due to a number of historical and non-Aboriginal cultural pressures. Government policies of forced removal of children from their parents; childhood separation from parents absent drinking; incarceration of parents; childhood institution-alisation; and long term hospitalisation from constant sickness; have disrupted traditional Aboriginal family structures The introduction of Western concepts of nuclear family roles, fostered by missionaries and government, have led to a disruption in traditional family structures. The assignment by non-Aboriginal authorities of these nuclear family roles have attenuated many traditionally assigned roles. The grandmothers' and mothers' brothers' roles have decreased in perceived power and respect.

Today kids often do not learn the proper Aboriginal ways:

> **Well, family need support, ay, they need love from their family, they need care, they need, you know, they need food, they need clothing, those kids need that now. If family [cared], he could be different fella, you know he could be a different brand new person.**

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.

A health worker at Wadeye tried to describe the overwhelming sense of devastation that would be felt by Aboriginal people losing family:

> **Lonely again, loneliness and not being loved. White people would never *understand it. T*hese fellas, white fellas, they like t*o* be alone. Get away. Be by yourselves. Aboriginal people don't want to be alone.**

5.1.2 Our children's health under threat

However, despite the increased birth rate, infant mortality rates are high. For example, infant and perinatal mortality rates are much higher than for Australia generally.

Moreover, the accident-mortality rate for Aboriginal children from 0 to 14 years in the Northern Territory (1983-85) was 2.5 times higher than it was for Australia generally over the same period.

Undernutrition is widespread in Aboriginal infants and young children and both reflects and contributes to their unsatisfactory standards of health.

The future for Aboriginal children in health terms, if the present trends continue, has been described thus:

> *Increased mining, tourism and other industries are likely to have significant impacts on Aboriginal people. Trends which are occurring in northern Australia suggest that rapid urbanisation even in remote localities and the adoption of western patterns of eating and the sedentary lifestyle are likely to make Aboriginal people targets for obesity, diabetes cardio-vascular and other degenerative disorders on a wide scale in early adult life.*
>
> *(Roberts, Gracy and Spargo, Medical Journal of Australia. Vol. 148,*
>
> *January, 1988)*

Added to these problems one must also consider the endemic problems of trachoma and other chlamydia related disease, damage to hearing and so on.

A doctor working with Tiwi people described the type of health problems that these disruptions have created:

> *Probably the commonest thing would be chest infections, ear infections, diarrhoea and kids just not putting on weight - skinny kids. Kids who just continuously tend to lose weight for many reasons, usually the commonest being that when they reach about 6 to 8 months of age, they should be getting other food, apart from breast milk - they don' t get that other food.*
>
> *Generally the younger the mother the less sensible, I mean it's not always the case but generally. And after about 6 months they' re tired of looking after the baby, they' re not interested, they' d rather play cards, go and watch a video somewhere. They don' t buy food and they don' t actually put the food in the baby' s mouth. That' s a big problem.*

To this must be added to problems of substance abuse by parents and their children.

5.1.3 Changing lifestyles and community breakdown

Urbanisation of communities, as noted by researchers (see 5.1.2 above), was also identified by our people as a source of problems for kids:

> **The old days, when people lived out bush, kids didn't get into trouble in town.**

Overcrowding, and inadequate and badly designed housing that doesn't take traditional lifestyles was also blamed for social tensions:

> **I think it is caused by not enough space for the families, the way the houses where built, is a**

tiny, small house. They don't think about the extended families. They try to bring in the European system which is only the natural families and I think that because, even though the houses where built for one family, still other members of the family comes and lives in the house so you have a small house like that accommodating I or 2 families. It just gets crowded and that causes a lot of problems, you have no space to move around, the children have got no privacy, violence occurs in a tight small area. Say for the housing problem, I think people have to think about building houses to accommodate more than one family in an Aboriginal community and I am sure the education housing management and all that sort of thing has been tried out before but it needs to be constant.

For people living in major towns up and down the "track", especially for those living in town and fringe camps, these problems are worse. A consultant for the Aboriginal Issues Unit documented community concern for unsupervised children in the Tennant Creek area, in particular the presence of groups of underage children and youth around alcohol outlets, gaming parlours and take-away shops till late into the night.

Kids often do not experience a normal childhood, but live with violence and family fighting; poverty; poor 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 lifestyles 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.

5.2 Children and Alcohol

5.2.1 The grog problem and our children

Mostly people talk about how grog has disrupted their families. and the stresses this places on those who don't drink:

They run away, all day out or somewhere with the nganaji [grog]. The mother and the father are drinking the nganaji one. Mothers finish up in hospital and her son comes to my house all the time for food. But never mind, it's relations. You know, the family is breaking down with the grog. The children go to the sister or the sister's husband and they'll look after them, but the mother and the father busy at Nhulunbuy. They spending the money themselves. When they get the money from the child endowment money they spending it there on the nganaji.

(A woman at Yirrkala)

And it's hard for the ones that have to look after other

people's children. In the old days it didn't matter because there was no nganaji and no petrol so that aunties could look

after the children.

(An older woman Yirrkala)

To those who don't drink, mostly women, the role of caring for the families of those who leave their kids for grog children can be overwhelming.

That's why I think the kids get into trouble. You know if the mother and the father drink then the kids are left here, and people try and look after them. But it's very hard, if you got six kids of your own and you got another six of someone else's.

(A man at Yirrkala)

Sometimes the women get sick of fighting them [drunken men] so they join them, and don't worry about their kids. **(A woman at Yirrkala)**

Someone tell me that when the little kid 'they grow up, maybe when they're little be older maybe nine ten up to shout 14 no one really look after them because everyone else looking after young baby.

When they come from school they don't find their parents at all.

(Port Keats)

Yeah, they are drinking mothers and fathers, drinking and spend all their money on nganaji.

(Yirrkala)

The fear and sense of rejection that this must create in kids was described:

He goes to someone (family) gets knocked back. "Well who do I go to, who can I go to to help me?" He only searching for help some sort of support.

When he wants to have something, something to buy for him and he don't get it he get harder and harder he feels that they are not supporting him to give him a good life -- that's when he starts to commit a crime he wants to go to jail -- so the parents think too late they did not help him in the first place. That's the only thing happen in Aboriginal community.

It was more than just the parents of the kids who are seen as letting them down:

Yeah in some way parents letting kids down -- well in Aboriginal society that boy does not live with family he maybe live with uncle, grandfather and parents are reaching out to help him but he is all over the place. Where he is served well, he stay. He is only looking for help.
(Discussion at Wadeye)

5.2.2 How grog teaches bad habits to kids

We were told by Aboriginal people and non-Aboriginal workers that the problem was not only an economic one, a problem of too much money spent on grog, but also a lack of appropriate models for children, models that could guide kids in the fight direction.

To a certain extent, not always, hard to generalise, depends on who the mother is. The biggest problem with kids, generally is that they don't get enough food because the money is not there. Either the money is spent on gambling or on other things, grog, videos or new TV and there's not enough money to buy regular food in. ! suppose the problem' s really bad especially for the young ones. And ! think that they don't have any role models. Their role models in the community, especially (for) the young ones, are the people, even though they all like football and that, all the footballers all drink, you know, that' s their role models, the drinkers. And anyone that' s anyone drinks.

That's right, no money. I think children they copy their parents.

Yeah, they copying, ok my father doing that, well I don't boast about my father and my mother, I go my own way, they do that. You know some children, you know very cheeky one children they do that.

Yeah, that's whats happening all over. Mother and father doing something, they see kid, Oh mother this way and father this way, well my way too. If they tellem off me, I tellem off too.

Children are described as not only having poor role models for their development, but poor supervision and discipline.

This is seen as creating a situation where kids can get into a range of "problems". Crime and petrol sniffing are seen as the biggest problems of a long string of troubles that kids get involved in. Without the guidance of the family, Aboriginal kids are becoming despondent, committing crimes and taking up substance abuse.

Some people feel that hunger motivates kids to break into houses, offices and community stores to get food or money. Others say boredom and lack of supervision create a volatile mix for kids, that ends in them finding trouble, often eventually with the police and courts:

They bored?

Yuwayi, they don't go you know they don't find any city or any other place, they all in one group, you know, they live in. Well that's why they go for drink, they don't go hunt, they make a problem you know. I reckon that way me. Better to those mob, like we sitting here, we got no

problem.

Another thing is out of all those kids (who get *in trouble)* not any of them have bikes or anything like that. All those other kids, their parents have bought them a bush bike or something like that, Basically the same kids haven't got anything, that's particularly (name deleted) that's why she pinches stuff because that she sees what all her friends have got and she hasn't got.

Kids often band together with their peers:

When crimes are committed it is not usually one but a gang, They are well organised.

(Wadeye, NAALAS Field Officers)

While some of the motivation for petty crime may come from boredom and hunger the style has been attributed to the new and potentially culturally distructive whitefella cultural mediums of T.V. and videos.

They have grog, TV, video. They see this gangster stuff. Then being sober try it.

(Wadeye, NAALAS Field Officers)

The video medium has been associated not only with imitating new styles of crime and violence but has also contributed to the development of sexually inappropriate behaviours that contrast to traditional ways of behaving:

Violent ones, like Rambo, the kids love it, love all them action packed movies, whereas when they don't realise it's really violent, you know they imitate them in the end.

They watch videos that they're not suppose to be watching Well they watch violent movies and that sort of causes problems for the community in a sense where they vandalise the place or you have children roam around at night peeping at people in their houses and new to me, and it's the first time. You know when we were over there, and my sister and I were sitting outside and this bloody kid, 14 year old looking through the window, checking to see if we were naked or whatever, we're just sitting there talking and this was about 11 o'clock at night and because nobody's watching them they tend to run round all hours till 2 or 3 o'clock when they're too tired to do anything, And that's caused from video, you know when they watch X-rated movies and they're not supposed to.

(Older woman, Bathurst Island)

5.3 Children And Petrol Sniffing

Petrol sniffing is widespread among Aboriginal communities in the Northern Territory, though is by no means evenly dispersed. Some communities have never or have only rarely experienced the phenomenon while in others it has been endemic for many years. There seem to be no apparent reasons why sniffing is so unevenly distributed. Apparently similar communities -- for example Lajamanu and Yuendumu -- have had markedly different experiences with sniffing.

It does appear to be true, however, that petrol sniffing is a phenomenon of larger, remote communities rather than among smaller groups located on homelands or in non-Aboriginal dominated townships up and down the track (though in the latter cases alcohol abuse assumes a dominant role).

As with the case of alcohol abuse, petrol sniffing is seen as being absent from the homeland centres/outstations, and a vice that is "learnt" in the larger centres:

Sniffing, no, nothing in the homeland, from the beginning to right now eh. Only here in Yirrkala. Some Yolngu when all the kids come to here, they will start sniffing, eh. When the Yolngu maybe coming for ceremony or visiting somebody here, and that kids will go straight to (it), somebody will teach from here for sniffing, all the children teach each other.

(Statement, Laynhapuy Resource Centre, Yirrkala)

Similarly, the problem is one that is seen to often be "imported" by individuals from other communities:

Early last year petrol sniffers came here.

Why do you think it started up again, was somebody coming in from outside?

Yeah.

Who?

[Name deleted], he's a juvenile. He's on a bond for two years.

Where is he from?

He's from Papunya.

So you are getting sniffers, kids from other communities coming to Hermannsburg and getting the local kids on

Yeah.

Has he got family here too?

Yeah.

What is that family doing about

They just worried, they want to send him over somewhere, send him to another place, but we was thinking that if we just send him over to another place, he's going to start it off again still.

So there's no one trying to stop him or help him?

When you're addicted to sniffing you stay on it.

But he's teaching all the other young kids?

Can't stop now, they's about the whole community, the kids.

(Discussion at Hermannsburg)

And while some of this "importation" is often related to movement between different branches of families living on different communities, larger communities that serve as centres for white administrative activities are particularly prone to also becoming centres of substance abuse:

I think probably petrol sniffing, I reckon that would be about the time that petrol sniffing started having an effect here, see I think petrol sniffing came from Numbulwar, Numbulwar young people were coming over to court here, this is the regional court here, and I think that was introduced, and I think that with the growth of young people, when you look at the numbers of young people, I haven't got the statistics, I'm not sure but it's been said to be something like you know 65 or 70% of people under the age of 25 or something like that and it's sort of growing. Well that coupled with petrol sniffing I suspect may have resulted in that type of situation, but I'm not sure, I'm really not sure, but I suspect that it could be tied to petrol sniffing.

(Discussion at Angurugu)

5.3.1 Petrol sniffing and the family

Petrol sniffing is perceived as being both a symptom and cause of the breakdown of traditional family structures. and many individuals feel helpless to counter it:

These days now, only him can talk longa children, and that fella there sitting, but you know, like all our people got to understand you know understanding inside, they can talk, but others they won't talk. You know, they children come in front of their mother and father and sniff.

Right in front of the eyes of the mother and father because they know they doing it wrong thing too see.

Wrong thing too.

Mother and father doing the wrong thing too?

Yeah

So they can't talk to their children?

Yo, they play cards or drink, you know beer.

If they say to them look "I don't want you sniffing on the front of me", if the father said (that, he would say) "Look dad, you're doing the wrong thing, too. I'm not care about you what you say."

Yeah, like that.

That's what the children are saying to the father?.

Yeah, lot of children they doing that.

And if the father been doing it be careful for his parent, ! mean for the child he will be a sit back and look, and he will be saying, don't sniff or don't drink ...

They will fight ...

And the lot the whole problem comes in one area you know, for family breaking down.

(Discussion on Bickerton Island)

This "generation gap" is one that has had tragic results for many Aboriginal families in the Northern Territory. As well as premature death, permanent brain damage, hospitalisation and incarceration, the conflict of values within families, particularly between parents and their children, is difficult to comprehend or

And because the children, they don't care they say look "I'm going to dead, cause I'm going to die for my sake of the body you know, because I'm paining, I don't worry about that"; that what they say them young lad you know. Just

remind me again one of my young lad he grab the gun you know, lucky he didn't put the bullet in it.

Pointed it at you?

No to himself, just put them in the neck here, "Look dad."' comes out of the door, that what he said "Look, I just put the gun, I hold it. Look dad! I just put my finger on the trigger, won't you come down and if you stop me I'm going to shoot myself." That what my son said. So I said to him, "Look my son. I love you, can you put that gun away. Gradually he did. That sort of a things the young lad never afraid of those dead things because already got the stuff inside, bad, they know it's getting had this mind, and these are the things I worry about them because they got already sickness inside and they are feeling themselves a really bad inside.

Is that from petrol or..

Yeah, from petrol and from the grog.

(Discussion at Anguru)

5.3.2 A drug sub-culture

Although there have been sporadic official and unofficial attempts to stem the problem through educational and other programs, as soon as the programs cease for one reason or another, the problem re-asserts itself, with problems. for both family and wider cultural life:

Like Roy had tribal boys camp down there, all the shiners there. Teaching Yolngu way of life, teaching how to dance all cultural things.

Did that work?

Yeah that works.

All time sniffers attended and were learning about ceremony and then something happened, it stopped.

It went for one month.

Who was there doing it with him with that?

His sons and all the young people.

It was really good that program that he had, children enjoyed it.

To keep them busy eh, shiners. When it stop, girls join with the boys starting sniffing petrol again, yo.

Did the kids sniff by themselves before?

No when the boys were in the corner (Roys program) there, the girls didn't sniff that time.

It stopped, when that finished they started sniffing again.

Do you think if you are a sniffer when you're little, you then start drinking nganaji when your big?

Yeah. They sniff then drink, they sniff and drink too.

So you think that girls are sniffing with the boys to be in a gang situation or looking for boyfriends or something, is that fair to say?

Yo, yo.

That's when the culture breaks down too, because the girls and boys might not be the right moiety. Then they might have babies and everything. Wrong.

(Discussion at Yirrkala).

This breakdown in family structures through petrol sniffing is, far more than is the case with alcohol abuse, a generational one. It is the young people that sniff, and it is at that point traditional structures are seen as most vulnerable:

Are the children who are petrol sniffing are they coming from families who drink?

Some yeah, but some not.

Maybe its pressure from the other kids too. **Yeah, yeah pressure.**

So it's peer pressure?

Yeah, like the other kids are saying "Why don't you do it, you're boring.

Yeah, yeah, same like this place here too. The children who come from parents or relatives who drink, they drink.

Petrol sniffers stick together though don't they. Lot of boys on the roads and the girls.

Yeah, and the girls too.

Do the petrol sniffers form gangs? And do they get courage from being in gangs to break in and do silly things?

Yeah they started doing that because they all hanging around together, in groups.

That's how they get the other kids in who don't sniff, being in gangs forms some sort of power.

Why do you think they are committing these petty crimes like breaking in and stuff is that for attention from family, or just for fun?

They breaking in for fun and food, because they are hungry, yo. Break in the store and the take away store too just to get food.

The store manager was telling me, it was a lady, a new lady Balanda lady, was working at night in the store, and she finds it so hard to work there because the little kids come up and say they are starving, she can't handle it. She feels so sorry for them, she said it happens every night, little kids, three and four are coming up and asking for food, but their parents should be able to feed them.

(Discussion at Yirrkala)

As is the case with drug dependency in wider Australian society, petrol sniffers form a "drug culture" within the wider community, and there is evidence that --quite apart from the hunger and neglect outlined above -- the damage caused by petrol is being visited on future generations, thus perpetuating the cycle of abuse:

This is the first that we had when they 16 *or* 18 or 19 years old, boys and we just giving them married, we think they going to be a settle down with his wife together, but they not, they together with.

They both sniffing.

They gamble, walking together in the street with the tins.

Wife and husband? Both sniffing?

And even carrying baby.

He's carrying the baby.

Mother sniffing petrol and the kids drinking you know milk.

And that childs going to get more worse and worser and worser, because of fuel goes into the mothers things and drink it out of the breast, you know. That's not the way to do it, and even the girls with the husband with the drinking, they getting worser and worser, the child sleep along, and nothing to do it and just you know, they bored, the mother gone and the father gone with the grog and the child just laying there with the things, and they starting to sniff again, the little kids, 2, 3.

They take their kids with them.

When they drink?

I seen couple of parents with their kids, while the club was still running, taking their kids while on drinking beer, and they grow up in the club.

And this is making us sad because the woman have a mother and still go and drinking with his husband.

Even when she's pregnant?

Yeah, even is she's pregnant, just drinking away.

Before that baby even come?

Yeah, that's right, that's what I'm trying to say, you know, that make us really sad too and the baby got the alcoholic inside already, when he's grow up and that person is going to be worse.

What about sniffing when they are having babies?

That's right, same thing, and this what we want to try and have a things you know, to let the world knows, you know NT Government and one of them was sniffers she was in a pregnant, and she is a single woman, and this kinds of things that are happening and the baby was inside and after all the baby just born with the alcohol in side and the petrol inside and the baby couldn't wake, you know just no good.

You seen the baby?

Yeah I seen the baby ... fuel inside of the baby. And these are the kinds of things we want to try and work together with the community, all of the NT together and this is what we are doing it now.

(Discussion at Angurugu)

5.4 Substance Abuse - Are There Any Solutions?

The range of responses to dealing with alcohol and alcohol abuse have been canvassed extensively in Chapter 1 of this Report. The particular problems of substance abuse among children, especially that of petrol sniffing, seems intractable to many of the people the Aboriginal Issues Unit spoke to during the course of its work.

For communities already devastated by alcohol abuse among so many of its adults, the extention of substance abuse to a new generation is more worrying. Our children are now the "front line" of potential social disintegration and collapse.

5.4.1 Aboriginal Law - rules are breaking away

The most common perception among Aboriginal people in the Northern Territory Of the reasons for the diminishing importance of traditional Aboriginal Law amongst the young -- and indeed for many other social problems - is substance abuse. The cases cited (see 5.4.2 below) of community-sanctioned disciplinary measures is one end of a spectrum that reaches across to circumstances where those

measures are neither possible or practicable. As mentioned in Chapter 1 of this Report, Aboriginal Law has never had to face the problems of substance abuse, and there have been no traditional sanctions for the actions of people who abuse grog or petrol:

> **Those sort of rules that are breaking away is because of nganaji and petrol sniffing. They are the two main things you know that are breaking away a lot of cultural things. (Discussion at Yirrkala).**

And while the problem now appears intractable to people in this situation now, the future looks bleak:

> **Yeah, that's right we are finding the same problem all over the Territory. And people are worried because these young people are going to be the leaders one day.**
>
> **But you know if they doing that you, we are expecting those generation to be our leaders, but how? We not expecting them to be leaders anymore. (Discussion at Yirrkala)**

There has been discussion by many groups about developing other forms of punishment and custodial methods:

> **You only working, right, the people that are working the law, are making the law they still sitting down in Darwin.**
>
> **I given my talk last year already, about the same thing you asking me now. We keep talking and talking and talking, and it's just wasting the time. Wasting the time.**
>
> **By petrol sniffing problem, drunk problem, break in problem, locked em up the problem, actioning problem, you know, where can we punish them, in the Balanda custody or Yolngu custody.**
>
> **(Discussion at Yirrkala)**

Others seem to suggest that custodial measures are inappropriate ways of dealing with the problem, and suggest that at least some reversion to traditional family life as being the most effective solution:

> **The families, that's a starting point ... Ahh you're mine, you're my boy, suppose to be close to their heart you know. Wanting that person to live, and to be happy with him, everybody should be. But when they leave him alone, it's like a lost dog they no longer wearing collar and chain but is just out of it and his free handed and he can commit a crime anytime at all. That's the starting point. You can go to different young boys and they've committed a crime ... with sniffing petrol maybe, whatever. They enjoyed bad game, you know gangsters and it become for that family problem, worry for them, families.**
>
> **(Discussion at Wadeye).**

But, for many, there are irreconcilable differences between Aboriginal and non-Aboriginal Law, and the prognosis for traditional structures is not good:

> **And somebody would have to be working full time to explain, this is the bad, this is the good, don't break the law, your own law, break the Balanda law, you know, break the Balanda law, don't break your own law.**
>
> So they are breaking two laws?
>
> **Yeah, they are playing two ways.**
>
> But it makes it harder for the old people?
>
> **It makes it harder, just make it hard for us ourselves and for themselves, for their family. And he the one that going to finish up in jail, and he the one who going to find himself in the jail. Family, relations talk to them ask them to settle down, quieten down, calm down, and not causing any problem, sometime they take notice and sometimes they don't.**

It is these differences in "two laws" that arc perceived as being both the cause of the problems as well as the obstacle to their solution:

> **The world culture, we having a culture doing it, but they you know, we make them really cheap**

way to do it, the culture things, because Balanda, the police or the government they won't letting us back our culture, really strong things you know, and that is why we are sit back because we are, you know if you do the things wrong, really dead thing and punishing all the kids, well the government will say "Oh look, you are doing the wrong things. You can't do that anymore because you are living in a white man world." The white man will be saying that you know, so we be careful you know. If we ever let those things have it, you know way of doing it straighting our children, maybe it will be the children will be understand our way of life.

Our life you know, blackfella life.

Blackfella life rather than whitefella life?

Other than the Balanda things you know. And this is a very difficult and a complicated to say you know, and you know this is what we are thinking too, if we have a ceremony, really deep ceremony, we going back to our old way of life, and the child will be reporting look these what they started held these people to us, can you stop them. And that is it you know.

So kids aren't wanting to go to ceremony?

That's right, because you can see all over the Northern Territory today when they have a ceremony the kids, I mean teenagers, girls and boys, they gone to the city you know, run away from that things. Because they don't like them.

Because their parents aren't teaching them?

No, because they don't like the very strong rule for the Aboriginal people.

They don't like the Aboriginal law.

Yeah, right. They want a easy way.

Yeah they want a easy way like European. Like Balanda way like they live you know, they can do what they like.

(Discussion at Yirrkala)

5.4.2 Going bush as a cure

Taking kids out bush was seen as one solution to getting kids, as well as adults, away from the problems of town and larger communities. Many people said that taking kids to "dry" outstations can provide a haven from grog and petrol sniffing, as well as a way of showing kids a new life:

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. People say I'm a drinker, but I don't want that for my kids.

(Discussion, Borrooloola outstation)

However, homeland centres/outstations in themselves are not seen as "'cures" for the problem, and the notion of "sending" sniffers out bush to the outstations has had mixed success:

Do you think that some of the problem is because Aboriginal way of life has changed a lot? The old days when people lived out bush -- kids didn't get into trouble in town.

Too hard. Always we can see ourselves -- mother and father -- children don't listen. We are trying to help.

It's hard to send kids to bush -- they can find ways to get back by truck or boat.

Instead of sending kids to jail -- send them to outstations --but it's hard. They won't stay.

(Discussion at Maningrida)

They got no place to go see, those mob, you know young kids I'm talking about, teenagers, they don't know the bush.

They haven't been taught about the bush?

YO.

Why haven't they been taught?

Some, some grown up teenagers, you know, they hunter, only getting rifle and shooting

kangaroo, and spear you know, go out and catch a fish, when they come back they go straight for petrol. I don't know why.

(Discussion at Yirrkala)

It seems that "bush life" can only succeed for some; for others, especially those who are distant from their country, or whose country is alienated by towns or pastoral properties, the bush solution either doesn't exist or is not practicable.

5.4.3 Parental and community discipline

Solutions to the problems of petal sniffing. as has already been stated, have often been haphazard and short-term. On a local level, responses to the problem have varied both within and between communities. Over recent years at Wallace Rockhole, Yuendumu and Urnbakumba public "shaming" and "floggings" have met with success:

And the community supports public bashings for petrol sniffers.

Yeah.

Has there been petrol sniffing on the sly, or where families have come and said "Oh my kids petrol sniffing", or just no petal sniffing here anymore.

No, when we find out, they take that person, everybody come out, open area in front of all the community, that girl or boy get good hiding.

Who flogs that kid. You?

Oh, their parents.

To let everyone know that...

Yeah.

So the parents don't want them kids to come back here sniffing because they themselves will have to give that kid a hiding.

Yeah.

(Discussion at Umbakumba)

In most cases, it seems, successes along these lines are dependent on a strong and unified community structure, as well a strong individual leadership in those

A lot of the kids from Hermannsburg here over Christmas, mother and fathers told me exactly what their kids were doing. They were here for seven weeks and the kids never touched anything because I went around and talked to every kids, "If I ever catch you sniffing, you going to get this", the race strap, and they never touched it. They going to all finish up like them kids at Amata.

What's happened, have you seen any of them kids since then.

Oh, they went hack and lot on to it again, they doing the same.

Is that because their parents haven't got any control.

No, mothers and fathers sit down and drink and the kids sniffing petrol.

Well two or three weeks no good, the kid just starting to know you, and then they gone, gone hack to their own ways. Six months or more, that's alright, they got more time to think about it, and with petrol sniffers you need twelve months.

At least

Yeah, but these boys stopped pretty quick ay.

No, I never touched it once.

No, he came out and tried twice, I caught em once, told era, second time they did it and I put the race whip to them and put it around their arse twice. Only two hits, and that was it, and they knew what I was talking about, next time you get more.

I haven't got a hiding yet.

He hasn't got a hiding yet?

No, never, he's lucky, well mother told him in there, when you go out to uncle Barry you want to look out.

Yeah, she told me.

You know the story from mum.

Yeah.

(Discussion at Wallace Rockhole).

It is arguable that, as well as being dependent on strong community leadership, the cultural make-up of individual communities has a bearing on the success or otherwise of attempts to eliminate petrol sniffing. In the cases cited above, each community is comprised of a single language group and/or discrete clan structures. Other communities, for example Angurugu, Yirrkala and Maningrida, draw their populations from a wide variety of groups, some of which have traditional antagonisms. In each of these cases, too, traditional landowners of these townships have become outnumbered by groups whose traditional lands lie elsewhere:

Some groups are sniffing and other groups aren't. That's a problem because some families are blaming others when things go wrong. It's tribal. There's conflict. There's blaming.

(Discussion at Maningrida).

In such communities. given the lack of formal programs. it is very often up to individual families to attempt to work through the problems, with mixed success:

But that child of hers does he still sniff petrol?

No.

So she stopped him?

He was staying with me before she went to Batchelor.

And you couldn't stop him?

No.

But he's stopped now?

Now he's back with my sister.

How did she stop him.

By keeping an eye on him.

I think that's what the parents have to do. Cause if there's no parents, you know if they've passed away or they're in town drinking it's hard. But maybe if she can do that then maybe other mothers might be able to. You'd have to watch them all the time until they got over that period of longing.

That boy, my sisters boy if he go down to beach, she always drive around and make sure that he's not with the sniffers, and he's stopped sniffing.

(Discussion at Yirrkala)

But for other groups, individual solutions such as these are not practicable or possible, and in any case may well be overlaid by wider cultural values to do with traditional family life:

What happens usually if a person is drinking they asking their wives or family to go and buy grog, and then they come back drunk and flog the wife and the kids, next day wife has got a black eye, and he's got a headache, so the wife gives him panadol and makes sure he's

alright. So what's happening is that the family is helping that person become an alcoholic, helping him cause when he comes back drunk they'll put him to bed, they'll look after him, so you've got the dependent and the family is supporting the dependent. So what they've got to do is work with the family who s helping this person keep drinking, what they are looking at is tough love, to love somebody and to care for them is being able to say no, and it's difficult in the yolngu society.

(Discussion at Yirrkala)

5.5 Broader Strategies

In many ways, the solutions for the problems facing Aboriginal children proposed by the people spoken to be the Aboriginal Issues Unit mirror those outlined in Chapter 1 of this Report, and we refer readers to recommendations from that chapter.

It is clear that the problems of substance abuse affect children, and will continue to do so in the future unless workable solutions are found by Aboriginal people. There will be no single solution, either for the kids who are substance abusers themselves, or for those members of their families who abuse grog and damage family and home life. Some of the communities that have eliminated petrol sniffing, for example, still have severe alcohol problems amongst its members.

However, the issue of deaths in custody is one that will not go away unless these issues are confronted and acted on now. In many respects, it has only been a matter of luck that more of our people have not died in custody up to this point. It is the future generations of our people that will reap the benefits of those actions, or bear the consequences of inaction.

From talking to Aboriginal and non-Aboriginal people, it is obvious that the Aboriginal kin and family based structures will be the key to the success or otherwise of any strategies that might be developed. No number of reforms in the prison system, or changes to policies about apprehension and detention, will curb the high rate of imprisonment -- and subsequent risk of death in custody --our people face unless the problem of substance abuse is solved.

And that can only occur if support structures to our families, traditional and otherwise. are maintained and strengthened.

Summary of Recommendations

6.1 Chapter 1

RECOMMENDATION 1.1

There should be an amendment to the Social Security Act to prevent cheques from being mailed to and cashed by alcohol outlets.

RECOMMENDATION 1.2

That schemes such as Tangentyere's food coupon scheme, which allows people to bank with Tangentyere's bank branch but withdraw their savings only as food coupons and thereby avoid being coerced into buying alcohol, be supported and extended into other Aboriginal communities particularly into community stores by ATSIC and other Aboriginal organisations.

RECOMMENDATION 1.3

That the Commonwealth and Northern Territory Governments provide the funding for alcohol rehabilitation and counselling services as a matter of urgency in Central Australia and in other regions of the Northern Territory where none presently exist.

RECOMMENDATION 1.4

Given the widespread dissatisfaction with the composition and policies of the Liquor Commission, and its demonstrable failure to address the issue of alcohol abuse in the Northern Territory among Aboriginal and non-Aboriginal people alike, the Aboriginal Issues Unit recommends that a judicial inquiry be held into the composition, functions and policies of the Liquor Commission with a view to radical reform of the ways in which alcohol is marketed, distributed and sold in the Northern Territory.

RECOMMENDATION 1.5

That the "dry" area provisions of the Liquor Act remain in place and that the Liquor Commission provide Aboriginal communities and organisations in the Northern Territory with more information about how these provisions work and assist more communities, including Aboriginal town camps to apply for dry status if they wish through full consultation.

RECOMMENDATION 1.6

In order to enable Aboriginal people to make informed decisions on bow to overcome alcohol abuse in their own communities, the Drug and Alcohol Bureau of the Northern Territory Department of Health and Community Services should work with the Aboriginal and Torres Strait Islander Commission, the Land Councils, Aboriginal controlled service organisations and community councils and associations to develop educational programmes and community development strategies to inform Aboriginal people of the range of opinion, strategies and outcomes of schemes (operational and proposed) designed to reduce alcohol abuse.

6.2 Chapter 2

RECOMMENDATION 2.1

The Northern Territory and Commonwealth Governments should commit themselves to the implementation of the recommendations of the Australian Law Reform Commission's 1986 report concerning the recognition of Aboriginal law.

RECOMMENDATION 2.2

A taskforce be established consisting of representatives of the three Aboriginal Legal Services, the three Land Councils, the Aboriginal Areas Protection Authority, representatives of communities, the Northern Territory Department of Law, and the Commonwealth Attorney General's Department to further the recognition of Aboriginal Law and to find ways to reduce the conflict between that law and European law.

RECOMMENDATION 2.3

The Department of Law or an Aboriginal Legal aid service, other than the one defending the client, should ensure that community interests are represented in cases involving serious crime which places people in small communities at risk.

RECOMMENDATION 2.4

Where a Magistrate considers it appropriate and not in breach of human rights, and where elders present sufficient evidence that they can hold an offending youth to ceremonial obligations without breaching human rights, he or she order the offender to attend a ceremony or number of ceremonies in addition to a sentence, fine or other correctional order imposed by the court, to enable elders to rehabilitate the offender according to their own culture:

RECOMMENDATION 2.5

The Aboriginal education consultative group (FEPPI) should consult with the Land Councils, the Aboriginal Areas Protection Authority and Aboriginal elders to develop a policy on the recognition of Aboriginal ceremonial obligations for school-age children. Negotiation should take place with the Northern Territory Education Department to adopt the policy and work with elders to ensure that their Law survives.

RECOMMENDATION 2.6

Magistrates and legal counsel for Aboriginal offenders should consult with the tribal elders and community councils of Aboriginal communities, to take into account in sentencing Aboriginal people's ceremonial

obligations, and in particular, the importance of Aboriginal men attending initiation ceremonies.

RECOMMENDATION 2.7

Funding to Aboriginal Legal Services in the Northern Territory he increased so that anthropologists can be employed as full time staff or contracted in special cases. In this way, conciliation between the parties may be possible and if not, the customary law background to such cases can he presented to the court.

RECOMMENDATION 2.8

A formal independent evaluation of the Northern Territory Department of Law Community Justice Scheme is required. It should examine, with the assistance of anthropologists who qualify as experts in the field, options for enabling indigenous forms of social control to operate in Aboriginal communities with the formalised cooperation of the Australian legal system, specifically the visiting magistrates and the Department of Correctional Services.

RECOMMENDATION 2.9

The Tangentyere Social Behaviour Project be funded by the relevant government departments and agencies, including the Northern Territory Department of Law. Funding and policy support should enable the project to be established effectively, to achieve its aims, and to be able to monitor its effectiveness in this new and exciting approach to the question of indigenous law in an urban environment.

RECOMMENDATION 2.10

Courses should be developed to train Aboriginal people in understanding the Australian legal system and to give them skills which they could use in positions such as Police Aides, Aboriginal Corrections Officers, Councillors, advisers to Magistrates, and prison and police cell liaison officers. These courses should be taught at the Institute of Aboriginal Development in Alice Springs, and at Batchelor College and the Centre for Aboriginal and Islander Studies at the Northern Territory University.

RECOMMENDATION 2.11

The Northern Territory and Commonwealth Governments should take urgent steps, in consultation with Aboriginal Law men and women and educationalists, to design and introduce such courses.

RECOMMENDATION 2.12

Each court in the Northern Territory should have an Aboriginal Liaison Officer whose duty it is to inform families of the outcome of each matter involving Aboriginal people before the Court, including imprisonment, fines, community service orders, and coronial inquiries. Such a position could be jointly funded by a number of departments and agencies.

RECOMMENDATION 2.13

A comprehensive strategy for incorporating Aboriginal interpreters into the Northern Territory Interpreters Service should be created. This strategy should be developed through negotiations between the Northern Territory Interpreters Service, the Institute for Aboriginal Development Interpreters Service (Alice Springs), all of the Northern Territory Aboriginal Legal Aid Services, both Aboriginal and otherwise, and the Northern Territory Department of Law.

6.3 CHAPTER 3

RECOMMENDATION 3.1

As a matter of urgency the number of sobering up shelters should be increased from the existing three. These additional shelters should be set up in consultation with Aboriginal communities; agencies involved in the fight against grog; and the police. All sobering up shelters should be backed up by well funded programmes for detoxification, rehabilitation, and counselling.

RECOMMENDATION 3.2

Commissioner Johnston seek submissions from the Aboriginal-controlled legal services in the Northern Territory, CAALAS, KRALAS, and NAALAS, the Australian Legal Aid Office and other bodies on the efficacy of complaint procedures about the Northern Territory Police. Matters which ought to be

addressed include the number of complaints received by these organisations during the period of the Commission's Terms of Reference or some lesser period, the nature of such complaints, the results of making complaints under the present procedures, and whether some other procedure (or procedures) for making complaints is necessary.

RECOMMENDATION 3.3

The issues raised by our people with the Aboriginal Issues Unit regarding the improvement of policing in the Territory should be investigated by the Law Department and the Northern Territory Police with a view to speedily implementing procedures to solve the problems raised.

RECOMMENDATION 3.4

Northern Territory Police need training not only to recognise illness, but to seek medical assistance and to refer prisoners to medical assistance when necessary. Formal procedures need to be developed to ensure that detainees who require medical assistance are promptly referred to the appropriate agency.

RECOMMENDATION 3.5

Medical alert bracelets be issued to Aboriginal people with a range of medical conditions requiting treatment and monitoring.

RECOMMENDATION 3.6

There is an urgent need for police to be trained by specialists to recognise particular health problems, such as head injuries, and mental and behavioural disturbance.

RECOMMENDATION 3.7

There is an urgent need for residential and treatment facilities in Central Australia for the behaviourally disturbed to which police can refer detainees with such problems.

RECOMMENDATION 3.8

There be an evaluation of the feasibility of the placement of trained Aboriginal Liaison Officers for police lock ups and prisons.

RECOMMENDATION 3.9

Police need to attend cross-cultural courses with Aboriginal input. The Alice Springs Grog Forum workshop and Katherine Forum suggest that these could be held at the Police Academy in Darwin through an Aboriginal Unit to be established in the Academy.

RECOMMENDATION 3.10

The voluntary community policing schemes established by the Julalikari and Gurungu Councils be funded and supported by both the Northern Territory and Commonwealth Governments. These schemes should be examined with a view to extending them into more Aboriginal communities because they have the potential to improve policing and to improve Aboriginal police relations rapidly and substantially lower crime rates.

RECOMMENDATION 3.11

The Aboriginal Issues Unit endorses Tangentyere Council's view that the goal of the Fight Crime Committee should not be to fight crime just for the sake of fighting crime. The Committee must look seriously at the underlying social and cultural factors which lead to the kind of crime we are now seeing.

RECOMMENDATION 3.12

Police Aides should be involved in developing better community relations between police and our people through participation in clearly defined programmes.

RECOMMENDATION 3.13

Police Aides to speak to and check on the condition of Aboriginal detainees when they are first brought to the police station.

RECOMMENDATION 3.14

The Police Department should recognise the valuable work that Aboriginal Police Aides perform, by improving staffing levels, salaries, career structures, and training.

RECOMMENDATION 3.15

Aboriginal people should develop more respect for Police Aides and the work they are doing. This might be achieved through the commencement of community based policing strategies like the Julalikari Council community patrols working with their local police.

RECOMMENDATION 3.16

The number of Police Aides should be immediately increased. Their duties should be reviewed to improve their value to the community and their own serf-development Aboriginal women Police Aides are urgently required.

RECOMMENDATION 3.17

The position of Trackers should be evaluated along with the Police Aide Scheme with respect to their impact and future direction.

6.4 CHAPTER 4

RECOMMENDATION 4.1

More funding is needed by the Community Service Order scheme if it is to be able to realise its full potential: CSO projects must be set up in more Aboriginal communities and organisations, and the integration of the scheme into the communities and the structures of Aboriginal law must be encouraged.

RECOMMENDATION 4.2

Any program to reduce Aboriginal imprisonment must include funding for schemes to tackle unemployment, poverty and alcohol abuse.

RECOMMENDATION 4.3

The Department of Correctional Services in conjunction with other Departments and Aboriginal organisations should undertake a study to develop a programme or a number of programmes to decrease the number of motor vehicle offence prisoners in Northern Territory correction system.

RECOMMENDATION 4.4

As recommended by Tangentyere Council and by the Assistant Director of the Department of Correctional Services in Alice Springs, some form of cheap public transport should be set up to operate between Aboriginal communities and urban

RECOMMENDATION 4.5:

- ·a way be found to lessen the attractiveness of using drunkenness as a 'mitigating factor' in the sentencing of alcohol affected offenders.
- offenders who act under the influence of alcohol undergo compulsory alcohol counselling or education.

RECOMMENDATION 4.6

The funding to the Aboriginal legal aid services for briefing out cases to experienced counsel, including barristers and Queen's Counsels, be increased and guidelines be established for senior officers of these organisations to decide when cases should be briefed out.

RECOMMENDATION 4.7

There is an urgent need for residential and counselling facilities for those with alcohol or behavioural problems in Central Australia.

RECOMMENDATION 4.8

The Criminal Law (Conditional Release of Offenders) Act be reprinted and consolidated. This would

enable Magistrates, lawyers, police and laypersons to read the Act including all the amendments and give them an opportunity to understand the provisions of the Act.

RECOMMENDATION 4.9

The Police Administration Act_should be amended so that detainees for warrants are held at major communities until assessed by a corrections officer rather than being brought into the Alice Springs cells by the police.

RECOMMENDATION 4.910

The discrepancy in dollar amounts per day of Community Service Order work between court-ordered and fine-default CSOs should be removed.

RECOMMENDATION 4.11

The Department of Correctional Services should undertake a study to determine how the Home Detention scheme can better be applied in Aboriginal communities

RECOMMENDATION 4.12

More funding and backup are required for the Community Service Order scheme. It is important that projects are set up whereby Aboriginal people could increase their skills and undertake tasks of greater importance to the community. Training for those people in charge of CSO projects should be provided

Appendix 1: The Consultations

A list of consultations by the Northern Territory Aboriginal Issues Unit with Aboriginal communities in the Northern Territory

This list is organised alphabetically by the names of the Aboriginal communities in which the consultations took place. The most common name, or name which appears on maps, is usually the one used, for instance Oenpelli, although the Council calls itself the Gunbalunya Council, except where a community name is the preferred Aboriginal name and which has not become general usage outside the community.

Communities listed are allocated a number, for example, ALICE SPRINGS which is the first community listed here by virtue of its alphabetical status is number 1.

A sublist of documents arising from consultations appears under each community name and these are allocated lower case letters.

1. Alice Springs

a. Interview with Heather Shearer and Brian White, Aboriginal Child Care Agency
b. Interview with Peter Samsa, Institute of Aboriginal Development
c. Meeting with Tangentyere Council on Community Service Orders.
d. Interview with Andy McNeill, Assistant Police Commissioner, Alice Springs
e. Interview with Ian Joblin, Forensic Psychologist
f. Interview with Ken Newman, Assistant Director Department of Correctional Services, Alice Springs and Barkly region
g. Interview with Central Australian Legal Aid Service lawyers

2. Alyangula

a. Notes from interview with Chris Adepoyibi, Correctional Officer, Alyangula.
b. Interview with Alan Wright, Public Relations Officer, Gemco Pty. Ltd.

3. Amoonguna

a. Interview with Raymond Satour, Ronald Satour, and Wauchope Tilmouth

(deceased).

4. Angurugu

a. Interview with Mumbuda and Jimmy Yentarmga.

b. Interview with Jambana and Gordon Barr.

5. Barunga

a. Notes from Telephone discussion with Peter Miller, Barunga School Action Group

b. Minutes of Barunga School Action Group meeting

c. Discussion at Barunga School Action Group meeting.

6. Bickerton Island

a. Interview with Joe Wurramarra, Council President.

7. Borrooloola

a. Interview at the Mabunji Outstation Resource Centre

b. Interview with Deanie McDeanie, Wanyunula Outstation

c. Interview with Cordon Lansen, Ryans Bend Outstation

d. Notes from meeting with Boonu Boonu Womens Council, Cominninya Outstation,

e. Interview with Powder Punch, Coolminminya Outstation

f. Notes of meeting at MARA camp

g. Interview with Neville Godfrey, Senior Traditional Owner, Robinson River pastoral lease

h. Interview at Robinson River pastoral lease

8. Daly River

a. Interview with Betty Daly (NLC Member) and Bill Touny, President of Manathed Association of Woodicupildia Outstation.

b. Interview with CDEP workers Nauiya Nambiyi Incorporated (formerly Daly River Mission).

9. Darwin

a. Notes of discussion with V. Stanton and clients of F.O.R.W.A.A.R.D.

10. Elliott

a. Meeting at North Camp, Gurungu Camp

b. Meeting with Young Men, Gurungu Camp

c. Interview with Marcus Dixon, Principal, Elliott Public School.

11. Galiwinku

a. Interview with Keith Djinyini, President, Galiwinku Community Council.

b Interview with Hilton Jones, Sister in Charge, Galiwinku Health Clinic.

c. Interview with George Dangibu (Manager) and Richard Wittington (Coordinator), Marthakal Homeland Resource Centre.

d. Interview with Geoffroy Muluwra (resident) and Robert McKenzie (Sports and Recreation Officer)
e. Interview with Galiwinku School Principal and others
f. Interview with Ian Gumbula and others, Galiwinku Adult Education Centre.
g. Interview with Richard Gundunuy, Town Clerk, Galiwinku Community Council.
h. Interview with Jim Hobby, C.D.E.P. Co-ordinator.
i. Interview with Uwe Kiebat (Principal) and Rose Gaywanga (Principal-in-training), Sheperdson College,
j. Interview with Fred Artu, Marthakal Homeland Resource Centre
k. Interview with post-Primary students, Galiwinku
l. Interview with Ian Gumbula, Adult Educator
m. Interview with Toby Gayalga, former Police Aide at Maningrida

12. Hermannsburg

a. Interview with Bayden Williams
b. Statement by Lloyd Spencer Nelson

13. Katherine

a. Notes of interview with Tom Kerwin, Northern Land Council Pastoral Advisor

14. Maningrida

a. Meeting with Mangrida Council
b. Meeting with Bawaninga Outstation Resource Centre staff
c. Meeting with Babbarra Women's Council.
d. Interview with Charlie Godjewa, Chairman, Maningrida Arts and Crafts Inc. and leader of Djimarda Outstation.
e. Interview with Aboriginal Liaison Officer, Department of Social Security.

15. Minjilang (Croker Island)

a. Meeting with staff of Minjilang Council.
b. Notes from discussion with Daisy Yarmirr, Aboriginal Health Worker.
c. Notes from discussion with Allen Clough and Sidoni.

16. Murganella (Wauk)

a. Interview with John and Andrew Christopherson

17. Ngukurr

a. Meeting with women
b. Interview with Cliff Thompson on Community Service Orders
c. Interview with Phillip Bush, Trainee Co-ordinator, Outstation Resource Centre
d. Notes from interview with Mal Barnes (Senior Constable) and Gordon Forrester (Police Aide), Ngukurr Police Station

18. Nyirrpi a. Meeting with Nyirrpi council and young men

19. Oenpelli

a. Meeting with Gunbalunya Council

20. Port Keats

a. Interview with Claude Narjik
b. Interview with Frank Dumoo, Nardidi Outstation
c. Interview with Gordon Chula, Assistant Probation Officer
d. Interview with Harold Anderson
e. Interview with staff at Health Clinic
f. Interview with Luke Bunduk, Council President of Karda Numida Inc.
g. Interview with Brother Ted Merritt (MSC)
h. Notes of interview with June Dowling and Kate Hutchinson, NAALAS field officers

2 1. Tennant Creek

a. Meeting with Julalikari Council
b. Meeting with Inspector Warren O'Meara (Div. 3 Police), Harry Courtney (Senior Sargent, Tennant Creek) and members of the Domestic Violence Committee.
c. Report by Gertrude Stotz: The Cultural Economy of Alcohol and Related issues in the Tennant Creek area.

22. Tiwi

a. Meeting with women's group, adult centre, Pularumpi
b. Interview with Adult Educator, Pularumpi.
c. Interview with women workers at Bemawear, Nguiu, Bathurst Island.
d. Meeting with Health Workers, St. Gerard Majella 'Health Centre, Nguiu.
e. Interview with Denise McCarthy, Manageress Bemawear clothing factory, Nguiu, Bathurst Island.
f. Interview with Doctor, St Gerard Majella Health Centre, Nguiu, Bathurst Island.
g. Interview with Francis Tipiloura, Senior Traditional Owner. Pularumpi (Garden Point)
h. Interview with Cyril Rioli, Manager, Pirlangimpi Progress Association
i. Interview with Therese Bourke and Ann Marie, Health Workers, Pularumpi Health Clinic (Garden Point).
j. Interview with Kevin Doolan, Town Clerk, Milikapiti Community Government Council, Snake Bay
k. Interview with Principal, teachers and teacher aides, Milikapiti school (Snake Bay)
l. Interview with Co-ordinator, Meals on Wheels Nutrition Program, Milikapiti (Snake Bay)
m. Interview with Patrick Purrantatameri (School Principal) and others, Pularumpi (Garden Point)
n. Interview with officer, Pularumpi Police Station, (Snake Bay)
o. Interview with Sabistian Rioli (President of Pularumpi Community government Council and CDEP Co- ordinator) and Graham Whiting (Vice President Pularumpi Community Government Council), Melville Island.
p. Interview with Robert Tipunwutti, President of Milikapiti Housing Association, Milikapiti (Snake Bay) Melville Island.
q. Interview with Rosemary Tipiloura

r. Meeting with Milikapiti Community Government Council, Milikapariti (Snake Bay) Melville Island.
s. Meeting with Women, Pularumpi Womens' Centre, Pularumpi (Garden Point), Melville Island.
t. Interview with Tiwi Islander

23. Victoria River Downs and Timber Creek

a. Interview with Jack Liddle, Bulla Camp
b. Yarralin Community Meeting on C.D.E.P.
c. Notes on meeting at Yarralin Community Store
d. Interview at Bulla Camp school
e. Interview with Darcy Mullens, Co-ordinator Ngaringman Resource Centre, Timber Creek
f. Interview with Gary Smith, C.D.E.P. Co-ordinator, Ngaringman Resource Centre, Timber Creek
g. Interview with Gerry Jones (President of the Ngaringman Resource Centre) and Josie Jones
h. Interview with Sammy
i. Interview at Bulla Camp

24. Wallace Rockhole

a. Interview with Barry Abbott.

25. Yirrkala

a. Report by Jeannie Bell on consultation at Yirrkala and outstations.
b. Interview with Banduk Marika and Alison Rorrwuy at Beach Camp, Yirrkala.
c. Interview with Roy Marika (Council President Dhanbul Association) and Rev. Ken Minyapirrawuy Garrawurra (uniting Church)
d. Discussion with Daymbalipu Mununggurr (Chairman), Wirrilma Mununggurr (Manager), and Banambi Wuunumurra (Secretary), Laynhuphuy Outstation Resource Centre
e. Interview with Women at Laynhuphuy Women's Resource Centre.
f. Interview with Yikaki Maymaru, Djarrakpi Outstation (Cape Shield)

26. Yuendumu

a. Meeting with Yuendumu Community Council and Tribal Council.
b. Interviews with men from Yuendumu who have served time in prison.
c. Interview with Blair McFarlane, Correctional Services Officer, Papunya
d. Interview with Lloyd Spencer Nelson

27. Not available at time of printing

a. Meeting with Central Australian Aboriginal Congress regarding Community Service Orders
b. Meeting with Central Land Council, Full Council Meeting held at Kurundi Station
c. Meeting with Tangentyere Executive.
d. Interview with Tjitjiti.
e. Interview with Mrs Blitner.

f. Discussion with Gordon Noonan, Brunette Downs.

g. Minutes of meeting held with community representatives at Northern Land Council

h. Minutes of discussion with Karu (Aboriginal Child Care Agency) staff.

i. Notes of a discussion with John Cheton Resident.

j. Notes of discussion with Sister Elizabeth School Principal.

k. Notes of a discussion with residents John Chula, Frank

l. Notes of a discussion with teacher's aide

m. Notes of a discussion with Visiting doctor of Daly River Region.

n. Minutes of Interview with John Chula

o. Interview with Galarrwuy Yunupingu.

Appendix 2

A LIST OF CONSULTANTS REPORTS

1. A.J.Bell, 1989

"Report on Consultancy Visit, Yirrkala, N.E. Arnhem Land, N.T."

2. G.Stotz, 1989

"The Cultural Economy of Alcohol and Related Issues in the Tennant Creek"

3. Chips Mackinolty, 1990

"Land rights and deaths in custody in the Northern Territory."

4. B. Moss, 1990

"Grog: Where to Now, the Report of the Forum."

5. Jim Wafer, 1989

"Why so many Warlpiri and Anmatyerre deaths in custody?"

Appendix 3

Submission to the Royal Commission into Aboriginal Deaths in Custody from Tangentyere Council, Alice Springs

Tangentyere Council requests that the Royal Commission's Aboriginal Issues Unit consider recommending, in its final report on the Northern Territory, that the following changes to existing laws be made and new legislation passed to reduce the amount of alcohol consumed in the Territory and the serious health and social problems which directly result from that consumption, most especially among Aboriginal people.

I. The N.T. Liquor Act should be amended to:

1. direct the Commission to establish clear polices and procedures re: prosecution of breaches of the Act;
2. define the word "intoxicated";
3. include stiffer penalties for breaches of the Act;
4. include "the public interest" or "public health and welfare" as grounds for community complaints;
5. allow emergency suspension of a licence "in the public interest" for an indefinite period (it is now 7 days), with notification of a hearing within 28 days;
6. invest the Commission with responsibility for limiting the amount of social harm from alcohol

sales;

7. direct that at least one Commissioner must have expertise in the area of alcohol education, treatment or rehabilitation;
8. direct the Commission to appoint regional Aboriginal advisory committees to assist on decisions in which issues of concern to Aboriginal people may arise;
9. direct that a proportion of revenue collected by the Commission go to alcohol education, treatment and/or rehabilitation programmes;
10. direct the Commission, in licensing matters affecting Aboriginal communities, to sit in a place and in a manner to facilitate expression of Aboriginal views;
11. include "the number" of licences (in addition to their location and conditions) among the factors to be considered in licensing matters;
12. require that all the matters of relevant to licensing decisions also be relevant in the consideration of complaints;
13. include a mechanism for monitoring the conduct of a licence on a regular (biannual or triannual) basis;
14. restrict take-away alcohol sales at petrol stations and roadhouses;
15. phase out grocery store and supermarket sales and require that take- away alcohol be sold only from outlets that exclusively sell alcohol;

II. Regulations under the Liquor Act should be amended to:

1. limit take-away sales to seven hours per day;
2. ban Sunday trading

III. The Liquor Commission should be separated from the Racing, gaming, and Liquor Commission and have its own chairman.

IV. New legislation should be passed to:

1. make licencees legally liable for injuries and damage caused by their intoxicated and/or under-age patrons (Dram Shop Liability);
2. tax alcoholic beverages according to alcohol content (e.g. lower tax on low-alcohol beverages);
3. ban alcohol advertising, except on licensed premises;
4. require health warning labels on alcoholic beverages (to include the number of standard drinks contained).

V. The Royal Commission should also consider recommending that:

1. a way be found to lessen the attractiveness of using drunkenness as a "mitigating factor" in sentencing of alcohol-affected offenders;
2. offenders who act under the influence of alcohol undergo compulsory alcohol combing or education;
3. retail outlets, especially liquor outlets should not be allowed as addresses to which Social Security cheques may be sent, unless the recipient is actually resident on those premises;
4. Laws relating to grog-running be strengthened.

Appendix 4

COMPLAINTS AGAINST POLICE

Commissioner Johnston on 19 October 1990 issued a suppression order prohibiting publication of three paragraphs which appeared at this point in the report.

Appendix D(ii) Overview of the Criminology Research Program

The aim of this paper is to explore the relationships, if any, between the series of 21 papers prepared by the Criminology Research Unit with a view to showing how the series was developed, and, more importantly, to draw out general conclusions that only emerge when two or more of the papers are considered together.

With the wisdom of hindsight, and perhaps with a little generosity of spirit, it is possible to detect a cumulative element in the knowledge and understanding that emerges from this series of papers. It is not suggested that the series represents a clear logical progression from one question to another in a planned sequence, but in a number of cases it can be seen that the findings of one study prompted further study which resulted in insights that had previously not been considered. It would not be true to suggest that the totality of research findings represents a mosaic, as in reality they do not fit together as neatly as one might like, but many findings clearly do relate to each other and it is suggested that the totality of knowledge gained is greater than the sum of the individual parts.

One aspect of the cumulative process that is readily admitted is the fact that in a number of early research papers mistakes were made. Some of these were methodological (the Unit had not yet learned how best to handle some concepts) and some were factual (the Unit had either been given incorrect information or had misused or misunderstood information that was correct). In many cases, we have produced revised versions of the relevant papers, clearly acknowledging the date of the original publication and the date of the revision. While we have always endeavoured to correct mistakes before the papers were released, and to this end a rigorous system of circulating drafts was instituted, it is suggested that a small degree of latitude might be permissible in pursuing a comprehensive research program into an uncharted and complex area. Be that as it may, the Unit acknowledge that errors were made and may well continue to be made.

At every stage of the development of the research program the approval of the Commissioners was sought and gained, and this was also the case with the release of research papers. The early drafts of the research program included topics such as Aboriginal health, education and housing, but after the establishment of Aboriginal Issues Units in early 1989 in many pans of Australia, the focus of the Criminology Research Unit was redirected to those topics which were more technical or statistical in nature and which often involved the gaining of co-operation from police and correctional authorities. This sharper focus, it is suggested, enabled optimum use to be made of the research skills and experience available to the Commission.

All of the papers in the series had the basic aim of providing information that would lead to an understanding of the phenomenon of Aboriginal deaths in custody and how that phenomenon may be reduced or eliminated. In many of the papers that was achieved, or an attempt was made to facilitate the achievement, but casting the phenomenon in different contexts, thus seeing Aboriginal deaths in custody in the context of all deaths in custody, in the context of the total Aboriginal and Torres Strait Islander population, or in the context of the numbers of Aboriginal or non-Aboriginal people in police or prison custody, etc, produced different views than that which are obtained by the study of the individual cases that were investigated by the Royal Commission.

The first research paper, released initially in February 1988 and in a revised form in June 1988, is a modest example of a broader view of Aboriginal deaths in custody, compared with the view obtained from a case by case approach. Produced without the aid of a computer, this study was able to show that:

- nearly twice as many Aboriginal deaths occurred in police custody rather than prisons,
- Western Australia and South Australia had the highest rates of Aboriginal deaths in custody per 1,000 Aboriginal adults in the relevant community, and
- an abnormally high number of the deaths occurred in 1987 with more than half of them in that year being caused by hanging.

These very basic facts have not been challenged by the more sophisticated research that was conducted later, even though better information and vastly improved equipment became available. The penultimate paper in this series is, in fact, a considerably improved version of the first paper with much more

information being available for each case.

Notwithstanding the cumulative nature of most of the research papers, some of them are the result of virtually independent inquiries into particular subjects. Thus these papers bear little or no relationship to other papers in the series. They were prepared in response to a particular need or a direct request from the Royal Commissioners. Research Papers Nos. 2 and 5 which cover draft guidelines for the prevention of Aboriginal deaths in custody and drug testing in prisons, respectively, fall

into this category. The draft guidelines, released in April 1988, were specifically requested by Commissioner Muirhead to stimulate discussion and practical action about the steps that needed to be taken to overcome what was perceived to be a tragedy which had profound national and international implications. This paper provoked very detailed responses from police and prisons departments and from many other agencies, but it was subsequently overshadowed by the more authoritative Interim Report that was released in December 1988.

Similarly, Research Paper No. 5 was specifically requested by the then National Commissioner who was investigating a death which had occurred in a prison and in which the apparent ready availability of illegal drugs was a relevant consideration. As it happened, the subject of the availability of drugs in prisons did not seem later to be such a major issue as it was in the particular case that was investigated in the first few months of the Commission's work.

In contrast to this, a subject of central relevance to many of the deaths that occurred in police custody, as well as to the underlying issues, is that of alcohol and its effects on human behaviour and health. Again, it was a particular inquiry which led to the question being raised of whether a person with a very high blood/alcohol reading could be capable of performing intricate tasks, such as the tying of knots. The subject was studied by an expert team commissioned by the Royal Commission to produce a report which would reflect the current state of knowledge and opinion from the relevant academic disciplines. [70] The report was very long and highly technical, and in order to increase the accessibility of its central findings a summary version was produced as Research Paper No. 14, Alcohol and Human Behaviour.

A further paper which is of a stand-alone character is No. 9, The Design of Safe and Humane Police Cells: A Discussion of Some Issues Relating to Aboriginal People in Police Custody. This paper, which was prepared by a visiting scholar to the Unit, was prompted by the extensive list of recommendations in the Interim Report relating to conditions and procedures at police lockups. This paper reviews the extensive anthropological, criminological and psychological literature that is relevant to the topic. As was intended, this paper provoked considerable discussion among police authorities, and it is now seen as a standard reference on this complex subject.

Even before police cell design became a matter of particular interest to the Royal Commission, it was apparent from even a casual review of the basic facts of the cases to be investigated that the subject of public drunkenness was going to be of central relevance. In a significant proportion of the Aboriginal deaths in police cells, the reason for custody was either that the person had been charged with public drunkenness or he or she had been detained as an intoxicated person in those jurisdictions where public drunkenness had been decriminalised. A study of this subject was undertaken, the results of which were published as Research Paper No. 3, Public Drunkenness - Australian Law and Practice. This paper was released initially in October 1988 and reprinted with corrections in February 1990.

This study reviews both the relevant law in each State and Territory as well as such statistical material as was available. It found that all jurisdictions except Victoria, Queensland and Western Australia had established by the end of 1988 some form of decriminalisation of public drunkenness with provision being made for the care of at least' some intoxicated persons in places other than police cells. The study also showed that in those jurisdictions where public drunkenness had been decriminalised, one consequence was an increase, rather than a decrease, in the total number of intoxicated persons held in some form of detention.

Apart from Research Paper No. 1, perhaps the starting point for a systematic study of the Aboriginal

deaths in custody is to be found in Research Paper No. 4, which is a review of the known facts about the Aboriginal and Torres Strait Islander population in Australia. It was considered essential that this information be collected as the basis for the later calculation of rates of Aboriginal imprisonment, detention in police custody, death (in custody and elsewhere), as well as levels of over-representation in either form of custody. This paper reviewed the difficulties experienced by the Australian Bureau of Statistics in obtaining accurate figures for Aboriginals and Torres Strait Islanders, but concluded that the 1986 census figure of 227,645, or just under 1.5 per cent of the Australian population, was the most accurate figure available. A later comparison of the age structure of the Aboriginal and non-Aboriginal populations showed that Aboriginal people comprised approximately 1.1 per cent of all persons in Australia aged 17 years and above.

Having established, as reliably as possible, the numbers of Aboriginal people in Australia, and in each State and Territory, the next obvious step was to endeavour to establish the numbers of Aboriginal people in police and prison custody. This was a relatively simple task as far as prisons are concerned as each year since 1982 the Australian Institute of Criminology, in association with all Australian correctional authorities, has conducted an annual census of all persons in gazetted prisons. There is no equivalent source of information, however, for persons in police custody. How this deficiency was overcome will be outlined later.

The annual census of prisoners was an invaluable source of basic information, especially as one of the items on the data collection form required a statement of whether or not the prisoner identified as an Aboriginal or Torres Strait Islander. In nearly all jurisdictions there was a small number of prisoners for whom Aboriginality was not known or was not stated and for Queensland as a whole no information on Aboriginality was released until 1987. Notwithstanding this limitation, it was shown in Research Paper No. 6 that the proportion of all prisoners for whom Aboriginality was known had increase from 13.1 per cent to 14.7 per cent from 1982 to 1987. (It was later shown in Research Paper No. 19, however, that from 1987 to 1989 this proportion decreased to 13.4 per cent, largely due to a massive increase in the numbers of non-Aboriginal prisoners over this period.) Even at its lowest levels, the proportion of prisoners identified as Aboriginal was shown to be many times higher than the proportion of prisoners in the community who were identified as Aboriginal. Aboriginal over-representation in prisons thus became an issue of central interest to the Royal Commission.

Research Paper No. 6 also showed that the levels of over-representation in prison were highest in South Australian and Western Australia, that the sentences imposed on Aboriginal offenders tended to be shorter than the sentences imposed for the same offence on non-Aboriginal offenders, and that the Aboriginal recidivism rates appeared to be much higher than the rates for non-Aboriginal prisoners. The limited evidence then available also showed that Aboriginal over-representation in non-custodial corrections was not as marked as it was in prisons.

With the basic facts of Aboriginal over-representation in prisons established to a reasonable level of accuracy, it was important to determine the facts in relation to police custody. As indicated above, no published data existed on this subject, and it was therefore decided to seek the assistance of all Australian police forces in the conduct of a national police custody survey. This would aim to establish who was taken into police custody, for what reason, and for how long. The focus of the survey was to be not on persons *arrested* by the police, but on persons *lodged in police cells* for any period of time. After extensive negotiations and testing of a data collection form in different locations this survey was conducted throughout Australia during the month of August 1988.

The preliminary results of this survey were reported in Research Paper No. 8, with more detailed findings and analysis being reported in Research Paper No. 13. The most important (and to a large extent expected) findings were that during the survey period there were over 28,500 incidents of people being placed in police custody and that approximately 29 per cent of them were Aboriginals. It was also shown that approximately 50 per cent of all of the females taken into custody were Aboriginal, and that the average period of custody was longer for Aboriginal people than it was for non-Aboriginal people. Of the 90 per cent of the cases that were in custody for less than 48 hours, the mean period was 9.7 hours for Aboriginal people and 7.6 hours for non-Aboriginal people. There were differences between jurisdictions

on this dimension, but in each State and Territory the mean period of detention was longer for Aboriginal people than for non-Aboriginal people.

These two studies of the numbers of Aboriginal people and non-Aboriginal people in prison and police custody provide an essential background that is needed for the interpretation of the numbers of Aboriginal and non-Aboriginal deaths in custody reported in Research Paper No. 7. This paper, which is considered to be a key element that links much of the research program together, brought together the basic facts of all deaths in custody over the nine year period 1980 to 1988 as reported to the Criminology Research Unit by all police and prison authorities.

The study reported in Research Paper No. 7 showed that over this period there was a total of 462 deaths in police or prison custody throughout Australia. 94 of these deaths were of Aboriginal people and 368 were of non-Aboriginal people. Furthermore, 280 of the total were of prisoners and 182 were of persons in police custody. The distribution of cases by Aboriginality and by custodial authority is most clearly shown in Table 1.

Table 1: Aboriginal And Non-Aboriginal Deaths In Custody 1980-88

	Aboriginal	***Non-Aboriginal***	***Total***
Prison	35	245	280
Police	59	123	182
	94	368	462

It can be seen from this table that there were nearly twice as many Aboriginal deaths in police custody as there were in prisons, as was shown earlier in Research Paper No. 1, but that almost exactly the opposite is the case as far as non-Aboriginal deaths are concerned. This pattern is statistically significant at a high level of confidence. It can also be readily calculated from the figures in this table that exactly 12.5 per cent of the deaths that occurred in prisons were of Aboriginal people while 32.4 per cent of the deaths in police custody were of Aboriginal people. These two percentages are of particular interest as they may be compared with the proportions of all persons who were in police or prison custody, but before such a comparison is made it is necessary to draw a clear distinction between *stock* and *flow* statistics for either form of custody.

In the two studies of Aboriginal people in prisons and police custody outlined above, the prison statistics were derived from annual censuses rather than the numbers of people entering or leaving prison. They provide snapshots of who was in prison on particular days, and are therefore examples of stock data. In contrast, the police custody survey counted the numbers of people entering police custody during the relevant period and provided therefore an example *of* flow data. Ideally, both types of data would be available for both types of custody, and with a little additional work these can be established at an acceptable level of accuracy.

At the request of the Criminology Research Unit, the Australian Institute of Criminology, with the assistance of all Australian prison authorities, undertook a small study of persons received into prison under sentence during the month of April 1989. The results of this study are presented in some detail in Research Paper No. 19, but the finding of particular interest in this context is the fact that for Australia as a whole 20.4 per cent of sentenced prison receptions during that month were of Aboriginal people. This is a flow statistic which is to be compared with the *stock* figures from the censuses which varied between 13.1 and 14.7 per cent, with a mean of 13.8 per cent.

Using the data from the police custody survey on the average length of detention for Aboriginal people and non-Aboriginal people it is also possible to provide both sets of data for this form of custody. It was shown above that the average period of detention for Aboriginal people was 9.7 hours compared with 7.6 hours for non-Aboriginal people. In other words, Aboriginal detainees were held 27.6 per cent longer. The survey also showed that 28.6 per cent of all persons entering police custody during the survey period

were Aboriginal, and if that percentage is increased proportionately to reflect the differences in detention time it is readily established that 36.5 per cent of the person/hours in police cells were served during the survey period by Aboriginal detainees.

The crucially important data from Research Paper No. 7 and from the studies of prison and police custody are brought together in Table 2 below. From this it can be seen that for both forms of custody the proportion of all of the deaths in custody over the 1980 to 1988 period that were identified as Aboriginal was smaller than the proportion of persons who were Aboriginal. The proportion of receptions that was identified as Aboriginal was lower than the proportion of deaths in prison custody, but higher for police custody.

Table 2: Aboriginal People: in Custody, and Deaths in Custody

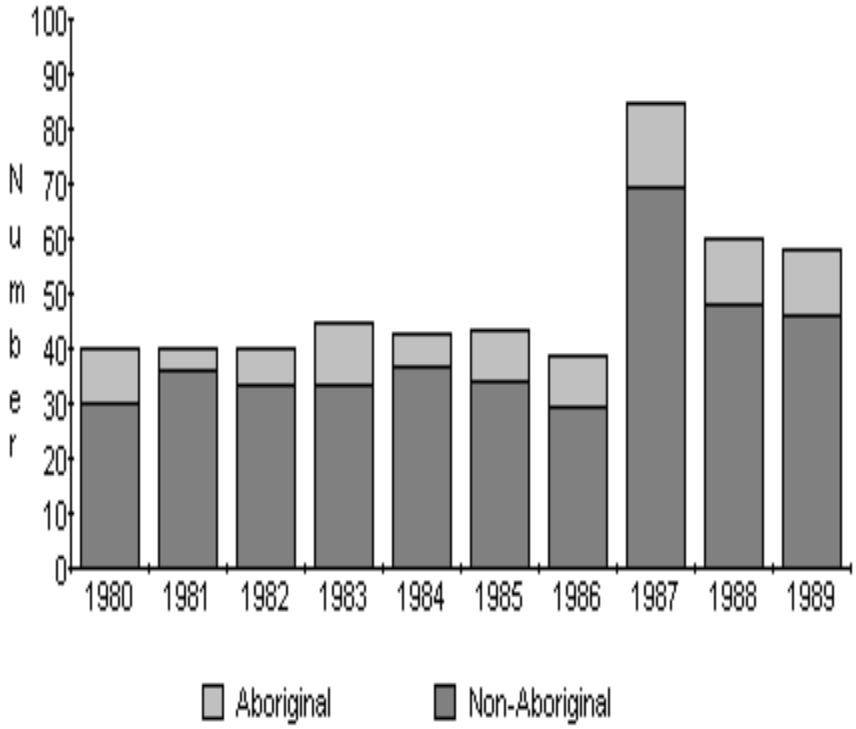
Custody	*in Custody*		*Deaths*
	Stock	*Flow*	*in Custody* [71]
Prison	13.8%	20.4%	12.5%
Police	36.5% [72]	28.6%	32.4%

These figures establish that the number of Aboriginal deaths in prison custody was slightly lower than might be expected on the basis of the number of Aboriginal people in prison, but the number of Aboriginal deaths in police custody was almost exactly what would be expected on the basis of the number of Aboriginal people in police custody. This general finding is of considerable significance to the Royal Commission and therefore justifies closer scrutiny.

It was suggested in Research Paper No. 7, and also later in Research Papers Nos. 10 and 11 which examined deaths in police and prison custody separately, that it was likely that there had been some undercounting of non-Aboriginal deaths in both forms of custody. It follows therefore that the percentages of deaths shown to be Aboriginal in Table 2 probably are slightly over-stated. Conversely, as the prison censuses and the police custody survey could not conceivably over-state the proportion of Aboriginal people in either form of custody, as it is highly likely that the vast majority of cases where Aboriginality was not stated were non-Aboriginal, these percentages are likely to be conservative. Thus, the general conclusion drawn from the figures in Table 2 is itself conservative. To the extent that any errors have been incorporated in these figures, the elimination of those errors would have the effect of strengthening that conclusion.

Even this cautiously worded conclusion (Aboriginal people, once they are in custody, are no more likely to die in custody than are non-Aboriginal people) prompts further questions along a number of different dimensions. Research Paper No. 7, for example, clearly showed that proportionately more Aboriginal deaths in both forms of custody were due to natural causes rather than being self-inflicted or suicidal, whereas the opposite was the case for non-Aboriginal deaths. That paper also showed that 1987, which had been shown earlier to have a high number of Aboriginal deaths in custody, was associated with an abnormally high number of non-Aboriginal deaths, especially in New South Wales and Victoria. The importance of 1987 for both Aboriginal and non-Aboriginal deaths in custody is illustrated in Figure 1 which is derived from the ten year data set, the first nine years of which were used in Research Paper No. 7.

FIGURE 1: DEATHS IN CUSTODY, AUSTRALIA, 1980-1989



These and other findings from the analysis of Aboriginal and non-Aboriginal deaths in prison and police custody are worthy of much closer examination if a full understanding of the phenomenon is to be achieved, but there remain two unanswered questions of even greater potential significance. In the first place, the data for Aboriginal deaths in prisons and for Aboriginal people either in or entering prison indicate that the over-representation explanation does rather more than is required. If it is really true that at least 13.8 per cent of the people in Australian prisons at any time are Aboriginal, and if it is really true that at least 20.4 per cent of prison receptions are of Aboriginal people, the question becomes: how can it be that only from 11.5 to 12.5 per cent of all deaths in prisons are of Aboriginal people? Is it possible that imprisonment reduces the probability of death for Aboriginal people, or is this finding no more than a statistical aberration? This is a question which is explored in detail in Research Paper No. 20.

The second major question raised by the conclusion drawn from the data in Table 2 relates to the possibility that Australia could have an abnormally high level of deaths in custody, which applies equally to Aboriginal people and non-Aboriginal people once they are in custody. This question is examined in Research Paper No. 15, International Review of Deaths in Custody, which attempted to bring together information on the incidence of death in prison or police custody from as many countries as possible. This attempt was only partially successful as, despite numerous requests using a variety of approaches, very few countries were able to supply the information that was needed, especially with regard to deaths in police custody. In the event, data on deaths in police custody were obtained from only four countries, but data on deaths in prisons were obtained from eleven countries. For both types of custody, it was shown that the Australian rates were higher than the average of the other countries. The Australian rate of death in prisons was found to be higher than the rates of South Africa, New Zealand, United States (Federal and State), Canada (Provincial), Scotland, Japan, Sri Lanka, and England and Wales, but lower than Thailand, Canada (Federal) and Finland. Of particular interest was the fact that the Australian rate of deaths per 1,000 prisoners was shown to be exactly twice as high as the equivalent rate for England and

Wales. It was concluded that the Australian general rate of deaths in custody is a cause of concern, even if the reasons for the high numbers of Aboriginal deaths are understood. [73]

A further question that was prompted by the general pattern of research findings established in the first series of projects was that of the relative incidence of deaths of persons in prison compared with persons serving probation, parole, community service and related orders. A small study conducted earlier in New South Wales had suggested that persons serving such orders in the community were more at risk than were people in prison. [74] Correctional administrators, as well as the Royal Commissioners, were interested to know if this were true for Australia as a whole. In order to establish the facts, a project was undertaken which resulted in Research Paper No. 12, Deaths in Non-Custodial Corrections Australia and New Zealand, 1987 and 1988. The results of this project included the fact that 31 of the 394 Australian deaths over this period were of Aboriginal people serving non-custodial orders. That is 7.9 per cent of the total, which is slightly lower than the 8.8 per cent of the total persons serving such orders (shown to be the case later in Research Paper No. 19). The study also showed that the crude mortality rate for persons serving non-custodial orders was 5.6 per 1,000 people, whereas the crude mortality rate for prisons was 2.6 per 1,000 prisoners. As was observed in Research Paper No. 12, 'Life in the general community for both Aboriginal and non-Aboriginal young males with a criminal history is bound to be more dangerous, owing to the risk of death from drink driving, drug use, assaults, etc, than is life in prison'. Thus, again, there is a hint that for some types of people, custody may reduce rather than increase the risk of death.

A related issue is the nature and extent of attempted suicide or self-inflicted harm in prisons and in police facilities. Even though it had been shown in Research Paper No. 7 that the reported cause of death was self-inflicted or suicide in only one-third of the Aboriginal cases, compared with nearly half which were attributed to natural causes, self-inflicted causes were predominant for the total of all cases as nearly half of the non-Aboriginal cases were in this group. Also, the Research Unit had received reports of numerous cases of attempted suicide from police and prison authorities and was therefore interested to establish the frequency of these incidents. A national survey, the first of its type, was conducted for a six month period in 1989 with the co-operation of all police and prison authorities, the results being presented in Research Paper No. 16, Self-inflicted Harm in Custody.

The data set established for this project was not entirely satisfactory as some authorities apparently interpreted the requirements in different ways, thus making inter-jurisdictional comparisons unreliable. Nevertheless, details of 375 incidents were collected and they were distributed in terms of Aboriginality and custodial authority as shown in the following table.

Table 3: Aboriginal and Non-Aboriginal Incidents of Reported Self-Inflicted Harm in Custody I April to 30 September 1989

	Aboriginal	*Non -Aboriginal*	*Total*
Prison	31	192	223
Police	49	103	152
Total	80	295	375

The remarkable thing about this table is that it reflects almost exactly the pattern shown in Table 1 for all deaths in custody over a nine year period. As far as self-inflicted harm is concerned, the danger for Aboriginal people is greater in police custody than it is in prisons, and the opposite is true for non-Aboriginal people. Putting this another way, 13.9 per cent of the incidents in prisons involved Aboriginal prisoners and 32.2 per cent of the incidents in police custody involved Aboriginal detainees. These percentages may be compared with the *stock* and *flow* figures for Aboriginal people in custody shown in Table 2. [75] Once again, the numbers of Aboriginal incidents are explained, in this case almost exactly, by the numbers of Aboriginal prisoners or detainees in custody at any time.

This study also illustrated the pervasiveness of self-inflicted harm in custody. Even though, as indicated above, the data collection was not completely satisfactory, and even though it is not suggested that all of

the incidents that were reported should be seen as potentially lethal, it is nevertheless worthy of note that the total number of incidents in this six month period was considerably higher than the total for completed suicides reported over a ten year period. It is clear from this observation that self-inflicted harm is a problem of great consequence in the management of both police and prison custody.

As the research program had reached a stage where it had collected a very considerable quantity of statistical information and as it became more widely accepted that the concept of Aboriginal over-representation in both police and prison custody was of central relevance to the work of the Royal Commission, the research staff gave closer attention to this concept. Assisted by discussions and the exchange of views by correspondence with leading researchers in many parts of Australia, a number of methods of calculating over-representation were considered and applied to the police and prison data that had been collected previously. The results of these deliberations appeared in Research Paper No. 17, Methodological Issues in the Calculation of Over-representation and Exposure to Risk in Custody. This paper concluded that it was preferable to compare Aboriginal and non-Aboriginal custody rates in order to calculate over-representation rather than to compare the proportions of Aboriginal people in custody and in the general community.

Unlike all of the previous research papers which adopted a national or international perspective, the next paper in the series focused on a relatively small locality in one State. This was Research Paper No. 18, Arrests, Custody and Bail, Kalgoorlie, Western Australia, Police Station, 1987 and 1990. This paper resulted from two studies of data collection, relating to substantial periods in 1987 and 1990, undertaken by the staff of the Perth office of the Royal Commission. The data were collected by the Research Unit, and the results were included in the series of research papers because they were extraordinarily interesting in their own right, and also because they were relevant to the findings of Research Papers Nos. 3, 8 and 13. In essence, this study of the records of the Kalgoorlie police station showed that in 1990, as compared with 1987, there were very few arrests for public drunkenness and that the proportion of Aboriginal arrestees who were released on bail was much higher than it was three years earlier. It was also shown, however, that for both periods there was some degree of discrimination against Aboriginal offenders in terms of the time spent in custody prior to release on ball, but this was less marked in the latter period.

As mentioned above, Research Paper No. 19, Aborigines in Prisons and Non-custodial Corrections, was essentially an update and extension of the information provided in Research Paper No. 6, but it was also a vehicle for the application of the methodological approach outlined in Research Paper No. 17 for the calculation of Aboriginal over-representation. This paper showed that Aboriginal adults were just over 15 times more likely than non-Aboriginal adults to be in prison, but for non-custodial corrections the difference was just over 8 times. It was speculatively suggested that this difference may have been due to a belief by judges, magistrates and parole authorities that Aboriginal people are either less able or less willing than non-Aboriginal people to comply with the conditions of non-custodial correctional orders, and hence were more likely to be sentenced to short prison terms.

As the over-representation of Aboriginal people in custody has emerged as a vitally important issue, there may be some danger that some commentators may see the solution to Aboriginal deaths in custody in the reduction of the numbers of Aboriginal people in custody by the elimination of this over-representation. Certainly, for a multitude of humanitarian and economic reasons the numbers of people, both Aboriginal and non-Aboriginal, in police and prison custody should be kept as low as is consistent with public safety, but to pursue this aim by shifting large numbers of offenders from prison to non-custodial corrections is to overlook the fact that, as established in Research Paper No. 12, the persons serving such orders are at least twice as likely to die (from all causes) as are people in prison. It is also to overlook the fact that the available evidence seems to suggest that young adult Aboriginal males have almost exactly the same probability of dying when they are in the community as when they are in prison. The solutions to Aboriginal over-representation will only be found by addressing the fundamental causes of Aboriginal social and economic disadvantage, not by making small changes to the operation of criminal justice systems.

With a number of projects concluding, in broad terms and using relatively crude data, that the risks of

death in custody experienced by Aboriginal people and non-Aboriginal people are similar, a project was undertaken jointly by the Research Unit and the Australian Institute of Health with the aim of exploring the issue more broadly and in greater depth. The outcome of this project was reported in Research Paper No. 20, an epidemiological analysis of the relative risks of death, among Aboriginal and non-Aboriginal people, in custody and in the community. The careful statistical analysis undertaken confirmed the earlier perception of the similarity in risk levels between Aboriginal and non-Aboriginal people in custody, and quantified the relative risks involved. The finding 'that both Aboriginal and non-Aboriginal people have risks of death in *police* custody that are far higher than they have in the community would not be surprising to many, but the finding that, in both groups, the risk *of prison* death is similar to that in the community is perhaps more novel. Self-inflicted death, injury and circulatory system diseases dominated the picture, as in earlier analyses.

It should be axiomatic that a person in custody (that is, in the care of the state) should be safer from illness, injury and death than he or she would be while at large in the community. This project confirms that this is the case with regard to *prison* deaths among Aboriginal people, reflecting their very poor state of health and exposure to injury in the community. The reverse is the case, however, with regard to *police* custody: both Aboriginal and non-Aboriginal people have much higher death rates in that environment than they have in the community. This fact highlights the constantly emerging theme of the dangers of the police custody environment and the concomitant need for more sensitive police custody policies and procedures, along with improved attitudes, training and supervision of police personnel.

The penultimate paper in the series takes the research program to the point of closure in a full circle as it presents, in very considerable detail, the known facts about the lives and deaths of the 99 Aboriginal men and women who died in custody during the period of nine years and five months that was covered by the Royal Commission and who were adjudged to fall within the terms of reference. For each case some 120 separate items of information were collected and these were checked against the findings of the Commissioners as presented in their reports of individual cases. The numbers have changed slightly, but the overall picture that emerges is much the same as was portrayed in Research Paper No. 1. There were nearly twice as many deaths in police custody as in prisons, the highest numbers were in Western Australia and Queensland, and 1987 had the highest numbers. Without making any attribution of responsibility or intention, the data indicate that 37 of the deaths were due to natural causes, 30 to hanging, 12 to head injuries, 7 to other external trauma, and 5 to alcohol poisoning or withdrawal, and 4 each to drug use and gun shot. The detailed findings as to the cause of death in each case are to be found in the Commissioners' reports, but a non-legal and non-judicial collection can do no more than to reflect upon the tragic waste of so many young lives, and also to reflect upon the even more pervasive tragedy which led to such disproportionate numbers of Aboriginal people being in custody in the first place.

The preceding pages have presented an overview of the Criminology Research Unit's program of work, and its outputs, as seen through the twenty-two research papers which have been prepared over the period February 1988 to March 1991. Some of the information contained in the papers is not new, although its presentation is. Other papers report on original research which involved the collection of new data. The papers have been presented to the Commissioners with the aim of assisting them in their consideration of the broader issues underlying the Aboriginal deaths in custody which they have investigated.

It is hoped that these complementary research activities have added to knowledge of Aboriginal deaths in custody and factors related to those deaths.

List of Research Papers of the Criminology Research Unit

1.	Preliminary Analysis of Current Data Base	February 1988
2.	Draft Guidelines for the Prevention of Aboriginal	April 1988

3.	Public Drunkenness - Australian Law and Practice	October 1988
4.	The Aboriginal and Torres Strait Islander Population	February 1989
5.	Drug Testing in Prisons	February 1989
6.	Aboriginal Imprisonment - A Statistical Analysis	July 1989
7.	Australian Deaths in Custody 1980-1988: An Analysis of Aboriginal and Non-Aboriginal Deaths in Prison and Police Custody	July 1989
8.	National Police Custody Survey August 1988: Preliminary Descriptive Findings	June 1989
9.	The Design of Safe and Humane Police Cells: A Discussion of Some Issues Relating to Aboriginal People in Police Custody	October 1989
10.	Australian Deaths in Police Custody 1980-1988: An Analysis of Aboriginal and Non-Aboriginal Deaths	November 1989
11.	Australian Deaths in Prisons 1980-1988: An Analysis of Aboriginal and Non-Aboriginal Deaths	November 1989
12.	Deaths in Non-Custodial Corrections - Australia and New Zealand, 1987 and 1988	February 1990
13.	National Police Custody Survey August 1988 - National Report	March 1990
14.	Alcohol and Human Behaviour	March 1990
15.	International Review of Deaths in Custody	June 1990
16.	Self-Inflicted Harm in Custody	July 1990
17.	Methodological Issues in the Calculation of Over-representation and Exposure to Risk in Custody	October 1990
18.	Arrests, Custody and Ball, Kalgoorlie, 1987 and 1990	October 1990
19.	Aborigines in Prisons and Non-custodial Corrections	November 1990
20.	Australian Deaths in Custody 1980-1989: An Epidemiological Analysis of the Relative Risks of Death for Aborigines and Non-Aborigines	March 1991
21.	The Royal Commission Cases: A Statistical Description	March 1991
22.	Overview of the Research Program and Abstracts of Research Papers	March 1991

ABSTRACTS OF RESEARCH PAPERS

RESEARCH PAPER NO. I

PRELIMINARY ANALYSIS OF CURRENT DATA BASE

This paper provides a preliminary analysis of the current data base of Aboriginal deaths in custody since

1980, as at 9 June 1988. It provides information on 108 cases of Aboriginal deaths in custody, outlining the following information; name, age, date of death, location and reported cause of death. The major findings showed that Western Australia and South Australia had the highest death rates based on the size of the adult Aboriginal community in each jurisdiction, with the Northern Territory having the lowest rate. It also showed that the incidence of Aboriginal deaths in custody has increased over the period 1980 to 1987, with the figures for 1987 being particularly high. More than half of the 1987 cases were attributable to hanging. Deaths in police custody were more common than deaths in prisons or in other forms of custody accounting for over half of all cases. Hanging was more likely to have occurred in police custody than in prisons and in nearly two-thirds of these cases where the age was known, the person was under 25 years at the time of death. Over half of all cases, where the age was known, were under 30 years of age when they died.

David Biles

RESEARCH PAPER NO. 2

DRAFT GUIDELINES FOR THE PREVENTION OF ABORIGINAL DEATHS IN CUSTODY

This paper was written with the intention of provoking discussion and comment. It does not present a concluded view. It alms to identify the basic principles that are to be addressed in the development of detailed policy directives which should guide police and prison officers in fulfilling their duties without significant risk of death or serious injury occurring to persons in their care, Aboriginal or not The information contained in this paper has been assisted by a wide range of documentary material including the Ministerial guidelines issued by Senator Michael Tate and Mr Gerry Hand in September 1987, the Vincent report from Western Australia, the Powder-Law report from Queensland, and numerous submissions made to

the Royal Commission by interested organisations and individuals. The guidelines described in this paper cover such topics as appropriate use of police and prison facilities, recognition of the rights of detainees, appropriate training for custodial staff, awareness of cultural differences and appropriately designed architecture to reduce the possibility of death.

David Biles

RESEARCH PAPER NO. 3

PUBLIC DRUNKENNESS - AUSTRALIAN LAW AND PRACTICE

This paper outlines the current laws relating to public drunkenness in each jurisdiction and police practices in enforcing the law. It draws on information collected from a variety of sources, including court statistics, police statistics and information collected by drug and alcohol agencies. The major findings showed that while there is no uniform collection of statistics for drunkenness arrest and detentions around Australia, data from various sources show that the number of people taken into custody has risen in all jurisdictions over the past few years. Substantial increases in detention rates have occurred in States and Territories where drunkenness has been decriminalised. Various explanations are offered for these increases, including improved reporting of admissions by various agencies, and a greater willingness on the part of police to detain persons under drunkenness provisions which do not require preparation of cases, than for offences under other Acts. The vast majority of intoxicated people picked up around the country spend the night in police cells. In recent years, in New South Wales and some areas of the Northern Territory, intoxicated people have been taken in greater numbers to sobering-up shelters. In other jurisdictions, however there is at present virtually no alternative accommodation to police cells. Other findings showed that Aboriginal people are apprehended at a greater rate than non-Aboriginal people in all those jurisdictions where records are kept of Aboriginal and non-Aboriginal detainees. The form of decriminalisation by which the offence of public drunkenness is removed but intoxicated people continue to be detained in the police cells achieves only part of society's goals in decriminalisation. The more that can be done to enhance the quality of care and protection, by providing better alternatives to police cells for such people, the lower will be the risk of their dying in custody.

Jillian Brewer

RESEARCH PAPER NO. 4

THE ABORIGINAL AND TORRES STRAIT ISLANDER POPULATION

This paper was prepared in order to provide accurate information on the numbers of Aboriginals and Torres Strait Islanders in each Australian jurisdiction. It also provides information on geographic distribution, age and gender structures, marital status and languages, which is necessary as a basis for understanding many other aspects of Aboriginal lifestyles. The major findings showed that the enumeration of Australia's Aboriginal population is an area in which precision has so far proved impossible. Not only is the size of the Aboriginal population at first contact in dispute but so too are population totals arrived at as a result of the various censuses published since the 1967 Referendum. It also showed that the most outstanding feature of Australia's Aboriginal population as revealed at the 1986 Census is the radical difference in the age distribution when compared with the Australian population as a whole. A much higher proportion of Aboriginal people is found in the younger age group with relatively few Aboriginal people in the sixty and over age bracket. The increasing urbanisation of the Aboriginal population is another noticeable trend but this development has to be treated with caution because of the self-identification factor.

Rosaleen Smyth

RESEARCH PAPER NO. 5

DRUG TESTING IN PRISONS

The matter of drug use in prisons is of wide community concern. Evidence has been presented to hearings of the Royal Commission pointing to the involvement of drugs in at least some of the deaths of Aboriginal people in custody. This paper provides an overview of social policies on drugs, reviews some of the key issues of testing for drugs in the prison environment and current research findings on prisoners' drug use prior to incarceration and in prison, and describes current legislation and policy in Australia and overseas. The major findings of this paper showed that the prevalence of drug use in prison varies from institution to institution, and over time. A range of problems are associated with drug use in prison, as in the broader community. These include crime, adverse health consequences, including the spread of AIDS virus and Hepatitis B, and a multitude of prison management problems such as attempting to prevent the distribution of drugs entering prison and being manufactured in prison, reducing the demand for drugs and testing for the presence of drugs. The findings also showed that a substantial level of diversity exists, between the Australian jurisdictions and overseas, in legislation and practice relating to testing for drug use in prisons. This reflects the range of different uses of testing; as well as historical circumstances within particular jurisdictions. Recommendations are provided to support the policy goals of minimising drug use in prison and thereby making the prisons as safe as possible. Coherent policies and programs relating to testing for the presence of drug use are an integral part of this process.

David McDonald

RESEARCH PAPER NO. 6

ABORIGINAL IMPRISONMENT - A STATISTICAL ANALYSIS

This paper aims to present details of Aboriginal over-representation in all Australian prison systems and also to examine trends in Aboriginal imprisonment in recent years. Almost all the statistical material used in this paper is derived from the Annual Census of Prisoners conducted on 30 June each year since 1982. The findings reveal that the annual census of prisoners has shown that over the period 1982 to 1987 the total number of prisoners in Australia has increased from under 10,000 to over 12,000, but the proportion who are identified as Aboriginal increased even more rapidly. Aboriginal people are at least ten times more likely than non-Aboriginal people to be in prison, and the level of over-representation is highest in South Australia and Western Australia. It is lowest in Tasmania and the Northern Territory. In all jurisdictions Aboriginal imprisonment rates are many times higher than non-Aboriginal rates. It also showed that Aboriginal prisoners in general are markedly younger than non-Aboriginal prisoners, that

their employment status at reception and the education level achieved both reflect the disadvantaged backgrounds of Aboriginal prisoners. Aboriginal over-representation in non-custodial corrections is not as marked as it is in prisons, but Aboriginal recidivism rates appear to be much higher than the rates for non-Aboriginal prisoners.

David Biles

RESEARCH PAPER NO. 7

AUSTRALIAN DEATHS IN CUSTODY 1980-1988 - AN ANALYSIS OF ABORIGINAL AND NON-ABORIGINAL DEATHS IN PRISON AND POLICE CUSTODY

This paper aims to place the phenomenon of Aboriginal deaths in custody in the broader context of all deaths in police and prison custody over the nine year period 1 January 1980 to 31 December 1988. The basic information contained in this paper was supplied by the 16 police and prison agencies throughout Australia. Police forces supplied lists which included for each case: name, gender, Aboriginality, age, time and date of death, place of death, cause/manner of death, reason for detention, alcohol level if known, time in custody, time since inspection and whether or not the deceased person was alone at the time of death. Prison administrators supplied similar information to the police lists but excluded reference to alcohol level and included more detail of the place of death, legal status, time served, time to serve, and made provision for other relevant factors to be noted. The major findings showed that during the period 1980 to 1988, 462 deaths in custody occurred. Thirty-nine per cent of these deaths occurred in police custody and 61 per cent in the custody of prison authorities. They also showed that Aboriginal people composed 20 per cent of the deaths in custody, although they are less than 1.2 per cent of the Australian population aged 15 years and above. The average age at death was 35 years. Suicide and other self-inflicted injuries was the most common cause of death, followed by natural causes. Some 91 per cent of the deaths reported as suicide were caused by hanging. A higher proportion of Aboriginal people, compared with non-Aboriginal people, died from natural causes. In 1987 a dramatic increase occurred in the number of deaths in both prison and police custody and among both Aboriginal and non-Aboriginal people. The greatest increase in Aboriginal deaths in 1987 in terms of both the number of deaths and percentage increase, occurred in Queensland, primarily among young males who were reported to have died by hanging in police custody.

David Biles, David McDonald & Jillian Fleming

RESEARCH PAPER NO. 8

NATIONAL POLICE CUSTODY SURVEY AUGUST 1988 - PRELIMINARY DESCRIPTIVE FINDINGS

This report presents the preliminary findings of a survey conducted during August 1988 of all persons taken into custody by police and lodged in cells anywhere in Australia. The survey was conducted with the full co-operation of the Commissioners of each of the eight Australian police forces. A survey form was developed by the Criminology Research Unit, in consultation with police forces, to cover each occasion when a person was taken into police custody during the month of August 1988 and lodged in police cells for any period of time. Some 28,568 instances of people being taken into police custody were reported including 559 people who were in police cells at the start of the month. Some Queensland Aboriginal community police custodies are not included in these figures. The major findings showed that Aboriginal people made up 29 per cent of the custodies with substantial differences existing between the jurisdictions in the Aboriginal custody rates. Aboriginal women were heavily over-represented, comprising about 50 per cent of the female custodies but less than 1.5 per cent of the national female population. Other findings showed that the mean age of people held in custody was 28 years, more custodies occurred on Wednesdays to Saturdays than on the other days of the week, with peaks during the weekends following the two pension days. Drunkenness and 'break enter steal, fraud and theft' were the most common offences leading to arrests, with Aboriginal people being over-represented in good order (including drunkenness) offences only. The periods of time held in custody were generally brief, with half being released after less than six hours of custody. Aboriginal people were in custody somewhat longer than the non-Aboriginal people.

David McDonald

RESEARCH PAPER NO. 9

THE DESIGN OF SAFE AND HUMANE POLICE CELLS - A DISCUSSION OF SOME ISSUES RELATING TO ABORIGINAL PEOPLE IN POLICE CUSTODY

This paper addresses behavioural design considerations for custodial environments in Australia, with particular focus on the situation of Aboriginal people in police custody and the prevention of deaths in custody. It identifies and discusses relevant issues, in order to encourage input and discussion from individuals and organisations with respect to both issues and solutions. The many submissions which bear on the question of police cell design received by the Royal Commission as well as task force reports by police authorities in Australia which addressed this issue have been considered in the context of this discussion paper. This paper discusses such topics as provision for individual control, observation, privacy and crowding, stress and coping, social isolation and confinement, cultural similarities and differences, suicide prevention and high risk, violent or intoxicated detainees. It also examines a number of specific design considerations such as cell layout, closed circuit TV surveillance, special and observation cells, spatial relation of cells to other functional areas and single/shared cells. The paper concludes with a discussion on the cross-cultural considerations and importance of Aboriginal input in the consultation process and recommends that this discussion paper in a final form and following feedback from relevant parties, might serve as a focus of discussion at a national meeting to develop a set of design principles for police facilities.

Joseph P. Reser

RESEARCH PAPER NO. 10

AUSTRALIAN DEATHS IN POLICE CUSTODY 1980-1988 - AN ANALYSIS OF ABORIGINAL AND NON-ABORIGINAL DEATHS

This paper is a supplement to Research Paper No. 7 and provides an opportunity for exploring in some detail those deaths which occurred in police custody during the period 1 January 1980 to 31 December 1988. The basic data comprise 182 case histories, 59 of Aboriginal people and 123 of non-Aboriginal people who died in police custody anywhere in Australia during this period. The information contained in this paper was supplied by each of the Australian police forces to the Criminology Research Unit. This information included for each case: name, gender, Aboriginality, age, time and date of death, place of death, cause/manner of death, reason for detention, alcohol level if known, time in custody, time since inspection, and whether or not the person was alone at the time of death. The major findings showed that when allowance is made for age and their relative representation in the Australian population, it is found that Aboriginal people died in police custody at a rate more than 40 times the rate of non-Aboriginal people. The alarming Aboriginal death rate is explained, almost entirely, by the over-representation of Aboriginal people in police custody. Other findings showed that substantial differences exist between the states and territories regarding rates of deaths in custody, with the Northern Territory having the highest ratio of deaths to population. Suicide and other self-inflicted injuries were the most common cause of death reported, with deaths by hanging accounting for 95 per cent of all reported suicides. The average length of time that people had been held in police custody, up to the time of death, was 15 hours. In 1987 a dramatic increase occurred in the number of deaths among both Aboriginal and non-Aboriginal people.

David Biles, David McDonald & Jillian Fleming

RESEARCH PAPER NO. 11

AUSTRALIAN DEATHS IN PRISONS 1980-1988 - AN ANALYSIS OF ABORIGINAL AND NON-ABORIGINAL DEATHS

This paper is a supplement to Research Paper No. 7 and provides an opportunity for exploring in detail those deaths which occurred in prison custody during the period 1 January 1980 to 31 December 1988. The basic data comprise 280 case histories, 35 Aboriginal people and 245 non-Aboriginal people who died in the custody of prison authorities anywhere in Australia during this period. The information

contained in this paper was supplied by each of the Australian *correctional* services. This information included for each case: name, gender, age, Aboriginality, date and time of death, time since last seen alive, cause/manner of death, most serious offence/charge, legal status, time served, time to serve, place of death and whether or not the person was alone at the time of death. The forms also made provision for other relevant factors to be noted. The major findings showed that when allowance is made for age and their relative representation in the Australian population, it is found that Aboriginal people died in prison custody at a rate nearly 13 times the rate of non-Aboriginal people. The alarming high death rate is explained, almost entirely, by the over-representation of Aboriginal people in prison. The highest number of Aboriginal deaths occurred in Western Australia whereas there were no Aboriginal deaths in Victoria, Tasmania or the Australian Capital Territory. Other findings showed that: the average age was 34 years with the age of death for Aboriginal people being lower; remandees made up 28 per cent of all deaths but only account for 16 per cent of the Australian prison population and suicide and other self-inflicted injuries were the most common cause of death reported. The average length of time that people had been imprisoned, up to the time of death, was one year and 10 months. In 1987, a dramatic increase occurred in the number of deaths among both Aboriginal and non-Aboriginal prisoners.

David Biles, David McDonald & Jillian Fleming

RESEARCH PAPER NO. 12

DEATHS IN NON-CUSTODIAL CORRECTIONS - AUSTRALIA AND NEW ZEALAND, 1987 AND 1988

This paper provides information on all adult deaths which were reported to have occurred in Australia or New Zealand while the person was serving a non-custodial correctional order during the years 1987 and 1988. Non-custodial correctional orders include probation, parole and community service orders.

A total of 391 such deaths were reported for Australia, including 31 which were reported as Aboriginal. This is equivalent to 22.6 per 100,000 Aboriginal people over 15 years of age in the general community, compared with 3.0 per 100,000 of the non-Aboriginal people in the same age group in the community. This high Aboriginal death rate is explained, almost entirely, by the over-representation of Aboriginal people in non-custodial correctional programs and the relatively poor health status of Aboriginal people in the general community. Accidental deaths were reported in over half the cases, with similar proportions of deaths recorded for suicide and natural causes. Noticeable differences exist in the causes of death of Aboriginal and non-Aboriginal people, respectively.

Some 71 New Zealand deaths were reported for the two year period, including 35 Maoris. This is equivalent to 14.1 per 100,000 Maoris over 15 years of age in the general community, compared with 1.6 per 100,000 of the non-Maori people in the same age group in the community. This high Maori death rate is explained, almost entirely, by the over-representation of Maori people in non-custodial correctional programs. Accidental deaths were reported in almost half of the cases, with an additional one-third of all deaths reported as suicide. Noticeable differences exist between Maori and non-Maori people in relation to causes of death.

Jillian Fleming, David McDonald & David Biles

RESEARCH PAPER NO. 13

NATIONAL POLICE CUSTODY SURVEY AUGUST 1988 - NATIONAL REPORT

This report presents the findings of a national survey conducted during August 1988 of all persons taken into custody by police and lodged in cells anywhere in Australia. A preliminary report on the survey was released in June 1989 as Research Paper No. 8 in this series. The survey was conducted with the full co-operation of the Commissioners of each of the eight Australian police forces. A survey form was developed by the Criminology Research Unit, in consultation with police forces, to cover each occasion when a person was taken into police custody during the month of August 1988 and lodged in police cells for any period of time, Some 28,568 instances of people being taken into police custody were reported including 559 people who were in police cells at the start of the month. Some Queensland Aboriginal community police custodies are not included in these figures

The major findings were that Aboriginal people made up 29 per cent of the custodies with substantial differences existing between the jurisdictions in the Aboriginal custody rates. Aboriginal women were heavily over-represented, comprising nearly 50 per cent of the female custodies but less than 1.1 per cent of the national adult female population. The mean age of people held in custody was 28 years, more custodies occurred on Wednesdays to Saturdays than on the other days of the week, with peaks during the weekends following the two 'pension days'. Drunkenness and 'break enter steal, fraud and theft' were the most common offences leading to arrests, with Aboriginal people being over-represented in good order (including drunkenness) and assault offences only. The periods of time held in custody were generally brief, with half being released after less than six hours of custody. Aboriginal people were in custody significantly longer than non-Aboriginal people.

David McDonald

RESEARCH PAPER NO. 14

ALCOHOL AND HUMAN BEHAVIOUR

This paper summarises a more detailed, technical report *(The Effects of Alcohol on Cognitive, Psychomotor and Affective Functioning, eds.* J. Greeley & W. Gladstone) prepared in 1989 for the Royal Commission by an expert group. The context of the project is evidence, such as that discussed by Commissioner Muirhead in the Eddie Murray case, which questions the capacity of people with elevated blood alcohol concentrations (BAC's) to perform complex tasks, such as tying knots.

Current research findings are presented relating to the biochemistry of alcohol in the human body; the analysis of alcohol in the blood; factors that determine how an individual will behave while under the influence of alcohol; the acute and chronic effects of alcohol in humans, including tolerance, alcohol dependence, withdrawal and damage to the body caused by alcohol; and refers to some of the cultural and environmental factors that are relevant to how humans respond to alcohol and to some of the implications for the management of people with elevated blood alcohol concentrations.

It points out that, although alcohol can impair a light or social drinker's behaviour at BAC's as low as 0.02g%, some people develop tolerance to the drug. The paper includes cases which illustrate the fact that some experienced drinkers (including many who are dependent on alcohol) can have very high BAC's and not appear to be drunk. Being alert to this possibility. of tolerance to the more obvious signs of alcohol use is important in assessing people taken into custody, as poorly managed withdrawal from high BAC's can cause serious, even life-threatening, reactions in the human body.

Importantly, the paper reveals that, contrary to what is sometimes stated, no research evidence exists which demonstrates that the body's responses to alcohol differ in significant ways between Australian Aboriginal people and white Caucasians. It suggests that, if further research is undertaken in this area, such research must follow the highest technical and ethical standards as recommended by key Aboriginal organisations and the National Health and Medical Research Council.

Janet Greeley & David McDonald

RESEARCH PAPER NO. 15

INTERNATIONAL REVIEW OF DEATHS IN CUSTODY

A number of different approaches were pursued in order to obtain data on the number of deaths in police and prison custody in countries other than Australia. Statistics were eventually collected from eleven countries in relation to deaths in prisons and from four countries in relation to deaths in police custody. For both types of custody the Australian rates were shown to be higher than the average for the other countries. The Australian rate of death in police custody was found to be higher than the rates of England and Wales and of New Zealand, but lower than the rate of Scotland. The Australian rate of deaths in prison was found to be higher than the rates of South Africa, New Zealand, United States (Federal and State), Canada (Provincial), Scotland, Japan, Sri Lanka, and England and Wales, but lower than Thailand, Canada (Federal) and Finland.

A comparison of particular interest is that of Australia and England and Wales. The Australian rate of deaths per 1,000 prisoners per year was found to be 2.98 while the equivalent rate for England and Wales was 1.48. It was concluded that the Australian rates of death in custody are a serious cause of concern.

David Biles

RESEARCH PAPER NO. 16

SELF-INFLICTED HARM IN CUSTODY

This project provides for the first time in Australia a description of all reported incidents of self-inflicted harm, including attempted suicide, in custody during a six month period, 1 April 1989 to 30 September 1989. It uses data provided to the Research Unit of the Royal Commission by the police and prison authorities within each Australian State and Territory. A total of 375 incidents were reported, 59 per cent from prisons and the balance from police sources. Aboriginal people made up 21 per cent of the total. A substantially higher proportion of Aboriginal self-harm incidents occurred in police custody whereas a substantially higher proportion of non-Aboriginal incidents occurred in prison.

Differences existed between the two custodial environments in the type of opportunities available for self-harm, both in terms of method and instrument used. Hanging was by far the most frequently reported method in police custody whereas laceration was the most frequently used method in prison custody.

Some 73 per cent of reported attempts in police custody took place within the first three hours of custody, whereas half the prison cases occurred after four months of imprisonment. The response most frequently reported as having been taken by custodial officers after the self-harm incident was to have the person placed under some form Of direct supervision.

The paper concludes that the most important technique for reducing both self-inflicted harm and completed suicide in custody is to keep the number of people in custody to an absolute minimum, and to ensure that for those for whom custody is unavoidable the physical and social environment is not unduly stressful.

Jillian Fleming, David McDonald & David Biles

RESEARCH PAPER NO. 17

METHODOLOGICAL ISSUES IN THE CALCULATION OF OVER-REPRESENTATION AND EXPOSURE TO RISK IN CUSTODY

This paper seeks to clarify the central methodological issues involved in the calculation of over-representation, with particular reference to the over-representation of Aboriginal people in custody compared with non- Aboriginal people in custody. It also discusses the related concept of exposure to risk in custody.

The data used to calculate levels of over-representation are often inadequate with differing definitions of key concepts and varying quality depending on sources being common problems. Throe methods have been used by researchers to quantify the relative risk of custody of Aboriginal and non-Aboriginal people. These are, first, a direct comparison of the custody rates, secondly, the odds ratio, and thirdly, dividing the proportion of the custodial populations that is Aboriginal by the proportion of the total community that is Aboriginal. It is concluded that the first and second methods, which produce the same results, are preferred over the third method. In calculating rates, the population at risk of being in custody is the most appropriate denominator and, wherever possible, allowance should be made for differences in the age structures of population being compared.

The levels of exposure to risk in custody, especially to the risk of death in custody, are determined by a range of factors in addition to the relative risks of different groups being in custody. Of particular

relevance among Aboriginal people is their generally poor health status and specific health problems seen in the custodial population. Other factors affecting the level of exposure to risk in custody include the length of time that a person has been in custody and, with regard to risk over a person's lifetime, the level of recidivism among different populations.

David McDonald & David Biles

RESEARCH PAPER NO. 18

ARRESTS, CUSTODY AND BAIL, KALGOORLIE, 1987 AND 1990

This paper reports a study of arrests, custody and bail in the Kalgoorlie, Western Australia, police lockup during a 39 day period in 1987 and a 45 day period in 1990. Detailed information is available on the latter period although only summary information is available for the former.

During the 1990 study period, 376 people were arrested and taken to the Kalgoorlie Police Station, of whom 46 per cent were Aboriginal. Offences against good order, other than drunkenness, was the most frequent category of offence followed closely by drink-driving. Only 13 arrests, or 4 per cent of the total, were for the offence of public drunkenness. Approximately three-quarters of the cases were released on bail with most of the balance leaving the station under escort to another custodial or health facility. A lower proportion of Aboriginal people, compared with non-Aboriginal people, was shown to have been released on bail.

A comparison of the patterns between the 1987 and 1990 study periods indicated that the proportion of arrests which were of Aboriginal people had fallen substantially and that, although arrests for drunkenness among Aboriginal people were the main source of cases in the 1987 study period, such events rarely occurred during the 1990 period. Although during both study periods higher proportions of Aboriginal people than non-Aboriginal people were held in custody, rather than being released quickly on bail, the discrepancy between the two groups was much lower in 1990 than in 1987. Furthermore, the proportion of people released on bail increased between the two study periods such that in 1990 higher proportions of both Aboriginal and non-Aboriginal people were released on immediate bail than were held in custody.

David McDonald

RESEARCH PAPER NO. 19

ABORIGINES IN PRISONS AND NON-CUSTODIAL CORRECTIONS

This paper extends for a further two years the information on Aboriginal imprisonment given in Research Paper No. 6 and it shows that the proportion of Australian prisoners (excluding those in Queensland) identified as Aboriginal in the annual census increased from 13.1 to 14.7 per cent from 1982 to 1987 but decreased to 13.4 per cent in 1989. It was suggested that the latter trend was largely due to the massive increase in the numbers of non-Aboriginal prisoners in recent years. It was also shown that as at 30 June 1989, the Australian adult Aboriginal imprisonment rate was 1464.9 compared with the equivalent rate for non-Aboriginal adults of 97.2. [76] The Aboriginal rate was thus shown to be 15.1 times higher.

The results of a small study of Aboriginal and non-Aboriginal receptions to prison under sentence were also reported and this showed that the level of Aboriginal over-representation in sentenced prison receptions was 23.4 for Australia as a whole.

The numbers of Aboriginal and non-Aboriginal persons serving non-custodial correctional orders, especially probation, parole and community service orders, at 30 June 1987 were reviewed in detail for each jurisdiction and for Australia as a whole. It was found that Aboriginal people were over-represented in this area by a factor of 8.3, considerably lower than the level for prisons. It was speculatively suggested that this difference may be due to a belief by some judges, magistrates and parole authorities that Aboriginal people are either less able or less willing to comply with the requirements of non-custodial

correctional orders than are non-Aboriginal people.

David Biles & David McDonald

RESEARCH PAPER NO. 20

AUSTRALIAN DEATHS IN CUSTODY 1980-1989: AN EPIDEMIOLOGICAL ANALYSIS OF THE RELATIVE RISKS OF DEATH FOR ABORIGINES AND NON-ABORIGINES

Earlier Research Papers in this series have concluded that, in broad terms, the risks of death in custody experienced by Aboriginal people and non-Aboriginal people are similar. Because this conclusion was based upon relatively simple analyses of the data available at the time those papers were prepared, the project reported upon in this paper was conducted jointly by the Criminology Research Unit and the Australian Institute of Health, with the aim of exploring the issue more broadly and in greater depth. The paper presents an epidemiological analysis of the relative risks of death, among Aboriginal and non-Aboriginal people, in custodial environments and in the community. The potentially confounding variables of age and gender are controlled for using stratification by gender and indirect age standardisation.

The paper presents standardised mortality ratios (SMRs) which indicate that both Aboriginal and non-Aboriginal people have far higher levels of risk of death in police custody *t*han they do in the community but that, for each group, little difference exists in death rates when one compares *prison custody* rates with those of the general community. No statistically significant difference exists in the relative risk of death between the Aboriginal and non-Aboriginal groups in either police or prison custody.

Data are presented comparing the rates of death of Aboriginal people in and out of custody with those of the total Australian populations, male and female. The mortality rates for Aboriginal people in police custody are far higher than those of Aboriginal people in the community, whereas the rates for Aboriginal people in *prison custody are* somewhat lower than those of Aboriginal people in the community. In other words, a protective factor exists with regard to prison custody (as one would expect) but not with regard to police custody.

The paper concludes with a corresponding analysis of causes of deaths in custody and in the community.

Neil Thomson & David McDonald

RESEARCH PAPER NO. 21

THE ROYAL COMMISSION CASES: A STATISTICAL DESCRIPTION

Research Paper No. 21 brings together the basic facts that have been gathered about the ninety-nine deceased Aboriginal people who have been deemed to fall within the Terms of Reference of the Royal Commission and whose deaths have been the subject of investigation and report by Commissioners. Cases that were investigated and reported upon that were ruled by the Commissioners as falling outside the Terms of Reference are not included in this total.

Following a brief overview of the major findings, the paper presents what is known about the demographic characteristics of the deceased persons and an outline of their earlier contact with police, courts and correctional institutions. Details of the last apprehension and detention and-the basic facts of the custodial authority holding these people as well as the institutions in which the deaths occurred are then given, followed by the known information about each of the deaths. The final section of the paper focuses on the post-death inquiries that were conducted and the medical and family backgrounds of the deceased persons.

David Biles, David McDonald & Robyn Draper

Appendix D(iii) References

(a) Reports presented by the Royal Commission

(b) Aboriginal Issues Units Reports

(c) Criminology Research Unit Papers

(d) Research Papers commissioned

(e) Exhibits

(f) Submissions

(g) Bibliography

Appendix D(iii)(A) Reports Presented by the Royal Commission

Dodson, P. 1991 Regional Report of lnquiry into Underlying Issues in Western Australia. AGPS, Canberra.

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Wyvill, L.F.	1991	*Report of the Inquiry into the Death of Robert Joseph Walker.* AGPS, Canberra.
Wyvill, L.F.	1991	*Report of the Inquiry into the Death of Vincent Roy* Ryan. AGPS, Canberra.

Appendix D(iii)(B) Aboriginal Issues Units Reports

Langton, M. and others	*Too Much Sorry Business,* Northern Territory Aboriginal Issues Unit Report
Williams, M., L. Malezer and others	Queensland Aboriginal Issues Unit Report
Riley, R., D. Kickett and others	*Fighting for Rights,* Western Australian Aboriginal Issues Unit Report
Lehman, G.	Tasmanian Aboriginal Issues Unit Report
Bailey, S.	Victorian Aboriginal Issues Unit Report
Hammond, R.and others	South Australian Aboriginal Issues Unit Report
Kitchener, K. and others	New South Wales Aboriginal Issues Unit Report

Appendix D(iii)(C) Criminology Research Unit Papers

Biles, D.	1988	Preliminary Analysis of Current Data Base	Research Paper No. 1
Biles, D.	1988	Draft Guidelines for the Prevention of Aboriginal Deaths in Custody	Research Paper No. 2
Brewer, J.	1988	Public Drunkenness - Australian Law and Practice	Research Paper No.3
Smyth, R.	1989	The Aboriginal and Torres Strait Islander Population	Research Paper No. 4
McDonald, D.	1989	Drug Testing in Prisons	Research Paper No. 5
Biles, D.	1989	Aboriginal Imprisonment - A Statistical Analysis	Research Paper No. 6
Biles, D., D.McDonald and J.	1989	Australian -Aboriginal Deaths in Custody 1980-1988: An Analysis	Research Paper No. 7

Fleming		of Aboriginal and Non-Aboriginal Deaths in Prison and Police Custody	
McDonald, D.	1989	National Police Custody Survey August 1988: Preliminary Descriptive Findings	Research Paper No. 8
Reser, J.	1989	The Design of Safe and Humane Police Cells: A Discussion of Some Issues Relating to Aboriginal People in Police Custody	Research Paper No. 9
Biles, D., D. McDonald and J. Fleming	1989	Australian Deaths in Police Custody 1980-1988: An Analysis of Aboriginal and Non-Aboriginal Deaths	Research Paper No. 10
Biles, D., D. McDonald and J. Fleming	1989	Australian Deaths in Prisons 1980-1988: An Analysis of Aboriginal and Non-Aboriginal Deaths	Research Paper No. 11
Fleming, J., D. McDonald and D.Biles	1990	Deaths in Non-Custodial Corrections -Australia and New Zealand, 1987 and 1988	Research Paper No. 12
McDonald, D.	1990	National Police Custody Survey August 1988 - National Report	Research Paper No. 13
Greeley J. and D. McDonald	1990	Alcohol and Human Behaviour.	Research Paper No. 14
Biles, D.	1990	International Review of Deaths in Custody	Research Paper No. 15
Fleming, J., D. McDonald and D.Biles	1990	Self-Inflicted Harm in Custody	Research Paper No. 16
McDonald, D. and D. Biles.	1990	Methodological Issues in the Calculation of Over-representation and Exposure to Risk in Custody	Research Paper No. 17
McDonald, D.	1990	Arrest, Custody and Bail, Kalgoorlie, 1987 and 1990.	Research Paper No. 18
Biles, D. and D. McDonald	1990	Aborigines in Prisons and Non-custodial Corrections	Research Paper No. 19
Thomson, N and D. McDonald	1991	Australian Deaths in Custody 1980-1989: An Epidemiological *Analysis* of the Relative Risks of Death for Aborigines and Non-Aborigines	Research Paper No. 20
Biles, D., D. McDonald and R. Draper	1991	The Royal Commission Cases: A Statistical Description	Research Paper No. 21
Biles, D., D. McDonald and R. Draper	1991	An overview of the Research Program	Research Paper No. 22

Appendix D(iii)(D) Research Papers Commissioned

Alcock, D.	1990	The Aboriginal Child and the Criminal Justice *System Background Paper,* South Australia

Alexander, K. (ed.)	1990	Aboriginal Alcohol Use and Related Problems : Report and Recommendations Prepared by an Expert Working Group for the Royal Commission into Aboriginal Deaths in Custody. Alcohol and Drug Foundation, Australia
Armstrong, S	1990	Issues in New South Wales Police Accountability.
Billich, D.	1990	*The Employment Conditions of Aboriginal People in Queensland.* Labour and Industry Research Unit, University of Queensland.
Boreham, P.		
Brock, P.		*South Australia: Historical Background*
Broome, R.		*'Victims and Voyagers': The Aboriginal experience of the European presence in Victoria since 1802*
Cunneen, C.	1990	*1990 Police Custody Survey in NSW: Further Analysis by Statistical Region and Age*
Edmunds, M.	1990	*Doing Business: socialisation, Social Relations and Social Control in Aboriginal Society: A Review of the Literature Relating to Cultural and Social Aspects of Aboriginal societies in Relation to the Issues Underlying Aboriginal Deaths in Custody.* Australian National University and the Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra
Elsegood, P.	1990	*Aboriginal Health Issues: A Report for the Royal Commission into Aboriginal Deaths in Custody Northern Territory Region.*
Evermore, C.	1990	*The Aboriginal Experience of the Victorian Education System*.
Finnane, M.	1990	*Criminal Justice for Aboriginals and Torres Strait Islanders in Queensland*.
Gerritsen, R.	1990	*Cause for Hope? Aboriginal Self-management and Local Government in Australia*.
Gray, A. and H. Tesfaghiorghis	1990	*Social Indicators of the Aboriginal Population of Australia: A Paper Prepared for the Royal Commission Into Aboriginal Deaths in Custody.* National Centre for Epidemiology and Population Health, Australian National University, Canberra.
Greeley J, & Gladstone, W. (eds.)	1990	*The Effects of Alcohol on Cognitive Psychomotor and Affective Functioning. Report and Recommendations Prepared by an Expert Working Group*. National Drug and Alcohol Research Centre, University of New South Wales, Kensington, NSW.
Green Ant Research, Arts and Publishing	1990	*Non-Aboriginal and Aboriginal media in the Northern Territory : a brief survey.*
Hookey, J.	1990	*boriginal Deaths In Custody: International Law Issues.* Aboriginal Law Centre, University of New South Wales, Kensington, NSW.
Hope, D. and T. Davis		*Local Government and Aborigines: A South Australian Perspective.*
Howitt, R.	1990	*'All they get is the dust': Aborigines, mining and regional restructuring in Western Australia's Eastern Goldfields*.
Hugo, G.	1990	*A profile of South Australia' s Aboriginal Population*.
Hutchings, S.	1990	*Aboriginal Youth Programmes in Port Augusta: The Tji Tji Wiru Programme. A Community response to Aboriginal Juvenile Crime*.

Incarcerated Peoples Cultural Heritage Aboriginal Corporation	1990	*Report on the Underlying Issues of Aboriginal Deaths In Custody*.
Jagger, D.	1990	CDEP: *a Prime Example of Recent Commonwealth Government Ideology and Practice in Aboriginal Employment and Self- Management* (Marco polo check?)
Jagger, D.	1990	CDEP: *a Prime Example of Recent Commonwealth Government Ideology and Practice in Aboriginal Employment and Self- Management*.
Keightley, A	1990	*Aboriginal Hospital Liaison Service, South Australia*
Kenney, S.	1990	*The Scope and Significance of the Arts in Aboriginal Culture: an Overview*.
Lake, P.	1990	*Mental Health Services for Aboriginal People in South Australia*.
Lorimer, F.	1990	*A Commentary on Psychiatric Assessments of Aboriginal Abnormal Behaviour for the Royal Commission 'into Aboriginal Deaths in Custody.*
May, D.		*Race relations in Queensland 1897 - 1971*
Memmot, P.	1990	*Report to the Royal Commission into Aboriginal Deaths in Custody on the Architectural Design of Holding Cells with Special Reference to Wujal Wujal,*
Memmott, P.	1990	*'Queensland Aboriginal cultures and the Deaths in Custody victims.'* in L.F. Wyvill, Regional Report into Individual Deaths in Queensland, (Appendix 2) AGPS, Canberra..
O'Connor, I.	1990	*The Impact of Queensland' s Family and child Welfare and Juvenile Justice Legislation, Policy and Practice on Aboriginal and Torres Strait Islander Families and Children*
Pritchard, B, Libesman, T and Cunneen, C	1990	*Economic Development in Northern Territory*
Read, P.	1990	*Aborigines in Northern Territory history: An Historical Perspective*.
Reset, J.	1989	*Report to the RCIADIC; Behavioural Design Considerations Relating to the Watchhouse Facilities at Katherine and Berrimah*
Reser, J.	1990	*A Perspective on the Causes and Cultural Context of Violence in Aboriginal Communities in North Queensland*.
Reynolds, H.	1990	*The Aborigines in colonial society, 1840 - 1897.*
Rowse, T.	1991	*Equal yet different: Commonwealth Aboriginal Affairs Policies Since 1967 in Cultural Context.*
Thomson N, and N. Briscoe	1990	*Overview of Aboriginal health status:* Queensland.
Thomson N, and N. Briscoe	1990	*Overview o/Aboriginal health status: South Australia.*
Thomson N, and N. Briscoe	1990.	*Overview o/Aboriginal Health Status: New South Wales.*
Thomson N, and N. Briscoe	1990.	*Overview of Aboriginal health status: Northern Territory.*
Thomson N, and N. Briscoe	1990.	*Overview of Aboriginal health status: Western Australia*.
Thomson, N.	1990	*Overview of Aboriginal Health Status: New South*

		Wales
Trigger, D.	1990	*Aboriginal people, media, crime and public attitudes in Perth, Western Australia: The case of the Bayswater/Maylands Area.*
Wauchope, J.	1990	*The Role of Government*

Appendix D(iii)(E) Exhibits

Aboriginal Housing Board of South Australia, *Halfway Camp: Priorities for Improvements,* South Australia Far West Regional Study, Paper No. 2, 1979 (S/7/67)

Anderson, C. *Statement,* (GEQ20)

Cantor, C. *Causes of Suicide* (QJ28)

Central Australian Aboriginal Congress. *Submission to the RCIADC,* (NT/2/G5)

Central Australian Aboriginal Legal Aid Service Inc*., Submission of the Central Australian Aboriginal Legal Aid Service* In., (NT/AP/G5)

Dawes, M. J. *Statement,* (S/1/114)

German, G.A. *Statement* (GEO/16WA) German, Prof. *Statement,* (GEO/16)

Goodall, H. '*Malcolm Smith: A Happy Institutional Boy',* submission on behalf of the Western Aboriginal Legal Service and the New South Wales Aboriginal Legal Service, (G7)

Gordon, M. G., *Statement,* (N/15/17/16)

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Sheehan T., *Report,* (G31)

Statement of Dr J.E. Gilligan, (NT/5/23B)

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Steer, R., *Sergeant of Police, Wilcannia Police Station, Statement,* (N/6/78)

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Taylor, J. C., M. J. Smithson, P. Reset and J. P. Reset, *A Community Profile of Yarrabah*.(QH 90).

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Western Australia. Department of Corrective Services, *Statement of Dr Bockman, Prison Medical Superintendent*

Western Australia. Department of Health, *Overview of Psychiatric Issues Raised by the Death of Paul Farmer by G. P. Smith.* (G/27/W5)

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Appendix D(iii)(F) Submissions

Aboriginal and Torres Strait Islander Commission.

Aboriginal Co-ordinating Council, (B. Miller)

Australia. Department of Community Services and Health. National Acoustic

Australia. Department of Employment, Education and Training, Aboriginal Deaths in Custody

Australian Federal Police, ACT Region. (B.C. Bates)

Australian Medical Association.

Brady, M.

Buchhorn, R.

Bull, B.

Byron, G. [77]

Cade. J. F. J.

Cawte, J.

Central Gippsland Aboriginal Health and Housing Co-operative Ltd., (R. Yates) Central Land Council, (Ross. D)

Collett, A. and P. White

Coombs, H. C.

Correctional Officers' Legal Fund. (Mahoney, J.)

Council for Aboriginal Alcohol Program Services (R. Sigston)

Daes, E.,.

Daff, H.

De Graaf, M.

Gault, A.

Goodall, H.

Hall, M. and W. Jonas.

Hunter, E.

Hutchins, S.

Johns, M.

Kosky, R.

Liew, C.

Littlemore, S

McDonald, J. and S. Ireland,

Morrison, P.

NAILSS '*A Report into the Western Australian Prison System.'*

NAILSS *'Preliminary results of interviews with Aboriginal prisoners in NSW Gaols'*

NAILSS '*Self-Determination: The Rights of Indigenous Peoples under International* Law'.(Prictchard, S.)

NAILSS '*Social Policy and Correctional Reform for Aboriginal People,* (Hazelhurst, K. M.)

NAILS S *'Stopping the deaths: A spectrum of possibilities for self-determination',* (Herpes, M.)

NAILSS '*National Land Compensation and reparation fund,*

NAILSS, '*Killing me Softly: Juvenile Justice and Genocide' (Jeavons,* V.)

NAILSS, '*Like a crane standing on one leg on a little Bland: an investigation of factors affecting the lifestyle of Wujalwujal community, North Queensland*' (Anderson, C. and S. Coates)

NAILSS, *A Report into the Western Australian Prison System*

NAILSS, *A Report into the Western Australian Prison System,*

NAILSS, *Stopping the deaths: a spectrum of possibilities for self-determination* NAILSS *,'Justice Alternatives for Indigenous People' (Hazelhurst, K. M.)*

New South Wales. Department of Family and Community Services

Nganampa Health Council Inc.

Northern Territory Department of Health and Community Services. (J.. Edgar) Northern Territory. Department of Correctional Services (Owston, D)

Office of Legal Aid Administration, (J. F. Ley)

Ogg, J.

PFNAZ, Overview Submission by the Police Federation of Australia and New

Zealand to the Royal Commission

PFNAZ, *Recommendations from the Police Federation of Australia and New Zealand for consideration by the Royal Commission*

Pitjantjatjara Council inc,(R. Bradshaw)

Queensland Corrective Services Commission.

Queensland Police Service. *Further responses to the Submissions to the Royal Commission by the Aboriginal Co-ordinating Council.*

Queensland. Department of Education.

Queensland. Department of Employment, Vocational Education, Training and Industrial Relations

Queensland. Department of the Attorney-General, (B. Stewart). Read, P.

Robson, R.

Royal Australian and New Zealand College of Psychiatrists,.

Secretariat National Aboriginal Islander Child Care, (N. D'Souza,)

South Australia Court Services Department

South Australia, Department of Education, Aboriginal Education Curriculum Unit.

South Australia. Department of Community Welfare.

South Australia. Department of Correctional Services.

South Australia. Department of Education. Aboriginal Education Curriculum Unit. South Australia. Office of Crime Statistics

South Australia. Police Department, (W. E. J. Sampson)

South Australian State Government. *Response to Questions Raised by the Royal Commission into Aboriginal Deaths in Custody (1990); by Michael Barry, Manager Young Offenders Programs*

Spencer, J.

State School Teachers' Union of Western Australia (S . Baskerville.)

Steer, R. *N. Submission by Senior Sergeant R.N. Steer. Patrol Commander at Wilcannia, to the Royal Commission into the Aboriginal Deaths in Custody.*

Tangentyere Council Inc.

Tasmania. Police Service. (W. J. Horman).

Victorian Aboriginal Health Service.

Victorian Aboriginal Legal Aid Service Co-operative Limited.

Victorian Institute of Forensic Pathology, (Professor S. Cordner)

Western Aboriginal Legal Service.

Western Australia Department of Corrective Services.

Western Australia Police Union of Workers.

Western Australian College of Advanced Education, Department of Aboriginal and Intercultural Studies, Mt Lawley, WA.

Western Australian College of Advanced Education. Department of Aboriginal and Intercultural Studies.

Western Australian. Department of Employment and Training, Aboriginal Employment Programs Section (R. Ellis).

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