ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

REGIONAL REPORT OF INQUIRY IN

NEW SOUTH WALES, VICTORIA AND TASMANIA

BY
COMMISSIONER THE HONOURABLE J.H. WOOTTEN, AC, QC

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Secretary: John Gavin
Assistant Secretary: Jill Sheppard

45 Flinders Street
ADELAIDE SA 5000

GPO Box 1005
ADELAIDE SA 5001

Reference:

Telephone: (08) 223 6222
Fax: (08) 223 7825

30 March 1991

His Excellency the Honourable William George Hayden, AC
Governor-General and Commander-in-Chief of Australia
Government House
CANBERRA ACT 2600

Your Excellency

In accordance with Letters Patent issued to me on 27 April 1989 and subsequently varied, I have the honour to present to you the report of Commissioner the Hon. J.H. Wootten, AC, QC, of the overall findings of his inquiry in New South Wales, Victoria and Tasmania.

Commissioner Wootten submitted his report to me on 13 March 1991. The report was based on the inquiry be completed on 31 December 1990 and in his transmission letter to me he expressed regret that the completion of his report had been delayed by the exigencies of his extended inquiry into the death of David Gundy and by consultations concerning my final report.

In accordance with Letters Patent issued by them, I am forwarding the same report to their Excellencies the Governors of New South Wales, Victoria and Tasmania.

Yours sincerely

Elliott Johnston
COMMISSIONER

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Secretary: John Gavin
Assistant Secretary: Jill Sheppard

45 Flinders Street
ADELAIDE SA 5000

GPO Box 1005
ADELAIDE SA 5001

Reference:

Telephone: (08) 223 *6222*
Fax: (08) 223 7825

30 March 1991

His Excellency Rear rata Peter Sinclair, AO
Governor of New South Wales
Government House
SYDNEY NSW 2000

Your Excellency

In accordance with Letters Patent issued to me on 10 May 1989 and subsequently varied, I have the honour to present the report of Commissioner the Honourable J.H. Wootten, AC, QC, of the overall findings of his inquiry in New South Wales. Because

of Victoria and Tasmania, his report deals with his overall finding in those States as well.

Commissioner Wootten submitted his report to me on 13 March 1991. The report was based on the inquiry he completed on 31 December 1990 and in his transmission letter to me he expressed regret that the completion of his report had been delayed by the exigencies of his extended inquiry into the death of David Gundy and by consultations

In accordance with Letters Patent issued by them I am forwarding the same report to their Excellencies the Governor-General and the Governors of Victoria and Tasmania

Yours sincerely

Elliott Johnston
COMMISSIONER

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Secretary: John Gavin
Assistant Secretary: Jill Sheppard

45 Flinders Street
ADELAIDE SA 5000

GPO Box 1005
ADELAIDE SA 5001

Reference:

Telephone: (08) 223 6222

Fax: (08) 223 7825

30 March 1991

His Excellency Dr David McCaughey, AC
Governor of Victoria
Government House
MELBOURNE VIC 3000

Your Excellency

In accordance with Letters Patent issued to me on 26 April 1989 and subsequently varied, I have the honour to present the report of Commissioner the Hon. J.H. Wootten, AC, QC, of the overall findings of his inquiry in Victoria. Because Commissioner Wootten held parallel Letters Patent from their Excellencies the Governors of New South Wales and Tasmania, his report deals with his overall findings in those States as well.

Commissioner Wootten submitted his report to me on 13 March 1991. The report was based on the inquiry he. completed on 31 December 1990 and in his transmission letter to me he expressed regret that the completion of his report had been delayed by the exigencies of his extended inquiry into the death of David Gundy and by consultations concerning my final report.

In accordance with Letters Patent issued by them I am forwarding the same report to their Excellencies the Governor-General and the Governors of New South Wales and Tasmania.

Elliott Johnston
COMMISSIONER

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Secretary: John Gavin
Assistant Secretary: Jill Sheppard

45 Flinders Street
ADELAIDE SA 5000

GPO Box 1005
ADELAIDE SA 5001

Reference:

Telephone: (08) 223 6222
Fax: (08) 223 7825

30 March 1991

His Excellency General Sir Phillip Bennett, AC, KBE, DSO
Governor of Tasmania
Government House
HOBART TAS 7000

In accordance with Letters Patent issued to me on 2 May 1989 and subsequently varied, I have the honour to present the report of Commissioner the Hon. J.H.

Wootten, AC, QC, of the overall finding of his inquiry in Tasmania. Because Commissioner Wootten held parallel Letters Patent from their Excellencies the Governors of New South Wales and Victoria, his report deals with his overall findings in those States as well.

Commissioner Wootten submitted his report to me on 13 March 1991. The report was based on the inquiry he completed on 31 December 1990 and in his transmission letter to me he expressed regret that the completion of his report had been delayed by the exigencies of his extended inquiry into the death of David Gundy and by consultations concerning my final report.

In accordance with Letters Patent issued by them I am forwarding the same report to their Excellencies the Governor-General and the Governors of New South Wales and Victoria.

Yours sincerely

Elliott Johnston
COMMISSIONER

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Secretary: John Gavin
Assistant Secretary: Jill Sheppard

Level 11
Westfield Towers
100 William Street
SYDNEY

GPO Box 3409
SYDNEY NSW 2001

Telephone: (02) 357 4255

Fax: (02) 358 2802

13 March 1991

The Honourable Elliott Johnston, Q.C.,
Commissioner
2nd Floor, Flinders House
45 Flinders Street
ADELAIDE SA 5000

Dear Commissioner Johnston

In accordance with Letters Patent issued to me by His Excellency the Governor General of the Commonwealth of Australia, His Excellency the Governor of New South Wales, His Excellency the Governor of Victoria, and His Excellency the Governor of Tasmania, I have the honour to present to you, upon completion of my inquiry into the eighteen deaths upon which I have reported, a report of other findings of my inquiry. The inquiries into the eighteen deaths were completed and the reports submitted by 31 December 1990. I regret that the completion of this report was delayed by the exigencies of the extended inquiry into the death of

David Gundy and by consultations concerning the National Report. I submit the report for consideration by you and for furnishing by you to Their Excellencies.

Yours sincerely

JH WOOTTEN
COMMISSIONER

FOREWORD

THE MESSAGE OF THIS REPORT

A number of people of goodwill have asked me what I have to tell them after my two and a half years experience as a Royal Commissioner inquiring into Aboriginal deaths in custody. By now they know that Commissioners have not uncovered stories of murder and deliberate brutality, but have reached the simple conclusion that so many Aboriginals die in custody because so many Aboriginals am locked up in this country.

I answer their question in this way. While it is important to divert Aboriginals from custody, to make their custody safer, and to ensure that any deaths are properly investigated, the great challenge to this country is to eliminate the grossly disproportionate rate of incarceration of Aboriginal people. How is this to be done? It does not take much close contact with Aboriginal people to convince one that the explanation for their disproportionate conflict with the criminal justice system does not lie in greater viciousness and criminality of character in comparison with the rest of society. One encounters as much gentleness, kindness, integrity and desire for a peaceful life amongst them as amongst the rest of the population.

What does become clear is that most Aboriginals have a continuing identity as Aboriginals which sets them apart culturally and historically as a separate community of people, encapsulated within a larger community. Relations between those two communities are built on inequality arising from a longstanding, unresolved injustice, and tensions which result from it affect the lives of individuals and communities in all kinds of ways. The dominant white community has over two centuries mostly tried to deal with the issue by destroying the Aboriginal identity - either by physical extermination or by genetic

or cultural absorption. Even today many of those who accept that a major effort must be made to overcome Aboriginal disadvantage in matters such as health, education, employment and so on, accept this only on the basis that there must be only one people recognised in Australia, and that any assistance to Aboriginals is not to enable their separate flowering as a people within the country, but to help them 'catch up' and 'be like us'.

Those who find Aboriginal refusal to accept this unreasonable, irrational, disloyal or unrealistic, might ask themselves this question. If Japan had successfully captured Australia and colonised it after World War II, swamping the former population with Japanese immigrants, how many Australians would have been

prepared to see themselves as thereafter Japanese, to merge their identity into a greater Japanese society? It was a comparable situation that faced Aboriginal people all over the world, not only the Aboriginals of Australia, but the Indians of North America, the Inuit of Canada, Alaska and Greenland, the Maoris of New Zealand, and many others. Today they share many common problems, including very high rates of imprisonment. Notwithstanding this, they continue to assert their separate identifies as peoples.

An individual's identity is not a purely personal thing. It is built on a social identity, on seeing oneself as part of a family and a community, each of which has its own history, traditions, culture and sources of pride and self-esteem. These are critical things for the development of the individual personality as a social personality accepting and conforming to the society in which the person lives.

These ideas are not easy to absorb, because not only are they unfamiliar, but even the history of Australia's treatment of Aboriginals, particularly in the second hundred years of settlement, is little known. However Australia like the United States, Canada, and New Zealand, has to come to understand them if it is to make peace with its indigenous people.

If a dominant society denies recognition to the very things on which an individual's identity is built, it will not be surprising if that individual becomes a delinquent from the point of view of that society. Yet that is what the European society that took power in Australia has been doing to Aboriginals for two hundred years. As a result there has developed a complex and difficult situation which cannot be simply unravelled, or washed away by better social services for Aboriginals. If Australia is going to deal with it in some way other than locking Aboriginals up in large numbers, it will have to learn to recognise Aboriginals as a people, to listen to them, and patiently build understanding and move to a genuine reconciliation between peoples.

ACKNOWLEDGMENTS

The core of the work carried out under my Commission between May 1988 and 31 December 1990, was the investigation of 18 deaths in custody. There were in effect 18 Royal Commissions completed in about 136 weeks, as each death had to be separately investigated and made the subject of a separate hearing and a separate report. These investigations and reports were completed at an average rate of about one each 71/2 weeks.

In addition, another death was fully investigated and heard, although not fully reported on for jurisdictional reasons, and three other deaths were the subject of significant investigation and argument before being ruled out of jurisdiction. Another death was the subject of preliminary investigation and report at the request of the Victorian and Queensland Governments. Concurrently there was considerable investigation of underlying issues and the preparation of most of this report, although its completion was delayed while I was engaged in consultations with the National Commissioner concerning the National Report.

The completion of so much work in such a relatively short time was possible only as a result of the contributions of many people. It is not possible to

mention them all, particularly as many people came and went during the period.

However, I must particularly mention the dedicated work of Counsel Assisting, Mr Stephen Norrish, QC, and the Principal Solicitor, Mr John McKenzie, both of whom were with me through the whole period of my Commission up to 31 December 1990. Mr Norrish was at various periods assisted by Mr Tim Game and Mr Bob Bellear of Counsel. Mr David McMillan and Ms Louise Blazejowska did valuable service as solicitors over long periods. Other solicitors who served for shorter periods were Mr Cled Brown, Mr John Bishop, Ms Marilyn Bartole and Ms Jo Collings. A very special contribution was made by Aboriginal Field Officers, Mr Shane Phillips, Mr Barry Cain and Mr Russell Reid in New South Wales and Mr Richard Frankland in Victoria. For a period there was a Victorian office under the charge of Ms Kate Auty, Solicitor, assisted by Ms Sarah Gebert and Ms Andrea Oribin.

The Sydney Office was ably managed for most of the period by Ms Colleen Crowe, and later by Mr Ian Johnston. I have a special personal debt for secretarial and research assistance from Kate Brodie, Lyn Carriage and Robyn Arrowsmith. Gail White was the valued secretary to counsel assisting. Among those who at various times contributed their expert knowledge and/or research on historical and social issues, I must specially thank Dr Heather Goodall, Dr Gillian Cowlishaw, Dr Lois Tilbrook, Mr David Jagger, Ms Louise Casson and Ms Nikki Rogers.

For varying periods in each of the three States there was an Aboriginal Issues Unit and I am particularly grateful for the work of Mr Kevin Kitchener, Ms Denise Andrews and Mr David Green in New South Wales, Ms Sandra Bailey, Ms Carolyn Steel and Mr Lance Briggs in Victoria, and Mr Greg Lehman in Tasmania. To all of them and to many others inside and outside the Commission who gave me assistance and support, I express my grateful thanks.

I benefited greatly from the fraternal co-operation and counsel of the National Commissioners, first James Muirhead, QC, and then Elliott Johnston, QC, and

my fellow Commissioners, Lewis Wyvill QC, Daniel O'Dea and Patrick Dodson. The Secretary of the Commission, Mr John Gavin, was an ever available guide, philosopher and friend.

My greatest debt, however, is to the many Aboriginal people who generously shared with me their experiences, sufferings achievements and aspirations. For all of them, and particularly for the families of those who died in custody, this Commission was a painful reminder of tragic events. Their history as a people and often their personal experiences gave them little reason to have confidence in a white Commissioner, or to believe that anything good would come from the raking over of their anguish by his inquiries. Despite their reservations, they were once again, as so often in their history, trustful, helpful and willing to cooperate.

It has not fallen to me to make recommendations about what should be done to redress the injustices which they have suffered and still suffer in what was, in every sense, once their country. That is for the National Commissioner. For my part, in the 18 individual reports which I have written about the deaths, I have tried to tell in a straightforward way, so far as I can understand it, what it has meant to live and die as an Aboriginal in South-Eastern Australia. The general issues which came to the fore in those reports are brought together in this report.

TABLE OF ABBREVIATIONS

ACLO	Aboriginal Community Liaison Officer - a position in the New South Wales Police Department
ADC	Aboriginal Development Corporation - a Commonwealth body
ADVO	Apprehended Domestic Violence Order - a restraining court order in New South Wales
AEA	Aboriginal Education Assistant
ALC	Aboriginal Land Council.
AMIC	Australian Mining Industry Council.
APB	Aborigines Protection Board - formerly existing in New South Wales
ATSIC	Aboriginal and Torres Strait Islander Commission
AWB	Aborigines Welfare Board - formerly existing in New South Wales
BAC	Blood alcohol concentration
CDBR	Committee to Defend Black Rights
CDEP	Community Development Employment Program
CJP	Community Justice Panel - a Victorian institution
DEET	Department of Employment Education and Training
FACS	New South Wales Department of Family and Community Services
LALC	Local Aboriginal Land Council
NAILSS	National Aboriginal and Islander Legal Services Secretariat
PMS	Prison Medical Service
RALC	Regional Aboriginal Land Council.
SWOS	Special Weapons Operations Section of the New South Wales Police Force
VAHS	Victorian Aboriginal Health Service
VALS	Victorian Aboriginal Legal Service
WALS	Western Aboriginal Legal Service

PART ONE: INTRODUCTION AND OVERVIEW

CHAPTER 1: INTRODUCTION

NATURE OF THIS REPORT

I was first appointed a Royal Commissioner to inquire into Aboriginal deaths in custody on 6 May 1988. My work has been confined to New South Wales, Victoria and Tasmania and I have conducted all the inquiries into deaths in those States except for the death of Edward James Murray in Wee Waa in New South Wales, which was inquired into by Commissioner Muirhead before my appointment.

My commissions from the Commonwealth and from each of the States of New South Wales, Victoria and Tasmania require me to submit a report into each particular death into which I have inquired, and I have submitted reports into 18 deaths. Each of my commissions requires me upon completion of my inquiry into the several deaths to submit a report of any other findings of my inquiry and such recommendations (if any) as I consider appropriate. This report is submitted in compliance with that provision in my various commissions. However the fact that I was continually involved in the inquiry into the death of David Gundy until 31 December 1990, and then went to Adelaide for consultations with the National Commissioner, means that this report is necessarily limited in scope and detail. Essentially it brings together the general issues that are discussed in the individual death reports and the reports of the Aboriginal Issues Units.

Rather than submit four reports, one to the Commonwealth covering my findings in respect of all the deaths into which I have inquired, and one to each State

relating to my findings in respect of the particular State, I have prepared a single report covering the findings I have made in relation to the deaths into which I have inquired in all three States. Any other course would have meant a great deal of repetition. Although there are important differences in history and administration between the States there is sufficient commonality to make the writing of a single consolidated report a sensible course. Most of the lessons to be learnt apply throughout the region.

This report is in no sense an attempt to make a comprehensive coverage of issues relating to Aboriginals in the three States. It is essentially, as I believe my commissions require, a report that brings together the views I have formed as a Commissioner as a result of conducting the inquiries into the 18 deaths in the three States. The scope of the issues referred to is somewhat wider than in any of the reports relating to particular deaths, because it reflects the overview which I have developed through the experience of all 18 inquiries. This report draws not only on the evidence relating to particular deaths but on the general knowledge I have acquired in the course of the inquiries, 1 and on the work of the Commission's Aboriginal Issues Units in New South Wales and Victoria and a related inquiry in Tasmania. It also seeks to provide a general context to the individual inquiries by looking at some of the general circumstances of the Aboriginal communities from which the individuals who died came, including Current legal, cultural and social circumstances of those communities, their history, and their relations with the general community in those States and its institutions.

A number of my individual death reports contained recommendations of a specific nature, mostly in relation to the consideration of criminal or disciplinary proceedings against officers. This report does not contain recommendations. It has

been agreed between Commissioners that except in purely local matters recommendations will be reserved for the National Report. This will avoid the pre-empting of recommendations by Regional Reports and allow for the collation by the National Commissioner of the experience of Commissioners across Australia.

LIVES AND DEATHS

Early in my inquiries I formed a strong conviction that a concentration solely on the immediate circumstances of individual deaths would not be very rewarding in terms of the understanding it would give of why Aboriginals were in custody and dying in custody. It soon became clear that the greatest reason why so many Aboriginals died in custody was that there were so many Aboriginals in custody. They were being locked up at quite staggering rates. Once one excluded the hypothesis that Aboriginal deaths in custody were the result of systematic murder or ill-treatment by police officers and prison officers, all that could be learned from the immediate circumstances of particular deaths were points of safe and humane custodial procedures and cell design. While these matters are important, they are for the most part not matters of peculiar application to Aboriginals. They involve matters which were just as important in relation to non-Aboriginal prisoners - matters such as the elimination from cells of potential hanging points, the regular inspection of prisoners, the seeking of medical attention for unconscious or non-rousable prisoners, alertness for the existence of other conditions masked by alcohol or other drugs, a humane reaction to disturbed, depressed or angry prisoners and so on. All of these require attention, but in large measure they can be readily discerned once one starts to examine deaths in custody. Most of them were the subject of discussion in Commissioner Muirhead's *Interim Report,* and many of them have received attention by custodial authorities around the country, although there is still much room for improvement.

Putting to one side these procedural and architectural issues, what could be learned from the study of the deaths that might increase understanding of why Aboriginals are coming into custody, and as a result are dying in custody in such large numbers? It seemed to me that only limited value could be got from statistical studies of the characteristics of those who died in custody, partly because there seemed to be a considerable element of chance in which prisoners happened to die in custody, and partly because the numbers involved were too small for useful statistical studies. Even if one took the whole of Australia over ten years as the field of statistical study, there were still only 100 deaths and these came from a number of very different cultural, social and geographical backgrounds, and were spread over a ten year period during which considerable social change had taken place. If one focused down to narrower geographic areas or to smaller time periods the numbers became so small as to make it absurd to look for significance in common characteristics. The absurdity would be well illustrated by looking at Tasmania. Obviously it is not possible to base any generalisation on one death in a ten year period.

I concluded that the most fruitful way of studying the individual deaths was to see each death not as an isolated event, but in the context of, and indeed as the culmination of, a life. Because of the extraordinary level of institutionalisation, supervision and incarceration that has been imposed on the Aboriginal population, it was possible to learn a great deal about the life story of each individual who had died from files that were readily accessible. Of course one has to be wary of taking

these materials, compiled almost entirely by white public servants, at their face value. In using them it was necessary constantly to bear in mind that they reflect the viewpoints, interest and attitudes of bureaucrats living in particular contexts and charged with carrying out particular functions on behalf of the white community. Often official records and reports tell more about the person who wrote them, and that person's attitude to the Aboriginal subject, than they do about the Aboriginal. However the files often contain enough clues to give a glimpse of what was going on, and one can soon learn to 'read between the lines'. Usually, somewhere in the files, there are some observations from some perceptive officer whose comments reveal the limited viewpoints of others. In addition, in most cases, it has been possible to supplement the material on the files with statements or evidence from other people who knew the Aboriginal concerned, and particularly from his friends or relatives.

My hope was that a careful use of available material would yield some insight into the way in which the circumstances of Aboriginal life in Australia, the cultural patterns of the Aboriginals themselves, and the policies and institutions of the dominant society which had dispossessed them, interacted to produce the situation where that individual had ended up in custody and died in custody instead of achieving some happier life outcome to his 2 life. The knowledge so gained is of a different kind from that generated from statistical studies, but it can give insights and understandings not available from statistics. It does enable one to think about Aboriginals as individual human beings and not as mere statistical inputs. It does enable their lives to be looked at as a whole, their communities to be looked at as a whole and the critical events of their lives to be seen in the context of a range of factors. The relations of Aboriginals and Aboriginal communities with the dominant white society then emerged as the most important of the factors for explaining what was happening.

My first, and I believe my most successful attempt to place a death in the context of a life, was in the *Report of the Inquiry into the Death of Malcolm Charles Smith.* This report generated an extraordinary reaction in the media, and the story of Malcolm Smith has continued to touch the hearts and imagination of many people. It brought out, in a way that it would be difficult for statistical studies to do, the shattering effect on Aboriginal lives of the well-intentioned but self-righteous and culturally arrogant policies of taking Aboriginal children away from their families and seeking to shape them by institutionalisation to conform to the standards and expectations of white society. The institutions of the dominant society did succeed in severing Malcolm's ties over the critical years of adolescence and youth with the deprived Aboriginal family that had let him often run free, unwashed and undisciplined instead of attending school, but had given him love, warmth, self-esteem and a chance to be a member of a social group. But society achieved this severance only at the cost of making Malcolm a person who was adjusted solely to life in institutions and remained locked up for almost his entire life.

The attempt to understand the life of Malcolm Smith was particularly successful partly because of the dramatic nature of his story, the wealth of material available, and the impact he had made on people who remembered him, but also because of the amount of time I was able to give to studying and writing his story. As the number of reports to be written built up and deadlines approached I was not able to give the same attention to all. However in a further 16 reports I was able in a greater or lesser degree to put the death in the context of a life story.

In my 18th report, that on the death of David John Gundy, I did not place such emphasis on the life of the man who died. The hearing and the writing of the report

took place under very severe time pressures, and the amount of material relating to his death, as a result of previous investigations, was overwhelming. But in any event I did not consider his life as relevant to his death as was the case with the others on whose deaths I reported. His death was not the consequence of the working out of factors in his own life. The temporary custody in which he met his death was not something to which his life and his past conduct had led him. It was accidental that he was the victim of an arrogant and unlawful police raid by officers who neither knew nor cared who might be in the house they were raiding. Consequently it seemed to me more important in the little time available to me to write the report, to seek to understand the culture of the police which led them to make a fruitless and unjustified raid on his home, rather than the cultural background that had led to David Gundy being in that particular house at that particular moment.

In looking in this present report at the wider issues underlying Aboriginal deaths in custody I am thus informed largely by the study of the lives of the people who died, supplemented in most cases by visits to the communities in which they had lived, and consultations with individuals and organisations about the general circumstances of life in those communities. In addition I have been influenced by what reading I have been able to do of the reports of the Commission's Aboriginal Issues Units, the many submissions to the Commission, and the writings of students of Aboriginal affairs and, very importantly, of Aboriginals themselves. I am deeply conscious that time has not permitted me to do justice to any of these sources.

Anyone who attempts to write about Aboriginals in modern Australia must be conscious of the limitations of what can be achieved, the risks of misinterpreting, of ending up in gross simplification or suffocating detail, and the inevitability of hostile reactions from those on one side or another, or on both sides, whose sensitivities are affronted. However distasteful it be to admit, there is a cultural or racial divide in Australia, on one side of which there is the Aboriginal community (itself an aggregation of many smaller communities) and on the other side the non-Aboriginal communities, with all the complexities and sub-cultures of which it is composed. Almost anyone who seeks to write will be on one side of that divide or the other, and will be conditioned by personal and cultural experience to see certain things and interpret them in certain ways.

There is a view popular in some quarters, both Aboriginal and non-Aboriginal, that non-Aboriginals have no right or capacity to write about Aboriginals. While it is proper to be conscious of how any individual writer's account and interpretation is shaped and constricted by his or her life experience, the denial of anyone's right to discuss a matter must be rejected. What are desperately needed are people on both sides of the divide trying to understand each other. Indeed what is most needed is that people on both sides of the divide should try to understand and write about the divide itself, what put it there, what keeps it there, what its consequences are, and how it can be bridged.

CHAPTER 2: OVERVIEW

THE IMPORTANCE OF SOUTH-EASTERN AUSTRALIA

Since many people tend to think of the northern and central parts of the continent when considering Aboriginals, it is worth stressing the importance in population terms of south-eastern Australia. Using the figures of the 1986 census, of the 227,645 Aboriginals in Australia 59,011 or 25.9% were in New South Wales. Only Queensland with 61,268 had a higher figure, and this depended on including the considerable number of Torres Strait Islanders in that State. The figure for Victoria was 12,611 or *5.5%,* and Tasmania 6,716 or 3%. Accordingly New South Wales is home to over a quarter of the Aboriginals in Australia, and New South Wales, Victoria and Tasmania combined to well over one third. They share a lifestyle with many Aboriginals in southern Queensland, in South Australia and in the southern parts of Western Australia which is very different from that of more traditionally oriented people in parts of central and northern Australia who provide the image of an Aboriginal for many people here and overseas.

It is important in the overall assessment of the issues underlying Aboriginal deaths in custody throughout Australia to pay close attention to the circumstances, both historical and current, in which these Aboriginals have lived and live today.

AVOIDABILITY OF DEATHS

As a significant part of the pressure for the establishment of the Royal Commission came from a suspicion that Aboriginals were being deliberately killed in custody by police or prison officers, it is proper to start by saying that I have found no evidence of such deliberate foul play. Except in the case of Bruce Thomas Leslie,[3] who died on 6 June 1985 following custody at Tamworth Police Station, I have made findings that the immediate causes of deaths were illness, self-inflicted injury or accident.

This however is a small comfort and should produce no self-satisfaction. As I point out in Chapter 5: Causes of Death, every one of the deaths was potentially avoidable and in a more enlightened and efficient system of criminal law and justice might not have occurred. Many of those who died should not or need not have been in custody at all, but were there because of archaic laws, unreasonable discretionary decisions for administration of bail, unlawful police actions, or failure to take critically ill people to hospital. Some deaths may have been averted by better custodial practices, more conscientious or more humane attention to prisoners, better psychiatric services in gaol, or proper inquiry into or response to the causes of offences. All these are matters pertaining to the criminal justice system itself and do not touch the wider questions of how much Aboriginal conflict with the law might have been avoided if Australia had property faced up to the position of its dispossessed original inhabitants.

POLICE CARE OF PRISONERS

In the case of deaths in police custody an important contributing factor has been entrenched attitudes, forming part of a widespread police culture, towards prisoners or detainees, and in particular towards persons who are regarded as drunk. Often despite the issue of instructions and expressions of concern at senior levels, it has proved very difficult to get the general body of police officers to recognise that a person who is, or appears to be, drunk may be a person at considerable risk, either from natural causes such as heart disease, diabetes or epilepsy (to name three common conditions among Aboriginals), or from

self-inflicted harm which, with the limited choices available to a prisoner, often takes the form of self-hanging.

Quite apart from the care of persons in an intoxicated condition, there has been a widespread reluctance on the part of police to treat the routine checking and supervision of prisoners as an important part of their duties, to which priority should be given. A number of the deaths occurred during periods when a prisoner was left unchecked for a substantial time. Frequent checking is a very important safety measure as it may enable the early detection of some life threatening condition in time for treatment, or the discovery of preparations for serf-harm while it is still possible to prevent the prisoner's actions. Apart from the discovery of preparations or attempts to commit self-harm, the psychological effect of human contact may itself be of importance in affecting what a prisoner does. In none of the seven cases of hanging in custody which I investigated was there reason to think that the prisoner had a fixed determination to hang himself. In every case the act was an impulsive one under the stress of immediate conditions, sometimes the effect of declining blood alcohol levels, sometimes stresses of a recent life experience or other angering or depressing circumstance. In such circumstances even a small display of sympathy or understanding may deflect self-destructive action. Unfortunately it does not seem to come easily to many police officers to treat prisoners in a human way, at all events Aboriginal prisoners.

How far the police conduct which bore on the deaths was influenced by attitudes to Aboriginals is less easy to quantify. In the case of Mark Anthony Quayle I rind it impossible to believe that the treatment which led to his death would have been given to a white citizen of Wilcannia. In a number of cases, on the other hand, it is not hard to conclude that a non-Aboriginal prisoner or detainee would have been at similar risk. In yet other cases it is difficult to form a firm view on the issue. While particular cases may be difficult to determine, overall the statistics indicate that, as a group, Aboriginals in police custody are not at greater risk in custody than non-Aboriginals.

The physical conditions of police cells are another very considerable problem. Often cells are so designed as to make supervision or contact unnecessarily difficult, and very frequently they provide easy opportunities for self-harm,' for example by easily available hanging points. So widespread are the deficiencies and so significant the cost of overcoming them that governments have been slow to remedy obvious. defects. However at least in New South Wales and Victoria, reasonably thorough surveys of danger points have been carried out and some of them have been rectified.

Again in New South Wales and Victoria, Police Forces have reviewed their Instructions relating to the care of prisoners and to arrangements which allow prisoners to be left in unattended police stations. To a large extent the latter practice has been cut out or greatly reduced, and much improved Instructions have been developed relating to the care of prisoners. Unfortunately there is often a large gap between excellent Instructions and what happens. Attitudes embedded in police culture are very resistant to change and it seems difficult to get police even to read new Instructions.

PRISON DEATHS

Among the deaths which I investigated were five in prison, all in New South Wales.

In one *case,* that of Maxwell Saunders, the death might well have been prevented if proper care had been taken by corrective services officers. Their actions were affected by entrenched attitudes to prisoners who were apparently affected by drugs. In three cases, those of Malcolm Charles Smith, Thomas William Murray and Peter Wayne Williams, lack of proper care by the Prison Medical Service contributed to the death. In the case of Peter Leonard Campbell, there had been a failure either on sentencing or on reception in gaol to make inquiry into the reasons for bizarre offences, which inquiry might have led to the detection of treatable mental disease. The latter four deaths underlined the general incapacity of the prison system to provide a safe environment for psychiatrically disturbed prisoners.

THE CONCERN ABOUT ABORIGINAL DEATHS IN CUSTODY

While the numbers are so small as to make statistical comparisons of doubtful value, there is not a great discrepancy between the rate at which Aboriginal prisoners or detainees and non-Aboriginal prisoners or detainees die when in custody. If one compares the percentage of deaths in police custody which were Aboriginal during the period reviewed by the Commission (1980-1989) with the only information available about the percentage of Aboriginals in custody (August 1988), one finds that Australia-wide Aboriginals accounted for 29% of those in custody and 32 % of the deaths. The corresponding figures for New South Wales were 14% and 12%, for Victoria 4% and 5%, and for Tasmania 7.5% and 2%. One cannot draw too much from the very small figures and the absence of figures for comparable periods, but at least it can be said that there is nothing to suggest that Aboriginals were dying at a faster rate than non-Aboriginals in police custody. A similar conclusion can be reached about deaths in prison custody where figures for comparable periods are available. Australia-wide Aboriginals in prison died at the rate of 2.2 per 1000, non-Aboriginals at the rate of 2.7 per 1000. The corresponding figures for New South Wales were 1.8 and 2.0, while in Victoria and Tasmania no Aboriginals were recorded as dying in custody, [but non-Aboriginal prisoners died at the rate of 4.3 and 2.0 per 1000 respectively. Nor were Aboriginals more likely to take their own lives in custody; the available figures in fact point in the opposite direction. Australia-wide 49% of non-Aboriginal deaths in police or prison custody were self-inflicted, while only 34% of Aboriginal deaths were so caused.

Why then was there the outcry about Aboriginal deaths in custody which led to the establishment of the Commission? One reason was a very different and more mistrustful attitude towards the justice system, police and prisons common in the Aboriginal community. Those who conduct these institutions are seen by many Aboriginals in a historical perspective as oppressors and as not to be trusted.

The failure to carry out independent and thorough inquiries into most of the deaths, and the failure to deal frankly and sympathetically with relatives, exacerbated Aboriginal suspicions in many cases. The ability of police to escape or defeat independent scrutiny, whether from senior officers, coroners, Ministers or Ombudsmen, which was often apparent, gave support to the longstanding Aboriginal complaint that police are not accountable for the way they behave. The unwillingness of police to question or investigate the conduct of other police emerged from my inquiries as a powerful feature of the police culture.

But there was another reason. There were in fact large numbers of Aboriginals dying in custody. Had non-Aboriginals died in custody during the period reviewed

by the Commission at the same rate as Aboriginals there would have been roughly 7,400 such non-Aboriginal deaths instead of the approximately 400 which in fact occurred throughout Australia. Corresponding figures for deaths in New South Wales would have been in the order of 1,340, and for Victoria 1000. 4 Given the widespread kinship networks and community connections among Aboriginals, large numbers of Aboriginals thus became conscious of deaths in custody and suspicious of the circumstances.

DISPROPORTIONATE NUMBERS IN CUSTODY

The reason for the disproportionate number of deaths was not the rate at which Aboriginals were dying in custody, but the rate at which they were being taken into custody. On an Australia-wide basis an Aboriginal was 27 times more likely to be in police custody than a non-Aboriginal, and the figure was 15 times in New South Wales, 13 times in Victoria and three times in Tasmania. Australia-wide an Aboriginal was 11 times more likely to be in prison than a non-Aboriginal, and in New South Wales eight times, in Victoria 12 times and in Tasmania three times.

While deaths of juveniles in custody arc relatively infrequent, and only one, that of Thomas Carr, was investigated by me, it is as juveniles that most Aboriginals enter the justice system. Of the 18 deaths which I investigated, 13 were of persons known to have had convictions as juveniles and at least 8 had spent time in juvenile institutions. Aboriginal juveniles arc 25 times more likely to be in an institution in New South Wales than non-Aboriginal juveniles, and 20 times more likely in Victoria. 5

One strand in what has happened, and is still happening, in all too many places, is that Aboriginals arc 'criminalised' at an early age by a policing and justice system that is intolerant of cultural differences, and which targets and overpolices Aboriginal communities and deals harshly with resulting resentment. The criminalisation of public drunkenness 6 and of 'bad' language has provided an easy induction to incarceration for Aboriginals, which comes to be seen, as the story of Mark Quayle shows, as a natural condition for Aboriginals. The story of that young man shows how hard it is for an Aboriginal to escape the grip of the prevailing stereotype.

In assessing the extent to which racism is involved, it is sometimes difficult to disentangle other forms of discrimination. However much police may profess or seek to treat all citizens with complete impartiality there is a general perception that the more powerful in the community arc treated with more consideration, and that the more people conform to standard middle-class notions of respectability and propriety, the more respect and the less suspicion they will attract from police. As most Aboriginals belong to the least powerful groups in society and are likely to have behavioural norms that differ from standard 'respectable' white norms, these circumstances inevitably affect the way in which Aboriginals are

REDUCING THE DISPROPORTION

The masons for this disproportionate number of Aboriginals coming into custody are at one level complex, and can be broken up into a large number of factors about each of which something can be done, at least in a palliative way. On the one hand they include such matters as styles of policing, which may be

experienced by Aboriginals as oppressive and harassing and generate street offences, and the exercise of discretions in regard to cautioning, arrest, granting of bail and other matters. On the other hand they include a variety of social factors, not necessarily peculiar to Aboriginals, which increase the likelihood of offending and conflict with the law - poverty, alienation from the education system, unemployment, poor housing, heavy consumption of alcohol and other disadvantages.

At a more fundamental level these various factors can be traced in considerable measure to one unifying cause. Prior to the white settlement or invasion (the same process seen from different points of view), Aboriginals were the occupiers and owners of the continent of Australia. In most pans of the continent they were brutally dispossessed without regard not only to their rights but to their basic needs. That situation has never been squarely recognised, faced up to or addressed.

In their eagerness to carve out for themselves a place in what they saw as a land of opportunity, Europeans who regarded themselves as enlightened Christian people rationalised their actions by racist theories and assumptions which in one form or another were built into the nation's attitudes and institutions and remain effective in a considerable measure today. Until very recent times Aboriginals were treated as people unable to manage their own affairs, and subjected to cruel and debilitating controls, including in many cases the removal of their children. Because of the enduring effect of the past on the present, and the widespread lack of knowledge of that past, I have included in this report a brief historical account of what happened in each of the three states.

Few white Australians understand how racism continues to affect Aboriginals and what an all pervasive part of their experience it is. If there is to be a real change in the position of Aboriginals in Australian society the non-Aboriginal community has to develop an understanding of the widespread, insidious, dehumanising and debilitating effects of racism, and work to reduce its influence. The many Aboriginals working constructively for the advancement of their people in their own organisations and communities and Government departments, or eloquently pleading their people's cause in the media or through books and plays, or winning the world's esteem for their art, have shattered the stereotype of the unsophisticated Aboriginal who was for so long the butt of the cartoonists' cheap racism. For all but the most prejudiced they have also shattered the stereotype of the noisy, drunken, importunate and untidy Aboriginal in the parks or streets, who, although usually a small minority in any community, was often the only Aboriginals noticed by most whites. However it is by no means clear that the old stereotypes are being replaced by realistic knowledge.

Most Aboriginals remain conscious of their identity as a people - the original people of Australia - and continue to seek recognition of that identity. The dominant European community has stumbled from one approach to another in relation to Aboriginals - extermination, exploitation, segregation pending extinction, forced assimilation, 'expected' assimilation, assimilation 'chosen' but without alternatives, 7 and 'integration', the last an unclear concept often hard to distinguish in practice from assimilation. In more recent times there has been adoption of policies such as self-management and self-determination, but limited success in giving them real content. Not the least part of the problem is that Aboriginals have for so long been cut off from power, from control of their own lives and communities, and from the exercise of authority and management of

resources and institutions that it is not easy for them to suddenly meet the often unrealistic and inappropriate expectations and requirements of white officialdom.

Until very recently there has been virtually no willingness to recognise Aboriginals as a dispossessed people with whom a just reconciliation should be sought. Only in the current year has the national government explicitly taken up this issue.

THE PATH TO RECONCILIATION

Australia is not alone today in confronting the need to come to terms with its indigenous people. In many countries there are people who, like the Australian Aboriginals, were dispossessed, wholly or partly, by invading settlers with more advanced technology who took their land with all its economic, social and spiritual significance and shattered the way of life which they had enjoyed for many thousands of years. These people have in common a struggle to retain or gain traditional land or compensatory resources, to cope with government management of their affairs, to overcome grossly disproportionate rates of incarceration, and to survive as culturally distinct people within nation-states. In a developing sphere of international law these people are coming to be recognised as a specific category of indigenous people' and under the aegis of various parts of the United Nations work is going on to develop a statement of their rights and ways of protecting and enforcing those rights. The countries facing these problems include Australia's sister democracies of Canada, the United States and New Zealand. Although there are great differences between the Indians of North America and the Inuit (as the Eskimos are now known) of the far north, the issues that have developed are extraordinarily similar to those developing in Australia. For Australia, as for those other countries, the problem is to reconcile demand for the recognition of special Aboriginal status and rights within existing institutional arrangements and the ideological foundations of western nation-states. 8

White Australians have shied away from confronting these issues, sometimes in complete ignorance of the past treatment of Aboriginals in this country, sometimes fearful of a challenge to the legitimacy of the white occupation of Australia, sometimes for the protection of vested interests which they see as possibly threatened by the recognition of Aboriginal rights, sometimes for racist reasons, sometimes in an arrogant ethno-centric rejection of cultural pluralism, and sometimes in an unjust and unrealistic invocation of ideas of equality. But the issue will not go away. It will only grow as an issue of conscience, justice, civil harmony and international reputation.

It has not only been the unwillingness and the racism of non-Aboriginals that has made dialogue difficult. On the Aboriginal side there have been problems not only of attitudes but of finding mechanisms through which an Aboriginal voice and an Aboriginal policy can be formed and articulated. The Aboriginal society which Europeans found in Australia consisted essentially of small groups without even regional, let alone national, organisation. Their way of life did not require a central authority and they had none. Their active resistance to the European invasion was by local small scale warfare in most cases, and the effect of the European policies after the defeat of Aboriginal resistance in south-eastern Australia was to drive Aboriginals from the land on which their social organisations were based and subsequently to concentrate them, reshuffle them, segregate them, break up their families, institutionalise them and in many ways hinder the development of even local centres of initiative, let alone large scale organisation.

Despite this there is a long history, little known to most non-Aboriginal Australians, of the building of political organisations by Aboriginals. However there is still no generally recognised voice of Aboriginals on a national, State or in many cases even regional level. Attempts by government to impose on Aboriginal communities organisations structured on European concepts have been generally unsuccessful.

In the absence of some national or widespread organisational unity on the Aboriginal side, formal dialogue on reconciliation is difficult. One cannot assume that the role will necessarily come to be fired by a body such as ATSIC which, despite extensive attempts at consultation prior to its establishment, is inevitably a body based on non-Aboriginal concepts, and indeed designed to be part of the governmental bureaucracy. When it comes, national Aboriginal representation will have to be something evolved by Aboriginals themselves, even if, as of course they should be free to do, they adopt or adapt organisations set up for other purposes. If there is to be an effective process of reconciliation, what is needed on the Federal Government's side is a very flexible willingness to allow and assist the independent development of representative Aboriginal institutions, and a resisting of the temptation to create or impose them from without.

In this context one can only applaud the approach of the Federal Minister for Aboriginal Affairs, Mr Tickner, who envisages a bipartisan and widely supported flexible approach to a process of reconciliation fostered by the Commonwealth Government and all of the States, and the response of the Leader of the Opposition, Dr Hewson, who has left the door open to a bipartisan approach.

THE IMMEDIATE FUTURE

The process of reconciliation is likely to be long and difficult and will succeed only if there is a development of understanding and sympathy on both sides.. That will take time. There will be attempts to subvert it by vested interests, by the narrow-minded and prejudiced and by those unwilling to adopt any but extreme stances. There will be those who seek to polarise the community by playing on ignorance, fear, prejudice and accumulated bitterness.

It is very important therefore that further steps in improving the circumstances of Aboriginal life should not await the outcome of the reconciliation process. Indeed there are many steps which should be taken which will not only be good in themselves in enhancing the status of and providing greater justice for Aboriginals, but will in that very manner pave the way for and ease the strains associated with the reconciliation process.

Some of the steps can be specific or local processes of reconciliation in more acute areas of conflict. There is much constructive work under way to reduce the longstanding tensions between police and Aboriginals, and there is an increasing number of examples of black and white communities seeking to understand each other and cooperate at local levels, an arena where there is much scope for work by local government councils. Many acute sources of conflict can be solved only at this face to face level.

Many of the areas in which government action and funding are needed to effect improvement have become obvious enough and indeed have been the subject of attention for many years. In addition to the areas directly concerned with the

administration of justice, to which reference has already been made, there is the deplorable health status of Aboriginals which leaves them with a life expectancy 20 years less than that of their non-Aboriginal fellow citizens; low education levels with flow-on effects to the acquisition of power, skills and employment; inadequate housing; the influence of alcohol and drugs with resultant social disruption and domestic and community violence; and the degree of mutual understanding, respect and interaction between Aboriginals and non-Aboriginals. In recent years governments have made considerable efforts to improve the lot of Aboriginal people, and while some successes have been achieved, the rate of positive change has often been disappointing.

While my work as a Commissioner has made me very conscious of these issues, the time available and the necessity of concentrating attention on the detailed circumstances of the custody and death of many individuals have prevented me studying such a range of topics to the point where I would venture to offer derailed views as to what should be done in the various special areas. However some fundamentals of the situation stand out fairly clearly. They were confirmed for me by a visit to North America where I had some opportunity, albeit brief, to see the very similar situations that have emerged in relation to the indigenous peoples of North America and Canada.

The great lesson that stands out is that non-Aboriginals, who currently hold virtually all the power in dealing with Aboriginals, have to give up the usually well-intentioned efforts to do things for or to Aboriginals, to give up the assumption that they know what is best for Aboriginals, and to stop treating Aboriginals as aberrant or backward individuals who have to be led, educated, manipulated and re-shaped into the image of the dominant community. Instead Aboriginals must be recognised for what they are, a people in their own right with their own culture, history, values and right to take part on an equal footing in finding their place in Australia.

They are a people who through the processes of colonisation were stripped of resources and, in south-eastern Australia at least, had their culture changed almost beyond recognition. Nevertheless they have retained and value, and are entitled to respect for, their distinct Aboriginal identity. They have maintained their identity and their culture in the face of deliberate attempts to destroy it, and in the face of having to live in a situation where economic, political and social power, control of resources, control of the media, control of education, control of employment and indeed most forms of power have been vested in the competing dominant culture.

What is needed is a redress of that balance so that there is a genuine respect for and genuine room for Aboriginal culture and identity. This must be accompanied by a real transfer of resources to the people who were so cruelly deprived of them, and it must be a real transfer to their control, not the use of resources to manipulate their responses in a way congenial to the dominant culture.

For many reasons - spiritual, economic, social and cultural - land has played a critical role in the assertion and maintenance of Aboriginal identity. In some parts of Australia the restoration of ownership and control of traditional land has been still possible and has been of great importance. In south-eastern Australia the complete and long-standing changes in land ownership and use have made this solution difficult or impossible in most cases. However New South Wales did introduce in 1983 a valuable and far reaching initiative in its land rights legislation. It was far more important in its implications than many people realised at the time.

It did carry an implicit recognition of the identity of Aboriginal people, the injustice of their dispossession and the need to transfer significant resources into their control. Such a ground-breaking measure must inevitably encounter problems. On the one side there will inevitably be resentment and opposition from vested interests, or from those who feel threatened by the disturbance of an historically unjust situation from which they continued to benefit. On the other hand there must be difficulties in the giving of trust and confidence by those who have been so long dispossessed, controlled and marginalised, and in their achieving success in managing resources of which they have been so long deprived, and in their exercising initiative and power which has so long been denied to them.

However such problems must not become an excuse for undermining or dismantling such an imaginative and potentially constructive measure as the New South Wales land rights legislation. It is only if measures which give some genuine degree of power and independence to Aboriginal communities, organisations and individuals are introduced and fury accepted that we can hope to move towards a reconciliation with Aboriginal people which will mean the end of the disproportionate numbers of Aboriginals in custody and with it their deaths in custody.

A closely related issue is the role of Aboriginal organisations. While there are some Aboriginals ready to step out into the mainstream community and seek the rewards of individual enterprise, most Aboriginals, in south-eastern Australia as elsewhere, see their lives in terms of membership of their communities, and to a large extent their local community.

Traditional forms of Aboriginal organisation and authority have largely disappeared in south-eastern Australia, and in any event they were not adapted to the economic and political world in which Aboriginals have to find a place today. Aboriginals have responded by developing a variety of organisations. Many of these have suffered great tensions, often because of alien requirements forced on them as a condition of funding, sometimes for other reasons such as divisions within communities built from various groups forced together by protection or assimilation policies, or by economic pressures or by the hostility of white power brokers in country towns. But despite difficulties and failures, many successful organisations have emerged.

In one area after another organisations have developed to provide Aboriginals with representative voices, opportunities to regain control over some aspects of their lives, and the experience of management and responsibility. They are a cradle for the development of many skills, of self respect, of unity and cooperation, and of the culturally appropriate services needed for Aboriginal advancement in many fields. There are many great advantages that do not appear in their balance sheets. It would be a tragedy if the organisations which are building a fabric for Aboriginal society were swept aside by a passion for 'mainstreaming' based on narrow calculations of efficiency. It would be, as one Aboriginal put it to me, 'the second dispossession'.

PART TWO: THE COMMISSION'S INVESTIGATIONS

CHAPTER 3: THE PROCESS OF INVESTIGATION

THE COMMISSION'S INVESTIGATION OF DEATHS

Each death was thoroughly investigated by Royal Commission staff, prior to the matter coming on for hearing. In each case a process of identifying and then requesting all relevant files and documents was the foundation upon which the investigation was conducted. In some cases the lives of the deceased had been detailed and documented to an extraordinary length by various government departments. All such files were obtained, as well as all the transcript and exhibits tendered at the coronial inquest into the death. This considerable mass of documentary evidence was then sifted and sorted, and arranged into files under the following headings, according to the source of the material.

Royal Commission Case File Numbers:-

1. Initial information

2. Coroner's file

3. Inquest transcript and exhibits

4. Police

5A. Corrective Services

5B Probation and Parole Service

6. Health

7. Attorney General

7A Director of Public Prosecutions

8. Ombudsman

9. Department of Aboriginal Affairs

10. Department of Family and Community Services (or similar department depending upon which State)

11. Premier's Department

12. Education and employment

13. Relatives

14. Aboriginal Legal Service, Western Aboriginal Legal Service, Victorian Aboriginal Legal Service or Tasmanian Aboriginal Legal Service

15. NAILSS

16. Committee to Defend Black Rights

17. Statements taken by Royal Commission

18. Research

The original documents were copied and paginated for ease of reference and copies provided to each of the parties. An important part in the preliminary preparation was early direct contact with the family of the deceased so as to hear from them their particular concerns and desires in relation to the investigation of the death of their family member. The compilation of a chronology was commenced once the various material had been organised and paginated. The chronology presented a fully referenced history of the life and death of the deceased and of subsequent actions relating to the death.

An initial conference was then called at which representatives of all parties taking part in the inquiry discussed what issues were appropriate for examination in the hearing. At this stage advice was also sought from all parties as to those persons whom it was thought necessary for the Royal Commission to interview and take statements from, and what topics were to be covered.

Bearing in mind the analysis made by Commission staff together with the advice of the various parties, lists were drawn up of people to be interviewed. In some cases the search for those persons entailed considerable work. Some had never before been formally spoken to in relation to the death. For instance, the investigation of the death of Peter Campbell, which had taken place at Long Bay in February 1980, was complicated by the need to identify and then track down 60 men who had been in the same wing of the prison on the night that he died. None of these persons had ever been interviewed or spoken to about the death before; some had long since left prison and had established new lives elsewhere; some were back in prison on different charges; some were deceased and some were unable to be traced.

Once all possible witnesses had been located, officers on the staff of the Royal Commission arranged and conducted interviews with them, and, on the basis of the information provided, drafted detailed statements, each of which had then to be checked and finalised with the relevant witness prior to being distributed to the parties and submitted as evidence. In some cases as many as 70 individuals were interviewed and statements compiled. As this work went on, analysis of the incoming information continued so as to develop a framework of issues to be addressed in the case. Where appropriate, letters were written to the representatives of persons or organisations who might be the subject of adverse comment, drawing attention to this situation and asking for a response to specific allegations or criticisms.

PREPARATION FOR HEARING

When the compilation of the evidence was almost complete, counsel assisting the Commission prepared a report 9 which set out a preliminary view of the facts as they related to the death under investigation, any prima facie findings adverse to or critical of individuals or organisations, areas where oral evidence was thought to be required and issues to be addressed in such evidence, tentative findings or submissions and the identification of underlying issues. This report was circulated amongst the parties for comment and discussion. The parties were given a fixed

time to consider the report and then a final pre-hearing conference was held to consider what oral evidence was required; what issues were to be addressed and what, if any, matters of relevance had not been covered by counsel assisting's report.

Following the conference, advice was given to me in relation to the issues to be addressed and the witnesses to be called. In some cases formal directions hearings were held prior to the actual hearing of the case, to enable legal representatives to make submissions to me as to 'what issues ought to be addressed by calling of evidence, and what witnesses ought to be called, beyond those identified by counsel assisting as necessary. In addition to the preparation of evidence from the ordinary witnesses, particular efforts had to be made to collect, collate and supply to expert witnesses engaged by the Royal Commission material relating to various aspects of each case on which they were requested to comment. Expert evidence was usually obtained about medical issues relating to the death and the conduct of the autopsy. Depending on the circumstances of the case, expert evidence was called on other issues, for example the effect of alcohol or drugs, the difficulty of tying particular knots, the qualities of materials, fingerprints, handwriting and the authenticity of documents and other issues. Care was taken to select experts independent of those involved in the death. For example, New South Wales autopsies were reviewed by Victorian experts, usually the Director of the Victorian Institute of Forensic Pathology.

When family members and members of the Aboriginal communities were to be interviewed, it was usual for such interviews to be conducted either by one of the Commission's Aboriginal Field Officers, or by a solicitor in the company of a Field Officer. The Field Officers also provided general advice to both the solicitors and the counsel assisting as to the issues, and the desires, interests and concerns of the local Aboriginal community.

One object of the detailed preparation of each case was the reduction of time occupied in public hearings, particularly having regard to the expense involved in such hearings. This entailed painstaking preparatory work, to a far greater extent than would otherwise have been necessary. The heavy workload was home by all the staff of the Commission in a most dedicated and exemplary fashion.

Although the time in public hearings was reduced, the amount of work which had to be done out of court by myself to master the materials, control the hearing, make findings and write reports in the 18 cases was considerable. To give some idea of just how big the task has been, the documentary evidence assembled in the case of David Gundy, excluding the witnesses statements taken by Royal Commission staff, totalled just on 8,500 pages. Even so the hearing covered 38 days and produced 3928 pages of transcript. This was the largest case as far as preparation and hearing were concerned, but there were several others which were not far behind. I note in this regard in particular the cases of Malcolm Smith, Lloyd Boney and Glenn Clark.

LOCATION OF HEARINGS

Consideration was given in each case as to whether the hearing into a particular death should be held near to the location of death, in the community of the deceased or in a capital city, having regard to such things as the wishes of the relatives, the location of the majority of witnesses, and the expected length of

hearing. My general rule was to hold the hearing in the deceased's home town unless there was particular reason for sitting elsewhere. In New South Wales, a number of cases were heard in Sydney, some because that is where the death occurred, some because that is where the relatives wished the heating to be held and others for a combination of reasons. However, hearings were also held at Grafton, Walgett, Tamworth, Lismore, Coffs Harbour, Wilcannia, Brewarrina and Griffith. I also visited communities associated with other deaths including Dareton, Broken Hill, Dubbo, Redfern and Wollongong. In Victoria one of the hearings was held at Swan Hill whilst the other two were held in Melbourne. However I visited the communities at Moe and Echuca from which the other two deceased came. The one Tasmanian death occurred in a suburb of Hobart, which was where the hearing was held.

Outside of capital cities, hearings were never held in local court rooms. These are commonly thought of as 'police courts' and are places where charges by police against Aboriginals are dealt with. Care was taken to ensure that all hearings were in more neutral territory. Many of the centres were small and the only available premises apart from the courthouse were council chambers, so these were commonly used. Sometimes other council premises such as community centres were available. In Wilcannia the Commission sat in the preschool adjoining the Aboriginal 'mission'.

REPRESENTATION AT HEARINGS

At each of the hearings leave to appear was granted to the family or kin of the person whose death was the subject of inquiry. The New South Wales, Victorian and Tasmanian governments respectively were given leave to appear in those cases relating to deaths in each State. The governments did not usually appear on behalf of individual public servants, but in relation to general issues the State had relevant interests to safeguard and was in a position to assist the Commission in a variety of ways. The relevant police or prison officer or associations provided representation for officers who were the subject of inquiry in every case. The Police Federation of Australia also sought leave to appear but indicated that it did not propose to attend proceedings as a matter of course. On the basis that it appeared to be a precautionary measure in case a matter arose on which the Federation and its State branch had divergent views I neither granted nor refused leave but left the way open for the application to be renewed if the need arose. This did not occur.

The National Aboriginal and Islander Legal Services Secretariat (NAILSS), which is an umbrella organisation of which the great majority of Aboriginal Legal Services in Australia are members, sought leave to appear on 'overview' issues, i.e. general issues transcending the circumstances of particular deaths. Similarly the Committee to Defend Black Rights (CDBR) applied for leave to appear in an 'overview capacity'. Having regard both to the ongoing and very real interest in the general issues relating to the arrest, charging, trial and imprisonment of Aboriginals on the part of various Aboriginal Legal Services and the fact that CDBR had played such an important role in relation to the publicising of the issue of Aboriginal deaths in custody and the movement calling for this Royal Commission to be established, I granted each organisation a qualified leave to appear, which did not allow the organisations to duplicate the work of counsel for the respective families. I granted NAILSS and CDBR leave to appear in relation to matters relevant to an understanding of deaths in custody as a general social

phenomenon and to steps which might be taken to prevent future deaths in custody. I particularly remarked in the ruling I handed down on applications for leave to appear that the parties were invited to make written submissions on general issues. I pointed out that the grant of leave was not to be construed as indicating that the Commission considered that it was necessary or appropriate for the party to be present at all hearings of the Commission, or to be represented in any particular way.

At each of the public hearings counsel appeared for the family of the deceased, the police and/or prison officers involved, and the relevant State government, and to assist the Commission. On occasions, counsel or officers represented NAILSS and CDBR, though the latter representation discontinued after the middle of 1989. From time to time other individuals or organisations sought leave to appear to protect their interests. At different times these included a solicitor, ambulance officers, a doctor, the Royal Flying Doctor Service and an officer of the Prison Medical Service. On occasions counsel for a State government would appear for some of the most senior officers involved. In some cases, notably the inquiry into the death of David Gundy, there was separate representation for different groups of police officers.

COMMUNITY CONSULTATIONS

On the occasions when evidence in the individual cases was taken in country towns, I usually took advantage of the occasion to conduct consultations with the local community members. This commonly took the form of meetings with organisations or arranged by organisations, or sometimes with groups of relatives. In some cases meetings were arranged formally with groups of police or other officials concerned with Aboriginal affairs. In Victoria I spent two weeks visiting communities over a wide range of areas in the State in company with Mr Richard Frankland, the Commission's Aboriginal Field Officer in Victoria.

Open public conferences about a range of issues were held in Wilcannia, Walgett, Brewarrina and Swan Hill. At the time of the inquiry into the death of Paul Kearney I held a public conference in Redfern in relation to issues arising out of intoxicated persons and alcohol. Public conferences were held in Sydney, one on juvenile justice and one on Aboriginals in the prison system. It was intended to hold a similar conference on Aboriginal/police relations in Sydney, and corresponding conferences in Victoria and Tasmania. However due to the time Occupied by the inquiry into the death of David Gundy it was not possible to hold these conferences. I was particularly grateful to have the opportunity in Victoria to take part in a live-in conference between police officers and Aboriginals. It was a particularly enlightening and encouraging experience.

I am indebted to all those people, Aboriginal and non-Aboriginal, who took the time and effort to advise and inform me of their point of view and ideas and possible solutions. Particular commendation should be made of the role of the Aboriginal Field Officers of the Royal Commission who were instrumental in arranging such community consultations and without whom, I am sure, I would have received nowhere near the amount of helpful and considered advice which I did fortunately receive. Whilst preparation was underway for many of the individual cases, solicitors and field officers were at the same time conducting interviews and amassing detailed information in relation to the more general issues affecting the particular Aboriginal community or of some relevance to particular characteristics

of the individual case under investigation. The result of all this consultation and statement taking has been a wealth of information, only a part of which it has been possible to incorporate into this general report. However, just because particular points or suggestions do not find their way into this report, I should like to state that my opinions and evaluations have been fashioned on a continuing basis by all the various people who have taken time to address me or provide me with written submissions. All the material has been made available to those working on the National Report of the Commission.

Knowing as I do, the degree to which Aboriginal people have had in the past, and continue in the present, to have their lives so intricately dissected by white researchers and departmental surveyors, I am all the more appreciative of those who nevertheless came forward and offered what were at times deeply personal and significant accounts in order to help me understand the situation of Aboriginal people in society today.

TESTING CUSTODIAL OFFICERS' EVIDENCE

In some cases where a death in custody occurs there are some witnesses independent of custodial officers, for example other prisoners, who may be able to give useful evidence, but this is not usually so. When the deceased is not there to give his account of what happened and the only surviving witnesses are the custodial officers whose conduct is in question, how can one reach a confident conclusion that there was not foul play or other misconduct? I had to confront this situation in a number of deaths where it was obvious that relatives very strongly believed that there had been foul play. I found that basically there were three approaches which were of assistance: one was to examine critically and pay great attention to the 'hard' evidence; the second was the critical and sceptical examination of the evidence of the custodial officers themselves; and the third was the examination of the plausibility of the self-harm explanation.

In no case which I investigated was the suspicion, indeed conviction, of foul play stronger amongst family and friends than in the relation to death of Lloyd Boney in Brewarrina Police Station. In that case I found that there were numerous events which could be given a guilty interpretation or an innocent interpretation, that is they could be fitted into either a killing or a self-hanging scenario. I explained how I proposed to approach those issues in the following passage:

> 'In some cases there are conflicting accounts of incidents which happened suddenly and were over in a matter of seconds, a situation in which human memory is notoriously unreliable. For many of the events the only surviving witnesses are police and if they are guilty they are not likely to admit it. On some things they have clearly not told the truth, but this does not necessarily mean that they killed Lloyd Boney.
>
> 'In these circumstances it is of great importance to see what can be learnt from 'hard' evidence, that is, evidence which does not depend on the honesty of witnesses and the reliability of their memories, but evidence which survived the events in some form which enabled it to be carefully examined afterwards, or may even enable it still to be examined now.
>
> 'In the present case three forms of hard evidence survived the events. The most important piece of evidence was Lloyd's body, which was subjected

to very thorough *post-mortem* examination by two independent and well qualified pathologists, one of them chosen by the Western Aboriginal Legal Service (WALS). Their observations at these examinations were written down in detail in *post-mortem* reports which give a picture of the state of Lloyd's body after the events.

The second form of hard evidence consists of the cell and things found in it. The cell and its doorway are still there and it is possible to examine them and see whether it was possible for Lloyd to have hanged himself. The sock by which the police say Lloyd was found hanging is still available and was subjected to very thorough scientific examination to see if its condition was consistent with the police story. A finger mark found in the cell was photographed, but there was insufficient detail to identify the person who made it.

The third form of hard evidence is the documentation created by police in processing Lloyd, which still exists and can be examined. If it supports police it must be very carefully considered to make sure it was not fabricated to support the police story. However if the police officers' own documents contradict their story, this is very telling.'

The death of David John Gundy was another example where the 'hard' evidence was of critical importance, because otherwise one would have been totally dependent on the evidence of the members of the SWOS squad as to the immediate circumstances of his death. In that case a very great deal depended on the medical evidence relating to the shotgun wound sustained by Mr Gundy and the configuration of bloodstains in the room in which he died.

The critical examination of the evidence of the custodial officer witnesses is a technique very well known to the law and to a considerable extent is what cross-examination is all about. I was assisted in all the hearings by very thorough cross-examination by counsel assisting and by counsel appearing for the family of the deceased. Often because of preceding coronial inquiries and police investigations a number of previous accounts had been given by the officers concerned, and discrepancies between their accounts at different times were a matter for critical evaluation. In addition there was the matter of internal inconsistencies within accounts and inconsistencies between different witnesses. The consistency of the oral evidence with the hard evidence and particularly with documentation for which witnesses were responsible is also a very important line of inquiry.

Of course the mere existence of discrepancies or inconsistencies or conflicts is not conclusive of untruthfulness, much less of guilt. Human powers of observation, particularly where events happen at speed or in a *complicated* context, are notoriously prone to error. Memories fade quickly and the reconstruction of events, often quite innocently, comes to play a big role in what people believe to have happened. Individuals differ greatly in their power of narration and command of language and in their ability to say with precision what they mean. All of these things must be allowed for and the assessment of witnesses' oral evidence is one of the most difficult tasks of a tribunal.

The third important approach to excluding foul play which I mentioned was the testing of the plausibility of the competing hypotheses. Among the questions to be asked in testing the hypothesis that a person took his or her own life are these.

Was the method of death - for example hanging - capable of being carried out, or likely to have been carded out, by an unaided person? Did the deceased have the opportunity to carry it out unobserved? Were the means available without provision by someone else? Did the deceased possess the skill and capacity needed to carry it out? Was the deceased disabled by intoxication or other circumstance from carrying it out? Is the objective evidence, including scientific examination of the site and the pathologist's examination of the remains, consistent with the deceased's own act? Was it plausible that this person would have taken his or her own life? Can all persons who had the care of the deceased or are possible suspects account for their movements?

Usually it is possible to reach a conclusion by the use of these techniques. However in the case of the death of Bruce Leslie I found that due to the untrue evidence of police officers I was unable to find how the death occurred.

CHAPTER 4 - JURISDICTIONAL ISSUES

TERMS OF REFERENCE

As in the case of other Commissioners, my Terms of Reference required me to inquire into the deaths in specified States of the Commonwealth

> 'since 1 January 1980 of Aboriginals and Torres Strait Islanders (including any such deaths 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 injury suffered whilst in police custody, in prison or in any other place of detention caused or contributed to that death.'

In a number of cases issues arose as to whether deaths should be placed on the Commission's list, or deaths that had already been placed on the list should be removed. In other States contentious issues have arisen as to whether particular persons were 'Aboriginals'. In three cases names which had been placed on the Commission's list were removed at my direction on the ground that the persons were not Aboriginal. However in none of the three cases (Stanley Cobb and Edward Hilsley in Victoria and Ross Mulvihill in New South Wales) did any argument arise. In each case the situation was investigated by Commission officers who found prima facie evidence that the person concerned was not Aboriginal and this accorded with the claims of the families of the deceased and was agreed to by all interests appearing before the Commission.

A major issue did however arise in relation to persons who had died in hospital, the death being contributed to by injuries suffered while in police custody or in prison. There were two issues which arose. On the one hand, did the Terms of Reference cover a death in hospital contributed to by injuries suffered whilst in police custody or prison if at the time of the death the person was no longer in custody? On the other hand, did the Terms of Reference cover a person who was still in custody but died in hospital in circumstances where the death had not been contributed to by injuries suffered whilst in custody? For reasons which I gave in detail in a ruling issued on 14 December 1988 I answered the first question in the

affirmative and the second in the negative. The answer to the first question had the effect of affirming jurisdiction in the case of Bruce Thomas Leslie, which I was then about to hear, but denying jurisdiction in the case of Francis Thomas Cooper, in which evidence had already been completed before the question arose.

FRANCIS THOMAS COOPER

Francis Cooper died in the Renal Unit of Prince Henry Hospital, Sydney on 3 August 1984. This was an ordinary public ward and Mr Cooper was not under guard, but he was a remand prisoner who had been taken to the hospital for treatment. In a ruling on jurisdiction given on 3 August 1990 1 said:

> 'The story is one of shocking and mindless inhumanity, with Mr Cooper slipping between cracks in a system where nobody took overall responsibility for his welfare. Although unconvicted, he was left to die over a period of two months in gaol, far from his family, when he was virtually helpless and a threat to nobody. He should have been released to die in dignity and comfort with his family about him. The root of his incarceration was that he was alleged to have said that he had driven a car while under the influence of alcohol. No-one had seen him do it, no-one had been injured and he denied that he had made the admission. Nothing had been proven against him, and one wonders in any event how useful was an admission claimed to have been made by a person affected by a blood alcohol concentration of 0.2.
>
> The terrible story raises very serious questions about the conduct **of** many people in the criminal justice system, 'including those representing Mr Cooper, and about the working of the Prison Medical Service and the Corrective Services Department as a whole. As I have said, the matter was investigated by the Commission without any issue of jurisdiction being raised. However, it was raised and made the subject of a general ruling prior to my reporting. It would now not be right to report unless I am satisfied that the matter was within jurisdiction. It is within jurisdiction only if injuries suffered in prison or police custody caused or contributed to Mr Cooper's death.'

After reviewing medical evidence I said:

> "There is no suggestion that Mr Cooper was in any way mistreated or denied any proper medical treatment which he was willing to accept. What happened to him while he was in custody was simply the progressive continuation of established diseases and the evidence identifies no particular step in the progress of the disease which could be described as an "injury". However, even if anything which occurred during his period in custody could be identified as the suffering of an injury, it is clear from the evidence which I have quoted that there is no basis for saying that it caused or contributed to his death.
>
> 'I therefore conclude that Mr Cooper's death does not fall within the Terms of Reference of this Commission and I will accordingly not report on it.'

ALLAN GORDON CLAYTON

Allan Gordon Clayton was a 28 year old Aboriginal man who was found dead at the bottom of an embankment adjoining the highway at Gowrie in New South Wales on 2 January 1982. The matter was investigated by Commission officers and it appeared that the probable cause of Mr Clayton's death was liver disease, resulting from alcoholism, and that over the 48 hours before his death there was a slow development of hypoglycaemia of increasing severity which culminated in his death. At various times some of the symptoms may have been mistaken for intoxication.

Investigation showed that Mr Clayton was in police custody between 1.00 am and 6.30 am on 6 January 1982 as an intoxicated person, and that he may have been in custody between 7.30 am and 9.00 am on the same day when he was taken by police from a yard in Tamworth to Tamworth Base Hospital and later back to the police station. It is clear that he had left the station at about 9.00 am as a free man and was not in custody at the time of his death. Accordingly his death did not fall within the Terms of Reference. The extensive investigation of the matter which was carried out did not reveal any reason to suspect any form of misconduct on the part of police. On the contrary all the indications were that they had acted out of concern for Mr Clayton's welfare.

KEITH 'COWBOY' ADAMS

Keith Adams, an Aboriginal man living in Collarenabri in New South Wales, was last seen in the early hours of 9 September 1982. A coronial inquiry held between 20 November 1986 and 3 December 1987 concluded that certain remains found in a paddock on 9 June 1984 were those of Keith Adams, and that he had died of poisoning from the effects of a type of sheep-dip, whether accidentally or not the coroner was unable to say. There was a lengthy investigation at the coronial inquiry at which the deceased's family was legally represented.

The matter was extensively investigated by Commission officers. Scientific evidence from Professor Cordner did not support the coroner's finding that Mr Adams died from poisoning by the sheep-dip, traces of which were found in soil near his remains, so that the matter was left on the grounds that there was no reliable information at all as to the cause of his death. The suggestion that his death may have been connected with custody came from a statement made by a witness, Mr Weatherall, who claimed that while in custody with Mr Adams he saw him being taken away by a sergeant of police and a civilian friend of the sergeant in a Landcruiser belonging to the friend. Unfortunately Mr Weatherall *died* prior to the commencement of the inquest, there being no suspicious circumstances associated with his death. Commission officers subjected every detail of Mr Weatherall's statement to close analysis to test its reliability. It became clear that many details of the statement were inconsistent with each other and inconsistent with their occurrence around the time of Mr Adams' disappearance. They were also inconsistent with routine police records. There were also important inconsistencies between Mr Weatherall's written statement and oral accounts given by him to other witnesses. It is clear that his statement provided no basis for any finding of misconduct in relation to Mr Adams' death or for any finding that he died in police custody. In some ways Mr Weatherall's statement is reminiscent of statements given by another witness who claimed to have been in police cells both with Lloyd Boney and Clarence Nean prior to their deaths, the evidence in both

cases being obviously quite fanciful. It is probable that in all three cases a story was imagined or fabricated to fit around the circumstances of the death.

One must sympathise greatly with the relatives of Mr Adams, as the mystery of his disappearance remains completely unresolved. However there was nothing that the Commission could do to assist.

KENNETH JOHN BUCHANAN

The dead body of Kenneth John Buchanan was found lying on a sand dune at Happy Valley, Coffs Harbour on the morning of 10 November 1986. He was an Aboriginal who lived on an Aboriginal housing estate, Wongala, in another part of Coffs Harbour. His death was placed on the list of this Commission for investigation as a possible Aboriginal death in police custody. On 30 October, 1989 I heard submissions, on the basis of the documentary evidence then available, as to whether or not the matter was within the Terms of Reference of this Commission. Following that hearing I issued a Ruling on 8 November *1989* indicating that I was not satisfied on the material then available that the matter was outside my Terms of Reference and I therefore directed that further investigation continue. Some further statements have been obtained and on 2 and 3 April 1990 oral evidence was taken from a number of witnesses at Coffs Harbour and submissions were made by parties in the light of the evidence. The evidence and submissions were directed to jurisdiction.

There was no dispute that Mr Buchanan was taken by two police officers from Coffs Harbour Hospital on the morning of 9 November 1986, shut in the back of a police wagon and taken to the place where his body was found the next day. The jurisdiction of this Commission to inquire depended on whether Mr Buchanan was in police custody at the time of his death. This involved the two questions whether his relationship with the police who took him to Happy Valley was one of being in their custody, and, if so, whether that condition of custody was still in existence at the time of his death.

After bearing evidence I concluded that Mr Buchanan had been in custody shortly before his death, but was still alive when his custody ceased. In those circumstances his death fell outside the Terms of Reference.

DAVID JOHN GUNDY

David John Gundy, an Aboriginal man, died on 27 April 1989 of the effects of shotgun wounds sustained when members of the Special Weapons and Operations Section of the New South Wales Police Force made a surprise forced' entry into his home in search of John Porter who had shot two police officers. I held that there was evidence that Mr Gundy was in police custody at the time of his death and this ruling was challenged in the Federal Court. Burchett J on 23 April 1990 held that Mr Gundy was not in custody at the relevant time. On 13 May 1990 a Full Court, (Morling, Beaumont and Gummow JJ) upheld an appeal, set aside the orders of Burchett J and dismissed the application to me from hearing the matter. In the course of a joint judgment Morling and Gummow JJ said:

> 'An Aboriginal person who is given by the police to understand firmly that he will he restrained from leaving his house at his own will may, one

should have thought, properly be said to be in police custody.'

The High Court subsequently refused leave to appeal from the decision of the Federal Court. I accordingly proceeded to hear and report upon the death.

PAUL ANTHONY PRYOR

Paul Anthony Pryor was an Aboriginal actor from Yarrabah in Queensland who was found hanged in a shed at the rear of his brother's home in Melbourne on 13 January 1988. He had been in police custody at Wangaratta from 5 to 8 January 1988 and had been due to appear in court on 11 January 1988. The coroner found:

> The deceased was depressed and as a result of being arrested at Wangaratta he became concerned about his previous treatment by the Yarrabah police (Queensland) approximately 12 months previously. He was also concerned about his forthcoming court appearance at Wangaratta on Monday 11 January 1988. The deceased took his own life between 10 and 11 January 1988.'

The coroner referred the findings to the Attorney General of Victoria for forwarding to this. Royal Commission and as a result the matter came into the Commission's list. It was clear on consideration of the facts that the matter did **not** fall within the Terms of Reference of the Commission. However, following representations made by the Victorian Aboriginal Legal Service to the Victorian Government, that Government requested me as the Commissioner conducting inquiries in the State of Victoria to undertake a preliminary investigation into the death of Paul Pryor with a view to making a recommendation as to whether the matter should be investigated by the Commission. This would of course have involved an amendment to the Terms of Reference. I indicated to the Victorian Government that in my view it should seek the co-operation of the Queensland Government if it wished me to carry out any investigation, as major allegations related to the conduct of police in Yarrabah in Queensland. The Premier of Queensland indicated that the Queensland Government was prepared to cooperate by providing any background information about the arrest of Mr Pryor in Yarrabah and would be prepared to consider any recommendation which I might make.

It also emerged that allegations were being made that Paul had been mistreated by police at Fitzroy Police Station in Melbourne on Thursday, 16 July 1987 and that this was also. a factor contributing to his action in taking his own life. I instructed officers of the Royal Commission to assemble all relevant material and to interview relevant witnesses in Victoria who were prepared to make statements. The Queensland Police Complaints Tribunal of Queensland supplied documentation of its investigation of a complaint by Paul Pryor concerning his treatment by members of the Police Force at Yarrabah on the occasion referred to at the inquest, and a copy of a report which the Tribunal had made to the Minister on 16 February 1990.

The Queensland Police Complaints Tribunal had in fact upheld Paul Pryors complaint concerning his treatment at Yarrabah even though he was not available to give evidence. It said that if Paul Pryor had been alive to give evidence against the police officers it would have had no hesitation in recommending criminal charges against them. In those circumstances, Paul Pryor's complaint having been

vindicated by a proper inquiry, I took the view that there would be no point in the Royal Commission conducting a further inquiry.

So far as Paul's detention at Wangaratta was concerned, police officers at Wangaratta made themselves available for interview by Commission officers. Paul had in fact told his brother that his treatment by the Wangaratta Police had been very, very good and the Commission's investigations suggested nothing to the contrary. Accordingly there was no reason to investigate his custody there.

Although counsel for the police officers submitted to me that I should not recommend the extension of my terms of reference to include Paul Pryor's death, the officers at Fitzroy Police Station declined to be interviewed by Commission officers. They did supply statements through their solicitor. Commission officers however interviewed all other persons who might be able to cast any light on what had happened, either from their own observations or from discussions with Paul. I concluded in my report to the Government:

> 'It is clear that the period in Fitzroy Police Station had a profound and distressing effect on Paul, and left him in a state of considerable concern and depression thereafter. There were outstanding charges for which he had to appear in court, and of course he carried with him the fear that this might be the occasion to extradite him to Queensland. However there is strong reason to believe that Paul's distress was the result of his own reaction to custody, bringing back the memories and fears from his Yarrabah experience, and probably exacerbated by the effect on him of alcohol and amphetamines. I do not propose to go into any detail about what is said to have occurred in the police station, as it has not been the subject of any tested evidence and its repetition would be painful to many people. However I have found the very strongest reason to believe that a formal inquiry would establish that the very serious effect on Paul of his incarceration in Fitzroy Police Station stemmed from the triggering of Yarrabah memories rather than particular actions by police at Fitzroy.
>
> 'In these circumstances a formal inquiry into events in Fitzroy Police Station would not, I believe, be in anyone's interest.'

Accordingly I did not recommend that the Terms of Reference of the Commission be amended to include an inquiry into the death of Paul Pryor.

The Victorian Commissioner of Police subsequently went on a national radio news program and criticised me for not having cleared the police at Fitzroy. I would point out that the only witnesses alive as to what did happen in Fitzroy Police Station are the police officers themselves and they not only opposed the making of a recommendation that an inquiry be held, but refused to be interviewed by Commission officers for the purposes of the preliminary inquiry. In those circumstances it was not possible for me to make any firm finding as to what happened at Fitzroy Police Station, and it is strange that a complaint should be made on behalf of those officers that findings were not made to 'clear' them.

POLICE/ABORIGINAL RELATIONS

A question of jurisdiction was also raised when I indicated my intention to convene a sitting of the Commission to discuss the most suitable procedures for informing

myself on the subject of police/Aboriginal relations in New South Wales. What I envisaged was looking at this question generally as background to the numbers of Aboriginals coming into custody and dying in custody. This sitting was called for 15 February 1990 and on that day the counsel for the New South Wales Government made the following submissions:

1. that I had no jurisdiction to consider generally the question of police/Aboriginal relations but only to look at their bearing on particular deaths;

2. that I had no jurisdiction to consider any feature of police/Aboriginal relationships arising after 31 May 1989, because my Terms of Reference were related only to particular deaths occurring before that date;

3. that I could not investigate 'an underlying issue' as distinct from the immediate circumstances of particular deaths;

4. that even if I had power to inquire into Aboriginal/police relations I should not undertake that task because of the limited time available and the number of reports still to be written, or inquiries to be held, on particular deaths.

I rejected these submissions for detailed reasons given in a decision dated 19 March 1990. In the course of the decision I quoted a letter from the National Commissioner, Commissioner Johnston QC, expressing the view that all Commissioners had the power and duty to investigate underlying issues associated with the deaths which were the subject of their inquiries. Both he and the former National Commissioner, Commissioner Muirhead had indicated a desire that individual Commissioners should inform themselves on underlying issues in the course of their work with a view to assisting the National Commissioner in his final report.

Following this decision I held two public conferences, one relating to Aboriginals in prison and one relating to Aboriginal juveniles in the justice system, in which all interested parties were invited to discuss the issues. It was planned to have a similar conference dealing with Aboriginal/police relations but in the end the exigencies of completing hearings and reports by the required date, and in particular the occupation of my extended Commission by the hearing of the Gundy case and the preparation of the report on it, made it impossible to hold the conference. This remains one of a number of issues which I have not been able to pursue to the extent that I would have wished.

PART THREE: THE DEATHS

CHAPTER 5: GENERAL FINDINGS AS TO CAUSES OF DEATHS

In pursuance of my Commission to inquire into and report upon the deaths with occurred between the relevant dates in New South Wales, Victoria and Tasmania I have investigated, held public hearings into and reported upon 18 individual cases of Aboriginal deaths in custody. Commissioner Muirhead inquired into and reported

upon the death of Edward Murray in New South Wales prior to the commencement of my Commission, and that case is listed but not discussed in this report. The following is a list of deaths showing the date and place of death, age at death and year of birth and the immediate cause of death.

NEW SOUTH WALES

In police custody

Edward James Murray; 12 June 1981; Wee Waa Police Station; 21 years -1959; Self inflicted hanging.

Clarence Alec Nean; 5 August 1982; Dubbo - base hospital following custody in Walgett Police Station; 33 years - 1948; Head injury following collapse due to alcohol withdrawal.

Mark Wayne Revell; 29 October 1982; Grafton Police Station; 27 years - 1955; Serf inflicted hanging.

Bruce Thomas Leslie; 6 June 1985; Sydney- Royal North Shore Hospital; following custody in Tamworth Police Station; 46 years - 1939; Fractured skull - cause of fracture undetermined.

Paul Lawrence Kearney; 11 July 1986; Sydney - Darlinghurst Police Station; 36 years - 1949; Sleep apnea following alcoholic intoxication and drug overdose.

Shane Kenneth Atkinson; 5 October 1986; Griffith Police Station; 23 years -1963; Self-inflicted hanging.

Mark Anthony Quayle; 24 June 1987; Wilcannia Police Station; 22 years -1964; Self-inflicted hanging.

Lloyd James Boney; 6 August 1987; Brewarrina Police Station; 28 years -1958; Self-inflicted hanging.

David John Gundy; 27 April 1989; Marrickville, Sydney; 29 years - 1959; Shotgun wound.

In prison

Peter Leonard Campbell; 12 February 1980; Sydney - Long Bay Gaol; 33 years - 1946; Self-inflicted cut to throat.

Malcolm Charles Smith; 5 January 1983; Sydney - Prince of Wales Hospital following custody in Long Bay Gaol; 29 years - 1953; Self inflicted - brush handle into eye.

Thomas William (Tim) Murray; 1 December 1983; Bowral Hospital following custody in Berrima Gaol; 19 years - 1964; Self inflicted drug overdose.

Peter Wayne Williams; 8 November 1987; Grafton Gaol; 25 years - 1962; Self-inflicted hanging.

Maxwell Roy Saunders; 28 November 1988; Goulburn Gaol; 27 years - 1961; Heart disease aggravated by self-administered methadone.

In a juvenile detention centre

Thomas Carr; 23 March 1981; Sydney - Minda Training Centre; 17 years -1963; Heart disease.

VICTORIA

In police custody

James Archibald Moore; 15 May 1982; Swan Hill District Hospital after custody in Swan Hill Police Station; 58 years - 1924; Pontine haemorrhage.

Harrison Day; 3 June 1982; Echuca Hospital following custody in Echuca Police Station; about 40 years - between 1939 and 1943; Epileptic fit.

Arthur Moffatt; 11 June 1987; Warragul Police Station; 51 years - 1936; hypoglycaemic reaction of diabetic origin.

TASMANIA

In police custody

Glenn Allan Clark; 27 March 1986; Glenorchy Police Station; 23 years - 1962; Self-inflicted hanging.

I propose now to discuss the deaths in relation to various causes or contributing factors. Among the categories I will use are 'Foul play', 'Negligence and lack of care', 'Accident', 'Self-inflicted harm', 'Suicide', 'Hanging', 'Unnecessary custody' and 'Avoidability of deaths'. These are not mutually exclusive categories, and in any event a particular death may be contributed to by a combination of different factors. Hence particular deaths may be referred to under a number of headings.

FOUL PLAY

In no case did I make a finding that custodial officers had killed a prisoner or even deliberately inflicted an injury on them. In the case of the death of Bruce Thomas Leslie I was unable, by reason of the untruthfulness of police evidence, to reach a firm conclusion as to how he had died, or to exclude the possibility that some mistreatment by police had contributed to his death. However, even in that case there was no reason to think that there had been any intention to cause his death or to cause him serious injury.

The suspicion on the part of relatives and friends that there had been foul play was very strong indeed in some cases. One of the great weaknesses in those responsible for notifying relatives of deaths or for conducting investigations into deaths has often been the failure to realise that such suspicion was likely to occur and was not unreasonable in the minds of relatives. From the point of view of relatives a live brother, father, husband or son goes into custody and a dead body is returned. It must never be forgotten that a very important and legitimate part of the 'racial memory' or 'cultural heritage' of Aboriginals in this country is the deliberate hunting down and killing of their ancestors and the deliberate destruction of their families by the forcible movement of groups and individuals and the taking away of children. With these memories police are very strongly associated. Today police continue to arrest Aboriginals at many times the rate at which they arrest other people. One simply cannot expect many Aboriginals to share the benign view of the police function that is held by many non-Aboriginals.

Death often takes place under circumstances where the only witnesses of the immediately surrounding events are custodial officers, in whose interest it is that the deceased should be found to have died by his or her own hand, or by natural causes without fault on their part. Any investigation which is to convince outsiders must critically examine such hypotheses and investigate the alternative hypotheses of death by foul play or negligence.

In my inquiries every effort was made to exclude the possibility of death by foul play. In Chapter 3 I described the thoroughness with which cases generally were investigated and also the methods that are available for testing the hypothesis of foul play when a prisoner dies in custody.

NEGLIGENCE AND LACK OF CARE

Negligence, lack of care, and/or breach of instructions on the part of custodial officers was found to have played an important role in the circumstances leading to 13 of the 18 deaths which I investigated.

Of the five deaths in prison inadequacies in the services provided by the Prison Medical Service were apparent in relation to the deaths of Malcolm Smith, Tim Murray and Peter Williams and in a fourth case, that of Maxwell Saunders, prison officers failed to seek medical attention when it should have been sought, partly as a result of a dispute between the prison officers and the Prison Medical Service. Peter Williams was also the victim of a hasty and inappropriate transfer to Grafton Gaol, apparently motivated by a desire to reduce the problems of one overcrowded gaol by sending him to another at the earliest possible moment.

The failure of police to carry out the proper checking of prisoners may have made the difference between life and death for Shane Atkinson, Lloyd Boney and Harrison Day. Paul Kearney should have been taken to a civilian proclaimed place, not a police station, but, having been taken to a police station, medical assistance should have been sought for him in the light of the pills discovered on him. Bruce Leslie and Arthur Moffatt should have been taken to a hospital not to a police cell, and in their cases there was a failure in duty by ambulance officers as well as police. Glenn Clark's life might have been saved had the Tasmania Police Force learned from the previous experience of deaths in custody and given appropriate instruction to police. Mark Quayle should never have been taken from hospital to a

police cell, and when taken to the police cell should not have been locked up unsupervised. In his case there were breaches of duty by a hospital sister and a doctor as well as by two police officers. David Gundy's life would not have been lost if police had waited until they had sufficient information to justify a lawful entry to premises, or if SWOS officers had been properly trained to deal with the seizing of their shotguns by an unarmed person.

ACCIDENTAL DEATH

In four cases questions of accident arose in relation to the deaths which I investigated. There was a sense in which the death of Malcolm Charles Smith was accidental. He was using the handle of an artist's paintbrush in an endeavour to put out his eye in response to the Biblical injunction 'If thy eye offend thee pluck it out'. However he pushed the brush so far in that it penetrated his brain and he died. Leaving aside any legal questions, the death of David John Gundy involved an 'accident' in common language, in that Sergeant Dawson did not intend to discharge the shotgun which went off, and was intending only to wrest it away from Mr Gundy, whom he believed to be trying to take it off him. In the process of pulling away his index finger inadvertently came onto and contracted against the trigger.

The most probable explanation of the death of Clarence Nean at Walgett Police Station is that be fell and struck his head on the concrete driveway as a result of symptoms of alcohol withdrawal. While the alcohol withdrawal symptoms were a result of previous drinking and its cessation, it was accidental that they should have these fatal consequences.

The issue of accident was very relevant to the death of Bruce Thomas Leslie. He may well have died as a result of fracturing his skull as a result of an accidental fall backwards either before coming into custody or after coming into custody. However by reason of the failure of police to give a truthful account of what occurred in the police station I was unable to exclude the possibility of non-accidental injury.

SELF-INFLICTED HARM

For the most part in my reports I avoided the use of the term suicide or the making of findings of suicide. I explain my reasons for this in my *Report of the Inquiry into the Death of Peter Leonard Campbell.* I spoke instead of the deceased killing himself or taking his own life or some similar phrase. In the strict sense, suicide is more than that. Suicide as a matter of law involves a finding that a person not only took his or her life, by his or her own act, but did so intending that consequence. If that person was capable of foreseeing, and did foresee, that death was the probable consequence of the action which was taken, then that person has committed suicide.

There were a number of inquiries in which I was confronted by a situation in which it was clear that the death was not due to natural causes, to accident, or to the act of another person. In other words it was self-inflicted. In some cases of self-inflicted death it may be clear that the deceased did not intend to take his or her own life, but was intending to do something different. Thus, as my *Report of the Inquiry into the Death of Malcolm Charles Smith* shows, the deceased in that case was trying to put out his eye, not to kill himself. Sometimes, although I have

not investigated such a case, the deceased has spelt out his or her intentions in a suicide note for all to see.

In other cases one must rely on historical or circumstantial evidence to try to penetrate the recesses of another person's mind. It is a difficult process, particularly when the person's mind is disturbed, whether by psychosis, intoxication by alcohol or other drugs, withdrawal symptoms, or delusions of any kind. Unless the person has been under constant professional observation, one will have to rely on bits and pieces of information which may give a very incomplete picture.

In the case of Peter Campbell for example, Peter was a very private person, who was revealing his thoughts to no-one in the period before his death, and was being seen by no professional observer. At the time of the Commission inquiry, ten years after the event, few people could be found to give any account of his usual demeanour and state of mind, and their memories could well have been faulty. There was evidence of premeditation or preparation on Peter's part, but there was also evidence of recent, apparently irrational, violent behaviour, and in the not too distant past, of bizarre delusions. I could have weighed up such evidence as happened to be available and come to a conclusion on the probabilities, but it might well have been different to the conclusion one would have reached on fuller evidence.

If in any particular case I had come to the conclusion that the deceased did commit suicide, it might well have inflicted further pain on relatives who had already suffered considerably. Personally I can feel sympathy with persons who suffer such pressures and stresses that they take their own lives and I can respect their decisions, but for many people the social and religious stigma attached to suicide is real and important.

I asked myself the question whether it was necessary to make a decision, capable of inflicting such pain, on such a dubious evidentiary basis. For some legal purposes it may be important to have a decision whether a death is legally a suicide, and courts and tribunals have, in such cases, to do the best they can.

But in this Commission nothing depended on such a decision. It was important for me to find whether any other person, and particularly any custodial officer, bore any responsibility for the death of a person in custody. It was important also to discover anything that cast light on why the deceased was in custody, and why he or she died in custody, as this might point to how the numbers in custody or dying in custody may be reduced in future. For that reason I sought to learn as much as possible about the life experiences and the attitudes and thinking of those whose deaths I investigated.

But in most cases I could see no good purpose to be served in trying to resolve whether a self-inflicted death was suicide in a legal sense (and still less in a theological sense). I made an exception in Malcolm Smith's case because there new evidence had clearly shown that a coronial finding of suicide was wrong.

ABORIGINAL SUICIDE

It was however necessary before making findings that particular deaths were self-inflicted to consider a widespread assertion that Aboriginals simply do not commit suicide, ie take their own lives.

I commented on this matter in my *Report of the Inquiry into the Death of Peter Leonard Campbell* because evidence was elicited from Dr Kalokerinos, who had had considerable experience working as a medical practitioner amongst Aboriginals, that he had never encountered a case of Aboriginal suicide. The doctor conceded, however, that he was speaking only of his personal experience, and that Aboriginal suicide was well documented. For example, in *Black Death White Hands* (Allen and Unwin revised edition 1985), Paul Wilson, after referring to the case of a woman who poured kerosene over herself and burnt herself to death at Palm Island, goes on:

> 'Such dramatic examples are probably exceptional, but other sources suggest that acts of self destruction are widely known by health and welfare personnel working in official and unofficial capacities among reserve dwellers. Howard Stevens, a Queensland flying doctor, reported that "self mutilation was not uncommon" and also that attempted suicides were frequent on Queensland reserves. Stevens knew of at least five suicides and attempted suicides among black people on reserves and communities he visited in recent years, yet there were no instances of suicide amongst his white patients.
>
> 'Although figures on suicide by reserve Aborigines are difficult to obtain, Stevens is convinced that this was a rare occurrence among traditional people - a view supported by experts such as psychiatrist Ivor Jones - and that far more occurred than are officially recorded. Similarly, the high number of deaths caused by motor vehicle accidents among reserve dwellers requires further research. We documented 32 Aboriginal reserve dwellers who died in motor vehicle accidents between 1976 and 1980; many of these deaths were caused, according to one observer, by "reckless ... attempts by the driver to kill himself'.
>
> 'John Taylor, an anthropologist at James Cook University, confirms Stevens' observations. Taylor, in preparing a report on dispute settling procedures, discussed "a veritable epidemic of suicide and self mutilation in Aboriginal communities in North Queensland". In attempting to explain this epidemic, Taylor suggested that Aborigines diverted rage and anger inward on themselves. He says, "if they (Aborigines) were to attack the real objects of their anger, they would incur retribution from the Australian legal system".' (pages 28 to 29)

More recently a considerable amount of literature has appeared on the great growth in suicide amongst Aboriginal populations, not only in Australia but in North America and other countries, in recent decades. This is particularly true of young male adults living in non-traditional settings. 10

There is research which indicates that in traditional Aboriginal society suicide was unknown or rare. This may be true of many stable traditional societies. However those into whose deaths I inquired did not live in a traditional Aboriginal society, but in areas where traditional Aboriginal society had been shattered for generations by dispossession by white people. The circumstances in which they lived imposed all kinds of stresses which were unknown in traditional society. They were no longer part of a clear and stable social order, but thrust into a different position on the margins of a society in which suicide was a not uncommon response to the stresses imposed. There is no reason to think that any Aboriginal

disposition against suicide was genetic; if it existed it was cultural and the culture had been subjected to tremendous change.

REASONS FOR SELF-KILLING

It is of course one thing to reject the proposition that Aboriginals do not commit suicide at all. It is another to accept the view that many of the Aboriginals whose deaths were investigated did in fact take their own lives in custody. Whether this explanation is plausible is something that can only be answered by examining the facts of particular cases and this I have done in the individual death reports. However there are some general points that may be made.

According to the statistics relating to the period investigated by the Commission, Aboriginals in custody appear less likely to take their own lives than non-Aboriginals in custody. Aboriginals were held in custody, both police custody and prison, at a far greater rate than non-Aboriginals. However, looking at those who were in custody, the overall death rate for Aboriginals closely parallelled that for non-Aboriginals. Aboriginal deaths resulted from self-inflicted harm less frequently than non-Aboriginal deaths. Whereas 49% of non-Aboriginal deaths were self-inflicted, only 34% of Aboriginal deaths were self-inflicted. On the other hand only 46% of non-Aboriginal deaths were from natural causes in contrast of 33% of Aboriginal deaths. 11 Thus while there is not support for the proposition that Aboriginals do not commit suicide, there is support for the proposition that they do so in custody less frequently than non-Aboriginal prisoners.

Lobbying for a Royal Commission had been carried on for years by bodies such as the Committee to Defend Black Rights, but it was the incidence of Aboriginal deaths in custody in 1987, particularly deaths by hanging in police custody, which attracted such public attention that the Commission was established. What was not generally realised at the time was that although there was an unusually high number of Aboriginal deaths in custody in that year, this was part of a general phenomenon that applied to all prisoners, Aboriginal and non-Aboriginal. The Aboriginal deaths in custody rose from nine in 1986 to 21 in 1987, but in the same years non-Aboriginal deaths in custody rose from 29 to 72. Moreover the increase in Aboriginal deaths in custody was particularly in Queensland and Western Australia. In New South Wales in 1987 there were 29 deaths in custody but only three of these were Aboriginal. In Victoria there were 26 of which one was Aboriginal, and in Tasmania there were two, none of which was Aboriginal.

Of the eight cases of Aboriginal self-inflicted death which I investigated it is quite clear that Malcolm Smith was not intending to take his life but to put out his eye;

Tim Murray, who took a drug overdose, may have intended merely to attract attention; Peter Campbell, who died of a self-inflicted cut to the throat, had shown signs of mental disturbance resulting in violence before going to gaol. The remaining five deaths were by self-hanging and in three of the cases the person was recently placed in custody in a state of considerable intoxication. The other two cases were Mark Quayle who was suffering withdrawal symptoms and hallucinating, and Peter Williams who was under such stress from his life history and his treatment by other Aboriginal prisoners that his act is not hard to understand. Mark Revell, Shane Atkinson, and Lloyd Boney were all young men recently arrested in a highly intoxicated condition. The particular circumstances which may have affected their view of the world at the time varied and are

discussed in the individual reports; however the effect of alcohol was common to them all. In the Mark Revell inquiry Dr Gregory Chesher, a consultant pharmacologist, gave evidence that while an alcohol dependent person is drinking and the blood concentration (BAC) is rising, the individual feels more cheerful - a reason for the drinking. When the drinking ceases and the BAC starts to fall, depression ensues and in some cases there may be a serious decline in an already low self-esteem.

ABORIGINAL BELIEFS OR ATTITUDES

There was no evidence in the cases before me which established that any particular features of Aboriginal psychology or belief contributed to the occurrence of deaths in custody.

However in Western New South Wales a number of Aboriginals emphasised the strength of belief in spirits with a resultant fear of the dark. There was reference to 'clevermen' and to 'Featherfoot'. It is quite possible that fear of the dark and of spirits present in the Wilcannia gaol may have had some effect on Mark Quayle when he hanged himself. On the other hand sufficient explanation for his actions could be found in the effect of alcohol withdrawal without resorting to other explanations.

UNCONSCIOUS MOTIVATION

While it is tempting to look for factors which would operate on the conscious mind of an individual and incline the individual towards an act of self-destruction, one must recognise that they may not necessarily exist or be found. There may well be factors operating that would not be understood by the individuals themselves. An Aboriginal woman recounted to me an incident that occurred to her when she was in police cells in a country town some 12 years ago. She was then about 17 and in the habit of drinking heavily, and was cutting out a warrant for non-payment of fines imposed for offensive behaviour and drunkenness. In a confidential interview she narrated to me the following experience:

> 'I was in the cell for about 3 days and when I was just laying down in the cell and reading a comic and all of a sudden I had this urge to get up and tear up a blanket. I just automatically dropped the comic - sat up, like I had the feeling that something just son of possessed me and I, I don't know how or why, I can't think of any reason why I done that, and the next thing I knew I was there tearing the blankets and the strips and tying a piece around my neck and tying it up in the womens' cell section there - going into the toilet - and trying to hang myself. I kept trying to go down so that it would pull the neck up. The blanket kept breaking and I must have attempted it about four or five times and this other girl ... she was there screaming and crying and carrying on and trying to get the coppers' attention to come down and see what was happening. And after a while, it must have been about 20 or 30 minutes after, they finally came down there and I was still there trying to, she was trying to pull me away and everything you know just like I was possessed. And there were the strangest things. I don't normally do silly things like that. I consider it very silly but I won't normally do it. I love life too much to commit suicide.'

Thinking about it since she had not been able to think of any good reason for her actions. She said that she had a loving family and everything that she wanted.

THE CONVICTION OF RELATIVES

A common feature in the cases where a person had died from self-inflicted harm was disbelief on the part of relatives. Again and again a strong conviction was expressed that they knew the person and that he would never have taken his own life. These feelings are very understandable. They flow from love of and a sense of loyalty to the person who has died, and may sometimes be influenced by feelings of regret or guilt about the treatment of the deceased which often arise when a friend or relative takes their own life.

Often the views are expressed by people who were not really in a position to know the state of mind of the person who died. This was particularly well illustrated in the case of the death of Peter Campbell. Family members were convinced that he would not have taken his own life, but they had not seen him for seven years before his death and had heard practically nothing from him. They did not know that since they had seen him his way of life and his mental state had changed considerably.

While one must respect and sympathise with the feelings of relatives, one must also recognise that such intuitive judgments are not reliable. They represent not informed opinions but emotional reactions expressing the unwillingness of relatives to accept the painful fact of what has happened. In investigating a death one has to base conclusions on the evidence about the death and the surrounding circumstances, and what was known of the person at the time, and hope that relatives can ultimately find it in their hearts to accept the findings of an exhaustive inquiry.

The widespread existence of this phenomenon of reluctance to accept that friends or relatives have taken their own lives is a critical factor to remember in dealing with notification of relatives and with investigations. There is need for the greatest openness and frankness and sympathy. Anything that smacks of secrecy or reluctance to discuss what happened is likely to be interpreted as evidence of cover-up or guilt.

HANGING

Undoubtedly one of the reasons for the concern which gave rise to the appointment of the Royal Commission was the series of hangings in custody. There was considerable scepticism as to whether it was possible for so many persons to hang themselves in custody. However, as I pointed out in my *Report of the Inquiry into the Death of Mark Wayne Revell,* hanging is a classic form of suicide, in Australia and overseas, particularly among prisoners, Aboriginal and non-Aboriginal, who have little access to other means of taking their own lives.

To the person who has had no experience of hanging, the word conjures up a scene of a body swinging freely by a rope, suspended from some point above the victim's head. This idea of hanging has been expressed in a number of artistic comments on deaths in custody - paintings, writing, sculpture and theatre. It seems a difficult and unlikely method of taking one's own life, and strange that the means

should be so readily available in custody. In fact the typical death by hanging in custody is not like this at all. Moreover, in the general community hanging is very commonly found to be suicidal, occasionally accidental, and rarely homicidal; by contrast, death by strangulation is usually homicidal and rarely suicidal.

> 'In hanging, the suicidal nature is nearly always apparent from the circumstances, such as the point of suspension, the use of a ready-to-hand ligature, the choice of location - usually one which is private, well known, and where the victim will not be found in time to interrupt his plans - and sometimes "a suicide note".' (Watson *Forensic Medicine* (l st edn 1989 page 187)).

Professor Plueckhahn in his book *Ethics, Legal Medicine and Forensic* Pathology writes of hanging:

> 'This is a relatively common means of suicide, particularly in males. Incomplete suspension of the deceased above the floor or ground does not rule out this possibility, and it is not uncommon for such deaths to occur as a result of fixed suspension from low elevations such a door knobs, bed heads and clothes hooks.'

A witness told of a terminal cancer patient who hanged himself with the buzzer cord in a hospital bed whilst he was still lying in the bed. To quote again Watson's *Forensic Medicine:*

> 'It does not require the full weight of the body to successfully accomplish hanging: the weight of the upper part is quite sufficient. Hanging can be effected from a low point of suspension. A victim may sit on the floor and use the door handle to fix the ligature and then let the body fall away from the sitting position.'

It was common in the cases I investigated to find that the deceased's feet were touching the ground, his knees were bent, but the weight of his upper body rested on a noose made from a strip tom from a cell blanket or sheet, or made by using an article of clothing such as a sock or jumper. Evidence given in a number of inquiries has explained that the mechanism of death in such circumstances is one or more of three factors: the occlusion of the airway, the occlusion of blood vessels such as jugular veins or carotid arteries, and stimulation of the vagus nerve. Only a few pounds of pressure on the neck is needed to occlude the jugular vein which drains blood from the brain, skull and face to the heart. A greater degree of pressure occludes the carotid arteries delivering blood to the brain from the heart, and still further pressure is required to occlude the windpipe. At any stage the vagus nerve may be stimulated and this will slow and sometimes stop the beating of the heart. Although death may take three to five minutes (less if the vagus nerve is stimulated), unconsciousness may occur in 15 to 30 seconds.

OTHER CASES OF SELF-HARM

The three cases of death by self-inflicted injury other than hanging involved the use of items which were readily at hand to the respective prisoners, all of whom were in gaols, not in police custody. In the case of Malcolm Smith it was the handle of an artist's paintbrush. Malcolm was displaying talent as a painter and his inclusion in a painting class was a humane and therapeutic measure which should

be applauded rather than criticised. His use of the paintbrush was unforeseeable. Peter Campbell used a double-edged razor blade which was prison issue. He had not given any indication to prison authorities that he was likely to harm himself. Tim Murray used an accumulated hoard of tablets, his accumulation of which might have been better policed had there been more adequate communication between the Prison Medical Service and the custodial officers.

UNNECESSARY CUSTODY

In a number of cases the custody was in a real sense unnecessary, because it was unlawful or improper, because there were alternatives which could have or should have been used, or because it was pursuant to antiquated laws now recognised as undesirable. Mark Quayle's custody was totally unlawful and unreasonable. David Gundy's custody was unlawful and would not have occurred if police had showed more patience and judgment in their pursuit of John Porter. Paul Kearney should have been in a civilian proclaimed place, not a police cell. Harrison Day, James Moore and Arthur Moffatt in Victoria and Glenn Clark in Tasmania were all in custody under antiquated laws about public drunkenness.

Had a proclaimed place other than a police cell been available in Grafton to which Mark Revell could have gone, it would have been feasible to give him bail on his charge of driving with a prescribed content of alcohol. A number of prisoners were in custody only because of non-payment of fines. These included Clarence Nean in New South Wales and Harrison Day and James Moore in Victoria. Glenn Clark could have been released but for a warrant for nonpayment of fines. Thomas Carr was unreasonably charged with multiple offences and should have been on bail instead of having been sent to Sydney in custody. Shane Atkinson would not have been in custody if the laws relating to bail had been more reasonably and sensibly administered. If their conditions had been properly identified, Bruce Leslie, Arthur Moffatt and Paul Kearney would have been in hospital, not a police cell.

Although I had to rule that the death of Francis Thomas Cooper was not within my jurisdiction because, although in custody, he died in a hospital, my investigation of the case showed a shocking and inhumane application of the law relating to bail. Held on a minor charge founded on meagre evidence, he was left to die over a period of two months in gaol, far from his family, when he was virtually helpless and a threat to nobody.

HEALTH AND ALCOHOL PROBLEMS

In 15 out of the 18 cases which I investigated 'lifestyle' diseases or alcohol or drugs played some role, at least at the point of coming into custody, if not in the immediate circumstances of the death. Thomas Carr died of heart disease at the age of 17 and Maxwell Saunders at the age of 27. Deaths from this cause at such early ages would be rare in the non-Aboriginal community. James Moore died from a pontine haemorrhage which was contributed to by hypertension (high blood-pressure). Arthur Moffatt died from a hypoglycaemic reaction arising from his diabetes. Harrison Day died as the result of an epileptic fit. Tim Murray and Paul Kearney met their deaths following overdoses of prescription drugs, Paul Kearney also being affected by alcohol. Mark Quayle and Clarence Nean were in different ways the victims of alcohol withdrawal symptoms. Bruce Leslie came into custody as the result of alcohol and may have suffered his fatal injury as a result of an

alcohol induced fall. Shane Atkinson, Mark Revell, Lloyd Boney and Glenn Clark all hanged themselves while intoxicated and were all in custody for alcohol related offences, as were James Moore, Harrison Day and Arthur Moffatt. Peter Campbell was in gaol as the result of unpremeditated acts of violence under the influence of alcohol, which were quite out of character with his sober behaviour.

THE AVOIDABILITY OF DEATH

The review which I have made in this chapter of the deaths which I investigated has shown that all but one of the deaths was potentially avoidable either because with more enlightened laws or better working of the justice system the person would not have been in custody at all, or because greater care or observance of instructions about the custody of prisoners might have avoided the occurrence of the death.

The one case which I have not listed is that of Peter Campbell. In that case too, however, a better working of the system of criminal justice might have avoided his death. He was under sentence for crimes of quite inexplicable violence and he had other bizarre crimes on his record. Had he been the subject of a proper psychiatric examination at the time of his sentencing or on his reception to prison, it may have been possible to provide treatment for his disturbed condition which would have obviated his subsequent taking of his own life.

ACTION AGAINST INDIVIDUALS AT FAULT

If the Commission finds that there was fault on the part of custodial officers, what should it do about it? From, an early stage of the Commission many people, particularly Aboriginals, asked what would be done about officers who were found to have some responsibility for a death. Commissioner Muirhead, and other representatives of the Commission, explained on many occasions that the Commission had no power to punish anyone; that was a matter for courts and disciplinary authorities. Nor did he Commission itself have power to prosecute anyone. Its only power was to report to Governments, but in its reports it could make recommendations. I have o doubt, from a perusal of the records, that on many occasions Aboriginals and others were led to believe that if the Commission found that officers had acted in breach of the law or their duty, proceedings would be recommended by the Commission.

The first report in which the issue confronted me was that in relation to the death of Paul Kearney. When I examined the matter, I found that the question of what recommendations should be made by the Commission was no simple one. I wrote in my report:

> 'It would not be right for this Commission to make a finding that any person was guilty of criminal or disciplinary offence. The law lays down certain procedures which must be followed before such findings can be made, and establishes particular courts or tribunals which have power to make such findings and impose penalties in respect of them. This Commission's function is to ascertain the facts in relation to Aboriginal deaths in custody and report those facts to Government. It is for Government, or the appropriate agency of Government, to take whatever action is called for in the light of those facts, whether that action be by way of legislation, policy

changes, funding of services or institutions, recognition of fights, or prosecution or disciplinary action. The Commission has no power to do any of these things itself.

While the Commission may make recommendations, there are good reasons why it should be cautious about making recommendations for proceedings against named individuals, except in very clear and serious cases. Whatever the Commission may recommend, the prosecuting authorities or, in the case of disciplinary proceedings, the Commissioner of Police, will have to make up their own minds whether proceedings should be taken. It does not follow that, because a Royal Commission has made a finding adverse to a particular person, a criminal or disciplinary charge will necessarily succeed or be warranted against that person. In the first place, because of the quite different procedures, it may not be possible to prove in a criminal prosecution matters about which findings may properly be made in a Royal Commission. A criminal prosecution is an adversarial proceeding in which the Crown carries the onus of proving beyond reasonable doubt, in accordance with strict and sometimes technical rules of evidence, that the accused, who cannot be compelled to make a statement or give evidence, is guilty of a crime as precisely defined by law. Not only is an accused person not bound to give evidence when on trial, but evidence which he or she has given in the Royal Commission is in most cases not admissible in the trial. While disciplinary proceedings are not as constrained as criminal proceedings, they are very different to a Royal Commission.

In a Royal Commission, set up not to try people but to find out what happened in some area where information is otherwise lacking, there are no parties, no onus of proof, no special rules of evidence, and no requirement of proof beyond reasonable doubt; persons whose conduct is in question can be required to give evidence; and the Commission may criticise or condemn reprehensible conduct even if it is not technically criminal. The limitations on a Royal Commission are, broadly speaking, only that the Commission should stay within its terms of reference, base its findings on evidence of some probative value, require a degree of proof commensurate with the seriousness of a finding, act in good faith and not make findings in contravention of the requirements of natural justice.

Apart from possible difficulties of proof, there may be discretionary reasons for prosecuting or disciplinary authorities not taking proceedings - for example that the offence was a minor one committed many years ago by a person of subsequent good record, or was committed in accordance with what was a general practice now realised to be wrong. If proceedings recommended against an individual are not taken, or are not successful, the outcome will be confusing to the public. On the one hand the individual may be unfairly assumed to be a guilty person who 'got off. On the other hand it may erroneously be thought that the Commission's findings are unjustified.

Some of the considerations I have mentioned are noted in Hallett *Royal Commissions and Boards of Inquiry* pp 48, 328-331. Some are relied on by the High Court in support of its construction of the *Independent Commission Against Corruption Act* 1988 in *Balog v Independent Commission Against Corruption* (28 June 1990).'

The issue caused me some anguish. On the one hand Aboriginals had been led to believe that recommendations for action would be made, and might feel betrayed if this did not happen. In addition Governments, police and prison officers had been led to expect such recommendations, and might conclude from their absence that the Commission considered that no action was necessary. In the end I resolved the dilemma in the way which I stated in the Kearney report.

> 'So far none of my reports have involved findings of deliberate or malicious harm, and I put such cases aside for future consideration if they arise. In other cases, including the present inquiry, I think the best course is to draw the attention of the Government, by a recommendation in general terms, to the fact that the report contains material warranting consideration by prosecuting or disciplinary authorities.'

I went on to say:

> 'There has been some comment about the lack of recommendations for proceedings against individual custodial officers, despite criticism in reports of the Commission of the way in which prisoners or detainees were treated. What I have said offers some explanation of this. In addition I make two general points. Firstly, in looking at events that occurred some years ago, it is easy to be wise in hindsight, and to judge people by the more sensitive standards of today, developed after years of debate over deaths in custody, so that conduct which would have passed with little comment at the time is now seen to be reprehensible. One would need special justification for appearing to make individuals scapegoats when their conduct was in accord with common practice at the time. Secondly, I would emphasise that I do not see the number of recommendations for actions against individuals as a measure of the 'success' of the Commission. The success of the Commission is to be measured by the extent to which it can ascertain and reveal the facts, and increase public understanding of them and of what lays behind them. If the facts support action against individuals, so be it. But this should not be allowed to divert attention from the collective responsibility for the public policies and widespread racism over many years that have produced the present situation.'

In the event I made recommendations that my report be referred to appropriate authorities to consider whether criminal or disciplinary action should be taken against any person in relation to seven deaths - those of Paul Kearney, Shane Atkinson, Bruce Leslie, Mark Quayle, Lloyd Boney and David Gundy in New South Wales and that of Arthur Moffatt in Victoria. None of the cases involved a finding of deliberate killing or physical harm. The relevant findings related to various breaches of duty relating to the care of persons in custody, to untrue evidence, and, in relation to the death of David Gundy, to various unlawful actions.

Before adopting the practice of making such recommendations, I consulted my fellow Commissioners because of the desirability of a uniform practice being adopted by all Commissioners. While the other Commissioners inquiring into individual deaths agreed with me that no recommendations should be made against named officers, they thought that no recommendations in general terms should be made, on the basis that if the facts were stated in the reports, it was for Governments to take appropriate action without prompting from this Commission. For the reasons explained earlier, arising out of the expectations created by statements on behalf of the Commission, I was unable to accept that view.

Accordingly I was the only Commissioner to adopt the practice of recommending consideration of criminal or disciplinary proceedings, and such recommendations were made only in New South Wales and Victoria. I emphasise that it would be erroneous for this reason to draw any adverse inference about New South Wales or Victorian police by comparison with other States on the basis of the lack of recommendations in other States.

CHAPTER 6: PREVENTION OF DEATHS

GENERALLY

In this chapter I deal with some general issues involved in preventing deaths in custody, and with the particular problems of police custody. The special issues arising in prisons are dealt with in the next chapter.

Duty of care

Prisoners in the hands of police or gaol authorities are in the custody of the State, which exercises its responsibilities for them through the Police Service, the Department of Corrective Services and the Prison Medical Service. These responsibilities include the taking of all reasonable steps to avoid acts or omissions which could reasonably be foreseen to be likely to harm the person in custody. That the legal duty towards prisoners extends to taking reasonable steps to prevent a prisoner known to be suicidal from taking his own life was clearly established in a recent case in the Court of Appeal in England, *Kirkham v. Chief Constable of Manchester* (1990) 2 WLR 987. In discussing the duty of care to a prisoner, Farquharson LJ said at p.996:

> 'The defendant argues that the judge was wrong in holding that such a duty existed, more particularly that the duty was .to prevent Mr Kirkham taking his own life. Counsel submits that there can be no duty to safeguard a man from his own act of self-destruction, on the principle that there is no duty of care to protect another from the risk of injury created by himself. The position must, in my judgment, be different when one person is in the lawful custody of another, whether that be voluntarily, as is usually the case in a hospital, or involuntarily, as when a person is detained by the police or by prison authorities. In such circumstances, there is a duty upon the person having custody of another to take all reasonable steps to avoid acts or omissions which he could reasonably foresee would be likely to harm the person for whom he is responsible ... Where, as in the present case, the risk is specifically identified then reasonable steps must be taken to avoid that risk.'

In R v Tak Tak (1988) 14 NSWLR 227 the New South Wales Court of Criminal Appeal reviewed the law of manslaughter by neglect, and it should be brought home to custodial officers and their superiors that they have duties breach of which may incur not only disciplinary proceedings but serious criminal charges.

It is to be noted also that there are *Standard Rules for the Treatment of Prisoners,* promulgated by the United Nations in 1984. In several cases before me NAILSS

argued that various aspects of custodial conditions fell short of these standards. Such submissions were made in relation to police custody at Tamworth in the Bruce Leslie hearing, and in relation to prison custody at Grafton in the Peter Williams hearing. In the latter case I observed that there was no available psychiatrist at Grafton Gaol, something which represented a failure to comply with Rule 22.1 of the *Standard Rules,* which provides that:

> 'At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry.'

In other cases the suggested deficiencies did not bear on the cause of death and I did not comment on them.

Human relations or technology

Design of some police stations seems to have had little regard to the need for communication between prisoners and police. It needs to be easy for custodial staff to keep in touch with prisoners and easy for prisoners to communicate with custodial staff. In my visit to North America earlier last year I found a widespread conviction that a most important factor in the custodial situation was human interaction between the guards and prisoners, not only for immediate medical and safety reasons, but to ease the stress on prisoners and maintain good relations between guards and prisoners. As one senior officer said to me, 'Put your money into human relations not into technology. If your human relations are good you won't need the technology'.

Where the existing architecture militates against interaction between guards and prisoners it is necessary to have other means of communication in place until this situation can be rectified. It may even be necessary in some situations to use television monitoring, although much overseas opinion seems to regard this as of highly dubious utility, as well as often being an unreasonable interference with the privacy of prisoners.

Shane Atkinson's death highlighted the importance of defusing explosive situations by providing humane and benevolent social intercourse. No matter how abusive or provocative they may be, prisoners in custody exhibiting signs of distress or agitation should receive attention to their complaints, and efforts should be made by custodial staff to calm them rather than leaving them to 'cool their heels'.

It needs to be brought home to police that to persons in custody a police station is often a strange, unfriendly and even frightening and threatening environment, creating stresses of which police may be unaware, but which appropriate and sympathetic conduct on their part can help to relieve.

Prevention of suicide

A remarkably resilient idea is that 'a suicide is a suicide'; once it appears that the person has taken his or her own life, there is nothing further to investigate except to get evidence that the person was unhinged or depressed. Coupled with this notion is the proposition, which I have seen enunciated even by coroners, that if persons are really determined to commit suicide, there is nothing you can do to stop them. The corollary is seen to be that it is not very important to ask what was

done to stop the person committing suicide, because it would have made no difference anyway. The fact is that very few cases where people take their own lives in custody are the acts of determined suicides, who are set on finding a way to end their life, no matter what. All the self inflicted deaths that I have come across in the Commission have been impulsive actions, often under the influence of very temporary conditions, such as the anger or frustration at the effect of arrest on other activities, the depression that comes with declining blood alcohol levels, or the disturbance associated with withdrawal symptoms. Such deaths can be prevented by adequate care and supervision. Some deaths can be prevented simply by a little sympathetic human interaction. A short or kind sympathetic chat by a custodial officer may not alter the prisoner's view of life, but it may weaken resolve or delay action until an opportunity or impulse for suicide has passed.

Importance of kinship

Many non-Aboriginal people, including police and prison officers, fail to appreciate the importance of family ties amongst Aboriginals. In general those ties are stronger and more pervasive amongst Aboriginal people than they are amongst the increasingly urbanised, industrialised and atomised non-Aboriginal community. Only on rare occasions during Malcolm Smith's lifetime in institutions did it occur to those in authority that Malcolm's family might be interested in him, or that contact with them might be important to his well being. Such considerations rarely, if ever, affected his location. The special problems of communication amongst illiterate people were probably not adverted to. Prison staff were surprised by the sentimental importance to Malcolm's family of his apparently worthless personal effects. The deprivation of family contact in Malcolm's adolescent years may have been a major factor in his institutionalisation. Although Tim Murray sought to reject his Aboriginality, it was the Aboriginal side of his family which continued to support him. The facilitation of continuing contact with kin network is an important part of care of Aboriginal prisoners.

Learning from experience

One of the most effective ways of avoiding further deaths in custody is to learn the lessons from those that do happen, and ensure so far as possible that the same thing does not happen again. Neither police nor prison authorities have been very alert to the potential for learning from deaths that have occurred. The common attitude is that it can all be left to the coroner, and if he does not make any recommendations, nothing more needs to be done. However where the coroner has to rely on the police to bring the relevant factors to his or her notice, this can be unproductive. Every death should be carefully scrutinised by the relevant department, without waiting on the coroner's finding, to see what can be done to prevent a similar death in the future.

In my *Report of the Inquiry into the Death of Glenn Clark* I commented on what was apparently utter indifference on the part of the Tasmania Police to the occurrence of deaths in custody, to the point where the Force displayed no interest whatever in learning lessons from deaths so that steps might be taken to avoid further deaths in the future. In the very police station in which Glenn Clark died, hanged by his jumper, another prisoner had died the same way four years earlier. Yet the police officers who were responsible for Glenn were utterly unaware of the risk of such an occurrence. Apparently nothing had been done following the 1982

death to ensure that police were aware of the risk of a suicidal person using clothes and low suspension points for hanging. Even more extraordinary is the fact that nothing Whatever was learnt from the occurrence of Glenn Clark's death. No steps were taken to ensure that the ignorance displayed by police concerning the risk of hanging, the ease with which it can be carried out, and the articles that can be used, was overcome for the future. Nor did it occur to anyone to advise police to take a more human interest in angry or depressed prisoners.

IN POLICE CUSTODY

Police cells

New South Wales

There are many unsafe cells in police stations around the country. Indeed some are so primitive as to be positively inhumane. Peter Williams' father, commenting on the present state of affairs in Lismore, said:

> 'Better facilities should be available to those persons placed in the Lismore police cells. At the moment the cells are out on their own at the back of the police station and it makes it difficult for any visits. Also the inmates get wet when it rains. These conditions are certainly very poor.'

Local police shared this view. The officer in charge of police at Tamworth was also highly critical of the cells at his station.

During the currency of the Royal Commission all police cells in New South Wales were inspected by Physical Evidence Police for the Police Task Force, and the information gathered was entered into a data base at the Police Properties Branch. In January 1989 Circular 89/11 gave a direction to patrol commanders concerning inappropriate structures. The result may be illustrated from what happened at Brewarrina cell complex, which had been scathingly criticised by a reviewing inspector in the Police Task Force Report. The cell complex was located some 15 metres to the rear of the station and was considered a security risk, and a 'high fire risk', and the cell fittings were not conducive to providing a safe environment for prisoners and police. However due to the location and type of construction of the existing cells it was not considered appropriate that any alterations should be made, as any reconstruction would cause further security problems. The recommendations made by the inspector included provision forthwith of an observation cell separate from the existing cell complex and close to the work area of the station.

At the time of the Commission's visit work done included the replacement of the wide gauge mesh on the doors of cells and on the windows and roof of the cell complex, and some other structural changes. However there were still a number of objects in the cell complex which could be used as means for self-inflicted injury, including hanging. These included iron bars around the viewing grille on the door leading from the cell complex to the walkway outside. The old alarm system, despite the fact it was inoperative, was still attached to walls in the cell complex. All in all the cells were still very unsafe.

Victoria

Like most of Australia, Victoria has many police stations with antiquated cell accommodation. In response to the problems of deaths in custody, the police have started an accelerated building program of 53 new stations to be built over twenty years. However, police consider that the custody of prisoners in cells should be taken over by the Department of Corrective Services and new cell complexes are being designed to facilitate this. At the time of writing, a package was being developed for Police regarding the care of prisoners which would include wall charts and a medical checklist. A District Training Officer would be responsible for educating officers in the matter. It is heartening to learn that a key objective of a study of cell block design has been 'to provide a more humane and comfortable cell environment, an environment which does not adversely affect a detainee's state of mind, but one which may help reduce a prisoner's stress level and potential for violent behaviour'.

There has now been introduced in Swan Hill and in some other Victorian police stations a system of 24-hour monitoring by television camera. At Swan Hill prisoners are thereby kept under the view of police officers 24 hours a day, except when they are using the shower. Apparently lights are left on all night, which must be a hardship for some prisoners. Supervision potentially includes the use of the toilet, and is irrespective of the sex of the prisoner. There are obviously questions of privacy to be considered and a balance to be struck between different interests. It seems to me that the method is offensively intrusive and demeaning, and of doubtful efficacy.

During a visit to North America early last year I found considerable scepticism expressed about the value and desirability of television monitoring. There is a widespread view that successful care and security of persons in custody require more human interaction rather than more technology. One can understand that in situations where architecture prevents such interaction, it may sometimes be desirable to resort to such measures as television monitoring until the situation can be rectified.

A situation which has created great difficulty for Police in Victoria, as in some other States, has been the use of police cells to make up for deficiencies in gaol accommodation. The Commission was advised that in May 1990, there were 314 remand and short-term sentenced prisoners being held in police stations. Particular watchhouses are gazetted for certain periods, for example, to hold prisoners for 30 days, 14 days, or 7 days. In order to secure formal compliance with this limitation, police have had to engage in the absurd practice of moving prisoners from watchhouse to watchhouse at the end of their gazetted period, and even exchanging prisoners between watchhouses.

Supervision in small stations

The problem of supervision in small police stations may also be illustrated from Brewarrina in New South Wales. At the time of the Police Task Forte review, the station was left unmanned overnight and when police were called out or were on patrol any prisoners were left locked in their cells unattended and unsupervised. Following the review Circular *89/11* provided that no person should be kept in a police cell overnight unless there was at least one police officer on duty 'unless it is clearly unavoidable'. Where police concluding duty on the last shift of the day are

working in a police station that does not operate on a 24 hour basis, prisoners are to be transferred to a 24 hour station or police are to find lawful means of releasing prisoners from custody. 'If it is not possible to relocate or release the person, an officer will either remain on duty or be recalled to duty. This policy should only be departed from under extreme circumstances and for clearly demonstrable reasons.' In the case of Brewarrina, prisoners were transferred to Bourke if required to be held overnight.

This Instruction now forms part of the redrafted Instruction 32 concerning 'Care, Control and Safety of Persons in Police Custody' (32.36). That Instruction also provides that where police are required to attend to inquiries away from the station they are to ensure, where a person is detained in police cells and nobody else is on duty, that they return to the station for frequent checks of the prisoner, and if the police are to be away from the station for long periods they will ensure that alternate arrangements are made for the prisoner to be checked at frequent intervals.

Selection of police for Aboriginal areas

In the *Interim Report* Commissioner Muirhead recommended:

> '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 the Lloyd Boney inquest the coroner recommended:

> That the Police Commissioner in appointing police to any town with substantial Aboriginal population, ensure, as far as possible, that such police have the personality and attitude to deal with a large Aboriginal population. Consideration should be given to the provision of substantial allowances so as to ensure long term appointments to police stations which are classified as "disadvantaged", rather than the present situation of police attending for short terms, in order to obtain a favourable posting to the coastal area of New South Wales'.

Superintendent Ure of the New South Wales Police Service advised the Commission in September 1989 that both issues were being considered by a Transfer Co-ordination Committee. However an allowance scheme was not in operation at that time. In relation to the appointment of police, Superintendent Ure advised the Commission of a number of specific strategies which had been proposed, but not necessarily implemented, to address the issue including:

i) Consideration Of individual suitability, having regard to the views of officers who might either support or oppose transfer.

ii) Officers sent to remote areas must have a minimum tenure of three years except in exceptional circumstances.

iii) Development of a community profile for towns, and provision of a contact police officer to give information about schooling, medical facilities,

recreational facilities etc.

iv) Development of local workshops so that police have a knowledge and understanding of the requirements of particular towns.

v) Establishment of an authorised balance of experienced and inexperienced police.

vi) Arranging that replacements will work in particular towns before predecessors have left the station.

In a paper presented to the Royal Commission in its conference on juvenile issues in 1990, Superintendent Ure said that under the current system 'an officer must compete for a position, such as a Patrol Commander, in a specific location and if successful would be appointed to the rank that goes with the position. Although not perfect this system should identify the person best qualified to fill the position and accept that accountability'.

The problem remains a continuing one.

Notification of Aboriginal Legal Service

In Victoria there is a longstanding practice that whenever an Aboriginal is taken in to custody, police must inform the Missing Persons Bureau, which in rum notifies the Victorian Aboriginal Legal Service. A practice of notifying the Tasmanian Aboriginal Legal Service has now been adopted in Tasmania.

In New South Wales there is no general practice, and it is highly desirable that one should be introduced.

Checking of prisoners

At the time of Shane Atkinson's death in Griffith police station, it is clear that the supervision of prisoners was regarded as merely incidental and subsequent in priority to other police duties. In Lloyd Boney's case police maintained that the task of returning a relieving constable from Brewarrina to Bourke, and the practice of using two officers for that purpose, took priority over the checking and supervision of prisoners.

These instances were symptomatic of an attitude to checking prisoners which surfaced in case after case investigated by the Commission. The requirement in the New South Wales Police Instruction 32.6 that 'when practicable' the officer performing station duties or the lock-up keeper 'will visit prisoners every hour and if necessary more frequently' was construed in practice by many officers to mean that prisoners would be inspected hourly if this did not conflict with other police duties. Similar attitudes were apparent in Victoria.

Recording times of visits to cells

In New South Wales there is no requirement that police record, in the cell book or

elsewhere, the times when they make the checks on prisoners, which they are required to make. While one is reluctant to suggest the imposition of additional clerical work on police, the noting of such checks would be a very brief matter of a few words and a time, and would constitute both an incentive to carry out the checks and a safeguard that they had in fact been carried out.

In Victoria, cell books or watchhouse registers provide for the recording of time of visits. In Tasmania provision is made for recording comments as well as times.

Apparently intoxicated prisoners

Officers who have the care of prisoners, and may have to decide at least whether to summon medical assistance, need some training for that purpose. Without in any way seeking to define or limit the content of such training, it is obvious that it should have regard to the high incidence amongst Aboriginals of conditions which may give rise to states mistakenly attributed to intoxication if the detainee smells of alcohol, eg diabetes; epilepsy, heart disease.

Doctor Stephen Jurd of the Drug and Alcohol Consultation/Liaison Service at Royal North Shore Hospital commented to the Commission on the care ofintoxicated persons. He emphasised that knowledge was not well disseminated within the community that alcohol is a drug, a potent hypnosedative that is able, in overdose, to kill by cardio-respiratory depression. Because of the widespread consumption of alcohol to intoxicating levels the community has become insensitive to drunkenness and to the 'sleep' (ie unconsciousness) that it induces. A sleeping drunk should be regarded as an unconscious person, overdosed with a sedative drug (alcohol), until proven otherwise. While police are required to take responsibility for drunk people, it requires education to understand the potency of alcohol, and its side effects. This education needs to be effective enough to allow them to develop attitudes towards alcohol different from the rest of the community:

> '... only then will unconscious, intoxicated people have a chance of being treated as though their lives were threatened, rather than being "under the weather", "drunk as a lord", "paralytic" or some other vernacular that diminishes the potential for harm in this situation. Then, close attention might be paid to:
>
> (a) Deteriorating level of consciousness;
>
> (b) Maintaining an open airway;
>
> (c) Positioning of the intoxicated person.'

In my *Report of the Inquiry into the Death of Paul Kearney* I drew attention to the evidence of Professor Sullivan concerning the dangers of sleep apnea and the significance of snoring as an indication of the danger of apnea. I also noted that in his decision of 12 July 1986 in the case of Deon Scott Mr Waller, then City Coroner, recommended that 'it be included in a police circular or instruction that snoring in any person suspected of being intoxicated due to alcohol or another drug is to be interpreted as a sign of respiratory distress so that the person is then roused and his condition observed'. This matter requires attention in the training of officers.

Calling of medical assistance

An example of an attitude embedded in police culture in a number of States is the preference for calling ambulancemen rather than calling *doctors* or sending prisoners to hospitals, where doctors will examine them. There may be some truth in the police view that doctors' culture includes a reluctance to examine intoxicated persons, although I have seen no evidence of this. But it seems clear that police prefer to expose their actions (if at all) to the gaze of ambulancemen rather than doctors, with whom they are less likely to be 'mates', and with whom they have less in common, and who arc likely to be less 'understanding' and less open to influence.

In Bruce Leslie's case in New South Wales and in Arthur Moffatt's case in Victoria ambulancemen wrongly advised police that the patients were only drunk. Both ended up dying, one from a fractured skull and one from hypoglycaemia, although in the former case the possibility remains that the fractured skull was suffered later. If a person is not rousable or is disoriented, he or she should be taken as quickly as possible to a hospital or seen by a doctor. In both New South Wales and Victoria a Police Medical Service is on call.

It was rare to find a police officer who had any knowledge of the high incidence amongst Aboriginals of various diseases, including diseases such as diabetes, epilepsy and heart disease, which can produce conditions which may be mistaken for intoxication, or be masked by intoxication. Dr Cutter of VAHS said in the Moffatt hearing that no person with a history of epilepsy, diabetes or hypoglycaemic episodes, heart disease or significant alcohol poisoning or withdrawal should ever be placed in a cell alone, or with people unable or unwilling to help. These conditions are widespread amongst Aboriginals.

Police treatment of prisoners

The Commission encountered several examples of the petty tyranny that can he exercised locally by small-minded police officers over prisoners, and which can only add to the resentment and frustration of prisoners which in some cases gets expressed in self-harm. At Bourke in New South Wales in 1987 an inspector had decreed that all prisoners must henceforth choose between smoking and mattresses because a mattress had been set on fire, and that they could not have reading matter because prisoners had clogged toilets with it. He refused to make any change in these practices when approached by WALS.

In Victoria it emerged during the inquiry into the death of Arthur Moffatt that no prisoners were given mattresses at Moe Police Station because some prisoners had in the past destroyed them.

Such practices are fortunately not general. In Brewarrina, for example, the officer in charge encouraged visits and the bringing of reading matter to persons in custody.

Identification and recording of 'at risk' prisoners

The most striking example of a failure to record and act on previous knowledge of a prisoner's state of risk is that of Shane Atkinson. Only one month before, in the

very same police station, Shane had threatened to take his life in the very way he did.

Recording of suicide or self-harm threats or tendencies must not rest on an officer's judgment as to whether the prisoner was 'serious', or be affected by a prisoner's subsequent denial that he or she was 'serious'. Neither of these things can be regarded as reliable, and the fact that a prisoner has at any stage harboured suicidal or self-harm thoughts, or attempted to inflict self-harm, should be enough to justify particular attention.

The difficulties that can arise at the local level when there is a lack of trust between police and Aboriginals was illustrated by an attempt to introduce recording of 'at risk' prisoners at Brewarrina Police Station some time after Lloyd Boney's death. Inside the front of the charge book was kept a list of people who were regarded as being 'at risk'. At the time the Commission was in Brewarrina, eight names were on the list. The identification of people as 'at risk' was based on what a person may have said in custody, local knowledge, and the extent of their intoxication. Such people were continuously monitored and if in need of medical attention were taken to the hospital. Due to the poor relations between police and Aboriginals this well-intentioned measure met with opposition. Aboriginals expressed fear that the presence of their names on the list put them at greater risk because police could readily explain away their deaths in cells on the basis that they were known to be suicidal. In fact the reverse was the case; police, having been put on notice of the risk, would have had a lot of explaining to do if they had allowed someone whose name was on the list to come to harm.

I was asked to make some recommendation about the making up of this list, but I expressed the view that it was a sensitive issue that can only be resolved by discussion after some effective channel of communication is opened at the local level between police and Aboriginals, and in particular with the Western Aboriginal Legal Service.

With the advent of computerised records in which criminal convictions, outstanding warrants and other information are available to all stations, there can be no excuse for failure to record and use information about vulnerabilities of prisoners.

SCREENING OF PRISONERS

A remarkable feature of many of the deaths in police custody was the cavalier attitude of police to the possibility that prisoners were at risk. A striking example was Paul Kearney, who was both unrousable and in possession of large quantifies of unidentified tablets, yet it did not seem to occur to police that he might be in need of care, and he was left to die. Shane Atkinson gave loud and continuing voice to his anger and distress, but was ignored and hanged himself.

These examples show that there is need for a routine screening of prisoners that will force police both to notice and to give attention to indications of risks to a prisoner's physical or mental well-being. In New South Wales a Prisoner's Admission Form has been introduced, and could be a useful precedent for other States.

As Dr Cutter of the Victorian Aboriginal Health Service said, if a person is too confused, disorientated or drowsy to give his name or describe his health

problems, then he should not be in a police cell. Dr Cutter also told the Commission of the encouragement by the Victorian Aboriginal Health Service of the wearing of pendants or bracelets, recording chronic conditions such as diabetes and epilepsy.

POLICE INSTRUCTIONS

Police Instructions or Standing Orders contain the rules applicable to the care of prisoners. But their vagueness and their dubious status has prevented them being a real control of police conduct. One can understand that on many matters it may be desirable to give police guidelines and leave them with discretions. However my inquiries show very clearly that unless strict minimum guidelines for the care of prisoners and detainees are stated and enforced, those in custody will get scant attention from many police. This applies particularly to intoxicated persons or persons believed to be intoxicated. There appears to be a widespread police culture, highly resistant to change, in which certain attitudes to prisoners are embedded, including an obdurate conviction that an intoxicated person is to be treated purely and simply as a drunk, and not as a person in possible need of care for other reasons. There is also high resistance to the notion that doctors or hospitals should be consulted about intoxicated persons, and high resistance to frequent and meaningful checking of prisoners.

These attitudes are tolerated and condoned, and even supported by many senior officers, and in the Moffatt case even the representative of the Victoria Police Internal Investigations Department was unwilling to investigate and criticise them.

New South Wales

The New South Wales Police Instructions contained many clear (and some unclear) directions about how police shall carry out their duties, including the care of prisoners, when the deaths which I investigated occurred. One might think that the enforcement of these Instructions would be one way in which police might be made accountable, particularly as the *Police Rules* made by the Governor under the authority of the *Police Regulation Act* 1899 provide for the issuing of the Instructions, and lay down that each member of the Force 'shall strictly comply' with the Instructions. However on a number of occasions representatives of police before this Commission strongly maintained that the Instructions are only guidelines that do not have to be strictly complied with. In the Ombudsman's inquiry into Lesley Revell's complaint, this view was officially expounded by the Assistant Commissioner (Internal Affairs), who told the Ombudsman that Instructions 'are issued as a guide'. Police actions must 'reflect the spirit of the Instruction and be reasonable in the circumstances', an approach which makes it very difficult to hold police accountable even for clear breaches of mandatorily expressed Instructions.

Victoria

In Victoria I was referred to the *Victoria Police Manual and Standing Orders.* At the time of my hearings the *Manual* contained administrative instructions, and some of the matters relevant to my inquiries were dealt with both in the *Manual* and in the *Standing Orders* in only slightly different terms. The Chief Commissioner's preface

to the *Manual* stated:

> 'The Victoria Police Manual is principally concerned with the permanent administrative instructions and is designed to facilitate the administrative processes of a large and complex organisation. Together with the Standing Orders, the Police Manual provides guidelines for attaining the objectives of the Police Service in contemporary society. An understanding of the instructions contained in the Police Manual and adherence to the inherent principles are essential to the attainment of individual and organisational aims. Every member of the police force has a responsibility to be conversant with the contents of this Manual, accordingly.'

Chapter 9 of the *Manual* dealt with 'Injured and Sick Persons and Attempted Suicides'. These provisions were directed to the general attention by police to people in the community rather than to prisoners in custody, which were covered by Chapter 9 of the *Standing Orders.* The obligations to prisoners, on the other hand, were set out in the *Standing Orders,* which were introduced by a separate preface by the Chief Commissioner which stated:

> To facilitate attainment of Police aims in contemporary society, these Standing Orders have been expressed, following a review of all permanent instructions to members of the Victoria Police Force. In some cases, absolute requirements are stipulated. In other cases, general guidelines have been expressed. In all cases, the intent is to assure the effective discharge of Police duties and responsibilities, in the public interest. It is not possible to make provision for every eventuality and there will be occasions on which members of the Force must rely upon their own initiative, judgment and discretion. In these circumstances, it is imperative that the action taken should be seen to be fair and reasonable and in accordance with our aims. In this spirit, I commend these Standing Orders to the attention of all members of the Police Force for their advice and guidance.'

Although this preface did say that in some cases absolute requirements were stipulated, there was such a general emphasis on discretion, culminating in a final commendation of the *Standing Orders* for the 'advice and guidance' of officers, that it is not surprising that some police argued that the provisions were only guidelines and that their observance was not mandatory.

It is essential that instructions for the care of prisoners be clear and unambiguous, mandatory in their requirements, and strictly enforced.

GETTING INFORMATION TO POLICE

In a number of my reports I commented on the big gap between Police Instructions and policy changes on the one hand, and any influence on police conduct on the ground on the other. The Boney hearing provided some examples.

The inspector at Bourke at the time of Lloyd Boney's death, who had control of Brewarrina and other towns of high Aboriginal population, was unaware of a circular issued by the Police Commissioner in January 1988 dealing specifically with Aboriginal deaths in custody. In order forcibly to bring home the importance of Police Instructions relating to the care of prisoners in cells, a telex was sent to

each police station during the Lloyd Boney inquest. When giving evidence to the Commission, the officer in charge of Brewarrina had no recollection of receiving it, although it must be said in fairness that he had independently taken steps to ensure that his officers were aware of relevant circulars. Evidence was given that a video had been made on the subject of deaths in custody for the instruction of police, but a number of officers at Bourke and Brewarrina had not heard of it or seen it.

Clearly there are logistical as well as psychological difficulties in making an impact on police culture. Following the Deon Scott inquest on 25 July 1988 a coroner recommended that consideration be given to introducing a procedure whereby all Police Circulars and lectures are noted as seen and read by police officers at any police station. In his finding in the Lloyd Boney inquest the coroner recommended that Police Instructions should require that police "note" all circulars by initialling or signing such circulars. The New South Wales police response was to point out that Circular 89/11 already placed an onus on Patrol Commanders to ensure that all police read and comply with circulars and Instructions. He stated that it was not considered that simply initialling or signing circulars will ensure compliance. This Commission has been advised that as from 11 December 1989 police circulars have been published in the Police Service Weekly. It was suggested that because the circulars are now packaged with other 'interesting information' there is a greater likelihood of the circulars being read, but there is still no system for checking if this is done.

The Kearney death illustrated an even more fundamental deficiency. The important changes to intoxicated persons legislation were not even conveyed to grassroots police, or incorporated in circulars or instructions for many months.

CHAPTER 7: ABORIGINALS IN PRISON

STATISTICAL INFORMATION

In New South Wales I investigated six Aboriginal deaths in prison custody and reported on five. The sixth which appears in some of the statistical publications of the Commission's Criminology Research Unit was that of

Francis Thomas Cooper on whose death I did not report because it was held to fall outside the Terms of Reference. 12 Although Mr Cooper was a prisoner at the time of his death, he died in hospital and his death was not caused or contributed to by an injury suffered whilst in custody. In Victoria and Tasmania there were no Aboriginal deaths in prison custody during the period from 1 January 1980 to 31 May 1989.

The very small numbers make it fruitless to attempt any statistical analysis. As background to the present discussion therefore I will mention findings of the Commission's Criminology Research Unit dealing with the Australia-wide figures. 13 Even here any conclusions must be treated with reserve having regard to the relatively small numbers, the differences in the circumstances of life of Aboriginals in various pans of Australia, and the substantial differences between States and Territories which appear on the relatively small numbers which are dealt with in the Australia-wide figures. The Unit concluded that when allowance is made for age and their relative representation in the Australia population, Aboriginal people will

die in prison custody at a rate nearly 13 times the rate of non. Aboriginal people. The alarmingly high Aboriginal death rate was explained, almost entirely by the over-representation of Aboriginal people in custody. Substantial differences existed between the States and Territories regarding the rates of deaths in custody with the Northern Territory having the highest ratio of deaths to population at 3.9 deaths per 100,000 and Western Australia and Queensland being the next highest at 2.2. Those figures apply to all deaths. With regard to Aboriginal deaths, Western Australia had the highest ratio at 34 per 100,000 followed by South Australia with 28. The lowest Aboriginal death rate was in New South Wales with 10 per 100,000 which was, however, still five times higher than the highest non-Aboriginal deaths to population ratio in any State or Territory. Aboriginal and non-Aboriginal people had roughly similar rates of numbers of prison deaths to the size of their respective prison populations, with Aboriginal rates being a little less than those of non-Aboriginal people. South Australia and Western Australia had rates well above the overall national rate which was 2.2 per 1,000 for Aboriginals and 2.7 per 1,000 for non-Aboriginals. Overall non-Aboriginal people made up 12.5% of the deaths in prison custody, although they were less than 1.2% of the Australian population aged 15 years and above. The New South Wales figures, which include the death of Francis Thomas Cooper, referred to earlier showed an Aboriginal prisoner death rate of 10 per 100,000 of the Aboriginal population of the State and 1.4 per 100,000 of the non-Aboriginal population. However when the deaths were related to the prison population, the rate of Aboriginal deaths per 1,000 of the Aboriginal prisoners was 1.8, less than the corresponding non-Aboriginal death rate of 2.1. As already mentioned, there were no Victorian or Tasmanian Aboriginal deaths in prison custody, though over the period Victorian had a non-Aboriginal death rate of 4.4 per 1,000 prisoners and Tasmania a death rate of 2.3 per 1,000 non-Aboriginal prisoners.

One matter requiring comment is the increased rate of Aboriginal imprisonment in New South Wales. As at 1 March 1981 5.8% of the New South Wales prison population was Aboriginal. The current Department of Corrective Services Aboriginal policy states that the prison census for 1989 shows that the percentage of Aboriginal prisoners has remained constant since 1986 at 8.5%, an increase of2.7% There is no clear trend emerging from the Victorian and Tasmanian figures.

In considering these statistics it is important to note that on average Aboriginal prisoners have shorter than average sentences and hence go in and out of prisons at a faster rate, that is more often and for shorter periods than the general prison population. As the prison census gives a static picture as at midnight on 30 June of a given year, the flow of Aboriginal prisoners in and out of prison is greater than the stock of Aboriginal prisoners, thus the over-representation described in official figures is probably under-estimated.

BASIS OF THIS CHAPTER

As I did not investigate any prison deaths in Victoria or Tasmania, any remarks about the circumstances of particular prisoners apply to persons who were in custody in New South Wales. I did not make any general inspections of prisons in any State, although in New South Wales I made several visits to prisons during the course of inquiries into individual deaths. I did not visit any prisons in Victoria or Tasmania.

In New South Wales a public conference was held relating to Aboriginals in prison

and there was considerable discussion from interested persons including those responsible for the management of the prisons, ex-prisoners and various interested persons and organisations. Some observations about prisoners were supplied to the Commission from the Aboriginal Issues Units in the three States.

Consequently much of what I say is based mainly on information about New South Wales prisons, although it may be that some of it will be applicable to prisons in other States. Some of the observations I make about the imprisonment of Aboriginals may be of general relevance.

SAFETY OF CELLS AND EQUIPMENT

The death of Peter Williams by hanging illustrated issues about the safe design and equipment of cells. A person in his condition should never have been put in a cell with such easy facilities for self-hanging. Indeed no prisoner should be so placed on his own. Primitive methods of electricity supply to the cell left an electric cord suspended from a convenient hanging point. Although another prisoner had hung himself in Peter's cell some months before, this did not result in a review of the safety of the cell. Conditions in the cell were considered by the Director of the PMS a few days before Peter's death, but only as part of a routine inspection of the gaol, and no attention was paid to the risks of hanging.

The example underlines the need for more attention to cell safety. What I have said earlier about the importance of human interaction applies as much to prisons as to police custody.

PRISON MEDICAL SERVICE

In four of the five deaths into which I inquired attention was focussed on the Prison Medical Service and the connection of its operations with the death in question. In three of the deaths, those of Malcolm Charles Smith, Thomas William ('Tim') Murray and Peter Wayne Williams, the concern was about the adequacy of psychiatric services.

Common decency demands that those who are deprived of their liberty and so are unable to seek treatment for themselves, or be looked after by friends and relatives, should be provided with adequate care by their custodians. This principle is indeed written into the New South Wales *Prisons Act 1952,* Section 16 of which provides:

> 'Every prisoner shah be supplied at the public expense with such medical attendance, treatment and medicine as in the opinion of the medical officer is necessary for the preservation of the health of the prisoner and of other prisoners and of prison officers ...'

I have already explained that the legal duty of a prison authority to take reasonable care of prisoners extends to taking reasonable steps to prevent a prisoner known to be suicidal from taking his own life.

PSYCHIATRIC ASSESSMENT AND TREATMENT

Over a period of nearly two years before his death in 1982, Malcolm Smith was recognised as psychotic on numerous occasions, mostly following serious attempts at self-injury. Yet throughout this period he had only symptomatic treatment consisting of observation and medication. On no occasion was a thorough assessment and diagnosis attempted. On no occasion did a psychiatrist who saw him discover, for example, his early history of being wrenched away from his family at the age of 11 or the more recent guilt-provoking history of killing Terry Percival and being denounced by his sister and convicted on the evidence of his family. It was not disputed that this was a totally unsatisfactory situation. The explanation was offered that there were not enough psychiatrists to meet the enormous demands at that stage. Dr Ward who was acting Director of the Prison Medical Service at the time said that he would like to think that things had improved, and Dr McLeod, the present Director, claimed that there had been considerable change in the patient care at Long Bay Prison.

The inquiry into the death of Malcolm Smith was the first which I conducted and I noted in my report that the evidence did not enable me to express any view on the adequacy of the present prison services. However I noted that the evidence of Dr H M Jolley, who was a visiting psychiatrist at Bathurst Gaol, indicated that the problems which existed at Long Bay when Malcolm was there certainly still existed at Bathurst Gaol at least.

The next death into which I inquired was that of Tim Murray who died in Berrima Gaol on 31 December 1983. All in all Tim Murray was an extremely difficult problem for society and for the prison system to which society consigned him. When at liberty he was a persistent offender, committing innumerable offences of break, enter and steal to maintain a high level of living and drug and alcohol abuse. Society provided no way of dealing with him except by sending him to prison, yet this was a very unsuitable place because there was no gaol equipped to deal with people such as he. He was young, small, effeminate, attractive, immature, manipulative, self absorbed, with low self-esteem and uncertain of his sexual identity, likely to become hysterical and threaten suicide if he did not get the attention he craved, and extraordinarily vulnerable to harassment and rape in a prison environment created to house aggressive personalities without normal sexual outlets. In addition he was a hypochondriac, anxious, easily depressed, and lacking in purpose and motivation.

His psychiatric treatment was mainly hurried and symptomatic, and he saw a number of different psychiatrists in a short time. There was little indication of in-depth assessment and none of any attempt to develop even a medium term plan for him. No one explored the possible relevance of his Aboriginality. I commented that to some extent the failure to embark on real assessment and treatment might be excused by the fact that he was a remand prisoner who was likely to be discharged or transferred when sentenced.

The third prisoner who had considerable dealings with the Prison Medical Service in relation to psychiatric problems was Peter Williams who died at Grafton Gaol on 18 November 1987. The evidence gave no sign of the improvement which I was assured had taken place since Malcolm Smith's death. The Prison Medical Service records relating to the month in which Peter was in its care give no indication of any in-depth assessment, or of any attempt to provide any plan to manage and treat him whilst he was in custody. As in the case of Malcolm Smith, his day to day

symptoms were treated mainly by meditation, and within a few days of his showing signs of calming down he was released back into the general prison system, free to be sent anywhere, including Grafton Gaol, where he would have no professional psychiatric attention at all. He was so released on 5 November 1987, although on that occasion he did not get past the Metropolitan Remand Centre on his way to Grafton. Four days later he was back seeking a return to the prison hospital in a highly disturbed state, and the next day he was admitted to the hospital as 'a serious suicide risk'. Only two days later, while he was still telling nurses that he was God, a psychiatrist, who recorded nothing more favourable about him than that he seemed 'quite cheerful and affable', cleared him to go to court. The psychiatrist made no inquiry as to whether Peter was in fact due to go to court as he claimed, or as to when the court was to sit or as to how important Peter's attendance was. As it turned out, his cases were not to come to court until 25 November, 13 days later, and there is no indication that even on that day they would have proceeded in a way requiring Peter's presence.

In making his decision about Peter, the psychiatrist did not even have available to him the medical file for Peter's previous stay in Long Bay Hospital, much less any longer term history. He made a number of assumptions for which he had no basis, and which he did not seek to verify. He assumed that considerable difficulty might arise if Peter were not allowed to go to court. He assumed that Peter would be away for only a day or two, and that Peter would be kept under observation. He gave no directions that these conditions should be observed, did not make his clearance conditional on any of these things, and did not even record on the file that these were the assumptions on which he acted.

Exactly how the system was supposed to treat the psychiatrist's clearance is not apparent from the evidence. He seemed to think that it was someone else's responsibility to understand and ensure that Peter should be released only for a day or two and kept under appropriate observation, but custodial officers were given no inkling that Peter's return into their hands was in anyway qualified.

They were not told that he was not to be away from the hospital for more than a day or two; they were not told that he was to be kept under observation; they were not told that his treatment at the hospital was incomplete and that he was to return as soon as possible. Peter was sent to Grafton where no professional psychiatric service was available, and hanged himself a few days later.

On the information that emerged from these cases, the psychiatric service provided by the PMS is totally inadequate for its task, badly managed and under resourced.

PREVENTION OF SUICIDE IN GAOLS

In my *Report of the Inquiry into the Death of Peter Williams* I noted that it was apparent that insufficient attention had been given to procedures for identifying and dealing with potential suicides. The case illustrated a deplorable lack of co-operation between medical and custodial staff. There must be considerable room for the involvement and training of lay staff, who are the persons in day to day and sometimes hour to hour contact with the potential suicide. They are in a position not only to make observations, but by personal interaction to contribute to the management of such persons. When it is not practicable to keep such persons under medical observation, steps should be taken to see that the best possible use

is made of custodial staff.

INVOLVEMENT OF CUSTODIAL OFFICERS IN WELFARE

The health care of prisoners cannot be exclusively the province of the Prison Medical Service, any more than it can be the exclusive responsibility of health professionals in the general community. The Service has a small staff in a limited area for limited hours, and inevitably many situations will arise where prison officers are able to observe things relevant to prisoners' health and are able and have a duty to take some action as a result. It is of the utmost importance that a relationship of co-operation and mutual responsibility is developed. In such an atmosphere it should be possible to work out the appropriate areas of professional confidentiality on the one hand, and of information and instruction to custodial officers on the other hand, so as to produce the best care of prisoners.

Giving prison officers a recognised role in relation to the welfare of prisoners may also help to bridge, from both sides, the gulf that inevitably exists when prison officers are seen, and see themselves, as concerned only with security. In the Max Saunders inquiry there was evidence of plans to introduce a 'Unit Management Policy' in Goulburn Gaol. The concept of unit management is to make each wing like a small gaol within itself, with more emphasis on interaction between prisoners and prison officers. It involves looking at each individual prisoner, and trying to work out goals for the prisoners. The prison officer will be doing the face to face work with the prisoner, supervised by a Case Management Officer. The proposal sounds extremely constructive, although much will depend upon the spirit with which it is implemented, the resources and the enlistment of co-operation from prison officers.

CONFIDENTIALITY OF MEDICAL INFORMATION

In the Interim Report Commissioner Muirhead stressed the importance of the confidentiality of prisoners' communications to medical staff, but noted that the issue was difficult because other matters affecting the welfare of prisoners impinge on the principle of confidentiality (pp. 54-5).

There are circumstances in which custodial officers can properly look after a prisoner's interests only if they are aware of certain matters about his or her medical condition. If a prisoner is at risk of suicide or self-injury, or is being sexually abused or otherwise ill-treated by other prisoners, it may be possible to eliminate or reduce the risk by steps taken by custodial officers in whose charge the prisoner is, or by appropriate classification of the prisoner.

An illustration is given by the death of Malcolm Charles Smith, the subject of my first report. In that case those having the immediate custody of the prisoner did not know of acts of self-injury which he had committed on two previous occasions similar to that which was ultimately to cause his death. A superintendent was asked to take Tim Murray into Berrima but was not made aware of his previous attempts at self-injury and overdose or that he was being issued with mood altering drugs. In respect to both prisoners psychiatrists had clearly noted and recorded the risks, but nothing was done to alert custodial officers. At Long Bay custodial officers were unaware that Tim was subjected to rape. Even though Tim did not wish to press criminal charges, custodial officers aware of the situation might have

been able to reduce the risk of further rapes. In Goulburn Gaol unnecessary problems arose, and may have contributed to Max Saunders death, because prison officers did not know which prisoners were on a methadone program. The Superintendent of Grafton did not have vital information about Peter Williams' instability. Obviously there needs to be some balance between conflicting considerations of confidentiality and the protection of a prisoner.

Another repercussion of confidentiality is the restriction on relevant information being available for classification decisions. The present practice in New South Wales is that prior to Classification Committee Meetings some members of the committee, which includes the Director or Deputy Director of Prison Classification, a Deputy Superintendent of Classification, an education officer, a psychologist, a probation and parole officer and, on occasion, others such as a welfare officer, discuss the prisoners listed for classification. If a concern is held about a prisoner because of behaviour indicative of a possible medical problem or if the prisoner has revealed that he is on medication, the Prison Medical Service is asked to provide medical information relating to the prisoner in accordance with a form. The information can only be obtained if the prisoner consents.

The case of Tim Murray illustrates that this procedure may allow a Classification Committee to make decisions without information about the degree of supervision which a prisoner may need for psychological or medical reasons. A theoretical solution might be that the Prison Medical Service should be represented on all Classification Committees but this would be unnecessary and wasteful of the scarce resources of the Prison Medical Service. Some better solution needs to be worked out.

SEXUAL OFFENCES AND SEXUAL IDENTITY ISSUES

It is apparent that prisoners with sexual problems or abnormalities create very great difficulties for prison systems. On the one hand prisoners who are believed to have been guilty of sexual offences against children, known as 'rock spiders' in prison jargon, are hated by many other prisoners and are at risk in gaol to the extent that they may require protection. However the isolation involved in protection may itself become a problem for prisoners. These difficulties were poignantly illustrated in the story of Peter Williams.

On the other hand prisoners of ambivalent sexual identity, or simply young male prisoners, are at risk of rape or other forms of sexual abuse from other prisoners. There can be little doubt that Tim Murray suffered severely in this way and it is quite probable that Glenn Clark did also. A major problem is that such prisoners are often afraid to complain for fear of retaliation. This may lead to great stress on prisoners and the seeking of protection, which itself may impose further stress (as happened with Tim Murray), or it may lead to assumptions that prisoners are willing partners who are then labelled by staff as homosexuals (which may have been the fate of Glenn Clark).

At the time of his death Peter Williams was on remand on charges of sexual interference with a small girl and a woman - he had other charges or convictions of a similar kind; Max Saunders was under sentence for the offence of rape which he had committed several times in the past, and Tim Murray had been placed in a protective environment in gaol because of his ambivalent sexual identity and his vulnerability to sexual abuse.

The evidence did not cast much light on the reasons behind Max Saunders' several offences of rape, beyond the fact that at the age of 14 he commenced a life almost entirely in institutions and had little opportunity to develop in a normal community. However both Peter Williams and Tim Murray suffered sexual abuse as children. There is general recognition that sexual abuse as a child is likely to contribute to delinquency, failure to establish a mature identity and the commission of sexual offences. Aboriginals have been expressing concern for some time about the consequences of sexual abuse which they see as often associated with policies that have broken up Aboriginal families and isolated children from their actual families.

Until recently it was widely believed that sexual abuse was not a problem in Aboriginal communities. However with an increase in community awareness and services, it is evident that Aboriginal families are not immune from the increase, or detected increase, in sexual abuse of children which is being seen in the whole community (Department of Family and Community Services, NSW, *Aboriginal Community Fostering Education Programme Package* 1988.)

It is important that the resourcing of Aboriginal Health Services and community organisations should have regard to the need to provide protection and assistance to children at risk in this way, and for the counselling and assistance of potential offenders.

MEDICAL SERVICES FOR ABORIGINAL PRISONERS

Although I was not able to investigate the matter in detail there were many indications that the mainstream medical services were not adequate or appropriate for Aboriginals. In the inquiry into the death of Max Saunders there was considerable evidence of lack of rapport between Aboriginal prisoners and the Prison Medical Service, although an absence of any specific detail to support criticisms of the Service's treatment of Aboriginals. It cannot but be a matter of concern that Max Saunders had over a long period been complaining of chest pains to his family, friends and fellow prisoners, and yet in all the years he was in gaol there was no record of these complaints ever having been taken to the Prison Medical Service. Nor is there any evidence of his advanced state of heart disease having being detected, despite numerous passages through clinics on his reception in gaols.

It would not be constructive for this problem to fall into an adversarial context in which Aboriginals expressed antagonism to the Prison Medical Service and the Service on its side adopted defensive attitudes. Some wisdom on this subject was expressed by the Aboriginal prisoner, Tim Matthews, who, although he did not have a high opinion of the Prison Medical Service, went on:

> 'All prisoners suffer the same problems, but I do not think Koories get the attention they need. Max was in need of help. There are things which are particular to Koories that require that they be given special attention. These things include shyness, and a problem with attitude to authority. Also a person in the gaol does not have a responsible attitude, otherwise he wouldn't be in there. All these things contribute to the fact that someone like Max would not seek out help. Max was trapped. I believe that he had a son of death wish. He was going through a lot of frustration.'

These are obviously problems which should not be ignored. The disproportionate numbers of Aboriginals in prison, the extraordinarily bad health profile and the low life expectancy of Aboriginals, continue to mean that Aboriginals should be regarded as a special and acute problem in the administration of the Prison Medical Service. Unfortunately this does not seem to be recognised in the Prison Medical Service itself.

There is a great deal of accumulated knowledge and experience about Aboriginal health problems and how to deal with them in the Aboriginal Medical Services.

While there is evidence that the Prison Medical Service, and the present Director, Dr McLeod in particular, have adopted a co-operative attitude to the Aboriginal Medical Services in giving them ready access to Aboriginal prisoners, it does not appear that there has been any attempt to make use of their experience or their services in shaping the general delivery of health services to Aboriginal prisoners. This would appear to be an area for very fruitful collaboration. Greater resources for Aboriginal Medical Services might allow them to play a greater role in prisons, which Dr McLeod says he would welcome.

Other references are made in this report to the importance of Aboriginal Medical Services. However the question is particularly acute for Aboriginals in prison, not only because of the disproportionate number of Aboriginals in prison, their very low standard of health and their lack of choice in medical services but because the state of Aboriginal physical and mental health is often a contributing factor to their custody. Commenting on Peter Campbell Dr McKendrick, the Psychiatrist Director of the Victorian Aboriginal Mental Health Network said:

> 'The story of his life and the plight of Aboriginal people in custody is familiar to all Aboriginal people and reflects the conditions of socio-cultural deprivation and racial discrimination which they experience throughout their lives. In my experience it is common for Aboriginal people to be taken into custody when it would be more appropriate that they receive medical treatment'.

A number of psychiatrists candidly admitted their limitations when dealing with Aboriginals - Dr Freeman, who dealt with Peter Williams at the Richmond Clinic said that cultural factors made his diagnosis of Peter Williams' condition problematic. In the Malcolm Smith inquiry two psychiatrists, Dr Jolly and Dr Milton both recognised the special transcultural problems in the psychiatric treatment of Aboriginals. Dr Jolly, who had had some experience with Aboriginal patients suffering what he described as 'schizophrenic-like illness', said that 'managing these conditions never seemed to correspond to the clinical instruction I had been given in medical school training days'. Dr Milton commented that 'there were probably profound and subtle differences in outlook between Smith and those treating him, sufficient to interfere with their evaluation of his emotional state and the risks attached. For example, what is regarded as psychotic behaviour i.e. mental illness, by white people, might have been for an Aborigine a normal if extreme way of demonstrating emotional distress and a need for help which could not be expressed more directly'.

There are a very limited number of practising psychiatrists who have specialised in work with Aboriginals. In south eastern Australia the outstanding example is Dr Jane McKendrick, the Psychiatrist Director of the Victorian Aboriginal Mental Health Network. Her work with the VAHS could be a model for other States.

IMPRISONMENT OF DISTURBED PERSONS

In the Peter Williams inquiry an experienced PMS nurse said that particularly in the last five years he had seen a big upsurge in the number of psychiatrically and emotionally disturbed and developmentally retarded people in gaol. He mentioned three factors in this, namely the increased use of drugs, the Summary *Offences Act* and the implementation of the Richmond Report.

It is a matter of grave concern, and one that must increase the incidence of deaths in custody, if mechanisms of the law are being used to convert persons in need of psychiatric care into criminals, and lock them up in a prison system that is not geared to their care.

IMPORTANCE OF RELATIVES AND FRIENDS

Prison authorities should be alert to the importance of the relatives and friends of prisoners. Maintaining contact with them is of great significance for the mental state of the prisoner, and hence for his or her conduct in gaol, and for prospects of rehabilitation on release. If they have resentments against the gaol's treatment of them it will soon be communicated to the prisoner, as well as affecting the gaol's and the department's reputation in the community.

The incident of the refusal to allow a television set to be brought into the gaol by relatives for Peter Williams' use illustrates the importance of decisions being explained, and not merely promulgated in an authoritarian fashion. There were good and proper reasons for custodial staff refusing to allow a television set to be brought in, but the failure to explain the reasons left relatives angry and resentful, and convinced that they had suffered discrimination.

ACCESSIBILITY OF GAOLS

It was obvious that two gaols which I visited during my inquiries, those at Broken Hill and Grafton, were of particular importance to Aboriginals. The rehabilitation of prisoners, and even their ability to maintain a balanced outlook on the world while in prison, may be greatly assisted by the maintenance of family and kin contacts. Corrective institutions tend to be located at a distance from centres of Aboriginal population, and the institution to which a prisoner is sent may be mainly determined by factors other than proximity to family. Broken Hill and Grafton Gaols are valuable exceptions.

Broken Hill Gaol is a relatively small gaol and one can imagine that in the days of economies of scale it may be under scrutiny. However its existence is of great importance to the Aboriginals of the western area of New South Wales, who supply many of its inmates. Although Broken Hill is 262km from Wentworth, 111km from Menindee, and 195 km from Wilcannia it is at least within an area in which Aboriginals are used to moving, whereas eastern gaols might as well be in another planet for many Aboriginals. Imprisonment in Broken Hill gaol gives some opportunity of maintaining family contacts; indeed with the large extended families in the area such contacts are to some extent maintained within the gaol. At the time of my visit in 1988 the gaol was run with a strong emphasis on rehabilitation

and had for a number of years been under the management of a Superintendent, Mr Mervyn Love, who had shown great interest in and understanding of Aboriginals and has won considerable respect in the Aboriginal community. When the Commission visited the gaol he explained a number of programmes that were operating to assist rehabilitation and outlined plans for including a substantial area of grapes on the small prison farm so that inmates could have the opportunity to acquire skills relevant to working on fruit blocks in the western region. Such an approach is deserving of every encouragement.

Grafton Gaol is similarly valuable for the Aboriginal community on the north coast, again providing the opportunity for Aboriginal prisoners for that area to serve sentences within visiting distances of their families.

During the inquiry into the death of Shane Atkinson, who died in New South Wales but spent a considerable part of his life in Victoria, I became aware of a similar significance to Aboriginals of Dhurringile, a low security gaol with a farm type establishment near Shepparton. Shepparton not only has a considerable Aboriginal population but is a convenient centre for a number of Aboriginal communities. Imprisonment at Dhurringile allows many Aboriginals to maintain contact with their families.

The importance of the location of prisons in relation to Aboriginal communities should be borne in mind when decisions are made about opening or closing prisons. This is particularly true in New South Wales where distances can be very great and Aboriginals constitute about 1 in 12 of the prison population.

In discussions with prisoners the New South Wales Aboriginal Issues Unit found that prisoners nominated access by parents or family or friends for visits as a major problem. It is a problem that had been made worse by cut-backs in rail services. Most of the visitors were people on social security benefits and they did not get concessions on private buses which were not subsidised. The cost of fares and accommodation when visiting distant gaols was a very heavy burden. A place particularly mentioned was Glen Innes Prison Farm which was a considerable distance out of town and without accommodation for visitors.

VULNERABLE PRISONERS

The evidence in the Tim Murray case showed the lack of any institution suitable for a prisoner like Tim, whether Aboriginal or otherwise. Dr Ward, the former acting Director, Prison Medical Services, advocated a special insititution, located on a prison farm, for young offenders, particularly those in gaol for the first time. Many have come from broken families with histories of parental alcohol abuse, violence and sexual promiscuity. Such young offenders have usually already spent time in boys homes and have abused alcohol and other drugs. Dr Ward has suggested a program for such offenders.

DRUGS IN GOAL

The evidence in relation to the death of Max Saunders made it obvious that drug use of many kinds was rife in Goulburn Gaol. Some Victorian communities expressed extreme concern to the AIU about the adverse affects that gaol has on their young people. In particular, it was said that the alleged availability of drugs

has spoiled the chances for young people when they are released.

I did not investigate how the drugs came to be available. However the problem lends weight to the desirability of adequate drug counselling in gaols, and for encouragement of activities which will strengthen the self-esteem of Aboriginals and their cultural pride.

PROBLEMS OF CLASSIFICATION AND TRANSFER

At the conference held by the Commission about Aboriginals in prison, there was considerable reference to the disruption of Aboriginal gaol communities by 'shanghai-ing', that is the sudden removal of prisoners from one gaol to another. Max Saunders' constructive plans for his rehabilitation were twice adversely affected by sudden, unnecessary and misguided transfers.

It is obvious that the settlement into prison life of prisoners, particularly long term prisoners, their rehabilitation through employment and education, their emotional maturation, and their preparation for return to civilian life, can be very adversely affected by misjudged transfers.

PRISONER EDUCATION

The large number of Aboriginals in prison, their general low level of education, and the connection of their educational level with their offending, make the availability of education to Aboriginal prisoners a matter of vital importance. The Commission has come across quite remarkable examples of rehabilitation of Aboriginal offenders as a result of new windows on the world opened to them. One former prisoner of 35, who had spent half his life in prison, told me that his rehabilitation had begun when he started to study sociology and art in gaol. 'For the first time in my life I felt free', he said.

It was very disturbing to hear reports of opportunities being cut back by financial stringency, the placing of TAFE on a fee for service basis, and restrictions on the right of prisoners to have study material in their cells.

The reduction of the number of educational programmes in corrective institutions must be one of the most short sighted and expensive policy changes imaginable. Literacy is a disability that can be highly correlated with propensity to crime and is one that can be remedied with skilful teaching. The acquisition of literacy is highly likely to improve the opportunities available to the offender. The highest priority should be given to encouraging Aboriginal access to education in prison, not only of a vocational nature, but for personal development, and funds for this purpose should be specifically provided and not have to compete with security expenditure in corrective services budgets. The negotiations under way with TAFE to develop new opportunities for vocational education, life skills, literacy and culture are to be commended.

RACISM

Several prisoners complained about racism in gaols, and what they alleged was differential treatment because of their race. One Aboriginal said that being a Koorie

in prison created what he called 'an invisible wall' between himself and other prisoners. Although be had never experienced physical harassment, be had experienced verbal abuse.

There were some very eloquent statements at the Commission's conference on Aboriginals in prison about the problems that arise. There were also indications of failures on the part of superintendents and others to be aware of the problem. This is exemplified in the present case by a statement of the Superintendent of Goulburn Gaol:

> 'In my time here as Superintendent or as Deputy I have never had an inmate coming to me with a complaint about problems with racism.'

Aboriginals who have lived all their lives suffering the effects of racism are not likely to come and complain to the superintendent about experiencing it in gaol, quite apart from the general reluctance of prisoners to complain for the fear of retaliatory action. The statement also suggests a failure to distinguish between acts or expressions of racial prejudice and the racism embedded in institutional practices such as the lack of recognition of the importance of kinsfolk to the emotional well-being of Aboriginal prisoners.

RECOGNITION OF ABORIGINALITY

Aboriginals stressed the painful and destructive effects of isolation. 'From the cradle to the grave, Aboriginal people are social beings and they're surrounded by people.' Problems occurred when Aboriginals were taken from their families or social units and put in an isolated position. There was a need for Aboriginals to be put with other Aboriginals, and again and again it became apparent that whatever divisions they might have outside Aboriginals tended to form a close social unit within gaols.

I encountered some examples of this being recognised. The gaol at Broken Hill to which I have already referred was one in which Aboriginals found their culture respected and they were encouraged to express their Aboriginality. In Grafton Gaol it was the practice to allow Aboriginals to share a cell known as the 'mission' cell and when necessary an adjoining cell. This was a sensible and desirable recognition of Aboriginal identity by the gaol management.

However it is clear that many Aboriginals perceive their experience in gaol as one in which the expression of their Aboriginal identity is discouraged. There were perceptions that Aboriginal groups were deliberately kept to a limited size in gaol and that persons who were active in expressing their Aboriginality or their solidarity with other Aboriginals were likely to be 'shanghaied' to another gaol. How far this is the fact was not something that I was able to investigate. One Aboriginal prisoner put it that problems often originated with other inmates who were prejudiced against Aboriginals or resented their solidarity, rather than with gaol managements. In his view it suited gaol managements to be neutral between Aboriginals and non-Aboriginals as the division left them very much in control.

In a visit to North America early last year I found a strikingly positive attitude to the encouragement of Indian identity in federal prisons. This was expressed in traditional religious and cultural practices which were encouraged and facilitated by the prison administration, which regarded the development of Indian self-esteem

as highly desirable. This was not on abstract grounds but in terms of improving the atmosphere in gaols, making administration easier, and encouraging the rehabilitation of prisoners. Urban Indians who had been cut off from Indian communities often responded with great enthusiasm. It even became a problem that non-Indians were seeking to pass themselves off as Indians to gain admission to the warmth of the Indian fraternity which stood out in the gaol situation.

ABORIGINAL ALTERNATIVES

Aboriginal communities are very conscious of the deleterious effect of gaols on Aboriginals, and particularly young people. A number of Victorian communities saw the revival of Koori culture and the Koori means of social control as a solution to the over-representation of Kooris in custody.

As a means of achieving this, many communities would like to see an alternative to prison. Several submissions, which embody detailed proposals, have already been prepared by various community organisations and workers in the field. The prison alternative has been described as a Farm, a Way Forward and a Living Skills Development Program. The aims are to reduce the custody rate and to reduce recidivism.

The features of this much needed alternative which were common to all the proposals put to the AIU were:

- that it be a place away from the prison system, and, some said, away from the city

- that the staff and organisers not be part of the Office of Corrections and not be police officers

- but that it operate in conjunction with the OOC

- that the focus would be on

    developing living skills
    providing support
    enhancing cultural identity
    strengthening self esteem
    providing meaningful education

- that it be controlled by the local Koori community

- that the entire project be conducted within the appropriate cultural framework.

The use of the word 'rehabilitation' was rejected and the term 'cultural revival' was used. The point being made was that the objective of the program would be to instill a sense of identity and self worth as opposed to changing someone's lifestyle in order for them to 'fit back into the general society'.

CHAPTER 8: AVOIDANCE OF CUSTODY

IMPRISONMENT FOR NON-PAYMENT OF FINES

The abolition of imprisonment for non-payment of fines was recommended in the *Interim Report* of Commissioner Muirhead. The importance of this recommendation was apparent from a number of cases.

But for the existence of a warrant for the non-payment of a fine Glenn Clark would have been entitled to be released when he sobered up. It was suggested, and it is possible, that the fact that he was not going to be released when he sobered up may have contributed to his depression and his taking of his life. Harrison Day was serving time for non-payment of a fine when he died. Clarence Nean died after collapsing in Walgett Police Station, where he was spending four days on a warrant for non-payment of a fine of $80, imposed for taking a tin of sardines and sauce valued at $1.07 from a local supermarket while he was intoxicated.

BAIL

I have earlier characterised as a story of shocking and mindless inhumanity what happened to Thomas Cooper, whose death was investigated but ultimately found to be outside my terms of reference. Although unconvicted, he was left to die over a period of two months in gaol, far from his family, when he was virtually helpless and a threat to nobody. He should have been released to die in dignity and comfort with his family about him. Instead bail was imposed which he could not raise. While this wag a particularly stark example because Mr Cooper -,has dying, the suffering of imprisonment for inability to raise bail rather than for the commission of offences has been a significant part of the Aboriginal experience.

For example in 1969 Clarrie Nean was charged with an assault and acquitted, but he had nevertheless spent nearly six weeks in custody awaiting trial, as the terms of his bail required him to find a surety for $200 in a town away from home. In 1971 he spent a similar period in custody, being unable to find a surety for $300 in another such town, although he was ultimately given a bond for the offence -an assault while drunk. Although in 1974 he was fined only 50c for offensive behaviour, he had been in custody for five days, unable to find a surety for $40. In 1976 he spent two weeks in custody awaiting trial for a PCA charge, his bail having required a surety for $200.

Unrealistic bail conditions

I commented in a number of reports on the fixing of unrealistic bail conditions. Bail conditions should not be set which obviously will not or cannot be complied with. Unrealistic conditions simply set the defendant up for failure, and produce the result that bail is at the discretion of the police, who can arrest the defendant for breach of conditions whenever they choose not to turn a blind eye to the breach.

The principal purpose of bail conditions should be to ensure that people attend at court to answer particular charges, although there may be other purposes in particular cases, e.g. the avoidance of further offences. However the conditions should not be used by police officers or magistrates to impose their views of an appropriate life style on offenders. A common condition is total abstention from alcohol, which is an invariable accompaniment to any social life for many Aboriginals in many country towns. The condition was repeatedly imposed on

Lloyd Boney's bail during 1987 that he not partake of intoxicating liquor. In the circumstances of Lloyd's life in remote communities in western New South Wales, the limited opportunities for social life revolved around social drinking, very frequently in public under the gaze of police. If it was seriously thought that it was necessary that Lloyd should not drink at all he should not have been released on bail, but obviously this would have been unreasonable. It is interesting to note that in Lloyd's case the condition was not sought by police, but was apparently automatically added by magistrates or justices to the more appropriate conditions sought by police.

Shane Atkinson's final custody flowed from an unrealistic and irrelevant condition requiring him to report at 5.00 pm each day in a sober condition, which, given his known habits, meant that his bail was revocable at the whim of police. Where reporting conditions are imposed the object is to put police on notice at the earliest available opportunity of the possibility that the defendant may not appear, or may be offending again, so that inquiries can be made. Yet in the case of Shane Atkinson six days elapsed before his failure to report was recorded in the Occurrence Pad and no attempt was made to inquire as to the reason. Instead he was simply arrested when seen at Griffith Show with his girlfriend, one of the reasons for the anger which he later expressed by taking his own life.

Another very onerous condition which seems to be much too readily imposed is one requiring the defendant to stay out of his own town, often the town in which he has lived his whole life.

Deferment of bail

The Revell case illustrated difficulties which arise about the application of the New South Wales *Bail Act* to a person who is, in some substantial degree, affected by alcohol or other drug. Under the Act police have no power to review bail granted by themselves or any other police officer. Consequently, once they refuse bail the person must remain in custody until he or she can be brought before a justice. For persons arrested during the evening or night this commonly means remaining in custody until ten o'clock or later the next day. This creates a dilemma where police consider that although a person is not in a proper state to be released immediately after arrest, that person may be able to be released after some hours of sobering up. By reason of s.5 of the *Intoxicated Persons Act* there may be an impediment to giving the person bail for the offence charged, but then holding him or her temporarily under the *Intoxicated Persons Act.*

The police have found a practical solution to this problem, which is expressed in police training lectures which say that police are entitled to defer determining bail by reason of the provision requiring bail to be determined 'as soon as practicable'. This phrase is construed as allowing police to defer the determination of bail until persons are sufficiently sober, not only to understand the conditions of bail, but to be able to be released without risk to themselves or others.

There are two problems about this. One is that it is a very doubtful interpretation of the *Bail Act.* Counsel before me in the Revell case were virtually unanimous in accepting that the *Bail Act* does not allow such deferment of a determination and that, properly construed, the *Bail Act* would require the police officer to make a determination as soon as possible, even if it meant refusing bail to a person who could be released some hours later.

The other objection is that the practice opens the way to the possibility of abuse. The deferment of bail does not even have to be recorded. Bail might be improperly denied by an officer simply deferring a decision; the deferral is not subject to any review.

The existing position is unsatisfactory. The Revell case gave an example of police acting reasonably and in the interest of the prisoner but on a questionable legal foundation. In other circumstances it is not hard to imagine that there might be a challenge to the good faith of police, as well as to the legality of their actions. It is desirable that the position should be clarified in some way. There are a number of ways in which the law might be altered, for example, by giving a power to defer with some safeguards; by giving police power to review a refusal of bail by themselves or other police officers, or by reviewing the interaction of *the Bail Act and the Intoxicated Persons Act.*

Victorian initiatives

Some recent constructive moves have been made in Victoria to improve the administration of bail. Legislation has been passed for the specific appointment of persons as Bail Justices. Bail Justices may be *ex officio,* as the holders of prescribed offices such as Clerks of Court, or they may be individual appointments by the Attorney-General. The Attorney-General's Department has developed a training course for Bail Justices in conjunction with the Leo Cussen Institute and all appointees will be required to complete the course. The intention is to improve the consistency of bail decisions and deal with any inappropriate preconceptions of those making hail decisions.

In relation to juvenile bail, it has now been enacted in Victoria that no young person may be refused bail on the grounds that they do not have adequate housing. A Remand Advocacy Program tins been established and Youth Officers at Training Centres assess the incoming juveniles and endeavour to find appropriate community placements. When such placements are found the juvenile is returned to the court for approval and release.

PROBATION AND PAROLE

The Importance of Probation and Parole

Probation and parole play a critical role in determining the numbers in custody, probation by providing an alternative to sending an offender to prison or a juvenile institution, and parole by allowing early release and the taking of measures to assist the parolee to settle into the community and avoid reoffending. Special importance attaches to the opportunities to divert a first offender, especially a child or young person, from the custodial system, and to assist a seasoned offender at the point which so many reach where they realise the futility of spending the rest of their lives in custody and wish to find a constructive alternative. The Probation and Parole Service in each State has a key role both in assessing individuals for, and making recommendations about, probation and parole, and in supervising probation or parole when it is granted by courts or correctional authorities.

The Commission's inquiries

A number of those whose deaths I have investigated were at times under the supervision of one of the Services, or were candidates for such supervision, but in no case does the result appear to have been successful. Because I heard so many more cases in New South Wales, and because the three Victorian cases related to men who had not had any significant conflict with the law except over drunkenness, most of my observations related to New South Wales.

In my first report, that into the death of Malcolm Smith, I noted the ways in which the Probation and Parole Service in New South Wales had failed to provide Malcolm with any support at critical times of his life. Released on probation in the strange city of Sydney at the age of 15, instead of being returned to his family at Dareton, he was soon incarcerated again at the behest of his Probation Officer, who appears to have given him no support. When he did return to Dareton on parole at the age of 21, the Service was unable to provide supervision and he was soon back in gaol. When he was 24 he was refused parole to return to Dareton, against the background that the Service was unable to provide the required supervision in 'this remote part of the State'.

Lloyd Boney experienced one period of supervision in 1986-87 while he was moving between Bourke, Enngonia and Brewarrina. He reoffended and his Parole Officer reported that 'Lloyd should not again due to nomadic lifestyle be placed under the supervision of this Service as it only serves to be a useless game of "cat and mouse"'. At a critical period in his life Peter Williams was denied supervision by the Service because of legal quibbling about its powers. At the age of 14 Max Saunders was recommended by a Probation and Parole officer for committal to an institution after his first offence of stealing $6.60 worth of cigarettes, thus beginning a life spent almost entirely spent in custody. At a late stage of his life a parole officer devoted a great deal of time and energy to his rehabilitation, and was so confident that he would not repeat his offence that she could not believe that he was guilty when again convicted.

In Tasmania Glenn Clark spent virtually the final six years of his life from the age of 16 under supervision, but no officer seems to have established rapport with him. Even after he had responded creatively to an opportunity to produce a newspaper in gaol, probation officers could find no positive potential in him, and missed the opportunity to nurture and build on this revelation of a constructive side of Glenn's character. By this time the Service seems to have been treating Glenn as a stereotype. A probation officer noted in 1980 that 'the flow of offending does not seem to have abater as a result of supervision', but this does not seem to have led to a re-evaluation of what the Service was offering.

Two parole officers, one in New South Wales and one in Tasmania, established good rapport with Peter Campbell at lonely times in his life, but did not succeed in keeping him out of further custody. The Tasmanian officer, reflecting on his failure, wrote:

> 'There are some sound lessons to be learnt from the failure of myself and allied services in this case
>
> our knowledge of Aboriginal mores, values etc. was nil.

> the need was guessed at and then amply demonstrated itself for an intensive, wide ranging contact between this man and the available Services.'

With some notable exceptions, it was common for Probation and Parole Officers to experience great difficulty in establishing rapport with those whose deaths I investigated, and for those officers to express negative views of their intelligence and potential which were at odds with other evidence available to the Commission. These comments are not made to belittle the efforts of officers of the Probation and Parole Services. On the contrary in many of the cases there were sympathetic and careful reports of these officers which evinced a keen desire to help their clients. The point is simply that the Services were not geared to dealing with Aboriginals, and had not at the time recognised the special needs to build cultural awareness in their staff, to recruit Aboriginal staff, and to enlist the latent creative energies and responsibility of Aboriginal communities.

During the inquiry into the death of Malcolm Smith the Commission received a valuable paper from Mr Mark Robertson, the Director of the NSW Probation and Parole Service, in which he described the then policy of the New South Wales Service, which he supported, of a generalist approach, in which officers worked with all sections of the community. He supported the recruitment of Aboriginal officers, not to specialise in work with Aboriginal people but to make the Service more representative of the community as a whole, and hence more sensitive and effective in dealing with its clientele, including Aboriginals. He did however see benefit in Aboriginals serving Community Service Orders working in Aboriginal community improvement programs, and for developing Attendance Centre programs in conjunction with Aboriginal communities. However he saw the need for Aboriginal communities and organisations being given the resources necessary to set up effective community-building and improvement programs of a general nature, rather than funding them to undertake a formal system of supervision of Aboriginal offenders.

The Commission saw heartening evidence of this situation beginning to change during the course of the Commission. In particular the inquiry into the death of Malcolm Smith acted as a catalyst for a review of the relations between the New South Wales Service and their Aboriginal clients, and indeed Aboriginal communities. After my report appeared, Mr Ross Lay, the officer in charge of the Service in Tamworth, who had had official contact with Malcolm, was stimulated by reading it to propose a seminar of the Service on the issues underlying Aboriginal deaths in custody.

NSW Draft Policy on Aboriginal Probation and Parole

Following that seminar, a Working Party was formed which developed a draft, which after comment will form a basis from which a Probation and Parole Service Aboriginal Policy will be developed. This draft was circulated on 14 February, 1991, and it is worth noting the very constructive character of the draft Policy, which goes a long way to meeting the needs noted by me during my inquiries.

The draft Policy recognises that while a common set of humanitarian principles should apply to the supervision of all offenders regardless of race, procedures and practices specific to the supervision of Aboriginal offenders are necessary to

achieve equality of access to services and equality before the law. It proposes principles and strategies for adoption in the various activites of the Service.

In relation to assessments *for pre-sentence reports, the* draft Policy recognises that Aboriginal people's mistrust of non-Aboriginal agencies, and the fact that Probation and Parole Officers are not always culturally aware, impose restrictions on assessments, to overcome which certain strategies are proposed. These include the conducting of interviews wherever possible outside service offices and in the Aboriginal community, and the presence of an Aboriginal person at the initial interview, at which the question of who will be present at later interviews will be determined. The client will read the report when it is prepared, or have the contents and recommendations explained by an Aboriginal person who is suitable to do so.

Emphasis is placed on exploring kinship ties rather than concentrating on the nuclear family, and on the avoidance of stereotypes. Cultural factors must be taken into account in relation to matters such as education, employment, and fines, and in the selection of organisations for Community Service and other matters.

In relation to assessments *for parole reports* emphasis is placed on the importance of explaining that many Aboriginals do not meet the 'normal criteria for parole', that conditions should be flexible rather than fixed, and that it is unrealistic to impose conditions requiring no consumption of alcohol or dissociation from community and family members.

It is proposed that a recommendation be made from the Probation and Parole Service to appoint Aboriginals to the Serious Offenders Review Board and the Offenders Review Board.

In relation to *supervision,* emphasis is again given to considering the appropriateness of conditions attached to probation or parole to the circumstances of Aboriginal life. Most importantly in relation to supervision, it is proposed to increase Aboriginal community participation in decision making about offender management and supervision. Services would be tailored to local and regional resources and the needs of the Aboriginal community and individual offenders. The concept of an 'Aboriginal community standard' would be developed through the establishment of Aboriginal Community Justice Panels. There would be networking with Aboriginal community organisations and a use of the resources of organisations and departments with Aboriginal Units. The potential for contracting offender management to appropriate Aboriginal organisations would be investigated. Contact for Aboriginal offenders could be facilitated by interviewing and reporting at an Aboriginal Community Office such as the Aboriginal Legal Service. Steps would be taken to ensure that Aboriginal offenders understand the process for complaint against a supervising officer who may be culturally unaware.

For *staff recruitment,* a target of 2% Aboriginal representation in permanent positions by 1991 is proposed for the Service, with a number of identified positions for which Aboriginality would be an essential qualification, and the selection committee for which would include at least one Aboriginal person from the local community. There would be Aboriginal Liaison Officers, and identified Aboriginal Probation and Parole Officers who would work predominantly with Aboriginals. It is particularly noted that a criminal record should not necessarily be an impediment to employment, each person being dealt with individually, and the views of the local Aboriginal Community obtained. A special effort would be made to employ Aboriginal women.

The draft Policy also contains a number of proposals for taking account of special problems of Aboriginal women offenders. It also proposes a number of strategies to ensure that Aboriginal culture awareness training is mandatory for all staff.

The draft Policy supports the concept of Aboriginal Community Justice Panels along the lines of panels already operating in Victoria, with the following objectives:

(i) to minimise the contact of Aboriginal persons with the Criminal Justice System through working with police on appropriate diversionary programs;

(ii) to assist police in ensuring the safety of Aboriginals in police custody;

(iii) to provide assistance to Aboriginals involved in court processes;

(iv) to provide advice to courts on sentencing matters in relation to Aboriginals;

(v) to advise on and participate in the supervision of community based sentencing orders, pre-release programs and parole orders;

(vi) to assist prison authorities in ensuring welfare of Aboriginals in custody;

(vii) to assist Aboriginals in the post custodial stage.

The proposal is that two panels would be piloted, one at Redfern and one at a country location, provided there was relevant community support for the proposal. Appropriate training for panel members would be provided and the principle of fee for service adopted.

The policy is most constructive and is fully in conformity with the needs as they have appeared to the Commission. It is to be hoped that the proposals will be adopted and adequately resourced.

Post-release Program for Aboriginal Ex-Prisoners

Another valuable initiative is the Post-release Program for Aboriginal Ex-Prisoners (PRP), which began in New South Wales in September 1989 as a pilot scheme to fund Aboriginal community-based organisations to run centres which would offer education, training and job placement services for Aboriginal ex-prisoners. The overall objectives of the program were to reduce recidivism and imprisonment rates among Aboriginal people by redressing some of the social disadvantages they face, especially those deriving from lack of employment, education and training. The centres were intended to provide services which included:

(i) basic education in literacy and numeracy on an individual basis for the participants assessed as needing it;

(ii) pre-training or training programs in vocational skills conducted in liaison with a formal training centre such as TAFE or Skill Share;

(iii) access to certificate, diploma or degree courses from recognised tertiary education institutions;

(iv) job seeking and job placement services, including visits by officers of the Commonwealth Employment Service to discuss employment prospects with participants, assistance in preparing job application letters and presentation at job interviews, and direct job placement assistance through the CES and other employment agencies.

To implement these objectives, each funded centre was to employ at least one Aboriginal project officer whose responsibilities included visiting prisons, courts and legal centres to recruit participants; liaison with prison authorities, police and the Aboriginal Legal Service; liaison with local education bodies to secure training arrangements for participants; liaison with Aboriginal vocation officers, the CES and other agencies to secure post-program employment or further training for participants; and the keeping of relevant records.

PRP is under the oversight of an interdepartmental committee consisting of representatives of the NSW Department of Corrective Services, the NSW Office of Aboriginal Affairs and ATSIC. Initially four centres were approved for funding, and at the end of the first year two of these were functioning successfully. One was based in Towri, an Aboriginal hostel in Bathurst which normally catered for students attending the Mitchell Campus of Charles Sturt University and Bathurst TAFE. The other was at Bennelong's Haven, a drug and alcohol rehabilitation centre on the site of Kinchela, the former APB Boys Home at Kempsey. At these two centres the program was sufficiently successful to lead to a decision to fund two more centres, one at Armidale and one at Dubbo. Although two of the centres originally funded had not succeeded, an evaluation of the successes and failures led to conclusions to be applied in further development of PRP. These were that:

* any organisation funded should have a sound administrative structure from the outset and be capable of taking on the required program without placing any major strains on its existing operations;

* the organisation should be experienced in running government-funded programs on an independent basis, and be willing to take responsibility for its own affairs. (K Windschuttle *Evaluation Report September 1989-September 1990).*

Community Justice Panels in Victoria

In Victoria the most encouraging developments in probation and parole work, as in other aspects of criminal justice, have centred around the development of Community Justice Panels, which were officially recognised in July 1988. The wide-ranging activities that have grown up around some of these panels, particularly that in Echuca, have made their activities relevant to a number of chapters of this report. For a general account of the Panels readers are referred to Chapter 18 where they are discussed in relation to Aboriginal/police relations, and their general organisation, strengths and needs are addressed. However it is to be noted in the present context that they were from the beginning intended to provide a service to Community Based Corrections. The Office of Corrections, which administered community service orders, and Aboriginal communities both desired to provide a more culturally relevant and supportive service to Aboriginal offenders and members of the offenders' family clan group. Amongst other functions, panel members would, in the event of an offender being found guilty, provide a pre-sentence assessment, offering an outline of the responsibilities the panel was

prepared to undertake in relation to the offender, eg

- supervision
- direction community work assignments
- co-ordinate personal development and/or educational programs
- provide progress reports on individual offenders
- provide disciplinary action when required.

Following successful completion of a Community Based Corrections volunteers training course, which has been developed by TAFE and is expected to be funded by DEET, panel members will become gazetted community corrections volunteers.

The potential of the program is demonstrated by the fact that in over a year after the institution of the panel in Echuca, not one Aboriginal had been sent to prison. As I indicate in Chapter 18, the critical issue is whether the Government will supply the necessary resources, in terms of equipment and remuneration, to maintain the program. It would be false economy not to do so.

DECRIMINALISATION OF DRUNKENNESS

Drunkenness

The *Interim Report* of Commissioner Muirhead recommended the decriminalisation of drunkenness in those jurisdictions where it had not already occurred. New South Wales had been a leader in this field. Hence in relation to the States with which I am concerned, the recommendation was effectively addressed to Victoria and Tasmania. In Victoria the topic was referred to the Law Reform Commission, which made detailed proposals for decriminalisation.

The three deaths into which I inquired in Victoria were all cases in which the detention arose out of drunkenness and I dealt at length in the reports with the absurdities to which the criminal treatment of public drunkenness gave rise. While drunks were not being penalised as heavily as in earlier years, the inappropriateness of dealing with drunkenness through policing was illustrated by a Swan Hill police officer's description of how the handling of a drunken person might escalate.

> 'You know, drank is quite sufficient for most. They give you a bit of lip. They might get drank and disorderly and if they got a bit more they might get a language.
>
> Question: Get the trifecta?
>
> Answer: The trifecta. It builds up. "Hamburger with the lot" they call it.'

If a civilian operating a pick-up van from a sobering up centre was given 'a bit of lip' by a drunk, he would ignore it and simply try to placate the drunk and get him or

her into the van as peacefully as possible. Because a policeman is involved, the ramblings of the drunk are treated as a challenge to authority and made the subject of charges.

In my three Victorian reports I repeated the recommendation of Commissioner Muirhead for the decriminalisation of drunkenness and linked it to the implementation of the recommendation of the Law Reform Commission. At the same time as the reports were released, the Government introduced legislation to Parliament to decriminalise drunkenness.

While being drunk in a public place is not of itself an offence in Tasmania, it is an offence under s.4 of the *Police Offences Act* 1935 to be found in a public place drunk and incapable of taking care of oneself, or drunk and behaving in a disorderly manner, or drunk in charge of any vehicle or animal or in possession of firearms and ammunition or of any other dangerous weapon. The two offences of 'drunk and incapable of taking care of himself and 'drunk and disorderly' thus cover most cases of public drunkenness.. The Tasmania Police Force recognises that to simply lock drunk persons up is only to create further problems for both the law enforcement body and the offender, and some years ago made a submission to the Government for the amendment of the *Police Offences Act* accordingly.

It is to be hoped that Tasmania will follow the lead of other States, including the recent decision of the Victorian Government based, inter alia, on the detailed report of its Law Reform Commission.

The success of decriminalisation depends on the establishment of sobering-up centres which provide an appropriate form of care for person/persons found drunk in public places. This matter is discussed in Chapter 26, Alcohol and Drugs.

Offensive language

Over and over again during this Commission there has been evidence about Aboriginals using the term 'cunts' in relation to police, usually with the result of a charge of offensive behaviour or at all events strong disapproval. I have often been led to wonder how police could continue to remain offended by a term they heard so often and so routinely.

The evidence in the Gundy hearing gave several glimpses of the fact that, as one would expect, it is a term in common use amongst police themselves. When Constable Judd was shown a photo of Porter he reacted That's the cunt that did it'. Shortly after Mr Gundy's death Sergeant Dawson, referring to Mr Gundy's seizure of his shotgun, was asking 'Why did the silly cunt do it?'

It is surely time that police learnt to ignore mere abuse, let alone simple 'bad language'. In this day and age many words that were once considered obscene have become commonplace in many circumstances, and are in common use amongst police no less than amongst other people. Maintaining the pretence that they are sensitive persons offended by such language - 'obscenities', as their counsel described such language to the coroners jury - does nothing for respect for the police. It is particularly ridiculous when offence is taken at the rantings of drunks, as is so often the case.

Charges about language just become part of an oppressive mechanism of control

of Aboriginals. Too often the attempt to arrest or charge an Aboriginal for offensive language sets in train a sequence of offences by that person and others - resisting arrest, assaulting police, hindering police and so on, none of which would have occurred if police were not so easily 'offended'. It particularly brings the law into disrepute when police use similar language, often with racist overtones, to Aboriginals.

As I pointed out in the last section, when discussing the decriminalisation of drunkenness, language which would be ignored by civilians looking after drunks is treated as criminal when used to police. Sometimes this is justified on the basis that the language is a challenge to the authority of police. But the ravings of drunks cannot be regarded as a serious challenge, and in any event a peaceful challenge to authority is not an offence in this country.

PART FOUR: ACTION FOLLOWING DEATHS

CHAPTER 9: DISCOVERY OF BODY

RESUSCITATION AND TREATMENT

In my *Report of the Inquiry into the Death of Peter Williams* and other reports I commented on the lack of clarity in custodial officers, both police and prison officers, about the subject of resuscitation. It is unfair to them and to persons in their custody to leave them without a clear understanding of when and how resuscitation should be attempted, and without training in how to carry it out.

It is often an important priority to secure the scene of a death and preserve it for investigation, but this should not inhibit any possibility of saving life. In particular all officers who have the custody of prisoners should be trained in resuscitation, and in when to employ it. Reaction to the discovery of a body hanging requires particularly clear instructions, as this is the commonest form of self-inflicted death in custody.

In only one case which I investigated, the death of David Gundy, were there gunshot wounds, and the officers of SWOS acted with commendable speed and diligence to give first aid.

IMPORTANCE OF OPENNESS

A number of the inquiries brought out the serious consequences that can flow from a failure on the part of authorities to be open about the circumstances of a death in custody. The most striking example was the death of Peter Campbell, where the relatives did not learn how their son and brother had died until the inquest months later. A death in custody is usually a matter of great anguish and distress, not only to the immediate family, but, in the case of Aboriginals, to a wider kinship and community network. There is often great suspicion. This is a natural reaction in view of the great warmth that commonly exists in Aboriginal extended families, the

fact that few people are ready to believe that someone close to them would have committed suicide, the history of Aboriginal and police relationships, and the shattering and bewildering effect of a loved one disappearing into inaccessible police premises, apparently in good health, and being delivered back as a dead body.

Unless there is a sympathetic and full and open communication of all the relevant facts, and an obviously genuine and thorough investigation of the matter by police and coroner, suspicion will grow. When families start to exchange experiences suspicion will grow exponentially. It is apparent that these circumstances occurred in relation to many deaths in custody, and contributed greatly to the concern which led to the establishment of this Commission.

It is of course of great importance that any information published should be accurate, a point brought home in the case of Peter Williams, where considerable misinformation was published in the local press, attributed to officers of the Corrective Services Department. However what is known should be made available immediately to those with a legitimate interest, which in the case of an Aboriginal should be taken to include the family and care-givers in the Aboriginal community and the Aboriginal Legal Service.

COMMUNICATION WITH RELATIVES

The way in which the news of a death in custody is communicated to relatives, and the openness and frankness with which their inquiries are answered, are of crucial importance if bereaved families are to come to accept the facts, and the initial suspicion is to be dissipated instead of left to fester and spread. The notification to the family must not be treated as some meaningless ritual, another duty to be ticked off in the appropriate box. It must have regard to the fact that the notification sets off an agonising process in which the family has to come to terms with what has happened, and with whatever implications it has both for their past relations with the dead person and for the future lives of the survivors. These implications may be particularly painful if the death was self-inflicted.

To withhold information is cruel and destructive of the family's ability to adjust. To treat the pendency of a police investigation or coronial inquiry as a reason for withholding information is self-defeating. It merely breeds suspicion, which the subsequent inquiry then has more difficulty in dispelling.

No one likes communicating painful news, and no one connected with a death likes facing a suspicious relative. Too often, as in the case of Mark Revell, the task of giving news of the death to relatives is passed to people who know nothing of the facts beyond a sentence or two of instructions. Often they do not know the relatives and the task is simply a painful chore for which they are ill-equipped. They can be polite and utter soothing words, but they cannot answer detailed questions, or vouch for the truth of what they say, and suspicion starts to grow.

When those who have been directly involved are confronted by relatives, sometimes far away at the end of a long distance telephone line, they may feel threatened by the emotion and the doubts implicit in the inquiries. They may take refuge in unconvincing excuses for denying information - 'investigations are not complete', 'the matter is sub-judice until the coroner gives his decision', 'we cannot give information over the phone', 'how do I know who you are?' - all of which is

seen as evasiveness by the inquirer. 'What have they got to hide?' Or the officials may become defensive, impatient, or rude, and dismiss the inquirers as unbalanced or unreasonable, or in terms of some derogatory racial stereotype, or as ungrateful - 'I did everything I could for that young fellow and what do I get for it?'. The relative becomes hurt, angry, and again, suspicious.

Breaking the news requires skill and sensitivity and openness. An untrained person is likely to feel very uncomfortable, a feeling which will soon be picked up and possibly misinterpreted by the relatives. In the case of Aboriginal deaths it is extremely desirable that there should be an Aboriginal person involved in the notification, who will have much more chance of understanding and responding to the reactions and concerns of relatives than a non-Aboriginal.

All this applies in relation to members of the general community, but it applies with special force to Aboriginal people because of the large number of Aboriginals in custody, their historical alienation from and distrust of law enforcement authorities, the closeness of Aboriginal families, and the warmth and breadth of the kinship network that surrounds each individual.

VIEWING THE BODY

There should be an opportunity, if the relatives wish, to see the body at a very early stage or have their representatives see it. One matter which gave very great concern to the relatives of Lloyd Boney was that the body was whisked out of town within an hour of being discovered, and before any attempt was made to notify a relative. Sometimes the sight of the body may be very distressing, but the choice whether it is seen or not should be that of the relatives. They may well nominate someone else to look at it on their behalf, but there should be an opportunity to see whether the body bears any marks of violence or whether there are other suspicious circumstances. Obviously restrictions may have to be placed on the viewing for the purpose of ensuring that there is no disturbance of possible evidence, but this does not justify a blanket refusal of access. Excessive restrictions, as were imposed on those who went to see Lloyd Boney's body in Bourke, will defeat the purpose and engender suspicion that there is something to hide.

Following the Lloyd Boney inquest the Coroner recommended that the Commissioner of Police should instruct police that, where possible, relatives should have the opportunity of identification of deceased persons as soon as practicable after it is accepted that death has occurred. The recommendation was referred to the Coronial Investigation Unit to develop guidelines for identification of deceased persons, but no result became known to this Commission. The recommendation speaks of 'identification', but this is really a separate issue to inspection of the body to see what happened.

IDENTIFICATION OF THE BODY

A necessary but painful task is the identification of the body. It should go without saying that the delicacy of this task requires great sensitivity in selecting someone to carry out the identification, and, particularly if someone likely to suffer severe distress has to be used, in selecting the circumstances of identification. However the extraordinarily insensitive way in which Mark Quayle's brothers were called on

to identify his body in the main street of Wilcannia shows that this point must be emphasised.

CHAPTER 10: POLICE INVESTIGATIONS

BASIS OF POLICE INVESTIGATION

Whether a death occurs in police or prison custody, or in a juvenile institution, it is police who are called in to investigate. Depending on the circumstances, the same investigation may serve a number of purposes: the detection of crime, the preparation of the brief for the coroner, the detection of breaches of duty on the part of custodial officers, the investigation of a complaint against custodial officers, and sometimes other purposes such as a departmental shooting investigation. Whatever the formal basis of the inquiry, there is required an appreciation of the need to satisfy the concerns of relatives and of the public about what happened in circumstances from which people other than custodial officers are usually completely cut off. A person in police custody is at the mercy of police, and by the nature of things it will almost always be the case that the only evidence after a death is the evidence of the police officers who were responsible for the prisoner. In these circumstances it is a completely inadequate approach to simply ask those officers what happened and accept their answers without testing. The same applies in the prison situation.

The matter needs to be approached on the basis that the investigation will eliminate the possibility, so far as that can be done, that wrong doing, ill-treatment, or official or unofficial policies or practices contributed to the death or allowed the risk of injury. One object that should always be borne in mind is not just the minds of senior police officers that have to be satisfied, but the reasonable, and perhaps at times over-sensitive, suspicions of outsiders who do not know what it is like inside the police station or prison. The second important objective is to see what can be learnt from the death so that similar deaths may be prevented in the future.

The Commission was informed by counsel for the New South Wales Government that in that State all deaths are now approached as potential homicides. This should assist in securing an appropriately critical approach.

INDEPENDENCE OF INVESTIGATORS

Shane Atkinson's death was one of many that demonstrated the problems of other police, particularly those within the same local command structure, having responsibility for conducting inquiries involving the conduct of colleagues for coronial or Departmental purposes. Problems are particularly acute when the investigating officer has special reason to identify with those investigated. In the Gundy investigation Superintendent Harding identified strongly with the SWOS officers with whom he had served as a part-time SWOS officer. When he was being cross-examined about his failure to take up the question of the lawfulness of SWOS actions and their compliance with Police Instructions, he was asked 'But surely part of your concern would have been to determine whether the police had acted reasonably?'. He replied 'Yes, but you don't leave your common sense

outside the door when you come to work. *I know why they did these things and to be perfectly frank, I have done them myself and I understand the philosophy behind it'* (emphasis added).

This helps to explain why no serious attention was given to the lawfulness of the SWOS raid on Gundy's home. Superintendent Harding said that the issue of whether police acted lawfully in forcibly entering the premises was 'a subject of discussion' during his *investigation,* but the actual issue of unlawfulness was not completely addressed. Asked whether it was a fairly fundamental matter for him to consider in his investigation he said 'In this sterile atmosphere most certainly but out in the field where it's happening, no'. He said that in the given circumstances operational expertise overrides the law.

It is not a matter of whether the investigator deliberately favoured those he was investigating, but a question of whether with his background he was able to look objectively at the conduct of people with whom he so closely identified.

POLICE INVESTIGATING POLICE

However the problems do not arise only where the investigator has a special link with those he is investigating. In my experience as a Royal Commissioner I have become very conscious of the existence of a 'police culture' - a set of ingrained attitudes and ideas that are widespread in the police force and are very resistant to change. There is a very great blindness in that culture to the problems of police investigating police, and a very great reluctance to acknowledge the possibility of wrong-doing by police. In Chapter 18 I discuss the general problem of police accountability; here my observations relate specifically to police investigation of deaths in custody.

Again and again deaths in custody have been subjected to no really independent investigation and the brief for the coroner has been prepared by the very officer who was in charge of the prisoner and whose conduct should have been subject of scrutiny. Even when investigation was under the control or supervision of a separate unit like the Internal Affairs Branch, the officers who come in have sometimes acted with a similar reluctance to contemplate police wrongdoing, or even as though their function is to defend the local police and demonstrate their innocence, rather than to carry out an independent investigation.

There can be great facades of independent supervision which in practice mean absolutely nothing. In the inquiry into the death of Arthur Moffatt counsel for the police argued that the fact that the officer preparing the coronial brief was the officer who had been in charge of the prisoner was not objectionable, because he was under the scrutiny of a host of independent eyes - a doctor who came to examine the body, a CIB detective, the inspector in charge and the Internal Investigation Branch. One by one the relevant witnesses were called. The doctor said that he only certified death and was not concerned to examine the body; the detective said that his only function was to take photographs; the inspector said that his task was purely administrative and not investigative; and the Internal Investigation Branch representative said that his function was to 'oversight', which turned out to mean that he had just accepted what he was told by the officer in charge. It is almost comical at times to see how everybody passes the buck for such investigations.

OVERSIGHTING OR REVIEWING OF INVESTIGATIONS

The attempt to secure a high standard of investigation through 'oversighting' by a body such as an Internal Affairs Branch is not necessarily successful as the example quoted in the last section shows. Much still depends on who is in charge of the investigation and the oversighting, and the frame of mind they bring to bear. The strong inhibitions imposed by police culture still have to be overcome.

Because of what had happened in the Lloyd Boney investigation the coroner recommended:

> 'That the Police Commissioner in the appointment of his investigator to undertake an investigation on behalf of the Internal Affairs ensure that such investigators have a demonstrated commitment to independence of mind and objectivity to ensure the proper oversighting of other police investigations.'

In responding to this recommendation, the New South Wales police referred to Circular 89/31, issued on 10 February 1989, which revised procedures for investigations into custodial deaths. The circular stated:

> 'The Command Region Internal Affairs shall assign a commissioned officer to oversight the investigation into the death ... the "oversighting" officer shall attend the scene of the death as soon as practicable and his role shall be to independently oversight the investigation. It is not his function to carry out the actual investigation but to ensure that all necessary action is taken. This oversighting role shall be maintained by the Police Internal Affairs Branch until the conclusion of the Coronial proceedings.'

It was advised that the title of "oversighting" officer had been changed to "reviewing" officer, but the concern of the coroner relating to the type of person appointed to oversight was not addressed. The quality of the investigations into deaths in custody remains a matter of concern in all three States, even where much improved instructions have been issued.

DEFICIENCIES IN INVESTIGATION

It is remarkable how in police investigations of police, or even of other officials like prison officers, the need is not seen for the same scrutiny of evidence as in other cases. It is elementary in general crime investigation that a suspect is interviewed quickly, and that if there are a number of people involved steps are taken to prevent them conferring and putting together an agreed version. I doubt that this has been done in any of the deaths in custody which I have investigated. In most cases police were not even interviewed but allowed to write their own statements at leisure, the leisure being any time up to a week or a fortnight before the inquest. Even where police have been interviewed, steps have rarely been taken to prevent prior discussion and agreement between them, and what they say has not been tested or probed.

Obviously available potential witnesses, like fellow prisoners in the same wing as Peter Campbell, or the other prisoners in Tamworth Police Station on the night of Bruce Leslie's custody, may not even be interviewed.

Sometimes the problem is too narrow a focus. Police inquire only whether there are 'suspicious circumstances' or indications of criminal conduct. Much more is required following a death in custody if the concerns of the public, and particularly of relatives, are to be satisfied.

REPORTING THE RESULT

An investigation should culminate in a report which makes clear what investigation was carried out, what issues were investigated, and why favourable or unfavourable findings were made. Unless there is such a report, the matter rests on the unsubstantiated statement of an investigating officer, whose reasons cannot be examined, and who can at a later date be called to account only by redoing the investigation.

The size of the report will obviously vary according to the circumstances and some may properly be brief. A major and controversial investigation like that into the death of David Gundy, carried out for the purposes of the coroner, of the Police Department and of the Ombudsman investigating a complaint, obviously required a substantial examination of the issues. It was a serious criticism of the whole process of investigation into that death that it led to no written report which recorded and analysed what had happened, and which showed that the issues had been properly considered and decisions reached about them for good reason. Such a written report, which can be subsequently called for and examined, is necessary if police accountability is to be a reality. The attitude of the chief investigator, Superintendent Harding, epitomised the escape from accountability. His theme in the witness box was 'Well, you tell me where police were wrong?'. It was he who should have shown, in a proper report, which could be examined, whether police were right or wrong.

CHAPTER 11: DEPARTMENTAL INVESTIGATIONS

THE NEED FOR DEPARTMENTAL INVESTIGATIONS

The need for departmental investigations remains notwithstanding the fact that there will be a coronial inquiry. There should be a review of procedures and the conduct of officers at the earliest opportunity, with a view to taking all possible steps to prevent an occurrence. Inquests take some time to come on, and issues of safety should not wait on the inquest.

Moreover there may be aspects of concern to the Department which go beyond the coroner's sphere of interest.

PRISONS

In the earlier prison deaths which I investigated there seems to have been no real departmental investigation at all. In the latest, that of Max Saunters, there was such an investigation. While I did not find myself fully in agreement with its identification of problems and conclusions, at least it did show a real attempt by the

department to learn from the experience.

New South Wales now has a protocol covering what should happen following a death in prison.

JUVENILE INSTITUTIONS

There was no departmental investigation of the death of Thomas Carr, which occurred in Minda Juvenile Detention Centre. The coroner made a recommendation that the relevant authorities consider the feasibility of a change in the availability of medical treatment at night at Minda, but the recommendation was never conveyed to anyone who had a responsibility to consider it.

The need for a departmental investigation was certainly not obviated by the police investigation, which was very narrowly focussed and treated the death as a matter of no urgency or importance. This was probably standard practice at the time but after all the concern about deaths in custody there would be no excuse for such an approach today. For deaths in police custody a very detailed protocol for independent investigation has been worked out within the police force and embodied in instructions. While the same issues of independence would not necessarily arise when police investigate juvenile institutions, it is important that there should be instructions ensuring that the investigations are carried out thoroughly, so as to remove any concerns about neglect or inadequate practices as well as about foul play.

CHAPTER 12 - CORONERS

CUSTODIAL DEATHS

The special character required of an investigation and inquiry into a death in custody has long been recognised. Waller's *Coronial Law and Practice* (2nd edition, 1982), which has been widely used in Australia, cites the *Coroner's Manual* (4th edition, page 45) which summarises in measured terms the aim of holding inquests into deaths in custody:

> 'It is very desirable that no suspicion should arise in the public mind that deaths in Government Institutions such as gaols are made the subject merely of investigation by Government officers, and that therefore, when deaths occur, it is not likely that everything which reflects on the management of the institution will be allowed to come into the public view. The public should be satisfied that the prisoner or confinee came to his death by the common course of nature, and not by some unlawful violence or unreasonable hardship put upon him by those under whose power he was while confined. There should not be given an opportunity for asserting that matters with regard to deaths in public institutions are "hushed up"'.

What goes on inside a gaol or police cell is hidden from public view, and after a death very frequently the only surviving witnesses are the custodial officers. From a relative's point of view a live son, daughter, husband, wife or other relative goes into custody and a body is returned. There are no independent witnesses.

Relatives and the public are entitled to be suspicious unless there is a full, open and impartial inquiry and the greatest possible access given to all information on the part of those representing the family. The issues go far beyond questions of homicide or deliberate infliction of physical harm; they extend to the care taken of a prisoner, often one who is intoxicated or under the influence of drugs, and to the psychological treatment of the prisoner.

In the Interim Report Commissioner Muirhead said:

> 'The anguish of many relatives of those who die in custody, i.e., in the 'care' of Government agencies, and the fear and suspicions which follow are not generally comprehended. The situation demands the most thorough investigation of facts and circumstances by skilled investigators who hopefully may be regarded as impartial, autopsies performed by expert forensic pathologists followed by thorough coronial inquiries conducted by legally trained Coroners under modern legislation which enables 'such Coroners to make remedial recommendations. In all these processes there must be sensitivity to the situation of the families of the deceased.
>
> 'If this degree of thoroughness, the implementation of such expertise, had been current in Australia over past years, it is arguable that the necessity for establishment of this Royal Commission would not have arisen. It is for this reason, which appears to be widely misunderstood, that the Terms of Reference require investigation into inquiries made subsequent to death'.

OPENESS

There is a very great temptation on the part of custodial authorities to be secretive about a death in custody. Instead of regarding relatives and their representatives, such as the Aboriginal Legal Services, as genuinely concerned people who want to know what happened, there is a tendency to treat them as trouble makers to be denied knowledge in case they misuse it, or (patronisingly) as people who should not be told things that might upset them.

A particularly undesirable practice is the use of the coroner and the pending coronial inquiry as a shield behind which custodial and investigative officers hide. Relatives may be told that the body cannot be seen because it is in the charge of the coroner; the site cannot be visited because it is the subject of coronial investigation; information cannot be given out because the matter is in the hands of the coroner, nothing can be said until the coronial investigation is complete and the inquest over. This use of the coroner's name may have taken place without any reference to the coroner, who may well have been quite unaware of the frustration being suffered by relatives and their representatives.

CO-OPERATION WITH RELATIVES AND ABORIGINAL LEGAL SERVICE

In my reports I referred to the desirability of those who are conducting investigations making contact with relatives and learning of their concerns, so as to be sure that the investigation addresses them. Similarly whoever is appearing to assist the Coroner should seek the views of the representatives of the family as to what issues should be addressed, rather than treating them as opponents or

parties to be kept at arm's length.

There should also be the earliest possible access on the part of the family, usually through their legal representatives, to documentary material, witnesses' statements, and, where witnesses are in custody, to the witnesses themselves. The investigations of police and coroner should take priority in the sense that they should have the opportunity to carry out their interviews of witnesses before others speak to them. However once that is completed witnesses should be available, just as they would be if they were not in confinement.

It is wrong to suggest that the interviewing of witnesses and the sighting of relevant exhibits by representatives of the family is of itself a threat to the integrity of police or coronial inquiries. Clearly such inquiries are entitled to an immediate priority, so that the scene of death and exhibits can be secured from interference pending examination, and so that witnesses can be interviewed before their evidence is contaminated, but thereafter there should be free access to panics with a legitimate interest. Any other approach will justifiably breed suspicion.

In some cases the family will wish to have someone present at the autopsy, perhaps their own forensic pathologist or perhaps a lay person who will be able to see the state of the body and what is done. Again this should be facilitated, subject to not allowing any interference with the work of the forensic pathologist.

The family should be involved in the preparation for the inquest. The most satisfactory inquests that the Commission tins investigated have been those where there was collaboration from an early stage between those assisting the coroner and the representatives of the family. This has ensured that all the witnesses whom the family consider relevant are interviewed and if necessary called and any tests or other steps desired by the family are attended to.

Apart from the demands of humanity, there are practical reasons for treating relatives in this open way. If there has been foul play or neglect, the more critical eyes of the sceptical relatives may help expose it. If there has not, this may become obvious. In any event openness will be of value in reducing suspicion and disputation.

POLICE INVESTIGATION FOR CORONER

In most of the cases which the Commission has investigated the coronial inquiry has been largely shaped by the preceding police investigation, although there have been recent exceptions in New South Wales where an independent counsel has been briefed at an early stage, and together with an instructing solicitor from the State Crown Solicitor's Office, has taken control of the investigation for the coroner. Often the inquest has consisted of no more than a perfunctory running through of a brief supplied by police. Unsatisfactory coronial inquiries have usually been the prisoner of inadequate police inquiries. If a police investigation is inadequate, there is often little the coroner can do to retrieve the situation when he comes to consider the matter. In these circumstances the integrity of the coroner simply lends respectability to the inadequate investigation. If we are to continue with the system whereby deaths are investigated for the coroner by police, the quality of police investigation is of tremendous importance.

In a submission to the Commission the Victorian State Coroner, Mr Hallenstein,

realistically stressed that a coroner is inevitably dependent on experts. Two particular areas are the investigation and the autopsy. So far as the latter is concerned, the establishment of the Victorian Institute of Forensic Pathology is a major investment in ensuring professional independence and competence, based on highly specialised study. So far as investigations are concerned, Mr Hallenstein said:

> 'In relying on the Victoria Police and other expert investigators the State Coroner assumes absolutely and has never been given any reason to doubt the honesty and integrity of investigation. If a situation were ever to arise that the field investigation did not proceed with the utmost integrity then it is probable that State Coroner and Deputy State Coroner will be sufficiently close to the investigation process to identify and rectify any problem either before or during inquest.'

However the Arthur Moffatt inquiry, and other inquiries conducted by the Commission, show that there are very great problems when police are called on to investigate police. I have already directed attention to this subject in Chapter 10 in discussing the general subject of police investigation of deaths in custody.

It is important that all investigating police should be dear about the purpose of their investigation of a death in custody for a coronial inquiry. It is wider than in many police investigations. The danger of confusion was illustrated by the chief investigator of Malcolm Smith's death, who defended the inadequate police investigation by saying: 'The Police function is to investigate crime. There must be some evidence that a crime has been committed before there can be a criminal investigation'. This proposition must be emphatically rejected as a limitation on the investigation of a death in custody for a coroner.

Important issues are often excluded by the very narrow focus of police investigations and this applies to deaths in prison as well as in police custody. In the case of a self-inflicted death there is often concentration on showing that the actual death was self-inflicted and a failure to inquire into surrounding circumstances of care and supervision and safety, such as, for example the gaol classification of a disturbed prisoner as one who does not require observation.

This is important not only for establishing responsibility for the death, but to see whether similar situations of risk can be avoided in the future.

AUTOPSIES

Purpose of autopsies

There was a surprising lack of agreement amongst those who gave evidence before me as to the function of an autopsy in a death in custody. At one extreme is the pathologist who sees the function of the autopsy as simply to establish a cause of death which can be entered on a death certificate. Next is the pathologist who sees his or her function as to take the police report, assuming it to be prima facie correct, and see if a cause of death can be found consistent with the police report. It is essential that in a case of a death in custody the forensic pathologist should proceed in a completely independent way, and amongst other things see whether there is anything consistent with foul play or ill-treatment. The investigation should

not be limited by the police report.

Professor Cordner, the Director of the Victoria Institute of Forensic Pathology, reviewed numerous autopsies for the Royal Commission. He has said that the fundamental purpose of all autopsies is to discover and describe all the pathological processes(including injuries) present in the deceased. This enables:

(i) the provision of an accurate cause of death,

(ii) the identification of pathology contributing to death, and

(iii) correlation with the clinical observations made in life.

A forensic autopsy has an additional purpose - contributing to the reconstruction of the events leading to the death. It is in this area that forensic pathologists have their particular expertise. The contribution to the reconstruction of the events is made by a combination of:

(i) an assessment of the scene of death,

(ii) the autopsy findings.

The third major purpose is to record the findings in such a way as to put another pathologist at a later date in the same position as the one who conducted the autopsy. Achieving this involves detailed description, retention of relevant organs and tissues, and photography.

Ideally the pathologist (and for that matter the coroner) would visit the scene of death and see the body in place before it is removed, or at all events see the remainder of the scene undisturbed. However there are judgments to be made as to how practicable this is and whether it is worth the time anti expense. In the case of deaths in custody, it is desirable that such judgments should be made by the coroner or the pathologist rather than by the police.

The body is very frequently the most important piece of 'hard' evidence which survives the circumstances of death and is not dependent on human truthfulness and recollection. This not only makes the autopsy very important in itself, but makes important the preservation of information about it in case controversy resumes at some later time or new issues are raised. Extensive and good quality colour photographs are most important, and the preservation of samples, for example, of blood and stomach contents for further examination if required. Tissue samples are often taken for histological examination and can be kept.

Qualifications and protocol

In the *Interim Report,* Commissioner Muirhead said 'Whether or not there should be a prescribed protocol for autopsies is a matter of some debate within the forensic pathology profession'. There is also an issue about the minimum qualifications for persons who conduct autopsies following deaths in custody, and these two questions are to some extent linked. On the latter question, the Council of the Royal College of Pathologists of Australasia adopted the following two statements at its meeting in September 1989:

1. The autopsy is a specialised procedure and should only be undertaken by a pathologist or a medical practitioner under the supervision of a pathologist.

2. That the public has a proper and significant interest in the results of autopsies in homicides and suspicious deaths, including deaths in custody, and these should only be undertaken by full-time forensic pathologists or (because of constraints of distance or resources) by a pathologist in communication with a forensic pathologist. In the latter instance it would be desirable that the pathologist had undergone a period of supervised training in forensic pathology in an institution recognised by the College for that purpose.

I have not heard evidence or argument about the practicality of implementing this resolution, or the need to apply it to all deaths in custody.

The College does not favour the adoption of a protocol. Some aspects of this question were debated in the James Moore inquiry, where Dr Byron Collins expressed the view that certain steps should be taken in all cases. The matters he commented on as lacking in the autopsy in that case being the routine weighing of organs, the histological examination of major organs, and toxicological investigation. The experienced pathologist who carried out the autopsy disagreed very strongly with Dr Collins' view that the steps he enumerated should be carried out as a matter of routine in all cases. He put the case, which he claimed was widely accepted today, for a discriminating use of the procedures. He also emphasised the desirability of taking into account such matters as, in the case of James Moore, that the deceased had been under hospital observation and treatment for two and a half weeks before his death, and was the subject of a recorded medical history going back for some nine years. It would seem reasonable in many cases that such matters should be left to the professional judgment of the person conducting the autopsy, but in any case where there is the slightest possibility of controversy all feasible investigations should be carried out.

Mutilation of body

One problem is that the more exhaustive the investigation by the pathologist, the more mutilation there will be of the body. This may be offensive to relatives and is a consideration that has to be taken into account by the pathologist. However in most deaths in custody it is desirable that there should be very extensive investigation for the purpose of establishing whether the prisoner has been bruised or man-handled. This may be very important in apparent suicides or natural causes deaths. In hangings, for example, such examinations may go a long way to eliminate the suggestion that the person was forcibly hung, or hung after being killed in some other way in order to conceal the original cause of death.

One problem that has arisen in some of the cases dealt with by the Commission has been concern on the part of the family that major organs such as the brain or heart are buried with the deceased. In some cases it appears that they are removed for further examination and disposed of separately and not returned to the body. This is capable of causing very considerable anguish to some relatives and is to be avoided unless there are strong forensic reasons necessitating it.

THE INQUEST

These days coroners usually have reasonable facilities for recording and reproducing the evidence, and it is important that this position should be maintained.

A matter to be noted is the reaction of one of Mr Moore's daughters to the atmosphere in court, expressed to the Commission in private conference. She said that it 'never felt right'; she felt that police were 'jeering, laughing and talking'. I have no reason to think that anything unusual happened in that case. What is important is the effect on bereaved relatives, unfamiliar with the process, of the routine and impersonal way in which court business is often unthinkingly conducted. This complaint echoes others that I have heard from a number of Aboriginal relatives in various places; indeed I have heard such comments at times about the conduct of people taking part in this Commission's hearings. People like police and lawyers, who regularly take part in court proceedings, including inquests, as part of their routine functions, can easily forget the very different way in which the proceedings are seen by the relatives of the deceased person. The making of a joke to break the tension, or other acts that may be felt to be normal conduct by those involved, may appear to a relative in the way described by Mr Moore's daughter. The unintended effect which careless conduct may have on the feelings of relatives is a matter to be borne in mind by all who take part in inquests.

An issue in regard to a number of inquests has been the treatment of the family and its representatives. Regrettably there is sometimes a tendency for the person assisting the coroner, and sometimes the coroner himself or herself, to fall into the lawyer's habit of treating the inquiry as an adversary proceeding. The family should not be treated in any way as an adversary, but as a group of people who have a right to know what happened and are trying to find out what happened. Thus if the family wants a witness with relevant information to be called, it is quite wrong for the representative to be asked whether foul play is alleged and to be called on to formulate an allegation. Families obviously have not had the resources and access to make the investigations which have been made, or should have been made, by police, and are entitled to test the police investigation and to explore possibilities without being compelled to assume the role of adversaries or to make allegations.

The most successful coronial inquiries I have seen are those in which those assisting the coroner have worked in close co-operation with the family to ensure that all relevant issues are ventilated and all relevant material put before the inquiry.

Very often the significance of the inquest goes far beyond the particular death. The death may be illustrative of widespread problems. In these circumstances it is appropriate that public interest groups and other appropriate persons should have an opportunity to participate in a coronial inquiry. This does not mean that they should have open slather, and be entitled to go over circumstances of the particular death which are being covered by representatives of the family. But it is desirable that they should have opportunities to ventilate the matters of general concern that arise out of the death.

USE OF A JURY

An interesting example of the way in which racism is often structurally built into

institutions that on the surface are fair and democratic can be seen in one of the arguments used by a police inspector to reassure the Aboriginal community of Brewarrina when it was concerned about the investigation of Lloyd Boney's death. He informed them that the family could have a jury if they wished. Given that the inquest was to be held in Dubbo, one could have expected almost certainly an all white jury, as Aboriginals immediately pointed out. While there had been no experience of juries in inquests in that part of the State, WALS informed the Commission that the few Aboriginals who appear on jury panels for criminal trials are routinely challenged.

The only case inquired into by me in which a jury was used at the inquest was that of David Gundy. It did not produce a particularly helpful outcome. This is not a criticism of the jury, which did the best it could, but of the unreal expectations put upon the jury. In the coroner's opening statement when he first sat, he talked about introducing 'a sense of order into the matter' and attempting to 'reduce the atmosphere of near hysteria which seems to pervade this death', and announced that he would hear the inquest with 'that most independent of tribunals, the jury'.

Had the function of the inquest been to determine the guilt or innocence of the officer whose gun killed David Gundy - which in the end was virtually all that it purported to do - there would have been much to be said for having a jury to play this very traditional role of juries. However determining any person's guilt or innocence was one thing that it was not the function of the inquest to do. What was needed from the inquest was a very careful sifting and explanation of the circumstances leading up to the death and an examination of what might be done to prevent similar occurrences in the future. The rendering of this service by the inquest was frustrated by the appointment of a jury which in the nature of things has to reach a very quick decision on very limited material with no opportunity to read, study and reflect on the issues. These are services which coroners and other judicial officers can provide but juries cannot provide.

COUNSEL ASSISTING THE CORONER

The position of officer or counsel assisting the coroner is very important. It has been traditional in Australia for assistance to a coroner to come in most cases from a member of the police force. In some cases into which the Commission has inquired the officer who was in charge of the prisoner at the time of death, and whose conduct should have been subject to scrutiny, was not only the officer in charge of the investigation and the preparation of the police brief for the coroner, but the officer assisting the coroner. This makes a mockery of any notion of independent investigation. At the Bruce Leslie inquest a police officer brought from Sydney simply presented the police case without testing it and without even voicing a criticism which he had formed of police conduct. In a number of cases the police officer saw the papers for the first time on the morning of the inquest. If a coroner's investigation is carried out by police and he is assisted by police he is not well equipped to inquire into the conduct of police.

It is increasingly common today for independent counsel to be briefed in relation to deaths in custody. There is a very strong case for the coroner to be assisted by someone who is quite independent of the police force. Often this is a member of the private bar. This can be very successful if the member of the bar takes an active role in the preparation and conduct of the case and sees himself or herself as having responsibility to ensure that all the facts come out. I have however seen

inquiries in which a member of the private bar was briefed and did no more than a police prosecutor would have done, that is simply call the witnesses nominated by the police and run through their statements. In that case nothing except expense is added to the inquiry. On the other hand I have seen cases where the counsel assisting has been a person with prior experience and understanding of the Aboriginal point of view, and has so prepared and conducted the inquiry as to ensure that so far as possible all avenues of concern are thoroughly explored and all evidence is thoroughly tested.

Forensic skill and independence are not confined to the private bar, although that is certainly a place where they can be located, and is also a place where because of the high remuneration available a lot of the most able people congregate. The latter consideration becomes a problem if very high counsel's fees have to be built into the general running of coronial inquiries. It may be that there are many cases which could appropriately be handled by salaried legal officers of the Crown, provided that adequate care is taken to ensure that they are not persons identified with police or prison administrations.

RECOMMENDATIONS BY CORONER

In a number of cases, of which the Tasmanian death of Glenn Clark was one, the coroner did not see it as his role to make any recommendations. That case illustrated the dangers of such a course, as the attitude of the police was that no attention would be paid to the results of the inquest unless some specific recommendations were made by the coroner. It would have been possible for the coroner to make some recommendations which jolted the police out of their apathy towards the occurrence of deaths in custody, and prompted them to take some real steps to develop a policy about such deaths, and to educate officers at least in some of the more obvious risks involved.

In several of the recent inquiries into Aboriginal deaths in custody in New South Wales the coronial inquiry has not only been wide ranging but has resulted in extensive recommendations. One noteworthy example was the inquest into the death of Lloyd Boney at Brewarrina. These recommendations have been very valuable and it is important that coroners should make explicit recommendations. In some cases coroners have proceeded on the basis that the situation is apparent from their findings and there is no need for recommendations, but all too often police or public authorities take no notice of anything except explicit recommendations.

Even very explicit recommendations can be ignored. In a number of cases they have not even come to the notice of relevant authorities. It is essential that there be proper machinery for conveying all coronial recommendations to the relevant authorities, and for monitoring what happens. One suggestion is that the coroner should have some continued jurisdiction for a period after he delivers his findings, during which he could if necessary have a further hearing to follow up the issues which emerged from the inquest.

STATUS OF CORONERS

There has been a steady increase in the status of coroners. The days of lay coroners are largely gone and coronial inquiries are in the hands of magistrates

and increasingly of specialist magistrates, or at all events under the supervision of a specialist magistrate. A hangover in New South Wales is the situation where a Clerk of Court acts as coroner. There may be value in a Clerk of Court being able to perform some of the administrative functions of coroner, particularly where there is no resident coroner, but I have suggested in my *Report of the Inquiry into the Death of Mark Wayne Revell* that such officers should not exercise the judicial or quasi-judicial functions of coroners. I referred in that report to

> 'a system which prostituted the precious tradition of judicial independence and competence to rubber-stamp inadequate police investigations on the cheap. If certain inquests are to be formalities to be carried out by administrative officers, they should be presented as administrative acts, not passed off as judicial'.

This is particularly important in relation to deaths in custody, as Clerks of Court inevitably have close contact with the local police and are seen by many people as part of a closely knit establishment. It is essential that judicial functions, including coronial hearings and findings, should be carried out by somebody with a clearly independent status, with some degree of remoteness from police, and capable of commanding public confidence, and in particular, in the case of Aboriginal deaths in custody, the confidence of the relatives and of the Aboriginal community. An indication of the problem is that the clerk who acted as coroner in the Bruce Leslie inquest told the Commission that he privately formed views critical of the way Bruce Leslie was handled, but his only public comments were exculpatory of police and ambulance officers.

In his *Interim Report* Commissioner Muirhead wrote:

> 'The value of the Coroner's role must now be recognised, the responsibilities of that office require recognition of the Coroner's true status, the provision of adequate and coordinated facilities. In my view the Coroner should be the person basically in charge of investigation of deaths within his or her jurisdiction and those responsibilities should be recognised. The terms and conditions attaching to Senior Coroner's or State Coroner's office should certainly not be less than that of a Judge of a District or County Court. The office represents the only tribunal which can investigate circumstances fairly and quickly, before memories fade or perhaps before reconstruction rather than memory influences the minds of witnesses.'

We have not yet reached the stage suggested by Commissioner Muirhead, but in several States there has been an enhancement of the status and resources of a State Coroner. This has resulted in considerably more specialisation in coronial functions, and in specialist supervision of inquests carried out by others. The Victorian State Coroner, Mr Hallenstein, said that, by contrast with the two full-time coroners (the State Coroner and his deputy):

> 'the country Magistrates who are also Coroners have a prime responsibility as judicial officers in an adversary system of criminal law and civil judicial process and cannot compromise their judicial position by close and physical involvement in the investigation process'.

Add to this their role in putting prisoners into custody, and their continuing day by

day association with police, and there is a strong case for such magistrates not having coronial responsibility for deaths in custody, and for such deaths to be normally inquired into by specialist coroners.

The experience of the Commission shows that the establishment of new procedures and institutions does not easily change ingrained practices and attitudes. I have discussed some of the problems that have come up in Commission inquiries without regard to particular systems operating at the time. They are problems which must be recognised whatever system operates, and it should not be too easily assumed that they will automatically be overcome by the revamping of institutions. Constant monitoring will always be required to ensure that the new institution works with the quality, confidence and independence that is necessary. The coronial inquiry into the death of Arthur Moffatt took place well after the coming into force of the *Coroner's Act* 1985, and in circumstances where it was known that the death would come to the Royal Commission. Nevertheless the investigation, autopsy and inquest were no more satisfactory than in earlier cases investigated by the Commission.

In a submission the Victorian State Coroner, Mr Hallenstein, wrote on 3 October 1988:

> 'In the end one cannot really criticise Coroner or pathologist who were acting in the context of change and increased understanding in the Victorian Coronial Service in the last year - 11th June 1987 may just as well have been fifty years ago'.

Nevertheless the fact that the system worked so ineffectively over a year after the new Act does prompt some reflections. One is the need to treat every death in custody, even if the actual death is patently due to natural causes, as requiring the same degree of scrutiny as a potential homicide. A person in custody is at the mercy of his or her custodians, and dependent on them for the most elementary things. A high degree of care must be demanded, and so far as possible all grounds for suspicion of deliberate or negligent mistreatment excluded.

COST OF CORONIAL INQUIRIES

Some of the coronial inquiries that have been held into Aboriginal deaths in custody in recent times have been extremely long and expensive. The cost of these inquiries has been part of the price which is being paid by the public, in one sense for its general treatment of Aboriginals, but more specifically for the failure to establish relations of trust and confidence between Aboriginals and police, for the failure to take proper care of prisoners, for the failure to be open and frank with relatives when deaths occur, for the failure to conduct thorough, impartial and independent and open investigations into deaths, and for the failure to be sensitive to the Aboriginal viewpoint on many issues and to listen to what they have to say. It was the combination of all these things which have necessitated such lengthy coronial inquiries. If the lessons are learnt, hopefully there will be fewer such deaths, and when they do occur, as inevitably some will, they will be dealt with in an atmosphere of much greater trust. With professional and independent investigation, and frank communication with relatives, it is reasonable to expect that future deaths will not normally engender such suspicion that long and expensive coronial inquiries will be necessary in an attempt to dispel it. Nevertheless they should not be shirked when the circumstances call for them to

remove doubts or allay suspicion.

PART FIVE: THE ABORIGINALS OF SOUTH-EASTERN AUSTRALIA

CHAPTER 13: THE ABORIGINALS OF SOUTH-EASTERN AUSTRALIA

UNDERSTANDING THE DISPROPORTIONATE CUSTODY

If we wish to reduce Aboriginal deaths in custody to a marked degree, we must reduce the grossly disproportionate number of Aboriginals coming into custody. To do this we must understand why they come into custody. Only a very small percentage of the white population of south-eastern Australia have significant contact with Aboriginals, and many think of them as primarily concentrated in the centre and north of Australia. They are surprised to learn that one-third of Australia's Aboriginals live in the three south-eastern States. Hence I will devote some space to introducing these Aboriginals, and saying something about the circumstances of their lives and their relations with the surrounding society.

It is natural in seeking an explanation of disproportionate custody rates to look at the point of arrest. Is it not logical to say: either Aboriginals are committing criminal offences, in which case they should be arrested, or they are not, in which case they should not be arrested. This leads to an explanation in terms of 'goodies' and 'baddies', and indeed there are many who view the situation in just such a way. Either it is good police and bad Aboriginals, or bad police and good Aboriginals.

It does not take much close contact with Aboriginal people to convince one that the explanation for their disproportionate conflict with the criminal justice system does not lie in greater viciousness and criminality of character in comparison with the rest of the community. One encounters as much gentleness, kindness, integrity and desire for a peaceful life amongst them as amongst the general population. Equally, close contact with police soon shows that most police are simply trying to do a job as they have learnt it, and that, as in the rest of society, there is a wide range of personalities and attitudes. Many have tried to improve a situation which they do not like and have retreated puzzled, and sometimes hurt, by what they see as a lack of response on the part of Aboriginals.

The truth is that Aboriginals and police are caught up in a process from which each finds it hard to break free. There is much that can be done to ease the conflict between them, but its roots lie elsewhere, in a conflict between a dominant white society and a dispossessed Aboriginal people who are still resisting the dispossession, and struggling for recognition of their identity as a people and for a dignified and just position in the wider society in which they find themselves encapsulated.

Relations between those two communities are built on inequality arising from a longstanding, unresolved injustice, and tensions arising from it affect the lives of individuals and communities in 'all kinds of ways. The dominant white community

has over two centuries mostly tried to deal with the issue by destroying the Aboriginal identity - either by physical extermination or by genetic or cultural absorption. Even today many of those who accept. that a major effort must be made to overcome Aboriginal disadvantage in matters such as health education, employment and so on, accept this only on the basis that there must be only one people recognised in Australia, and that any assistance to Aboriginals is not to enable their separate flowering as a people within the country, but to help them catch up and 'be like us'.

To begin to understand this situation it is necessary to look both at the present situation and the history which has shaped it. In this part I will look first at some of the conflicts that have arisen in individuals over Aboriginal identity, as they are illustrated in the lives of those who died in custody. Then I will consider some of the general features of Aboriginal life in south eastern Australia, the history that lies behind it, and specifically the terrible story of the attempt, which still casts its shadow today, to 'solve the Aboriginal problem' by separating children from their families and dispersing them in the community. In the next Part I go on to consider relations with the rest of the community, including the police.

THE DENIAL OF ABORIGINALITY

One of the cruellest, although usually unwitting, manifestations of racism is the attempt to deny the Aboriginality of persons who have grown and lived and suffered as Aboriginals, by imposing some category of genetic fractionalism. It would be extremely rare in south-eastern Australia to find a 'full-blood' Aboriginal, as language still commonly describes a person totally descended from those who were in Australia prior to the arrival of Europeans. Yet all too often one hears in the white community the ignorant assertion that those who claim to be Aboriginals in south-eastern Australia are therefore 'not real Aboriginals'.

This is particularly cruel because the persons who would so deny the Aboriginality of their fellow citizens would for similar reasons deny them full admission to the white community, and leave them in a social limbo. They are neither 'real' Aboriginals nor 'real' (ie fully accepted) whites. Indeed the refusal for the most part of the white community to give full social acceptance to persons of mixed Aboriginal/European ancestry has been part of the reason why such persons are indeed real Aboriginals. They are not rejected by Aboriginal communities but grow up as its members, find a place in their kinship networks, find there the love and social warmth that every individual needs, and identify with an Aboriginal family, with an Aboriginal community and with the history of Aboriginal people. The process was reinforced by the fact that most of the European ancestry in Aboriginal communities dates from an early period on the frontier where there were few or no European women, and the children of the European fathers grew up in the Aboriginal communities in which their mothers lived, or to which they returned when their white partners died or discarded them.

It is not fine details of genetic ancestry but social identification and shared experience that makes an Aboriginal. As Shirley Smith said:

> 'I'll tell you. An Aboriginal is anyone that knows what it was like down on Erambie Mission, West Cowra, thirty years ago. An Aboriginal is anyone who lived down there with me, thirty years ago, that knew what it was like'.

There are of course an unknown and possibly very large number of people with some Aboriginal ancestry who have 'passed' into the white community, and who may often be quite unaware of their Aboriginal ancestry. Their identification is with the white community and they are not Aboriginals.

LIVING IN BETWEEN

On the other hand there are those who are caught somewhere in between, and who have ,often suffered most tragically as a consequence. There is an infinite variety of situations. Two examples in the deaths which I have investigated are Thomas William ('Tim') Murray and Paul Lawrence Kearney. Tim Murray's father was not Aboriginal; his mother was distinctly Aboriginal in appearance, and his Aboriginal grandmother had been a great refuge and comforter in his childhood. He himself was not Aboriginal in appearance and sought to reject his Aboriginality, generating painful internal conflict as he denigrated part of himself. That conflict was overlaid by another conflict, since he was of ambivalent sexuality and his identity became a painful and complicated issue for him. He adopted such stereotypes of Aboriginals as those of 'always wanting things' and given to bashing children. These stereotypes were no doubt common in his peer group; to what extent they were current in his family is not clear. But it is clear that Aboriginality was not easily accepted and respected in the home, and was at least a matter of conflict between the parents, if not a matter of agreed disparagement. Aboriginality was certainly not a matter for agreed pride and self-esteem.

The Commission received a perceptive paper from Millie Ingram, then Assistant Director, Community Relations and Special Projects, Office of Aboriginal Affairs in the New South Wales Premier's Department. She wrote:

> 'Living in the heart of white suburbia as Tim did, it is very difficult for any Aboriginal child to hold on to a sense of pride and dignity about his or her Aboriginality. It is, in such a situation, very difficult not to be influenced into denying one's Aboriginality. The overall effect of the pressure which surrounds you is to push you into wanting to be seen as a white person. Unless pride in being Aboriginal is instilled into the child at an early age so as to counter the pressure brought to bear by the combined forces of white suburbia, an Aboriginal child will bow to instincts of survival and begin to deny his Aboriginality. As well as the pride in being Aboriginal it is vital that the child should be made aware of and be recognised as possessing qualities which are different to non-Aboriginal people, and not inferior. This is a process which really needs to be commenced in formative years, ideally at pre-school. It is vital that the pride and dignity be encouraged both at home and at school. If the Aboriginal child begins to deny his Aboriginality a very troubled life lays ahead for him. This fact is most often seen in the lives of people who were taken away from their Aboriginal families when still young and brought up by non-Aboriginal people'.

She commented also on the particular problems of the child of a mixed marriage, saying that quite often confusion will accompany the child's self-identification.

> 'Usually, whoever is the dominant partner in that mixed marriage will have the greatest influence as far as cultural identification for the child is concerned. If the non-Aboriginal parent is the dominant partner, that then

becomes a very strong formative influence on the child.'

In the circumstances in which Tim grew up he lacked any clear role model, and in particular was unable to relate satisfactorily to any adult male in his family circle. This contributed to his difficulty in establishing a sexual identification and also a racial identification. Neither by role model nor by the society around him was he helped to feel pride in his Aboriginal descent. He was left in a situation where he would, in Millie Ingram's phrase, 'bow to instincts of survival and begin to deny his Aboriginal identity', with a predictably 'very troubled life' ahead of him.

Paul Kearney, the son of an Aboriginal father and a white mother who separated from her husband and sought to bring Paul up in the white community, experienced painful conflict in a different form. He was not able wholly to identify with either community and at one stage spent his nights drinking with Aboriginals in Sydney parks and his days working for Australia Post in a manner for which his white middle-class upbringing had prepared him. Both Tim and Paul died in custody of overdoses of prescribed drags, at least in part a reflection of the stresses to which their struggles for identity subjected them.

Tasmania, by long denying Aboriginal identity to any of its citizens, created painful problems of identity for those of Aboriginal descent who had survived the extinction on which Tasmania perversely prided itself. Today a strong Aboriginal community has emerged and organised itself in Tasmania, providing mutual support for such people. But two young men who grew up before this occurred are numbered in the deaths which I have investigated. Glenn Allan Clark hanged himself in Glenorchy Police Station in Tasmania and Mark Wayne Revell hanged himself in Grafton Police Station in New South Wales. Both had serious problems with alcohol addiction and hanged themselves when left alone after arrest in a heavily intoxicated condition.

Victoria also long denied recognition of their Aboriginal identity to the Aboriginals who had been forced off the reserves on which many Aboriginals were at one time concentrated. Despite the lack of official recognition, large numbers of Victorian Aboriginals maintained a clear identity, but the stresses of the difficult social and economic conditions in which they lived are seen in the story of Shane Kenneth Atkinson who grew up in Victoria but hanged himself in Griffith Police Station in New South Wales.

The three deaths which actually occurred in Victoria, those of Harrison Day, Arthur Moffatt and James Moore, were all of men who remained secure in their Aboriginal identity, but had suffered the consequences of the shockingly bad state of health in Aboriginal communities, with its high incidence of conditions such as circulatory diseases, diabetes and epilepsy, and ultimately died of these 'natural' causes in police custody. Two of them had grown up as workers in the pastoral industry where their employment largely disappeared with changes in the 1960s. All three had become heavy drinkers when unemployed and had been savagely or mindlessly persecuted under the absurd laws against public drunkenness which remain in force in Victoria to this day.

THE ATTEMPT TO DESTROY ABORIGINAL IDENTITY

But the greatest tragedies of identity were created by the inhuman application of policies of assimilation practised overtly in New South Wales by the Aborigines

Protection Board and the Aborigines Welfare Board, and less explicitly, but nonetheless effectively, in Victoria and Tasmania through the application of general child welfare legislation. This was in an era when white middle-class standards were uncritically applied in determining child welfare, and there was no recognition of the importance of keeping Aboriginal children in need of care in Aboriginal homes and communities. This was illustrated in Tasmania in the life of Glenn Clark.

In New South Wales there was a quite deliberate policy of taking Aboriginal children away from their families and merging them into the white community, with a view to thus 'solving' the Aboriginal problem. Some of the terrible identity problems that this created for individuals have been described in Peter Read's *The Stolen Generations* and Peter Read's and Carol Edward's *The Lost Children.* Amongst the deaths which I investigated the situation was heart-rendingly illustrated in the life of Malcolm Charles Smith. He was taken from his family at the age of 11, cut off from them completely, and when released placed in the alien environment of a Sydney boarding house, where he was not surprisingly soon involved in petty crime, leading to a life spent almost entirely in juvenile institutions and gaols. He did maintain his Aboriginal identity and rediscovered his family at the age of 19. However it proved too late for him to adapt to life outside institutions and he ultimately died a tragic death in gaol when affected by psychological trauma flowing from a crime committed as a result of his inability to cope with ordinary family life during one of his brief intervals out of prison.

Few Aboriginal families in New South Wales remained untouched by the devastating effects of the policies of family destruction pursued by the Aborigines Protection Board.

CLASSIFICATION BY THE WHITE COMMUNITY

Only in relatively recent times have Aboriginals been allowed by the dominant white community a say in their own classification. When white people came to Australia, and for many years afterwards, it was assumed that human beings could be divided into discrete races and that these races could be ordered in evolutionary terms from the most advanced to the most primitive. In theories of 'the great chain of being' Aboriginals were allotted a place at the bottom of the ranks of humans near the apes. However the attempt by scientists to divide the human race into discrete, totally separate groups called races foundered on the fact that there were always more genetic differences within the groups than between them. There were long and involved arguments as to whether there were three or twelve or fifty races, and which characteristics should be the basis of the categories. There was the further obstacle that any genetic differences between populations are differences of frequency. 'That is, only by taking a single genetically given characteristic can populations be divided into two discrete categories. Once two or more of the millions of such characteristics are considered, there will be problems of categorisation. 15

Another reason why most biologists have abandoned the term race is its misuse as an explanation of other differences. The notion of racial differences became confused with social differences and with differences of ability or worth or culture. In fact the main point to be emphasised is that there *are* real differences between groups that are cultural and historical. But these differences are not *caused* by those few superficial differences in genetic heritage which are observable and

superficial. The fact that skin colour is such a powerful symbol is due to our colonial history. It is not a sign of innate and fundamental inequality. It is not difference itself which is the problem, but social practices based on it.

In any event with racial mixing, classification by reference to race became highly dubious. Colour has always been a basis used by whites to identify who was an Aboriginal person, and the 'caste' of children at the Kinchela and Cootamundra Homes was determined by their shading, as happened to David Gundy's cousin when a group of children were taken. At Cootamundra the darkness of the skin determined whether the children were adopted out. Max Saunders' mother 'was quite dark and stayed on until she was 16, when she was sent out to work. 16 Although the notion of racial categorisation has been shown to be scientifically invalid, and real differences between groups have been accepted as cultural and historical, nonetheless the colour of a person's skin is still a powerful social marker. Thus a person with a dark skin in Australian society will arouse curiosity about the source. If there is an Aboriginal genetic heritage, whether there is a visible sign or not, the stereotypes and images evoked are likely to be negative and potentially upsetting.

Paul Kearney was not easily identified as having an Aboriginal forebear by his appearance but nonetheless was clearly troubled by the fact of this heritage. Who knows what anxieties he had when he spoke about a racial identity problem with his doctor. 'At Redfern House he was placed in group therapy for his racial identity problem but became very nervous'. 17 In cases such as Glenn Clark and Max Saunders also it is difficult to know what the psychological consequences of their Aboriginality were.

Whereas once the official definition of who was Aboriginal relied only on skin colour, so that with light skin a person was virtually forced to identify as white, and if dark there was little possibility of obeying the injunction to assimilate, now the official definition of who is Aboriginal has three components not necessarily reflected in colour or appearance. A commonly used definition requires that a person must have some Aboriginal ancestry, but must also identify as an Aboriginal and be identified as part of an Aboriginal community. This makes problematic the position of those who were adopted or fostered by white parents or whose kin ties were severed due to being taken into the Protection Board homes. Those who in an earlier era obeyed the injunction to assimilate are disadvantaged as, even if they have some community ties they can call upon, they are not likely to be accepted readily, as they may be seen as traitors. People who for any reason have no connections with an Aboriginal community, (as in the case of Paul Kearney who was reared by his white mother in white suburbs), may find it difficult to establish a legal claim to be Aboriginal unless they develop some connections. While a sense of identity could be gained by joining an Aboriginal community, this is not an option available to all with Aboriginal forebears.

The consequences of identifying as Aboriginal have changed over the years. Today there is a common accusation of pecuniary interest associated with the willingness to identify as Aboriginal. This is bitterly resented by many Aboriginal people who have not determined the current or previous policies let alone the definitions of who was Aboriginal. They were previously rewarded for not identifying but rather assimilating, and are now being rewarded for reversing their position, and the irony of being blamed for the change is not lost on many Aboriginals. However, it invites divisions among Aboriginals also, because there is resentment of those fellow residents of tension-ridden towns who have in the past

distanced themselves from their Aboriginal heritage and connections but who now want to affirm them. Thus the rewards and punishments for identifying may be very different within the Aboriginal community from what they are outside. The issues associated with the question of Aboriginal identity are clearly complex.

The issues have been particularly acute in Tasmania. 'How many thousands of people who were not Aboriginals because they found it better not to say so, and had no community to be recognised by, have now become Aboriginals?'. 18 Mark Revell is an example of a person whose psychological state would have been greatly helped had he been able to identify with a community. His mother said 'Trouble was he didn't have a tie with a community because the Aboriginal community was scattered ... If there had been Aboriginal community organisations this would have helped Mark'. 19 The dilemmas over identifying are not new. Mark's grandmother 'was shy about her race' and his grandfather also 'did not advertise his Aboriginality, but it attracted the nickname of Sambo'. 20 Glenn Clark's family may well have avoided the worst of their suffering had there been Aboriginal organisations earlier.

CHAPTER 14: LIVING IN SOUTH-EASTERN AUSTRALIA

THE ABORIGINAL POPULATION

Aboriginals and Torres Strait Islanders in New South Wales, Victoria and Tasmania numbered 78,338 according to the 1986 census - 1.1% of the whole population in New South Wales, 0.3% in Victoria and 1.5% in Tasmania. They live in a variety of situations - in isolated Aboriginal communities, and in communities in country towns, in the heart of capital cities and in suburban concentrations. As individuals and families, they live everywhere.

While the greatest numbers of New South Wales Aboriginals now live in the Western Metropolitan and Sydney/Newcastle RALC areas (forming together 36.1% of the total New South Wales Aboriginal population), they constitute a very small proportion of the total population of those areas. The Aboriginal population in the North West, West and Central RALC areas is much more concentrated. The North West, with 6914, or 11.7% of the total New South Wales Aboriginal population comprises 14.3% of the regional population. In some places, such as Wilcannia, Aboriginals are in a majority.

Thus, in some rural areas the Aboriginal people form a substantial minority and are more visible and more community oriented. The urban populations in western Sydney, Dubbo and other larger rural centres appear to be increasing. But whether there or in the inner city, they still visit and are visited by rural relatives. Rural communities continue to form the core of Aboriginal identity in New South Wales and Victoria. Perhaps the most culturally significant communities are those in rural towns where a large minority of Aboriginals have been established since settlement, though often with severe disruptions. Such towns exist all over the state, but the largest proportion is in western and northern New South Wales and along the Murray River and in Gippsland in Victoria. Many had missions or reserves which nurtured some of the most active leaders of the Aboriginal communities who called for citizenship in the past and for Land Rights today. Well known ones include Moree, Bourke, Walgett, Wilcannia, Cowra in New South

Wales and Mildura, Swan Hill, Echuca, Shepparton, and Bairnsdale in Victoria, and satellite towns and communities. The only place where a substantial group of Aboriginals live in a separate community on Aboriginal land is at Lake Tyers in Victoria.

Changes in the distribution of the Aboriginal population are going on apace. The areas of greatest growth of the New South Wales Aboriginal population between 1976 and 1986 were around the centres of Bathurst and Orange. Areas along the Dividing Range generally and most parts of coastal areas experienced substantial growth. Dubbo has one of the largest Aboriginal populations of any New South Wales town outside the urban core of the state - Sydney, Newcastle and Wollongong. Like this central urban core, Dubbo's Aboriginal population has grown largely through migration rather than natural increase. Dubbo is a major reception area for historical and ongoing Aboriginal migration from the towns and former reserves of Western and North Western New South Wales), but it has also been, as have other rural centres, a focus for recent return migration from the urban core.

THE RURAL LINKS

While Aboriginal people are scattered through the population, they are not scattered evenly, and it is in Aboriginal rural communities that the most distinctive aspects of Aboriginal traditions are apparent. That is, Aboriginal cultural identity has been forged in rural communities. A large proportion of the Aboriginal population in urban areas retains links to either a reserve, a mission or a rural community through the continuing importance of kinship. Today perhaps less than half of Aboriginal people in south-eastern Australia live in predominantly Aboriginal communities. But in the past, when tribal groups were 'dispersed' and many people were forced onto reserves and missions to live under Protection Board rule, the people retained knowledge of extended family ties. Most people worked in rural industries.

Thus Aboriginal identity has been shaped by three major forces; the older Aboriginal traditions, rural work, and control by the Protection or Welfare Boards or other white agencies. As will appear in the next Chapter, the histories of the three States are different in detail, but in Victoria and New South Wales very similar outcomes have been reached. Tasmania lacks the outback of the mainland, and Aboriginal traditions there have been largely linked with the islands of Bass Strait. Where Boards did not exist, many features of the Boards' intrusions were reflected by the police and welfare agencies.

Perhaps the most distinctive features of the Aboriginal communities which is linked to the pre-invasion past is the close knit, community based life. Families are large and several generations often share a house with extended kin. There is a loyalty to kin such that they are all family. Links between communities and kin are a central focus of life. There is visiting between families and travelling across the country to relations. Itinerant labour such as fruit picking and cotton chipping is still part of the annual round for many people.

THE RURAL TRADITION

The rural traditions were apparent in the families of most of those who died in

custody. Typical is the life of James Moore, who was born in 1924, married in 1944 and had five children. The family moved about following seasonal work in an area including Swan Hill, Robinvale, Balranald and Moulamein, while he supported them by labouring, rabbit trapping, wood chopping, sawmill work, grape picking and other seasonal work. Aboriginals like those in James Moore's family were left to do the best they could in a hostile and prejudiced environment, with minimal access to education and to any but casual work. They lived often in humpies on river banks in unsanitary and poverty-stricken conditions, but enjoying a community warmth and a degree of freedom unknown on the 'missions' on either side of the border. When there was no work in winter the family subsisted at Balranald on rations issued by the police, consisting of tea, sugar, syrup, treacle, flour and salt. Meat was obtained by hunting rabbits, kangaroos, possums and emus, with the occasional gift of sheep from a station. They camped on stations where he and and his wife worked, or lived in humpies which he erected on river banks, with clothing often taken from rubbish tips and blankets made from potato bags or knitted from unravelled clothing. Water was carried and boiled in buckets and baths were taken when it was dark. The Murray River was no boundary. Like the family of Malcolm Smith, they led an independent life and had no dealings with 'missions'. James hated being dependent on rations, and preferred to live on a river bank and do a lot of rabbit trapping and fox shooting if no work was available. But the demand for the traditional bush skills of men like him had been declining with closer settlement, completion of fencing, and the great reduction of rabbits following the introduction of myxomatosis. After the rural recession of the 1960s the demand for such labour did not recover and enforced idleness led to a widespread increase in drinking.

The grandparents of Mark Quayle, who died in the Wilcannia police cells, had travelled around in the comer country with a wagonette, finding work shearing, fencing, tank sinking and horse breaking. His father did similar work. As a girl Mark's mother, Amy Quayle left the overcrowded unhappy mission at Menindee to travel up and down the Darling River with her Grandmother Moysey. 'Granny used to work a day or two at the stations for flour, salt, sugar and tea to supplement the kangaroo and emu which they gathered.' Amy Quayle sees the loss of freedom to travel around the land and the confinement to towns as a crucial part of the problems today.

Thomas Carr's aunt said 'We knew we had nothing, we had to work and there was work around then ... People could go out and get some rabbits ... We would keep some and to eat and sell the others to the freezers or skin them and sell them'. The life of the Smith family was itinerant rural work, travelling, camping and avoiding 'the welfare'. 'Malcolm's childhood at Dareton was a happy, and carefree one, swimming in irrigation channels and hunting for small game with a catapult. One or more of the sisters would come along with the billy and some flour so that the bird could be immediately cooked and eaten.'

But the nomadic rural life came up against fences and boundaries, as well as the anxieties of the authorities and the local townspeople that Aboriginals be confined and controlled, and that children such as Malcolm should be given proper 'homes'. In Victoria Aboriginals forced out of reserves as all but Lake Tyers were closed, eked out an existence, usually by casual work, moving between familiar places and camping or living in humpies and temporary dwellings on river banks.

A survey in Victoria in 1959-60 found that most Aboriginals lived in substandard dwellings or appalling shanty town conditions, and the infant Shane Atkinson's poor health is testimony to the hardship. But from within a community, life is valued

even when material conditions are poor. The older Atkinson children recall moving around as their father followed seasonal work. 'We lived in tents but we had a good time though they were hard.'

Rural work such as droving, fencing, seasonal harvesting was still characteristic of Aboriginal groups in rural areas until comparatively recently. Many Aboriginal groups became adjusted to a life of itinerant rural labour. Country music was adopted and adapted by such folk singers as Dougie Young and Jimmie Little and more recent groups. Big cars and the roving life are celebrated in the film 'Open Road'. The long terms reduction in rural labour, most recently in the rural recession of the 1960s has almost ended such work completely and with it the cultural strength of a positive rural identity.

The result had a catastrophic effect on many Aboriginals. A number of features of Lloyd Boney's life were typical of many Aboriginal men of recent decades. He reached working age at a time when the main opportunities for Aboriginal employment in the pastoral industry had largely disappeared. Instead he lived in a town where all the power, all the businesses and all the resources were in the hands of white people who in most ways belonged to a separate, dominant community. He grew up in a home and among peers to whom formal education meant little; went to a school which he found alien and alienating; and acquired the habit of spending his time, in the absence of other ways of using it, in sociality heavily laced with alcohol.

THE NORTH WEST OF NEW SOUTH WALES

The problems flowing from the rural changes are writ large in the north west of New South Wales, which has the largest concentration of Aboriginal population in New South Wales outside of Sydney. A number of towns have a high proportion of Aboriginals in the population, and a number of problems in common as well as specifically local problems. In the Boney Report I wrote:

> 'In the small isolated towns suddenly come upon in the endless fiat country of western New South Wales, things tend to appear starkly. It is hard to resist the temptation to stereotype. The risk is not only of seeing things solely in black and white. Everywhere there is the temptation to classify people as 'goodies' or 'baddies'. Classification of Aboriginals into good and bad Aboriginals is widespread in the white community. The bad include both those who defy notions of middle class propriety by noisiness and drunkenness in public and the 'radicals' who challenge the foundation of the existing order by talking about land rights, human rights, the rights of indigenous people or almost any rights other than the right to be 'equal' in a racially structured system rooted in dispossession. The good Aboriginals are those who try to conform, appear grateful for small mercies and are ready to acquiesce in criticism of the radicals. But both the 'good' and the 'bad' Aboriginals are caricatures and the Aboriginal community is much more complex, sophisticated and, despite tensions and divisions, more united than the caricatures suggest.
>
> 'It is equally easy, and equally an over simplification, to see the white community as divided into the 'red necks' and the enlightened sympathisers with Aboriginals. Confronted by the operational solidarity of the Police Force, it is not always easy to remember that it too is the site of

> battles between conflicting attitudes and philosophies. Individual human reactions are often hard to express under the conflicting pressures. From within come demands for loyalty and conformity. From outside the force come irreconcilable claims for harsh law and order policies on the one hand and social engineering on the other. But in night to night work police stand alone to face the bitter resentment and anger of the dispossessed and frustrated when alcohol releases their inhibitions'.

Collectively the towns form a group which are the source of a large number of Aboriginals in custody in New South Wales 21 and a significant proportion of the deaths in custody. They have high numbers of police and what is felt by many Aboriginals to be oppressive policing. There are many indications of racism that make life unpleasant for Aboriginals. There is, for example, strong 'backlash' against Abstudy grants for children attending school. Some members of a white community that agitated to have Aboriginals excluded from schools in 1917 and for many years thereafter now regard it as objectionably discriminatory to make any redress of grants to Aboriginal children who carry the burden of that history in attending school today. On the other hand schooling subsidies to the families of graziers who now occupy the land taken from Aboriginals are seen as legitimate. 22 Another example is in the conflict over drinking places noted elsewhere.

The broad alternatives in isolated areas are doing nothing, in which case Aboriginals in such areas will become increasingly depressed, poverty stricken, and in conflict with the rest of the community; building local employment and enterprise; or movement of Aboriginals to more promising areas. The first is surely unacceptable, and will mean continuing high rates of imprisonment and deaths in custody. The other choices are fraught with difficulty. - Some individuals and families have moved in search of greater opportunity, but often only to return home after a period. As a whole the communities show a passionate desire to stay where they are, and a repetition of the forced movements of the past is unthinkable today.

The only viable alternative is to give Aboriginal communities the resources to develop local employment-providing enterprises, as they have shown themselves only too keen to do. Given the economic limitations of the areas, these may provide only modest incomes, and may require an element of subsidy from government, as rural or remote areas have often done in our past. How much better for everyone would be subsidy in this form than in the form of expensive policing, courts, maintenance in gaols and juvenile institutions, hospitalisation, insurance of property damage and periodic Royal Commissions and responses to the criticisms of world opinion. It would in any event be a small price to pay to remedy past injustices.

COMPLEXITY OF THE ABORIGINAL POPULATION

The north west is only part of the picture, although a critically important one. Getting to know the Aboriginal people of south-east Australia brings a realisation of how varied and complex the Aboriginal population is. Those few Aboriginals who are professional lawyers, school-teachers, and senior public servants seem a long way from the overcrowded reserves in Walgett, but they show how dynamic the situation is. The old men sitting drinking on the banks of the Darling seem to be in a different world from the young people in Redfern. The dancers in the Aboriginal and Islander Dance Company have very different experiences from the Aboriginal prisoners in Grafton. There are many Aboriginal people living in western Sydney

Housing Commission houses who have left the more inward looking communities for a possibly more peaceful but more isolated life. Yet there is a common past and a sense of common identity among such diverse groups.

There are other lines of differentiation. The radical activists who remain outraged at the injustices of the past and of today speak a different language from the serious bureaucrats who wish to achieve reforms. The respectable Aboriginal junior officials in government jobs have different aims from the Aboriginal Land Rights worker who arranges meetings to plan strategies. The writers and artists who are creating a vision of the future may hope for a better future from the prison visitor or alcohol worker. And the many many prisoners could join any of the above categories if they could be freed from the barren and destructive cycle of custodies.

There is a lot that all of these Aboriginal people share. The contrasting political strategies are based on differing beliefs about what is possible, but on similar understandings of past wrongs. There is an immense common feeling of shared suffering at the hands of the wider society, of having won through difficulties and of having common cause with all who have been subjected to the laws and practices of a racist society.

SOCIAL AND ECONOMIC STATUS

The social and economic disadvantage of Australian Aboriginals is well-known. The consequences to Aboriginals in economic changes have been severe.

Employment opportunities shrank, and today unemployment is very high and heavily concentrated in government agencies and organisations serving Aboriginals. In every sphere, education, employment, housing, health, employment and economic status, Aboriginals are at the bottom of the pile in Australian society.

CHAPTER 15: THE HISTORICAL BACKGROUND

THE IMPORTANCE OF HISTORY

I will give some space to a summary of the history of Aboriginals in New South Wales, Victoria, and Tasmania because it is not widely known and it is of fundamental importance to the understanding of the present position of Aboriginals. Many non-Aboriginals assume that the dispossession of Aboriginals happened a very long time ago, and that there has been no obstacle to their progress since. They are not aware how strongly the dominant society continued to control Aboriginals, sought to destroy their identity, broke up their families, denied them civil rights, and deprived them of opportunities for initiative or experience in managing their own affairs. Nor are they aware how strongly and continuously the Aboriginals resisted the attempts to destroy them, an element of the story emphasised in the following account. It explains why Aboriginals say so proudly today 'We have survived'.

The initial dispossession

The invasion of Aboriginal land began in New South Wales in 1788, with the invading English bringing their own labour supply, and aiming to establish an agricultural base and to find a marketable product. The first impact was felt by the immediate Aboriginal land owners, the Dharuk, including the Sydney clan of the Eora, and the Gandangara, who suffered devastating losses from the introduced disease smallpox within a year of the invasion beginning. Yet they retained the determination to contest the loss of their lands, expressed in a series of armed conflicts in the 1800s and 1810s, along the Hawkesbury and Nepean rivers. They retained too the resourcefulness and flexibility to regroup after the punitive massacres, and to regain some of their own country, on which some had developed a farming base in the Burragorang Valley by the 1870s. The directions of these coastal people were reflected in the paths taken by other Koories, Murries and Wiimpatjas, 24 the Aboriginal people of what became New South Wales. Savaged by disease and violence, they nevertheless retained not only the will to resist the invasion of their lands, but flexibility in the methods they chose and the outcomes they sought in negotiating with their invaders.

The invasion took many forms over time and distance. The demand on world markets for Australian wool in the 1820s and 1830s meant that the invasion of the central grasslands was the most rapid and brutal, with thousands of sheep pouring across the Great Dividing Range within a few years, devastating Aboriginal game and harvesting resources. Some of the most fierce fighting and most ruthless massacres took place on the grassland countries of the Gamalarai and Ngiyamba in the north west (where Myall Creek and Hospital Creek are the best known but not the only slaughter grounds), the Wiradjuri in the south west, and the Paakantji on the western Darling. After the collapse of world markets in 1840, however, the pace of invasion slowed for some years on the north coast and in the far west, reducing the level of violence and creating opportunities for more varied forms of resistance and survival strategies among the Aboriginal land owners.

Survival strategies

Some of these strategies involved working in European rural industries, while at the same time maintaining traditional cultural and social networks. By the 1850s, many Aboriginal men and women were employed as labourers in agricultural and pastoral concerns, and as shearers, in some cases on cash wages equal to whites. In more western New South Wales areas, sheep and cattle properties were soon dependent on Aboriginal workers. By the 1860s, however, a process had become evident which would be repeated for all rural labourers, Aboriginal and white. A whole category of work was eliminated by changing technology - in this first case it was shepherding which was made redundant by the introduction of fencing.

Aboriginals responded to changing European land use by increasing their pressure to regain their land. Not by military means now, but by petitions, deputations and alliance with local whites, Aboriginals in the south west and along the coast made the colonial government aware in the 1870s that they were seeking farming land. Some Aboriginal groups were impatient with such processes and simply moved

onto vacant land within their traditional country

began planting crops, with no European recognition or with only the tenuous hold of a permissive occupancy.

Many of these reassertions of land holding were finally acknowledged by the government in the 1880s, when it began gazetting Crown Land as 'Reserved for the use of Aboriginals'. Of the 114 reserves gazetted by 1895, 72 (63%) were declared over land already independently settled and under crop to Aboriginal farmers or with Aboriginal owners ready to take up the land immediately.

There were some regions where European land use was changing so fast that Aboriginals were pushed entirely out of employment and away from any access to their country for traditional social activity or subsistence harvesting. In these areas, there was clear evidence of Aboriginal poverty and distress by the 1870s, as was seen in the south western wheat belt and on the south coast, and Aboriginals from these areas moved to towns where they demanded compensation for loss of livelihood. When the south coast Koories moved to Circular Quay, the government found them too embarrassing to be ignored, and it finally responded to missionary pleas to allow them to control and evangelise to those groups.

Protection begins

The State government set up the Aborigines Protection Board in 1883 to monitor the church activity and to give out rations. The Board had at that stage very few other clear cut duties, no legislation and very little power, other than that which was already vested in the police officers who were its agents across the State. In fact from the 1880s to the early 1900s the Board acted as a responsive body: it responded to missionary and philanthropic calls for supervised aid to Aboriginals in some areas, but it also responded to Aboriginal calls for independent control over land by gazetting and handing over, free of any supervision, the independent reserves. Yet again, it responded to white employer calls, on the northern slopes, to subsidise their Aboriginal pastoral workforce with rations in the off-season and with reserved areas to secure their residence close to the properties which were being divided by 'closer settlement' but which retained high labour needs.

Aboriginals were in mixed conditions from the 1860s to 1890s: working in some areas for rations only, they were in others employed for wages, and in yet others living by a combination of seasonal employment and traditional subsistence harvesting. Yet overall, despite some regional poverty, Aboriginals were 82% self-sufficient, from some combination of these activities, in the 1880s. There were very few Aboriginals living on white 'charity' at that time and the development of the Aboriginal farming base in the 1880s enhanced their economic conditions. Not all the farming was self-sustaining: the family wheat blocks on Cummeragunja on the Murray, for example, were farmed so skilfully that they yielded at or above the region's average each year, but they were very small, at only 27.5 acres, and could never support a family, and so Koories there remained dependent on seasonal labouring. In the Burragorang Valley, however, and on the north coast from the Hunter Valley to the Bellingen River, some Koories had been able to secure small areas of highly fertile land, which by the mid 1880s were supporting at least 50 extended families by mixed farming and some dairying.

Exclusion from education

Aboriginals were over the same period seeking access to the institutions of public life, in particular the new 'free, secular and public' State schools. This occurred first in the areas where farming had given an added economic security, the south west and the north coast, but during the 1890s Murrie pastoral workers too began calling for schools to be set up on the remote properties on which they formed the major workforce, such as Goondabluie north of Walgett. They met with resistance from local white citizens, whose complaints were eventually and somewhat reluctantly supported by the State Department of Public Instruction. One by one between 1880 and 1902, the public schools of New South Wales were closed down to Aboriginal children.

This was not an impersonal decision by Sydney-based administrators, but a series of bitter local struggles, in which white citizens opposed Aboriginal parents face to face and forced their children out of the schools. The reasons they offered were usually that Aboriginal children posed a threat to the health of whites, but whenever these claims were investigated they were found to be baseless. The major health problems cited were always nit and lice, conditions from which all working class children suffered throughout the State. The real anxieties held by white parents appear to have been that school would encourage dose social and perhaps later sexual relationships between their children and Aboriginal children, an outcome which had ramifications for local status and power.

Eventually, the constant white protests wore down the central administration, and in 1902 the Director of Public Instruction issued a regulation which allowed a public school to be racially segregated if there was any complaint by any white parent. Aboriginal parents in many towns repeatedly challenged these bans, but the racial segregation of New South Wales public schools was maintained officially for over 40 years, and in reality until the 1960s. Until 1973, all Aboriginal children could still be temporarily excluded from a public school if one Aboriginal child was believed to be suffering an infectious disease.

Dispersal and the taking of children

The Depression of the 1890s was extremely difficult for Aboriginals and many were forced out of work. As there was no official unemployment relief, these unemployed Aboriginals sought temporary aid on the ration lists of the Protection Board, suddenly increasing the economic demand on the Board. It was concerned that this would be a permanent drain on State resources, but, of more significance, the Board's members were alarmed at what they took to be a rapid increase in the numbers of non-'full-blood' Aboriginals which the unemployment lists revealed. State parliamentarians were afraid that the Board was fostering the increase of a group with different cultural values to the white population. In those years of Federation and 'White Australia' sentiment, such fears were a powerful motive to change direction, and by 1904 the Protection Board had begun to seek strong new legislation to break up Aboriginal communities.

The Board most frequently referred to its new policy as 'dispersal' and as this accurately conveys its aims, if not the real effects of the policy, it is a more appropriate description than the conventional assumption that the Protection Board sought to 'segregate' Aboriginals. Its first legislative base, gained in 1909, gave no powers to confine, nor did the Board seek such powers. Instead, it empowered the

Board to expel Aboriginals from reserves and managed stations 'and to force them to move away from any town or reserve. Its aim was to push, as it believed to be necessary, adult Aboriginals into the white working class as isolated labourers, living independently of government and, most importantly, separate from any other Aboriginals.

The focus of Board interest was, however, on children, over whom it gained powers *in loco parentis* in 1915. Its aim, expressed many times in its Annual Reports, was to 'save' as many children as possible, by removing them to be trained and indentured as domestics and labourers, but most importantly, to be taught to forget their families. The children were never to be allowed to return to their homes. The Board's goal was the eventual withering away of Aboriginal communities altogether. The Girls' Home at Cootamundra was established first in 1912, reflecting the Board's aim to reduce the Aboriginal birth rate by taking away girls at puberty. They were to be indentured from there as domestics, unfree labour to meet the demand from middle class homes which were increasingly deprived of servants by the movement of working class girls into higher paid factory work.

The second dispossession

As the economy began to improve after 1904, the closer settlement movement to establish more small scale white farmers on the land was renewed. Whites began to view the *continuing* success of the independent Aboriginal farms with acquisitive interest. From 1905, the *Protection* Board came under increasing pressure to revoke these reserves in favour of white settlers. This pressure intensified and local Lands Department officers frequently demonstrated sympathy with the white claimant. By 1914, Lands Department action had forced a number of north coast Aboriginal farmers off their land, often in mid-crop and always under *protest.* The first World War added emotive pressure, with the Returned Servicemen's Resettlement schemes, and by 1917 the Protection Board had ceased its earlier defences of Aboriginal tenure and agreed to revoke as many of the small reserves as the Lands Department should request.

This drive to revoke led to the loss of 13,000 acres of Aboriginal reserve between 1911 and 1927, half of the total Aboriginal reserve land in the State. Of the land lost, 75% was from the north coast, and all of it was fertile, independently settled Aboriginal fanning land. Bellbrook and Burnt Bridge on the upper Macleay were two of the very few such reserves which survived the 1920s, saved from alienation only by their relative remoteness and lower fertility. One of the most productive farms had been the Kinchela lands at the mouth of the Macleay, settled by the Drew families. These were not lost to white farmers, but to the Protection Board itself, to set up more of the machinery for the most destructive aspect of its dispersal policy, the removal of children. Kinchela farm, which had been a flourishing symbol of independent Aboriginal survival strategies, became Kinchela Boys' Home, a feared place where boys removed from their families were kept in loneliness and abuse, to teach them to forget their Aboriginality.

The Board's dispersal policy generated turmoil among New South Wales Aboriginals as they were expelled or forced off reserves or as they escaped to protect their children from 'removal'. The loss of the self-supporting farms was devastating, especially on the north coast, but the improved employment conditions of the 1920s allowed Aboriginals some flexibility to move to new areas away from Board threats to their children. There were never more than 15% of the

Aboriginal population under Board managerial control over these years. The Board had created an illusory dispersal, reducing its ration lists from the inflated numbers of the Depression, but generating large population increases in town camps beyond its control, where Aboriginals continued to regard themselves as Aboriginal, maintaining their extended family relationships and obligations, and where they were most definitely regarded by whites as Aboriginal.

The Board did, however, succeed in reaping a bitter harvest of children. More than 1500 Aboriginal children were taken from their families between 1912 and 1938, at a time when the total known Aboriginal population of the state was only between 6,000 and 10,000. Many others, for whom there are few accessible records, were channelled into the Child Welfare system, where their Aboriginality was officially denied, yet where they suffered subtle, covert racism. Despite attempts to obstruct them, one in five of the children taken by the Board absconded and around three quarters of them returned eventually to their own or another Aboriginal community, but the emotional scars borne by these children and their families form a stark and enduring monument to racism.

Conflict in the towns

The Board had not reckoned on white resistance to its dispersal policy, which had been formulated to appease Treasury and Parliamentary fears. It had led, however, to great increases in the Aboriginal populations camping close to country towns, which meant more Aboriginal demands for school access for their children, more competition between white and Aboriginal workers and greater visible Aboriginal presence on the town streets. Local councils began to hector the Protection Board in the early 1920s, demanding that it acquire for the first time the power to round up and confine Aboriginals, which of course was precisely the opposite of the Board's own goals. Bitter straggles developed over the decade as councils used evictions, demolitions and jailings to try to move Aboriginals, and if those tactics failed, schools were segregated and children threatened with removal. More informal means of control became widespread: police harassment to enforce illegal curfews and vigilante gangs to discourage Aboriginals from town streets were widely observed and in some cases documented. Aboriginals resisted such pressure in a number of ways, sometimes taking legal action, as at Lismore, or organising petitions, as at La Perouse and Bateman's Bay, but their great vulnerability lay in the Board's power over their children, particularly if the local school closed its doors and the parents could be accused of failing to secure an education for their children. Aboriginals in Yass, Walgett and Moree, to name only three out of many examples, found that to protest a school segregation or to try to live in the town of one's choice, meant losing one's children to the Aboriginals Protection Board or the Child Welfare.

Aboriginal organisation

The Board had not reckoned either on the resistance of Aboriginals. The families of children under threat had opposed and fought removal, confronting Board and police officers who tried to take children or fleeing to safer places. Communities like Cummeragunja had opposed the seizure of their family farms and the expulsions of individuals from the station with a series of law suits and then with sustained civil disobedience in the early 1920s. The Koories of the north coast, hardest hit by land losses and, later, by the removal of children, formed a public

and organised movement in 1924, the Australian Aboriginal Progressive Association.

Soon linked with south coast and Sydney communities, the AAPA strongly protested the loss of the lands and of children. The organisation held rallies of up to 500 people in towns along the coast from 1925 to 1927, where speeches were made by senior men in their own language, ceremonial leaders who had also recently been farmers, who called on the government to restore their traditional lands, their farms and their children. The AAPA petitioned parliament and press, bitterly condemning the Board for tolerating the sexual exploitation of the young girls who were 'apprenticed out' and then sent home pregnant. Beyond this, the organisation organised secret support networks for girls abused in this way. Fred Maynard, the Hunter Valley Koorie who was spokesperson for the AAPA, called for acknowledgement of the values of Aboriginal civilisation, for enough land for self-sufficiency for each New South Wales Aboriginal family and for recognition of cultural difference, with Aboriginals allowed free access to public schools but also able to run their own schools, as did Catholic and other religious groups.

This organisation could not stem the loss of lands, but it caused enough public embarrassment to the Board to lead to some modifications to the child removal policy. Children were thereafter allowed to return home, at the end of their indentures, but only to face managerial insistence that they marry rapidly and live 'respectable' lives. Women continued to boar the brunt of the Board's attempt to culturally indoctrinate Aboriginals, finding their marriages regulated, their homes inspected and tested, and their children always vulnerable.

The Great Depression

The 1930s Depression interrupted the Aboriginal political movement by closing off the few economic options they had had in the 1920s. The Protection Board, in a bid to meet the shortfall in its budget in the first lean year of 1929, appealed to the government to allow it to take control of the recently granted Child Endowment payments to Aboriginal families. It argued that Aboriginals could not handle the cash, but the only complaints the administering body had made was that some Aboriginals were underspending their grams. Nevertheless, the Board was granted control over all Aboriginal families' Child endowment and used the additional funds to cover the cost of its increasing ration lists as Aboriginals were thrown out of work.

Aboriginals faced heavy job losses, but were systematically excluded from receiving the new State unemployment benefits in New South Wales, although eligible in Victoria for that State's dole. The New South Wales Department of Labour decided that Aboriginals would have to prove they had 'performed a white man's work', a test which no-one defined and which effectively excluded most unemployed Aboriginals in the judgment of the issuing officers, who were the local police. Despite Aboriginal *and* Protection Board protests, Aboriginals were forced to turn to Board rations, although they were equivalent to only half of the meagre Unemployment Food Relief available to white unemployed. Excluded too from Local Government administered Work Relief, Aboriginals were forced in increasing numbers on to the Protection Board's resources, until over 30% of the known Aboriginal population was under the direct and dictatorial control of Protection managers by 1935 and many more were on reserves under the surveillance of the police. The Board was forced to admit the failure of dispersal: Aboriginals had not

disappeared or 'merged' with the white working class. Over 10,000 people were identified as Aboriginal by the census collectors, a role also filled by the police.

The policy of concentration

The Board's limited finances were unable to meet the sudden demand, and no new housing or services could be provided between 1929 and 1935 for the massive population increases in stations and reserves, which were often carrying twice the number who had lived there only a year before. The poverty and sudden overcrowding caused major epidemics of respiratory and eye disease which swept the Board stations in 1934 and 1936. The Board responded by finally capitulating to town demands for segregation. It believed that it could only gain funds to improve living conditions for a reduced number of large, centralised managed stations, and it formulated a policy in 1934 to 'concentrate' all Aboriginals on these newly expanded stations, which they would not be free to leave until they had been 'educated' or 'trained' to live in ways acceptable to whites. The policy of resocialisation, previously only applied to the children removed from their communities, was now extended to all adult Aboriginals as well.

Under the resulting 1936 amendment *to the Protection Act,* all Aboriginals, including those of 'light caste' who had previously been told they were not Aboriginals at all, were to be confined for as long as it took to reshape their lives. For the Board, this was a programme with an end in sight, 'assimilation' into the white community, a delayed but eventually more effective 'dispersal'. For local government councils and rural white communities, the end was the confinement itself, which they fully expected to be permanent.

Enforced concentration began in 1934 and continued until 1939, but it was implemented only unevenly across the State. Most dramatically affected were Aboriginals living where the rural economy appeared to be undergoing the greatest restructuring, in the western and north coast pastoral industry areas where the largest properties were again being broken up. Whole communities of Aboriginals were moved hundreds of miles by cattle truck and dumped on Protection Board stations at Menindee, Brewarrina, Toomelah and Burnt Bridge. Aboriginals protested bitterly but they had been made even more vulnerable by the legislative changes of 1936, which they called the 'Dog Act', because it allowed them to be carted around and penned up like animals. In reality they had few choices, particularly if they had young children. Nevertheless, many were transported only at gunpoint, like the Murries moved from Angledool to Brewarrina in 1936. Others stayed in the new 'concentration' stations only so long as economic conditions forced them into dependence on Board rations, like the Wangkumarra of the Comer Country, who were forced to Brewarrina in 1938 but left in 1940, 80 strong despite the deaths of many of their old people, to walk the 190 miles back to their country.

The fight for rights

The massive loss of economic and civil rights suffered by Aboriginals in the 1930s meant that as their political movement reemerged its focus had shifted. This time a coalition of regional movements was formed. The Cummeragunja community had linked with others in south-western New South Wales and Victoria in 1934 to form the Australian Aboriginal League (AAL), to protest the New South Wales economic

discrimination of exclusion from the dole. The AAL went on to express their long-held community aspirations for land in a well-researched and pragmatic proposal for redevelopment of the family farms programme, with Cummeragunja as the pilot project. The west and northwestern communities of New South Wales developed the Aboriginals' Progressive Association, led by Bill Ferguson and Pearl Gibbs, protesting economic discrimination, enforced movements and the appalling conditions on the Protection Board managed stations. Their demands were for immediate equal civil rights and for a long term goal of land settlement. On the north and south coasts, the AAPA was reactivated with Jack Patten as spokesperson, opposing Protection Board control and calling for restoration of Aboriginal lands, including the reserves taken in the 1920s. The worsening in access to civil rights had made this issue the most common immediate demand, while land issues remained on the agenda but as a long term demand.

A strong body of white support for the Aboriginal movement pushed the government into reorganising and renaming the Protection Board as the Aboriginals Welfare Board in 1939. The new Board included anthropologists and later a token Aboriginal position, but the old 'Dog Act' legislation was retained and real power never left white hands. Aboriginals bitterly rejected the new bureaucracy, insisting: 'We are not savages, sinners or criminals. We do not need anthropologists, clergymen or policemen to look after us'.

The most moving demonstration of Aboriginal distress occurred in 1939, when the mismanagement and victimisation of the Board manager at Cummeragunja, and the Board's rejection of the AAL's farm proposals, forced the Aboriginal residents to walk off the land they had been fighting to regain for fifty years, setting up a strike protest camp on the Victorian side of the Murray river at Barmah. They stayed for nine months, despite arrests, harassment and a freezing winter, mobilising press cover and trade union support to demand an end to Board rule and the restoration of their farms. While they won the dismissal of the manager, they did not regain their independent lands, and many moved to Victorian fruit towns like Shepparton or to Melbourne, where they formed the nucleus of later political activity.

The war generated such a change in the economy that Aboriginals found themselves suddenly freed from economic dependence on the Board. By 1948, only 21% of the Aboriginal population remained under managerial control on stations and 96% of Aboriginals were employed. Aboriginals had moved to areas where the Welfare Board had little means of control and where new work opportunities had arisen. The Welfare Board was forced to admit the failure of its 'confine and educate' plan, yet it was plagued by new and rising protests from white townspeople about the increased presence of Aboriginals in towns like Moree, Coffs Harbour and Griffith.

Behaviour modification

In 1948 the Board formulated a new version of its reeducation policy: it abandoned plans to concentrate Aboriginals by active relocation, and began to construct a system of surveillance, which was aimed at monitoring precisely those Aboriginals who had succeeded in extricating themselves from Board control. The Aboriginals' Welfare Board appointed District Welfare Officers (DWOs) to the towns where large populations of Aboriginals had recently settled, and told the officers to observe and report on all Aboriginals in the area. The means of control and social

change was to be the newly developed 'Exemption Certificates' which would in theory entitle Aboriginals to have access to public education, housing, services and facilities on the same basis as white citizens.

Aboriginals had to apply and be recommended to achieve an exemption, which meant proving to the DWO that they were willing to live separately from other Aboriginal people, to work in approved 'regular' jobs and save for 'approved' purchases, for example home furnishings but not for distribution of resources to kin or for travel to maintain extended family relationships. Denial or revocation of exemption certificates meant the family were more vulnerable to school segregations and to loss of their children, were far less likely to receive Federal unemployment benefits or old age pension, and were denied access to hotels and alcohol, which meant exclusion from the labour exchange of many country towns as well as from the social network of the rural male workforce.

Despite the high cost of not participating in the 'exemption' process, many Aboriginals refused to be humiliated into applying for what they called a 'Dog Licence', and opted instead to defy or subvert this behaviour modification attempt. Between 1943 and 1964, when the system lapsed, there were only 1500 applications for exemption certificates, out of a vulnerable population of 14,000. Around 1200 were approved, leaving 15% of applications denied or approved certificates later cancelled. Nevertheless, Aboriginals faced increasing interference and surveillance as the widening system of DWOs relentlessly inspected and judged independently rented homes and riverbank shacks as vigilantly as any managed station hut.

The old system of 'apprenticing' children had apparently been dismantled in 1939, but control over the process of removing children had merely been transferred to the Child Welfare Department. The Welfare Board's managers and DWOs (a number of whom were ex-managers) continued to act as 'friends of the court', advising police and Child Welfare officers on Aboriginal home conditions and the desire of parents to 'rehabilitate' and 'assimilate'. Increasing numbers of Aboriginal children appear to have been taken in the 1950s and 1960s. Although this is difficult to trace in the Child Welfare system, the Aboriginals' Welfare Board homes demonstrated the increase: there were only 170 children in the homes in 1951, but by 1961 there were 300. Fewer children were employed as domestics after the war, although it continued to occur into the 1960s. More often, children were fostered, first to 'suitable' Aboriginal families, but after 1956 the Board began advertising, successfully in its view, for white families to foster Aboriginal wards, thus increasing cultural and social alienation. Aboriginal families were warned repeatedly in Welfare Board reports, that if they did not demonstrate a willingness to live like white people their children would be taken.

Economic changes

The extension of Welfare Board interference in Aboriginal lives occurred during the 1950s and 1960s as the economic opportunities again contracted. As had happened in the past, whole categories of jobs were lost as rural technology and industry structures changed. Mechanised harvesters, for example, eliminated the need for many workers in the inland wheat and coastal corn industries, while wheat silos eliminated the need for bag sewers. Trucks and motor bikes reduced the need for horsemen and other stock workers in both sheep and cattle industries, while road trains eventually eliminated droving jobs. Irrigated agriculture offered

many seasonal harvesting jobs, but Aboriginals faced devastating competition in the Riverina from post-war European migration. White rural working class families were uprooted and moved to urban industrial areas, but Aboriginal affiliations to land and kin meant that many Aboriginal workers sought to stay on their lands despite the economic changes.

In the 1960s, the new agribusiness of cotton generated many new jobs chipping weeds out from between the young crop plants. This was hard labour in poor conditions, but at least it offered some work for Aboriginals who made up the majority of the seasonal workers. In this industry, however, the increasing use of herbicides and pesticides diminished the need for chippers at the same time as it caused deterioration of the land and riverine environment. Continuing Aboriginal subsistence harvesting was being undermined in such ways through the 1950s and 1960s, as introduced species and intensive chemical based agriculture damaged the fish supplies in the Darling and other rivers at the same time as cash work became less available. Over this time too, an introduced species on which Aboriginals had come to rely for food and cash income, the rabbit, was decimated by myxomatosis.

On the coast, the spread of white residential, leisure and tourist development began to eat away at Aboriginal residence and access to the coast for subsistence. Stuart's Island at Nambucca in the 1950s and Fingal Beach in 1960 were two examples of such pressure, where the Welfare Board was prepared to accede to white demand by revocation of the remaining Aboriginal reserves. Aboriginals protested at all these locations, but only at Fingal were they successful in halting further land loss. The Board's reserve revocations were most intense in 1955 to 1957, 1959 to 1960 and 1962 to 1965, precipitating reluctant Aboriginal migration and reactivating the land issue as a major platform of New South Wales Aboriginal politics by 1960.

In the situation of weakening economic opportunities, the Welfare Board could allow concentration of the Aboriginal population (a goal it had only reluctantly abandoned) by attrition. Read has described the Board's refusal to maintain accommodation and facilities on smaller reserves on the Wiradjuri lands of the south west, its bulldozing of houses while families were unavoidably away on the ever lengthening seasonal work tracks, and the revocation of the reserves themselves to force people on to the managed stations. In other areas, such as the Macleay Valley, Morris has described a differing situation, where newly appointed managers were imposed on the populations of previously independent reserves like Burnt Bridge and Bellbrook. Although this generated less population movement, both processes marked an intensification of Welfare Board scrutiny into and control over Aboriginal lives.

Town housing

The Board had held out promises of improved conditions for Aboriginals when it began constructing its post-war system. The most attractive had been the offer of a proper house: Aboriginals had been seeking reasonable rental accommodation in country towns for decades before the war, as well as decent housing on reserves and stations, but they had met with intransigent residential segregation imposed by white townspeople. The Welfare Board had a powerful attraction when it announced that if Aboriginal families could demonstrate that they would live 'to standards acceptable to the white community' the Board would secure a house for

them in town. The Board's aim was to use such houses as behaviour modification tools in themselves: separated from other Aboriginals in 'pepperpotted' houses. Such 'assimilating' families faced constant scrutiny and judgment from their all-white neighbours as well as from the DWO.

Yet the Board failed to fulfil this most central of its promises. The housing shortage was severe: in 1949, the Board estimated that 600 to 700 houses were needed simply to meet the current demand. In the following year, the Board built 60 houses on managed stations. But the Board simply could not breach the intransigence of rural residential segregation: from 1946 to 1960, only 39 houses were built for Aboriginals inside municipal boundaries. The towns simply would not admit Aboriginals: suddenly no land could be found for Board acquisition, or the tradesmen who had been engaged to build the houses withdrew their tender, or the Board was flooded by deputations and petitions from local Government councils and white residents.

The Board responded to what it called 'strenuous opposition' and 'fierce prejudice' by creating reserves and building houses on them, eg at Gulargambone and Coffs Harbour in 1948 to 1950, or by retreating from town building premises and placing new houses on managed stations. As late as 1967 the Board was being forced to acquire land by reservation on the outskirts of town boundaries.

Intense conflict with white townspeople occurred throughout the 1947 to 1969 Welfare Board period but peaked in blocks in 1947-52, 1956-61 and 1965-68, and was ongoing at the Board's own demise in 1969. The Board's reserve revocations, which were most intense 1955-57, 1959-60 and 1962-65, had possibly generated some population movements which intensified town alarm at rising Aboriginal populations.

A most significant catalyst must have been economic conditions, with employment declining sharply in 1958-60 in the Riverina and north coast regions, and in 1966-69 in the western pastoral areas, with mechanisation and drought. This meant unemployment for whites too, and a loss of white population to the cities in these periods, increasing the insecurity of the white populations which remained in rural areas, particularly those in most economic decline. A final catalyst was Aboriginal political pressure to desegregate the towns, which had been mounting since *1956.*

There was as well a small but growing body of white rural support for desegregation: the Board-fostered 'assimilation committees' had in many cases come to criticise the Board itself for acquiescing in town resistance and formed effective lobbies inside the local government ranks, as happened at Coonamble, dubbed 'Australia's Little Rock', where an alliance of Aboriginals and a few townspeople succeeded where the Welfare Board had failed, to secure the first house blocks in town. A few of these white supporters went beyond this demand for access to town services, and began to join with Aboriginals to criticise the whole basis of 'assimilation', recognising the cultural and social costs imposed on families forced away from their chosen communities to live in 'pepperpotted' houses.

The Board had not only failed to penetrate rural residential segregation but had in effect acted as a legitimator of that segregation, by consistently resolving disputes by creating reserves and then building houses on them, despite its stated policy to do neither, rather than fighting the battles required to gain footholds in the towns. After the mid-1950s, the Board increasingly sought to shift the blame from itself or

white townspeople by blaming Aboriginals for insisting on living in town camps rather than in town houses. Yet, as demonstrated by the Board's own failure, there were in reality no alternatives except to move to another town, with little guarantee of better conditions, and when towns refused to supply amenities to camps. Only in 1967 did the Board admit that the major obstruction to housing Aboriginals in towns had been white residents' objections.

Access to education

The Board failed too in its promise to desegregate public schooling, despite its claims in 1955 to be rapidly closing the 'special' poorly resourced 'Aboriginal schools'. The result, documented well by Fletcher in the case of Collarenebri, was frequently a covert but no less powerful form of segregation, in which Aboriginal children were allowed into the public school, but then placed all in one class, with no white students, and at times even allocated separate playing areas fenced off from white children. In 1961 Education Department figures showed that far fewer Aboriginal children than white stayed on till the later years of schooling.

The Board, characteristically, attributed the 'failure' to Aboriginals, stating in its 1961 report: 'Aboriginal children, as a whole, do not possess an intelligence quotient comparable to that of their white counterparts'. In the Board's view, this was the 'principal factor' in the low retention rate of Aboriginal children in high school. The Board retracted this view in the 1962 Report, only to blame Aboriginal parents' lack of support for the low retention rate, despite the years of Aboriginal struggle to gain entry to the system. Nevertheless, the public expression of such crude genetic determinism by the body administering Aboriginal affairs must indicate its widespread currency in the various departments (Child Welfare, Public Health and Police) represented on the Board. It is not surprising then that Aboriginal dealings with the AWB and these other departments should be shaped by culture-bound assumptions about 'IQ', which appear consistently on the documentation about Aboriginal clients.

Such an assumption was reflected in the frequent justification for internal segregation in which the Aboriginal class was labelled a 'slow learners' class, although remedial teaching was seldom if ever offered. There are disturbing signs of a continuation of this approach in the present in the New South Wales Department of Education. 'IQ' tests continue to be conducted, despite their demonstrated cultural bias, and a combination of such spurious testing and teachers' judgment has labelled 6% of Aboriginal children in the State system as 'mildly intellectually retarded' or 'IM'. This proportion is even higher, at 10%, in western and north western New South Wales, suggesting that the issues are social, cultural, economic and political rather that genetic.

The Board then, from the 1940s into the mid 1960s, delivered very few of its promises to Aboriginals. Instead, it actually acted to *contain* Aboriginals, maintaining and even justifying segregated living conditions and using exemptions and threats to children to police Aboriginal behaviour. Like its predecessor the Protection Board, the Welfare Board acted, even if reluctantly, in the interests of the white population.

Aboriginal organisation continues

Rather than the long boom experienced by many white Australians, the 1950s and 1960s were decades when New South Wales rural Aboriginals faced constriction of the job market, an increase in bureaucratic surveillance and interference, the Joss of more of their reserve lands, and continued residential and educational segregation. Aboriginal individuals and communities resisted these processes in varied ways, many refusing to engage in the exemption system, for example, and attempting to maintain their wide family obligations despite obstruction and disapproval by managers and DWOs. The Board had demanded rent from its tenants, often for miserable unserviced huts, as a tool for educating Aboriginals to 'accept responsibility'. Most refused to make the nominal payments, and even the Board had to recognise that it faced widespread civil disobedience in protest 'for dispossessing them of their lands'. Other forms of resistance were more ambiguous and destructive: for at least some Aboriginals, public expressions of defiance were made by adopting forbidden behaviour, such as drinking, despite or indeed because of the continued illegality of supply of alcohol to them.

A persistent Aboriginal response, however, was to organise politically, although the white support of the 1930s had been eroded by the Welfare Board's early liberal rhetoric. Pearl Gibbs, in particular, campaigned through the Council for Aboriginal Rights, based in Dubbo but with some Sydney trade union support. She organised protest meetings and gained some press attention for the appalling conditions Aboriginals were facing in north western New South Wales, with no town housing to rent because of white racism, no services to town camps because of local government reluctance to encourage Aboriginal presence and no freedom under Welfare Board control on the managed stations.

Local Aboriginal communities protested the increasing use of bulldozers against the camps by local government, and against reserve housing by the Welfare Board, and by 1956 they had gained some urban support in the formation of Australian Aboriginal Fellowship (AAF) in Sydney. This organisation served as a focal point for reemerging white support and in 1957 assisted Pearl Gibbs by sending union representatives on a fact-finding tour to Walgett to publicise rural segregation and tension. On the north coast, the increased tempo of reserve revocation was the catalyst for the political mobilisation of the Bandjalang, the original owners of the country stretching from the coast where tourist development was increasing into the rugged hill country where the beef cattle industry was being finally restructured. In a series of conferences and meetings from 1960 to 1962, the north coast Koories brought land rights back to the forefront of the political agenda, with calls for the restoration of traditional lands, an end to reserve revocations and assistance to develop the lands agriculturally along co-operative lines.

Movement to the cities

By the late 1950s, some Aboriginals had decided that the industrial areas of the cities offered better economic, educational and political conditions than the suffocating conservatism and racism of so many small rural towns. This migration was along paths trodden already by kinsfolk, so that chain migration occurred to Sydney suburbs where some Aboriginal families had been living for decades. Redfern and Alexandria were the most publicised destinations, but Aboriginal communities were also well established on the old Gandangara and Dharuk lands of western Sydney.

Conditions were poor, with many Aboriginal migrants able to afford no more than crowded slums and with intense racism manifested by real estate agents and local governments at any signs of increasing Aboriginal population. What was not present was Welfare Board control: the Board had never developed a strong urban surveillance structure and it appeared to find the task of monitoring complex and dense urban communities just too difficult. In default of the Welfare Board to contain Aboriginals, local government and white residents called on police to control their presence and behaviour. By the early 1960s Aboriginal concern about police harassment was becoming more public and raids on hotels and homes were increasingly well documented.

As they had in rural areas, the rising Sydney Aboriginal population formed supportive networks which offered social and then later political organisation. The 'Redfern All-Blacks' football club was one such body, which provided a vehicle for strengthening community links but also a base for negotiating with predominantly white support groups like the AAF. Ken Brindle, an activist involved in the 'All-Blacks' was central in mobilising and directing the AAF to address the pressing issues for urban communities, notably accommodation and police harassment. Brindle himself was savagely bashed by Redfern police when he tried to assist the family of Patrick Wedge, a Wiradjuri man shot by police in 1963. The Council for Civil Liberties' involvement in Brindle's defence and damages claim laid the foundation for later alliances between urban lawyers and Aboriginal activists.

The Welfare Board had begun to recognise its own failure to break into rural residential segregation by the early 1960s, and it attempted to intervene in the stalemate of conflicts between towns and Aboriginals by pushing Aboriginals towards the industrial workforce of the coast. While some Aboriginals clearly chose migration, at least temporarily, many others had continued to assert their rights to live in the area of their choice, which was often related to their traditional country and always to their extended family relationships. From 1960, however, the Welfare Board began to argue that young people and their families should 'pull up roots' and seek housing and training in the cities, and in 1962 it threatened that those Aboriginals who failed to respond to such suggestions would be forced off reserves and stations. In 1963, the Board began to use the Housing Commission to acquire houses in urban areas rather than in the rural towns with highest Aboriginal populations and highest demand for houses. The intention was made very plain to Aboriginals: if you wanted a house at all, you would be far more likely to get one if you agreed to move to Sydney or Newcastle.

Struggles of the 1960s

At the same time, as the conditions under which Aboriginals were living had become more public due to agitation by Aboriginal and white groups, the Board made a last ditch attempt to minimise the isolation of some Aboriginal reserves and to be seen to be addressing the health and housing crisis. Some large and remote stations were closed and a series of housing settlements were rapidly built on reserve land at the edge of towns like Brewarrina, Bourke, Kempsey and Moree from 1964 to 1966, all cheap and jerry built, but at least allowing the Board to call them 'town settlements' rather than reserves. These white towns had all won their battles to keep Aboriginal families outside municipal boundaries, but the Welfare Board then simply dumped large Aboriginal populations in overcrowded and poorly-built houses on the very edges of those towns, exacerbating anxieties and tensions.

The Aboriginal movements had been openly condemning the cultural destruction sought by the 'assimilation' policy since at least 1958, when Bert Groves reasserted, for the first time since 1927, the cultural distinctiveness and values of Aboriginal societies. Aboriginal involvement in the AAF and the early meetings of the Federal Council had encouraged the national, pan-Aboriginal perspective which had been so evident in the Aboriginal Progressive Association of the 1930s. Since 1957, there had been strong New South Wales Aboriginal support for the AAF campaign to change the federal Constitution to make the Commonwealth Government responsible for Aboriginal Affairs, the fulfilment of another platform of the 1930s movements. In the early 1960s, however, the focus of political organising returned to New South Wales, and the Aboriginal movements campaigned strongly during 1962 for the abolition of the Welfare Board and the dismantling of the Assimilation policy. They generated a debate about the relative merits of 'assimilation' and 'integration' which raged in the press in the following years. Major changes had already occurred when the Commonwealth Government agreed in 1960 to grant pensions to any aged Aborigine, regardless of 'caste', place of residence or 'exemption'. The powers of the 'Dog Licence' were now greatly diminished, and with them, the power of the Board to threaten and intimidate New South Wales Aboriginals.

The remaining legal restriction was Section 9, the ban on the supply of alcohol to Aboriginals. After an effective Aboriginal and AAF campaign, this too was removed in March 1963, taking with it the final power of the exemption certificate. The level of Aboriginal drinking appears to have been little affected, according to police reports to the Welfare Board, as those Aboriginals who had wanted alcohol before had been able to obtain it at an inflated 'black-market' price from publicans and storekeepers, who appeared happy to sell methylated spirits to alcoholics. This avenue of abuse was closed off, although there were many towns where Aboriginal access to the normal venues for social drinking has never been achieved, with Aboriginal drinkers instead confined to the least comfortable back bars of many country pubs. The few early figures which are available on arrests of Aboriginals for public drunkenness appear to indicate that an increase in Aboriginal drinking occurred not in 1963, with legalisation of supply, but much later, in the 1970s, when employment in many areas had dried up altogether for Aboriginals and the level of confrontation between local government and Aboriginals had risen still further.

Through the early 1960s, there was growing urban support for local rural activism which challenged the segregation in picture shows, swimming pools and pubs, all symptoms of the fundamental residential segregation. While there was increasing metropolitan press coverage for events like the Labour Council delegation to Walgett in 1964, it was not until 1965 that there was major attention given to the issue. The Freedom Ride, with its tape recordings and photographs of ugly confrontations over attempts to break the colour bar, produced chilling evidence for urban audiences of the racism in rural New South Wales. It was, as well, a very public announcement of a new alliance between Aboriginals in both urban and rural areas and white professionals, in this case university students, who were later to become the lawyers and others who staffed the 1970s Aboriginal controlled organisations. It contributed far more than the Welfare Board had ever done to public awareness of the problem, and to the breaking down of the petty but infuriating segregation of rural public spaces. Residential segregation, however, was to be far more persistent.

The years of previous campaigning combined with the direct action and high publicity of the Freedom Ride to prompt a New South Wales government select committee inquiry into the Welfare Board in 1966. Its report condemned the Board, but largely, it argued, because the Board had not been assimilationist enough, continuing to foster Aboriginal communities by allowing reserves to persist, when it should have been actively pepperpotting families all over the State. The report's underlying directions to the bureaucracy were therefore to continue and indeed accelerate many of the very policies opposed by Aboriginals. Nevertheless, it spelt the end of the Welfare Board as an entity, and plans began to dismember its functions and transfer them to relevant departments, such as the Housing Commission and Child Welfare Department. The demise of the Welfare Board appeared a positive step, and a new rhetoric of 'integration' had replaced the earlier 'assimilation' terminology, and it seemed that political activism had made a major impact.

The referendum and the 1970s

Just as dramatic were the results of the long-awaited federal Referendum, which in 1967 won overwhelming support for the proposals to recognise Aboriginal people symbolically by including them in the general census count and to transfer responsibility for Aboriginal affairs to the federal Government. Close analysis of the voting returns showed, however, that the areas with the lowest 'yes' votes were those rural areas with large Aboriginal populations, which had usually manifested the most entrenched discrimination and segregation. In New South Wales, the racial conservatism of rural areas was being fanned into the open by the political challenges of Aboriginal reassertion and by the growing sense of insecurity as the Welfare Board was dismantled. This body had effectively managed and contained Aboriginals for white townspeople, and now it was going. In fact, the diffusion of the sites of control and surveillance to a number of other departments made those powers greater and more difficult to fight. The large bureaucracy of the Housing Commission, for example, could much more effectively force Aboriginals to conform to 'normal' standards in house use, rent and location than the smaller and more personalised Welfare Board had been able to do. Yet for rural local government, particularly in those towns with newly constructed and adjacent 'town settlements', the situation looked far less controlled than in previous years, and rural media in western areas began to reflect calls for more police, more control of Aboriginals and more 'law and order' from the early 1970s.

The Aboriginal political movement too expressed grave concerns about the directions of New South Wales policy. Aboriginals had little real input into the new administration, the Directorate of Aboriginal Affairs under the Ministry of Social Welfare. Although an elected Aboriginal Advisory Council first sat in 1970, it had no powers independent of the Minister, and in one of its earliest acts agreed to the revocation of Kinchela reserve. The pressure on Aboriginals to conform to Housing Commission expectations of nuclear family and urban living was intensifying, and Aboriginals found the new Directorate even more openly committed to urban relocation than had been the Welfare Board. The recommendations from the Directorate to the Housing Commission in 1971 show far more houses being constructed for Aboriginals in urban areas than in areas of highest demand like Bourke. Such discrepancies demonstrated the distance between Aboriginal demand and Directorate intentions.

Aboriginal concerns were not allayed when the Director of the Directorate, tan

Mitchell, initiated the Aboriginal Family Resettlement Programme, a scheme to assist supposedly voluntarily migrating families. Aboriginal suspicions were widespread that substantial pressure was applied to community leaders to attract them with house and job offers in order to stimulate chain migration, and that the covert goal was the old Protection Board one of closing down the reserves altogether, to be left with atomised, urban families rather than Aboriginal communities. [At least 200 families had been moved in this way by 1980, but 25% of them had returned to their rural homes, and more were to do so in the following years as employment opportunities in urban secondary industry disappeared. The programme collapsed in 1988.]

The anxiety generated by the recognition that Aboriginals would continue to be under pressure to leave their home countries if they wanted decent housing, was heightened by the continued threat to reserve lands by revocation. Some concessions were made to reassure the most politically active communities like Woodenbong that their reserve would not be revoked, but the Directorate was clearly not committed to maintaining what little remained of the Aboriginal land base.

The new organisations

To concerns about the direction of policy were added the very immediate concerns generated by increasing police harassment, most noticeably in the inner suburbs of Redfern but in rural areas as well. Tensions were rising as local authorities, urban and rural, expressed their insecurity over the loss of the Welfare Board, and the growing effectiveness of Aboriginal political reassertion. The alliance between Aboriginals and urban professionals, first obvious in 1965, bore fruit in the documentation of police harassment and violence in the early 1970s and then in the formation of the Aboriginal Legal Service in Sydney in 1971, with branches established in rural areas by 1973. While influenced by strategies of organisational support being established in urban Afro-American communities, the New South Wales attempt to make the legal system more accountable reflected a response to the realities Aboriginals were facing in both urban and rural areas, where police were being called on more frequently to fill the vacuum in managing Aboriginals which appeared to have gone with the Welfare Board. The example was rapidly followed in the health field by the establishment of the Aboriginal Medical Service.

The use of white professionals like lawyers and doctors, under direct Aboriginal control, was an organisational structure which was untried in Australia and which brought immediate results in improving legal representation for Aboriginals at least to the level accessible to the urban working class, but beyond this more fundamental political changes were needed. This was the basis in 1975 for the New South Wales ALS and the Central Australian Aboriginal Legal Aid Service to call for a wide ranging Royal Commission to inquire into Police Aboriginal relations, in the context of the wider role of police as a body interconnected with other institutions such as the State child welfare and health authorities and local Government. The fall of the Whitlam Government in 1975 ended plans for such a national inquiry, although more limited studies have been undertaken until the issue of Aboriginal deaths in custody pushed the complex matter again into prominence and generated the current Royal Commission.

Aboriginal political concerns in the early 1970s had reflected, as well as the immediate pressure of relations with white society through the police, the

increasing pressure on land and the fight to live in communities in the area of people's choice. This focus on land and country issues was demonstrated in the New South Wales-initiated Tent Embassy demonstration in 1972, in which New South Wales concerns were welded to those of Aboriginals from all over Australia. The increased pressure on the incoming Whitlam government to make concessions on Land Rights had effects outside Commonwealth territories, as the New South Wales government conceded in 1973 that there should be some recognition of Aboriginal concerns about land by renaming the Aboriginal Advisory Council the 'Lands Trust', although without giving it any more powers and certainly no more land.

Aboriginal communities were using the newly available Commonwealth funds to more effect: the emergence of Housing Companies in many rural towns reflected the assertion by these communities that they intended to remain on their chosen country and have decent houses. As the rural recession deepened in the mid-1970s, many rural areas lost significant numbers of white residents, and the combination of vacant houses and some available funds for Aboriginal housing companies led to the first real breakdown of rural residential segregation, with the housing companies finding themselves able to buy up the empty houses in previously white neighbourhoods. Such a process continues to be partial and incomplete, but to the extent that residential segregation has been challenged, it has been Aboriginal housing companies which achieved what gains have been made. Aboriginal goals have not been 'pepperpotting', however, and they continue to struggle with State housing authorities which are now more inclined, with federal funds, to build homes for Aboriginals in rural towns of Aboriginal choice, but in general refuse to build on Aboriginal reserve land.

Beyond the limited success of the housing companies, Aboriginal political action continued to focus on land issues through the early 1970s, building strength from the public awareness of the Woodward Inquiries into Land Rights in the Northern Territory, but grounded in 200 years of very local Aboriginal campaigns to regain traditional lands and reestablish an economic base. Out of this movement, the New South Wales Aboriginal Land Council was formed in 1976, an organising body which included veteran land rights activists from the coastal movements of the 1920s, people from the west who had experienced the enforced moves of the 1930s as well as younger people involved in these issues for the first time. It was this body which lobbied the New South Wales State government until it established a Select Committee inquiry into Land Rights, which eventually recommended Land Rights legislation in New South Wales, passed in 1983.

A related idea was beginning to emerge by the mid-1970s. This was sovereignty, an amorphous but powerful formulation of a number of strands which had been developing in Aboriginal politics. Aboriginal mobilisation for equal and non-discriminatory access to education, housing and other public services was increasingly tempered by disillusion with an 'equality' that differed little from assimilation, an 'equality' which still spelled 'the same as whites' and which denied Aboriginal aspirations to develop their own cultural directions, an 'equality' which was often invoked to make disadvantage permanent. With this disillusion was a rejection of increased bureaucratic surveillance, well-established under the Welfare Board and expanding ever more rapidly under the variety of Federal and State departments with which Aboriginals were dealing after 1972. Linked with the cultural reassertion of the 1970s and based on the movement to regain lands, these strands have continued to interact in complex ways, forming and reforming to shape the public face of Aboriginal political and cultural action over the following

decade.

VICTORIA 25

The invasion and settlement of Victoria

Prior to the actual settlement of Europeans at Port Phillip in 1835, populations in what is now Victoria were probably halved by smallpox spreading south from Sydney around 1790, and again significantly reduced by another outbreak in 1830. Only Gippsland appears to have escaped the disease. The aftermath of the white arrival was even more shattering. According to official estimates, about 10,000 Aboriginal people remained in Victoria in 1835, but by 1853 only 1,900 survived - a decline of 80% in 18 years. Disease, malnutrition, declining birth rates and alcohol, all themselves the result of dispossession, accounted for about 90% of the fall of 8,000 in the population. White violence, and to a lesser extent black violence resulting from the disturbance of traditional balances, caused possibly 10%.

The decline occurred in the face of one of the most rapid land occupations known. By 1850 six million sheep and 400,000 other stock grazed the lands of Port Phillip. As hunting and gathering and the depasturing of sheep are both activities which seek to use all available land, the traditional basis of Aboriginal life was rapidly destroyed, except in remote and less accessible areas. The population decline was not halted by the Port Phillip Aboriginal Protectorate, which operated from 1839 to 1849 under humanitarian pressures from Great Britain.

The reserves

For 13 years after 1849, Aboriginals were left to fend for themselves, aided by the gold rushes of the 1850's which drew labour away from pastoral properties and so created a temporary acute demand for Aboriginal labour. There are records of Aboriginals expressing a wish for land to farm as early as 1843. Following the Report of a Select Committee of the Victorian Legislative Council in 1859, a Central Board for Aborigines was established in 1860 to proclaim Aboriginal reserves, distribute Government monies and oversee local Aboriginal protection committees.

The first allocation of land had in fact been made the year before, when the Minister for Lands, impressed by a deputation of Kulin Aboriginals from the Melbourne and Goulburn Valley areas, had allowed them to select 1,820 hectares in an area of special significance to them. Although they received no help with supplies and equipment, they rapidly set about developing the reserve, only to be moved after pressure from settlers who coveted the land. After three such moves between 1859 and 1863, the Kulin 'squatted' on a traditional site near Healesville, which they named Coranderrk, and which came under the control of the Board in 1863. Other reserves under the direct or indirect control of the Board were Framlingham (1861), and the Church mission stations at Ebenezer (1859), Ramahyuck (1861), Lake Tyers (1861) and Lake Condah (1867). By 1869 only a quarter of Victorian Aboriginals had been enticed onto the reserves, and in that year powers of coercion were given to the Board for the Protection of Aborigines.

Where the Aboriginals had cultivable land and sympathetic management, they

showed great industry and ability in farming. Coranderrk became for a period a model agricultural settlement. Other reserves with more regimented management gave less scope for Aboriginal creativity, and Coranderrk itself was often in rebellion.

Segregation and assimilation

In 1877 there were still less than half of Victorian Aboriginals on reserves, although there was a continual flow between the reserves and the outside world. In that year the policy of segregation on reserves was questioned by a Royal Commission, and a new Act of 1886 gave effect to a new Board policy of segregating 'full bloods' on reserves, together with 'half castes' over 34 at the time, who were considered too old to adapt. The rest of the mixed blood population was to move into the general community and be 'absorbed', or, as the popular term later became 'assimilated'.

The process was aided by the initiation of a policy in 1898 whereby all 'half caste' children living on the reserves were transferred on leaving school to the Department of Neglected Children. After initial training in departmental homes **in** rural and domestic work, they were sent out to 'service'. The head of the mission station at Lake Condab commented in his annual report for 1900:

> 'As the blacks are dying out, and the Board removes the half-caste boys and girls by handing them over to the Industrial Schools Department, finality is greatly facilitated and will doubtless be attained in a few years'.

Lake Tyers

The reserves, their viability already undermined by lack of capital for stock and equipment, insecurity of title, dictatorial management, and the Board's unwillingness to let residents keep the fruits of their labour, now had most of their manpower sent away. Their populations and production declined and the Board closed Ebenezer in 1902, and closed and sold most of the others by 1923, by which time only Lake Tyers remained a functioning reserve.

Residents of other reserves, including Arthur Moffatt's forebears who had been on Ramahyuck and Coranderrk, were transferred to Lake Tyers, where the numbers increased from about 50 in 1920 to over 230 by 1925.

The management at Lake Tyers was despotic. As late as 1968 people coming on to the reserve had to obtain a permit, and give two weeks notice - even those who had previously lived there and wished to return.

At one time, under sympathetic management, there was flourishing agricultural production on Lake Tyers. Subsequently farm buildings were dismantled by successive managers, conditions were let run down, and pressure was applied to make residents leave. The McLean Report of 1957 recommended that Lake Tyers should be administered with a 'helpful, but firm policy of assimilation', and that there should be a return to the spirit of the 1886 Act 'to encourage or force' the able bodied off the reserve. The reserve itself should be reduced twenty-fold to 200 acres set aside for the care of those unable to fend for themselves. The pressure was maintained and by 1965 there were only 50 people left at Lake Tyers.

But Lake Tyers had become a symbol of Aboriginal survival. Victoria's Aboriginal people, led amongst others by Doug (later Sir Douglas) Nicholls, and Arthur Moffatt's father, Laurence, fought back and finally won. There was a change of policy - instead of Lake Tyers being closed down, a project committee was set up to make recommendations as to the improvement of the reserve. In 1965 it was gazetted as a permanent reserve. In 1968 the permit system was abolished and residents were allowed to own their own motor vehicles. The mission at Lake Tyers had been established in 1861 and the first accommodation erected in 1864. A church had followed in 1868, but it was to be 100 years before the people of Lake Tyers gained any security of rifle, even to this little residue of the State of which Aboriginals had once been the sole proprietors.

In 1971 the 1,600 hectares remaining of the reserve were handed over to the surviving 40 residents under communal freehold title, each member of the community holding trust shares that prevented future sale if one member objected. Together with Framlingham, Lake Tyers was the first hand back of land to Aboriginals in Australia.

Shares in the Lake Tyers Trust were given to all people who lived on the reserve as at 1 January 1968, and to people subsequently admitted with the approval of the Lake Tyers Aboriginal Council. The disenfranchisement of many former residents, who regard Lake Tyers as home, has remained a source of considerable resentment and conflict, as people who had been born on Lake Tyers, but had succumbed to the pressure to move prior to 1 January 1968, did not receive any rights in respect of the reserve. They could become members of the community again only with the approval of those who had been fortunate enough to qualify. Arthur Moffatt was one who had left in 1954 to do his National Service, and thereafter made his life in the Latrobe Valley.

Life off the reserves

Until 1957 the Victorian government did not acknowledge the existence of those Aboriginals who over the years had yielded to the pressures and left the reserves. They eked out an existence, usually by casual work, moving between familiar places and camping or living in humpies and temporary dwellings on river banks. Rabbiting was an important occupation and source of food. The official attitude was expressed in 1941 when the Victorian Chief Secretary replied to suggestions that Aboriginals from Cummeragunja, who had settled in bag and tin humpies on the river bank at Mooroopna, should receive some official help. He explained that they were not Aboriginals; 'they were quadroons, octoroons and of light colour, and were ordinary citizens, entitled to the benefits and privileges of citizens, also their responsibilities'. Such an attitude ignored the whole history, and the fact that, whatever the legal position, they were socially stigmatised by the dominant white population as Aboriginals. It also ignored their own sense of identity as a distinct people.

In 1944 a survey was published by two research students in the Melbourne University Agricultural School of all Victorian towns with a population between 250 and 10,000 people. This included towns such as Lakes Entrance, Orbost, Warragul, Morwell, Moe and Bairnsdale. The only mention of Aboriginals anywhere in the book was in a discussion of the prevalent attitudes in the towns:

> 'The Australian aborigines, who present no economic competition, for they are only used when labour is very scarce, are not hated. They are despised, good humouredly: "You can't expect them to learn anything. They're really just like animals". Generally speaking, in the few districts where there are any numbers of them, there is very little sense of responsibility towards them. When the girls are prostituted by white men the community reaction is not against the latter, but is expressed in such a comment as: "The blacks are like that, they don't know any better"'. 26

Modern assimilation policy

However concern about the condition of Aboriginals in Victoria built up sufficiently for the Bolte Government in 1955 to appoint Charles McLean, a retired Chief Stipendiary Magistrate, to conduct an inquiry. He counted about 1,346 Aboriginal people, later found to be an under-estimate by about 50%. He found that most rural Aboriginals, apart from those at Lake Tyers and Framlingham, lived in squalid humpy conditions. He recommended a new Aborigines Welfare Board to pursue an 'active policy of assimilation', and this was established.

In 1957 there was a major change in Government attitude - in that year the discriminatory laws and the Board for the Protection of Aborigines were abolished, and the Aborigines Welfare Board was established. The new Board was set up to actively implement a policy of assimilation, with the object of assisting everyone of Aboriginal blood to obtain the status of 'a fully accepted member of the general community'.

One of the first steps taken by the new Board was a survey of the Aboriginal population, which concluded that Victoria had a population of 1,400 of whom less than 20 were full-blood. One finding was that they lived in appalling housing conditions. In its report for the year 1959-1960 the Board noted that in country areas there were 77 families with 385 persons who lived in 'appalling shanty town conditions' 27; 145 families with 771 persons who lived in substandard dwellings; and 110 families with 500 persons who were considered to have satisfactory housing. In the metropolitan area 30 families were in very substandard houses and 30 were considered to be in satisfactory houses. The family of Shane Atkinson was one of the 77 families living in appalling shanty town conditions. Indeed for much of the time they lived in a tent.

The Aborigines Welfare Board existed for only 10 years and in its last report for the year 1966-1967, when the number of part Aboriginals whom it had identified in Victoria had grown to 3,500, it claimed that there were not more than 12 river bank shacks, pickers' huts or other rural slums still occupied by Aboriginals. The Atkinson family was one of those which had benefited, and by the time Shane was a year old the family had moved into one of the first houses provided for Aboriginals in Echuca.

An Aboriginal perspective

Bevan Nicholls, an Aboriginal who is Cultural Officer at the Swan Hill Pioneer Settlement, gave the Commission an Aboriginal view of the history of the Swan Hill area:

'My great great grandparents came from around here. This land was theirs. With the whites arriving they took all the good land in the end. The Aboriginal people ended up on the river bank and over at Wamba Wamba. We got Wamba because it is low lying ground. Nobody else wanted it as it frequently flooded. Eventually, Murray Downs (a pastoral property) extended so far that lots of the people moved away to a place called Aggie Swamp. Three hundred people moved there and never ever came back. Nobody knows what happened to them. There had been conflict between whites and Aborigines all along the river - at Speewa, Aggie Swamp, Tintinda Homestead (West of Swan Hill). I have been told a story about the Beveridge brothers who moved up here. One of them was speared by Aborigines after taking Aboriginal women and chaining them to the beds and using them up. The tribal meeting about this matter decided that one of the brothers should be killed for that and that's what happened. I was told about this by Nellie Stewart. She said that he was quite a good fellow before that. After his death Aboriginal people were poisoned and shot all over the place. Aboriginal people were a nuisance to the whites when they wanted more land, and so they wiped them out.

'When the families ended up with no land we were moved around by the government. My family went to Cummeragunja which was a mission reserve. It was no better there as the State nurses were do-gooders who didn't like the Aboriginal way of doing things. They were coming in and taking the kids away. Aboriginal people were never asked what they wanted. This problem continues to this day. When we are asked and tell people they don't listen anyway.'

TASMANIA 28

'Extinction' and renewal

Before the European invasion, Tasmanian Aboriginals had a thriving culture, and the island was as densely populated as similar areas on the mainland. Despite some conflict, there was accommodation with the early settlers who came for sealing or agriculture, but the pastoral expansion between 1820 and 1830 provoked the same dislocation and fierce conflict as it did on the mainland, as Aboriginals were driven off their land and their food supplies were destroyed. The military and police cleared most Aboriginals from settled areas, assisted by 'roving parties' of settlers to complete the elimination. A sorry band of survivors was segregated under the management of George Robinson on Flinders Island and later moved to Oyster Cove, where they gradually died out.

Until relatively recent times everybody 'knew' that there were no Tasmanian Aboriginals, there being only a few survivors from the famous 'Black War', as Turnbull called it, and the last of these, Truganini, having died in 1876. Like many popular conceptions about Aboriginal history, this was wrong. However, until recent times there was no one to question it because there was no incentive to declare one's Aboriginality in Tasmania. To do so would only evoke unpleasantness and discrimination. It is only in fairly recent times, since an Aboriginal community has emerged in which individuals identifying themselves as Aboriginals can find mutual support, and the availability of some benefits has provided a counter-weight to the disadvantages, that many Tasmanian Aboriginals

have started to declare themselves.

One has only to look at census figures. The first major change came in the years following the 1967 referendum and the development of Commonwealth Government interest, especially from 1972 on. A comparison of the 1971 and 1976 censuses shows an increase in the self-identified Aboriginal population in Tasmania of 338.5%, the figure jumping from 671 to 2,942. This was nine times the rate of increase in Australia as a whole. During the next five years the figure for Tasmania, as in Australia generally, stabilised, and indeed showed a slight decline to 2,688. But the next census, in 1986, reflected the emergence of a high-profile Aboriginal community, as exemplified in the central role played by the Tasmanian Aboriginal Centre, and 6,716 persons were identified as Aboriginal, a further increase of 150%, compared with an Australia-wide increase of 42.4%. In a careful study of the figures, Census 86: Data Quality -Aboriginal and Torres Strait Islander Counts. published in September 1989, the Australian Bureau of Statistics concludes that the main explanation of the magnitude of the change is the increased propensity of people to record themselves as Aboriginals. Even the latest figures would be an underenumeration; Aboriginals are underenumerated to a greater extent than other persons.

The Islanders

Tasmania could maintain that there were no Aboriginals left after the death of Truganini in 1876 only by refusing to acknowledge the identity of the 'Islander' community in eastern Bass Strait. This community traced its ancestry to Aboriginal women whom sealers had brought to the islands. With a perverse pride in having exterminated a race, white Tasmanians dismissed these people as 'hybrid' or 'half-caste', but they retained their identity. In 1847 there were 13 Islander families totalling about 50 people on Cape Barren Island and the surrounding smaller islands. Among many surnames now familiar in the Aboriginal community was that of Glenn Clark's mother who was born Mansell. Edward Mansell lived on Long Island with Julia, an Aboriginal woman from St Patrick's Head. After 25 years together they were formally married when Bishop Nixon visited the Islands in 1854.

The community grew and fought for recognition and land rights, and the protection of the muttonbirding, which was central to its economy. In 1871 the Government offered the Islanders two to ten acre blocks on the western end of Cape Barren Island for homestead and agricultural land. Among the seven families living there by the end of the next year were those of Thomas and James Mansell.

> The reserve system was reintroduced to Tasmania in 1881 with the establishment of the Cape Barren Island Reserve for the sealing community ... The Islanders were expected to become a self-sufficient farming community despite the fact that the island was largely unsuited to agriculture. Their movements to and from the reserve were controlled; they were threatened with constant eviction and were subject to Government regulation, but were not entitled to government assistance. There was no opportunity for self-determination. The ultimate irony arrived in 1951 when in accordance with the assimilation policy, the reserve was abolished because the Government no longer defined the Islanders as Aborigines.' 29

'Despite their service in two world wars, the reserve was withdrawn in 1951, as

part of the assimilation policy which declared that the Islanders had to live "like white people" and leave the island so that their land could be used by cattle farmers. But the Islanders' stubborn refusal to disperse enabled a more sympathetic federal government in 1971 to bring some life back into the community.' 30

Before the Second World War there had been 300 Islanders on Cape Barren Island, but enlistment, manpower drafting and the search for new opportunities reduced the number to 106 by 1944. At the end of 1947 there were 130 in residence, but by the mid-1960s only 50 survived the revocation of the reserve and the offers of houses and jobs in Launceston from the Social Welfare Department. Among those who had left were Glenn Clark's mother and her parents.

Other Aboriginal Tasmanians

To a large extent the history of Aboriginals in Tasmania since Truganini's death is the history of the Islanders. However they were not the only source of modern Aboriginal Tasmanians as the story of Mark Revell's family illustrated his mother Betty Revell was proud of the fact that both her mother and father were of Aboriginal descent. Her mother, Vera Vincent, was the daughter of Eva Miller, who was the daughter of Sarah Smith, who in turn was the child of Fanny Cochrane. Fanny, who died in 1905, had been at Flinders Island and Oyster Cove with Truganini, and was the daughter of Sarah, who was an Aboriginal of the Tanganuturra tribe. Despite her historic ancestry Betty Revell's mother seldom spoke of being Aboriginal. Betty says 'I think the reason for this is that she found it hard growing up in Tasmania as an Aboriginal and therefore was shy about her race'.

CHAPTER 16: THE STOLEN GENERATIONS

THE LEGACY OF 'THE STOLEN GENERATIONS'

The taking of Aboriginal children has been touched on in the previous chapter, but its abiding effect on Aboriginal communities and their perceptions of 'welfare' call for more detailed treatment. The *Report of the Inquiry into the Death of Malcolm Charles Smith* was the first which I wrote, and it brought home to me the terribly destructive effect on the Aboriginal communities of south-eastern Australia of the removal of children from their families. The taking away of Malcolm Smith from his family and its catastrophic effect on his life and ultimately his death was not some isolated incident. Peter Read has calculated that 5,625 Aboriginal children were taken away from their families in New South Wales up to 1969 under the *Aborigines Protection Act, the Aborigines Welfare Act, and the Child Welfare Act.*

'Everyone of the 5,000 children removed from their parents had, and have, their own private and bitter memories of separation and later problems of adjustment. From the point of view of the Aboriginal race as a whole, we can hardly guess at the cost of wasted talent of those who spent a decade in the service of the whites. We can hardly guess at the number of men and women who deny their own birth-right as Aboriginal citizens of Australia. The comparisons must tell the stories.

Perhaps one in six or seven Aboriginal children have been taken from their families during this century, while the figure for white children is about one in 300. To put it another way, there is not an Aboriginal person in New South Wales who does not know, or is not related to, one or more of his/her countrymen who were institutionalised by the whites.' 31

The fact that the Aborigines Welfare Board was abolished in 1969, and that since that date Aboriginal children have in New South Wales been dealt with under generally applicable child welfare legislation, does not mean that Aboriginal people are no longer suffering the impact of the policies adopted, or that no remedial action is necessary. A submission from the National Aboriginal and Islander Legal Services Secretariat (NAILSS) referred to:

> 'what people in the Aboriginal community know as an indisputable community sorrow. That is that the survivors of Kinchela (and Cootamundra Girls Home) and their children are now adults, struggling against the odds to lead normal lives in a world that is permanently disordered from the inside out. An indeterminate number find themselves in a revolving door relationship with police, hospitals, prisons and various debilitating dependencies. Malcolm Smith was one of many'.

One cannot spend much time amongst the Aboriginal people of New South Wales without realising the truth of the NAILSS assertion. Constantly one meets people whose lives have been shattered or gravely disturbed by the taking away of children. They may have been the grandparents or parents or brothers or sisters or other relatives of the children concerned. They may have been the children themselves or they may be themselves the children of those who were taken away, their own lives suffering from the damage that was done to their parents. Many are people still mourning the children that were taken away, or are themselves people who were taken away and are still seeking their relatives. There are many heart rending stories of searches and reunions in the Aboriginal community.

PROTECTION AND WELFARE BOARDS IN NEW SOUTH WALES

New South Wales was not unique in its practices and similar heart-rending stories will be heard all over Australia. From State to State there were variations in the time at which policies were applied, length of time for which they were continued, and the thoroughness of their application, but at least as far as south-eastern Australia was concerned the Aborigines Protection Board of New South Wales stands out for its impact. It was established administratively in 1883 and given a statutory basis in 1909. Cootamundra Girls' Home which operated from 1912 and Kinchela Aboriginal Boys' Home which operated from 1924 to 1969 had a lasting effect on the lives of many Aboriginals. The homes were established as instruments of the Board's original policy which was summarised by Dr Read as:

(a) the 'full-bloods' to die out peacefully within a generation or two on the reserves, which would then be revoked,

(b) the pan-Aboriginal population to be persuaded or forced to leave the reserves within the same time-scale,

(c) the children to be removed to institutions where they would learn to identify as a lower grade of white people.

The Board waged a campaign, successful in 1915, to obtain total control over Aboriginal children, with the following aims (as distilled from the reports and minutes of the period by Dr Heather Goodall):

1. Reduction of Aboriginal birth-rate by removal of adolescents, particularly girls.

2. Prevention of Aboriginal children's identification with the Aboriginal community by:

    - isolating them from their families and communities through adolescence,

    - preventing or hindering their return to their families or the Aboriginal community at the end of their term of 'apprenticeship'.

The Board's policy was designed to achieve the disappearance of Aboriginals as an identifiable group of people. Such a policy would today be internationally condemned as genocide. The Board explicitly sought a 'final solution', saying in its 1921 report that 'the continuation of the policy of disassociating the children from camp life must eventually solve the Aboriginal problem'.

Dr Read writes of Donaldson, the 'beady-eyed reformer' who was a member and later inspector of the Board:

> 'His solution was breath taking. He wanted to remove the girls at the age of 9 or 10 to training homes, not just the neglected ones; all of them. The boys were to be removed a few years later, but all would go for good. "Under no circumstances whatever should the boys and girls be allowed to return to the camps except on short visits in an emergency, and then only by consent of the Department" ., 32

The policy was never fully implemented for reasons which include the resources available to the Board, the resistance of the Aboriginal people themselves, the strength of Aboriginal identity, and the determination of many young people to return to their families at whatever cost.

When the Aborigines Protection Board was replaced by the Aborigines Welfare Board in 1940 there was 'new legislation and new rhetoric'. 33 Procedures were those of general child welfare but the objective remained the disappearance of Aboriginals as a people by individual assimilation into the general community.

There does not appear to have ever been an explicit repudiation of past policies, although they were expressed in less crude and blatant terms. Although there was lip service to the undesirability of breaking up Aboriginal families, and expressions of sympathy for family requests for information about children in the Board's care, 34 and a claim that children were not taken until all efforts to rehabilitate the home had proved unsuccessful, 35 there was no sign of such more enlightened policies when Malcolm and his brother were taken away in 1965.

The horror of a regime that took young Aboriginal children, sought to cut them off suddenly from all contact with their families and communities, instil in them a repugnance of all things Aboriginal, and prepare them harshly for a life as the lowest level of worker in a prejudiced white community, is still a living legacy amongst many Aboriginals today, some of whom I have spoken to directly. The horror continued until only a few years before Malcolm's arrival at Kinchela. So horrible was it that it makes the less reactionary regime of Malcolm's day look almost benign. At least it was no longer necessary, as it had been in 1933, to warn the manager against being drunk on duty, using a stockwhip on boys, tying them up, or denying them food as punishment. 36

Yet his experience must have been traumatic for an eleven year old suddenly cut off from the family which had been his whole world, and transported into a totally strange environment many hundreds of miles away. His father Joe did not know where his sons had been taken and official files show that no attempt was made to contact him while Malcolm was a ward or on his discharge, or indeed till years later. To more sophisticated people it may seem obvious that he should have contacted the welfare authorities or written letters. He was illiterate and had never written a letter in his life, and Malcolm too was illiterate and remained so. The 'welfare', far from being people from whom assistance might be sought, were the people he had been evading all his life, just because they had the reputation of taking away children and denying all contact with them. That reputation had been well deserved for decades and nothing had happened to indicate a change.

A year after Malcolm went to Kinchela its manager gave evidence to a New South Wales Joint Parliamentary Committee into Aboriginal Welfare that he believed that the boys were sent there because their parents had neglected them and that parents did not visit them because they were indifferent to their fate. Such gross misunderstanding of the fundamentals of Aboriginal society in the man who ruled over Kinchela speaks volumes. He said that a typical boy at Kinchela received only a smattering of training of any kind and was turned out to employment at the first moment he turned 15. A few years before Malcolm's arrival there had been yet another inquiry into unnatural sexual practices, in which it had been shown that there was a lack of recreational facilities, a lack of evening occupation, and an utter lack of privacy, presided over by a manager who stereotyped the boys as of a low standard of intellect.

LINK-UP

The pain of these policies continues for many people until today. One measure taken to alleviate some to the resultant suffering was the establishment of Link-Up in 1981. This organisation has sought, by providing research, investigation and personal contact services, to reunite displaced people with their families. The provision of adequate funding and official co-operation to a body such as this would be a small measure of compensation for some of the damage that has been done. It is certainly reasonable to suppose that measures to reduce the very severe emotional tensions operating in the Aboriginal community over this issue may help to reduce the gross over-representation of Aboriginals in juvenile institutions and in gaols and resultant deaths in custody.

CHILD WELFARE TO-DAY

I have pointed out the remarkable parallel between the way in which Glenn Clark and his siblings were dealt with and the way in which many Aboriginals were dealt with in the name of overt policies of assimilation on the mainland.

Whether or not the break-up of Glenn's family is seen as influenced by attitudes to Aboriginals, it showed a frightening lack of understanding and concern for the well-being of young children, and the importance to them of the emotional security and the bonds of love that are provided in the family situation.

Today there should be a recognition of the importance of the family setting for the child, and the need to provide assistance to maintain families rather than to destroy them, as was the experience of Glenn's mother. There is also now a very considerable body of knowledge of the importance of endeavouring to match the cultural and racial background of children with foster parents or adopting parents. So far as Aboriginal children are concerned, there is now a very widespread recognition of the role that should be played by Aboriginal organisations in ensuring suitable placements for Aboriginal children. This dates largely from the early 1970s and followed campaigns by Aboriginals for recognition of the very adverse effect on Aboriginal families and children of earlier practices.

There is in several States legislation designed to ensure that priority is given to placing children who cannot remain with parents with kinsfolk, in their own community, or at least with other Aboriginals. There are also Aboriginal child care agencies involved in the placement of children. Hopefully this will go a long way to preventing the abuses of the past, but in the meantime many Aboriginal people, families and communities remain affected by what has happened.

PART SIX: ABORIGINALS IN AUSTRALIAN SOCIETY

CHAPTER 17: DAY TO DAY INTERACTIONS

RACISM

In my report on the death of Malcolm Charles Smith I wrote:

> 'Asking an Aboriginal what he or she regards as the important factors underlying deaths in custody often elicits as a first reply "Racism". An increasing number of Aboriginals are seeing racism as a key concept in understanding and explaining their relations with the rest of the community. It is an uncomfortable subject which tends not to be talked about very openly and the existence of which is often vigorously denied by those who are its most obvious practitioners'.

It is also something the subtler forms of which are hard to notice, embodied as they are in common assumptions which non-Aboriginals share, and in procedures and institutions which non-Aboriginals take for granted. Few if any are immune; I certainly can make no such claim. Indeed an increasing consciousness of the ramifications of racism has been the result of a slow learning process for me as my experience in this Commission has gone on, giving me many opportunities to talk

to Aboriginals individually and in groups, and to other experienced people, to see the official view of lives of Aboriginals laid out in many files, and to read the illuminating work of scholars in the field. 37

In my reports on the deaths of Malcolm Charles Smith (pp.87-88), Thomas William Murray (pp.81-82) and Mark Wayne Revell (pp. 17, 20) I noted some fairly obvious examples of the effect of racism on the lives of those Aboriginals. In reading the files in Clarrie Nean's case I came to see more clearly how deeply the lives of Clarrie and his parents were affected by the racist assumptions of the non-Aboriginal community, and of how much they continue to affect the lives of Aboriginals today, not least in the towns of northwest New South Wales with significant Aboriginal populations.

It is important that racism should be recognised as a pervasive problem in society, and not a matter about which anyone can adopt a 'holier than thou' attitude. Effort must go into understanding and combatting it. One reason directly relevant to the work of this Commission is the tremendous load racism can place on the self-esteem of those who suffer its consequences. Low self-esteem is often a characteristic of those who behave in ways that bring them into custody, and none the less so when it presents as defiance or aggression. The greatest tragedy of racism is when it not only fixes the stereotypes held by the dominant community, but, as in Tim Murray's case, it is internalised by its victims. Low self-esteem prevents achievement, underlies much conduct that leads to imprisonment, and results in self-destructive activity.

Another reason is the way in which unconscious racism defeats so many well-intentioned efforts to improve the situation. Aboriginal affairs and Aboriginal towns are full of people who are so sure that they know better than Aboriginals what is good for them that they cannot bring themselves to listen to or consult with Aboriginals in a meaningful way. The life of Clarence Nean, Clarrie's father, reveals a number of examples of how officialdom listened to white people intervening on his behalf while be himself was ignored. The reluctance to allow Aboriginals to control their own affairs and resources is another example, whether it be their modest child endowment payments in the 1950s, or their organisations, services and enterprises today. Yet Aboriginal independence and initiative is clearly fundamental to real change in the present situation.

It is not hard to recognise these factors at work when we look back some decades to the activities of the Aborigines Protection and Welfare Boards. It is harder to be aware of them in our own conduct and policies today.

Views from Swan Hill

There is no reason to think that Swan Hill is more or less racist than other towns, and I mention it only as a town which I happened to visit for the James Moore inquiry and which serves as an example. Many Aboriginals see as a major reason why their children do not progress at school, or even stay at school, the hurtful effect of racist attitudes, mainly on the part of other children. Children tend to start happily at school and progress until they become conscious of these attitudes. It is clear that racist remarks are hurtful and discouraging to a degree that most non-Aboriginals fail to understand. A common experience, according to one school principal, is that the problem comes to a head at adolescence, the stage where relationships begin to develop between boys and girls. Parents become involved.

There is a closing of ranks on the part of the white children against interracial relationships, and Aboriginal children, feeling rejected and excluded, become unwilling to stay at school.

Children would be largely reflecting adult attitudes which they learn at home or in the community. They may often repeat words they do not even understand, and they may not have learnt the adult habit of saying things behind other people's backs instead of to their faces.

A medical practitioner who had lived in Swan Hill for about nine years expressed the view to the Commission that racist attitudes have a direct bearing on the much lower life expectancy of Aboriginals. He said:

> 'My belief is that the Aboriginal people are subject to negative feeling from the rest of the community, this damages their self-image seriously. For a person's self-image to be good and healthy and for them to want to live a long and happy life, they need the approval of the rest of the community, and this of course includes the European community. It is, in particular, this lack of positive affirmation which causes Aboriginal people to be so unhappy living in a European dominated world, that they wish to die'.

He stressed the importance of positive programs to improve European attitudes. His remarks have been strongly supported by Aboriginals who have read them.

In discussions with people, Aboriginal and non-Aboriginal, working in organisations and departments dealing with Aboriginal affairs, many examples were given of racist attitudes in Swan Hill. This often takes the form of ignorant criticisms of what are described as 'handouts' to Aboriginal people. One example of the double standards involved was given by a Commonwealth Employment Service officer. He told of an employer who sought a subsidy of 100% to employ an Aboriginal, and at a later date was heard at a meeting to complain of Aboriginal people being given 'handouts' by the Government. An Aboriginal commented on 'two-faced racism' on the part of people who were apparently friendly to Aboriginals but denigrated them behind their backs.

One Aboriginal Educator told of being invited to address year nine pupils at a Catholic school, because the sister in charge was concerned about the attitude of pupils towards Aboriginals, attitudes which they appeared to bring from home. When the Aboriginal Educator went to the school the pupils had a list of questions along the following lines: Do Aboriginals pay rent? Do they work? Are they always drank? How come they get a new car every year?.

Some notes from Wilcannia

An example of the way in which Aboriginals are excluded from facilities is in relation to the TAB at Wilcannia. The only agencies are in the Golf Club and in the Wilcannia Club Hotel. Few Aboriginal people belong to the former and many are barred from the latter: thus they have no access to betting facilities which they quite properly regard as a service to which all should have an equal right. This is another of many sources of feelings of resentment, powerlessness and humiliation.

The division between the two groups was seen as maintained in many ways by white racism. While the Commission was in the town an Aboriginal organised

barbecue was held to which the whole town was invited. Wilcannia offers few alternatives, but the barbecue was attended by 250 Aboriginal people and five white people from the town. There were similar complaints about the refusal by white residents to join in Aboriginal sporting events.

There was strong expression of feeling about being the object of scrutiny and contempt by Golf Club patrons: 'You don't want to go up there and let all white people stare at you'. 'We're just like a mob of animals in a cage or something.' There were complaints of the exclusion of Aboriginals from the New Year's dance at the Golf Club until the local police sergeant intervened. He commented to the Commission that the refusal of entry was 'not what I would call open racism - I think the Club was under a misapprehension then as to what its constitution said'.

Examples from the cases

Malcolm Smith's brother commented on racial prejudice in the school at Dareton. The activities of the Aborigines Protection Board and Aborigines Welfare Board in relation to the taking away of children were based on racist assumptions and sought to achieve racist objectives. Kinchela was an instrument of this racism.

Racist attitudes at Mt Penang Training Centre were described as appalling. It is probable that racist attitudes had something to do with the persistent downgrading of Malcolm's intelligence by those who assessed him. It is difficult to discount the possibility of racism as an explanation for some of the extremely harsh sentences received by Malcolm, as when he was committed to an institution after missing two days from an unattractive job at the age of 15. A Parole Officer observed that Aboriginal prisoners were generally stereotyped by prison management as uneducated, unhealthy and futureless people not worthy of the investment of services and support, harmful generalisations which worked adversely on the prospects of Aboriginal people in the gaol situation. Perhaps a non-Aboriginal would have been treated as inadequately by the Prison Medical Service, but one wonders.

Although there was a general denial that the fact that Arthur Moffatt was Aboriginal affected his treatment, it is impossible to exclude racism as an element in what happened. Racism is not necessarily manifested in hostility towards persons of a particular race - it can be implicit in standard practices or 'common knowledge', and even well intentioned stereotyping. It is probable that the attitude of the train conductor, who was adamant that Arthur Moffatt was very drunk, and that it was not a matter for the ambulance, was affected by the knowledge he volunteered that 'it is the practice of a lot of Aboriginal people to congregate at a park in Morwell near the railway station and from there people often catch the Morwell train'. The conductor remembered what was said by the Aboriginal passengers whose aid he enlisted to quieten Mr Moffatt:

> 'They tried to talk to him and asked him to get up and said to him "You are going to get us all into trouble". The passenger travelling through to Moss Vale made some comment about "We've got to get to Moss Vale and we don't want to be put off the train"'.

Obviously their reaction was that as Aboriginals they might be held responsible for and suffer for the conduct of another Aboriginal, even when they had done their best to help. Such trepidation can only be the result of past bad experiences and

provides chilling evidence of the subtly dehumanising effects of racism.

The story of Clarrie Nean

Looking at Clarrie Nean's life as a concrete example of the effects of racism, one can see that the reason for his custody lay not in any inappropriate or unlawful police action, but in the story of his life, and behind that in the story of dispossession, pauperisation and dependency inflicted on Aboriginals. They were, as Ashley Montagu described the Blacks of America, 'deprived, oppressed, discriminated against, impoverished, ghettoized, and generally excluded from the brotherhood of man'.

When Clarrie was 15 months old his parents were not able to maintain him in good health and, instead of their being offered assistance or counselling to overcome the difficulties which they faced, Clarrie, after spending seven critical months of development in hospital as a baby cut off from family life and individual love and care, was made a ward of the Aborigines Welfare Board. He was sent far away from his parents for seven years, cut off from all contact with them and passed through three different foster homes. His parents wanted him back but were left in the debilitating environment of racist Aboriginal stations and a condition of general powerlessness and marginalisation. What this means is described in detail in Part Two of the Nean report from the official files.

What it meant for young Clarrie was that for seven of the first eight years of his life he grew up separated from the love and support of his family, and that when he did return it was to an environment in which racism was taken for granted, in which he was expected as an Aboriginal to accept the role of inferior to white people who would manage him and educate him to be like them. When, not surprisingly, he manifested problems in adolescence, his parents were again marginalised and the mystique of science in the form of a misinformed and inexperienced psychiatrist was invoked to legitimise the views of white officials on the station, without consulting Clarrie's parents. As a result he again became a ward of the Board and was sent to Kinchela. There he was very unhappy and desperately anxious to return to the parents from whom he had been separated. His attempts to escape landed him in a further institution and ultimately he was able to return to Walgett at the age of 16 with a very disrupted childhood behind him, much experience of separation from his parents, life in foster homes and institutions, and several criminal convictions. In all he had spent only six of his first fifteen years with his family. With little education his only opportunity was for unskilled work which he pursued for a number of years until he fell into the grip of alcohol, the context of so many Aboriginals coming into custody.

The experience of Clarrie and his parents is not unique, but part of the general pattern of Aboriginal life. Some parts of that pattern have changed; for example children are no longer so easily separated from their parents. But other parts remain, embedded in attitudes and policies of many kinds that hamper the growth of initiative and self-esteem. A reduction in the great disproportion of Aboriginals in custody will be difficult to achieve without fundamental changes to the racist attitudes that have pervaded the treatment of Aboriginals. Aboriginals must have real opportunities to escape from the situation to which they were forced by dispossession and institutionalisation. Fundamental is the need to restore self esteem and, as part of this, independence, and an opportunity to take real responsibility for their own affairs. The deep desire for this is expressed in claims

for 'self-determination', 'self-government' or 'sovereignty'. These may seem strange concepts to the ears of white Australians, but they are being advanced by indigenous peoples in many countries, not least such kindred countries as Canada, New Zealand and the United States. Like other countries, Australia has to learn to listen to its indigenous people and to face the hard task of finding what meaning can be given to their claims within a nation state.

HIDDEN TENSIONS

In most towns few non-Aboriginals seem to be aware of the depth of feeling which many Aboriginals have about their position and the way they are treated. Repeatedly through my inquiries I have had glimpses of normally controlled or suppressed anger, resentment and sense of injustice in Aboriginal people bursting out at unexpected and apparently inappropriate times. I am sure that this suppressed anger is responsible for much violence and damage by Aboriginals, as much directed at themselves as at others.

An example was in the inquiry into the death of Peter Williams, who was not a person who normally engaged in political activity or expression, or who usually had bad relations with white people. Yet such feelings came to the surface following his arrest in 1986, when there was a Pare fiercely violent struggle with police, after which he said This country belongs to us blacks. You whites stole it off us', and went on to talk about the rights of Aboriginals.

Peter Campbell was another who was not at all politically active. In September 1976 he expressed his anger at the way Aboriginals were treated by police and told them that if he was in power there would be some changes. Similar feelings were expressed to a Parole Officer in Hobart in March 1977 and to a psychiatrist at about the same time, and may have surfaced in his acts of violence.

White Australians generally have yet to come to terms with the fact that this anger and sense of injustice exists, is well justified, and will not go away. Like a number of other countries, Australia will have to face up to the difficult task of effecting a reconciliation with its dispossessed indigenous people. Meanwhile the suppressed anger and resentment is likely to lead to custody when it bursts out often disguised in some unrecognised form, and frequently released by alcohol. While suppressed it adds to the great stresses on Aboriginals, and creates acute tension between the races in many rural areas in particular.

HOSPITALS AND ABORIGINALS

The death of Mark Quayle brought to the fore disturbing aspects of the relationship that develops between police and hospitals in small country towns. Some other examples are referred to in my *Report of the Inquiry into the Death of Lloyd Boney* where police were involved with Lloyd in hospital at both Goodooga and Brewarrina Hospitals. A relationship between police and hospitals also figured in my Victorian *Report of the Inquiry into the Death of James Moore.* Obviously there may be occasions when the hospital needs the assistance of police, but in such settings this can all too easily become one of unnecessary reliance on police instead of resolving problems in the hospital by proper medical means. There could be no more striking example of this than the way that Mark Quayle was treated.

In a town such as Wilcannia, which is marked by a racial divide between whites and Aboriginals, the relationship between police and hospitals can easily become part of the general technique by which the white power holders manipulate and manage the Aboriginal community. In such towns, where there is no Aboriginal Medical Service and limited access to doctors, the hospital plays an extremely important role in the life of the community. This is particularly so in the case of Aboriginals who have few resources to seek medical care outside the town. Yet even in Wilcannia where Aboriginals are a large majority of the population, and a very high proportion of those treated at the hospital, Aboriginal participation on the hospital board and as members of the hospital staff has been very limited. It is hard to imagine that hospital staff could have treated Mark Quayle in the way they did if they had been used to dealing with Aboriginals not just as a group of poor and disadvantaged patients but as members of the governing hospital board and as fellow employees.

The whole question of the connection between the Aboriginal community and the hospital in towns of substantial Aboriginal population will require very concentrated and continuing attention to change the situation.

MEMBERSHIP OF HOSPITAL BOARDS

A very important part of the process is ensuring that the hospital board is representative of the community. Typically, hospital boards in towns like Wilcannia, have been dominated by persons with businesses in the town or rural properties, with little or no representation from the white public servants or the Aboriginal residents of the town. Gloria King was one of the first three Aboriginal people to be appointed to the Wilcannia Hospital Board in 1980 and she said that she felt isolated when she attended board meetings.

Evidence to the Commission was that appointments to hospital boards have been essentially political appointments not made on the basis of the needs of the community. The Chief Executive Officer of Wilcannia Hospital explained that applications for membership of the hospital board were put in order of priority by the board itself. The applications were then sent to the local member of the State Parliament and also to the Regional Director of the Department of Health, who made a recommendation to the Minister. The Minister made the actual appointment. As described by the Regional Director, the process of selection was one in which white people were given a say, and indeed a veto, over the selection of Aboriginal members, but no attempt was made to seek the opinion of the Aboriginal community. He said that of a list of seven members from the Aboriginal community who volunteered to become members of the Wilcannia hospital board after Mark's death, two were excluded from the list because of objections by the local Member of Parliament. The advice of Matron Crisp was sought on the remaining five, and only two names were endorsed by the Matron. There was no Aboriginal community consultation or consultation with the existing Aboriginal board member. With a procedure such as this, in which the only Aboriginals who could get onto the Board were those acceptable to the white power brokers, Aboriginal membership can easily become a facade which reinforces rather than breaks down the racial divisions in the town.

As noted in discussing the coroner's recommendations, the Minister has since directed that there should be greater consultation and in July 1990 there were

three Aboriginal members on the board of Wilcannia Hospital.

LOCAL GOVERNMENT

In many pans of New South Wales the local government Councils play a major role in the life of rural communities and impact on Aboriginal communities in a number of ways. These Councils are a major employer, but invariably Aboriginal persons receive very few jobs and nothing anywhere near proportionate to their numbers in the general community. Even where there are a large number of Aboriginal people, there may be no Aboriginals employed by the Council. Complaints are frequent that even filling labouring jobs preference will be given to non-Aboriginal persons who may not even be residents of the area. Where Aboriginals work for Councils under Employment Schemes subsidised by the Department of Employment, Education and Training, or other Government organisations, the employment invariably ceases when the subsidies cease. Employment in the administrative or service delivery areas is rare for Aboriginals.

Most of those who are employed by Councils have been in the employment for a long time and there has been negligible employment of new Aboriginals in recent years. On the odd occasions that an Aboriginal person may obtain employment, he or she often finds difficulty working in isolation with no other Aboriginal employees, and is sensitive to discrimination. For such reasons some have not stayed very long.

Recently developed Government strategies are to be welcomed but the AIU found that very few people in Aboriginal communities had any information in relation to these initiatives.

In many areas there are conflicts between Aboriginal communities and Councils over the provision of services or infrastructure to Aboriginal communities and on the other side the payments of rates on Aboriginal land. Aboriginals also feel that Councils are frequently hostile to development applications related to Aboriginal projects. Councils in the north and north-west of New South Wales have also been heavily involved in 'law and order' campaigns. Whatever the rhetoric, they are directed at securing the targeting and over-policing of Aboriginal communities. Local Members of Parliament have also been involved in a number of these campaigns. Such campaigns are directed to repressive action against Aboriginal communities, not to any attempt to secure constructive approaches to the problems that are endemic in such communities.

There have been occasions in recent years when Aboriginal people have organised and succeeded in electing one of the number to a local Council. However, persons so elected usually either do not complete their term of office or do not stand for re-election. It is a common feeling that Aboriginals on the local Council are not seriously listened to or taken notice of and accordingly they find that their participation is not only an unpleasant experience, but serves little purpose for their community.

At Wilcannia, where the Commission held a community conference, there were numerous complaints by the Aboriginal community about the attitude of the local council, including the very limited employment of Aboriginals. A particular grievance was the management of the swimming pool which was often closed while the Commission was sitting in Wilcannia in mid-summer. Given the

population of the town the greatest potential use of the pool is by the many Aboriginal children, to whom it would be of tremendous importance in summer holidays. Members of the Aboriginal community had expressed interest in taking over the management of the pool and complained about a decision to give the management to some white residents on a part-time basis. The defence of the situation by a councillor at the community conference speaks for itself:

> The swimming pool is not controlled by the Council in any way, it is controlled by a committee, and it just so happens that the people on that committee happen to be employees of the Council ... which has the responsibility of appointing the members of the committee'.

Aboriginals expressed particular bitterness about the situation because they believe that the Council had received financial assistance to build the pool because of the Aboriginal population. The occasional examples of positive attitudes are appreciated by Aboriginal communities. There was praise when the Council at Burke gave support to some initiatives to provide some activities for young people.

HOTELS

Leaving aside the long-term issues that arise from excessive use of alcohol, the fact is that in many centres where there are Aboriginal communities in south-eastern Australia, hotels are the main centres of social life, especially for Aboriginals. Small centres, like the western towns of Wilcannia, Brewarrina and Walgett, in all of which deaths were investigated, have few recreational outlets. The social life of the white community is to a much greater extent centred on clubs. While most of these now have some Aboriginal members, they are the more 'respectable' or conformist members of the Aboriginal community and most Aboriginal drinking is dependent on hotels or the drinking of liquor bulk-purchased from hotels or stores.

Hence hotels are of great importance to Aboriginals, but they frequently contribute greatly to the tensions and discord of Aboriginal life in the town. There is often a substantial separation of Aboriginals from other drinkers by one device or another, and the areas used by Aboriginals are usually austere and depressing in the extreme. Despite the widespread Aboriginal preference for outdoor drinking, beer gardens are rare in Aboriginal towns.

Friction between hotel owners and Aboriginals is common, with publicans often seen as arbitrarily excluding particular Aboriginals temporarily or permanently. Police are seen as the allies, if not the tools, of publicans. Some of the issues have been discussed in Chapter 18. Suffice it to say that there will not be good relations in Aboriginal towns until there is equal negotiation about and agreed resolution of the problem of acceptable drinking places.

CHAPTER 18: RELATIONS WITH POLICE

THE IMPORTANCE OF ABORIGINAL/POLICE RELATIONS

As one would expect, given the high rates of Aboriginal custody, relations with police loom much larger in Aboriginal communities than in the rest of society. With the growth of Aboriginal organisations carrying on an increasing range of activities, there are now more contacts with other Government agencies and non-Aboriginal society, so that relations with police are not as dominating as they once were. However relations between Aboriginals and police occupy a key point in determining the numbers of Aboriginals that come into custody. The first step in almost every Aboriginal custody is a police action. Even where police have no alternative to arrest, the manner in which they treat Aboriginals, and particularly the manner in which they treat juveniles, may have important consequences. It may affect the likelihood of ancillary charges arising out of the arrest, whether against the offender himself or those with him, and it may affect their future attitude towards the police and the law.

But in the great majority of cases, Aboriginals come into custody as a result of relatively trivial and often victimless offences, typically street offences related to alcohol and language. Many of these 'offences' would not occur, or would not be noticed, were it not for the adoption of particular policing policies which concentrate police numbers in certain areas, and police effort on the scrutiny of Aboriginals. The concentration of large numbers of police is itself a result of the fact that Aboriginal communities are seen as troublesome, untrustworthy and given to criminal conduct. The presence of police in large numbers leads to innumerable further trivial charges, creating a vicious circle in which Aboriginals are criminalised.

Trivial as the offences may be, police reaction to them is fraught with grave consequences. Those arrested are criminalised in several ways. They acquire criminal records, they are defined as deviant not only in the eyes of police but of the broader society, they are introduced to custody in circumstances where they feel resentment rather than guilt, and hence arrest and custody cease to be matters of shame. In dealing with these situations, there is often a great deal of room for alternative courses of action by police, depending on how they interpret a situation, what alms they adopt in their policing, what judgments they make and how they exercise numerous discretions available to them.

What happens will inevitably be influenced greatly by the state of relations between Aboriginals and police in the particular community. The 'offensive' language, which so frequently initiates Aboriginal conflict with the law, often reflects resentment against police and their repressive role, and offences like resisting arrest and hindering or assaulting police, will also be closely related to the state of police/Aboriginal relations. Whether particular actions of police will be perceived by Aboriginals as harassment, or on the other hand, as ordinary execution of police duties, or even as attempts to make constructive contact, will also be a reflection of police/Aboriginal relations in the community.

Those relations have on the whole been bad. The circumstances which gave rise to this Commission illustrate starkly the extent to which Aboriginals regard police as enemies. When a series of Aboriginal hangings occurred in police cells, there were large numbers of Aboriginals who could and did readily draw the conclusion that police were simply killing Aboriginals. Hostility to police is widely shared among Aboriginal people of all ages and in most communities in south eastern Australia, both in rural towns and in urban areas. Both Aboriginals and police bring a great deal of historical baggage to their contemporary relations. Each has difficulty in discarding their stereotypes of each other and the distrust and antipathy.

Often the stereotypes have more to do with historical legacies, or particular past experiences, than with the realities of the current situation. Even the interpretation of the contemporary situation is often highly selective, police tending to stereotype all Aboriginals according to the characteristics of a minority with whom they have problems, and Aboriginals often having their current view of the situation dominated by a minority of police who conform to the historical stereotype of a rough, offensively spoken and racist officer.

A CHANGING SITUATION

Fortunately there is much happening on both sides to destroy these stereotypes. New images are emerging, particularly where there has been some shift of power and resources into Aboriginal hands. Where Aboriginal communities or organisations have acquired funds and property and conduct a range of activities, their spokespersons are able to speak with a new confidence and cannot be easily dismissed. Whereas the Aboriginals who were not in conflict with the law tended in the past to be inconspicuous, accepting of assimilation and unassertive, today they are increasingly able to assert themselves and their Aboriginality through organisations and communities.

This change on the Aboriginal side has necessitated a re-appraisal of police attitudes in many places, and often there has been an intelligent response by police to the new situation. In many of the police services (as the former police 'forces' are increasingly called) this has been assisted by an enlightened realisation at senior levels that the old relationship with Aboriginals is no longer acceptable, and a real attempt to change the attitudes and practices that have been inherited from the past. Amongst other things there is increasing recognition that in the northwest of New South Wales, for example, excessive numbers of police exacerbate conflict.

The process of change is a difficult one, and has a long way to go. Like a battleship under full steam, the traditional relationship between police and Aboriginals has a tremendous momentum from the past, and it will take time and great effort to turn it round. The encouraging thing is the growing numbers of people on both sides who are trying to do so. It is a situation of which it is difficult to write in a fair and balanced way, which on the one hand gives due credit and encouragement to those who are seeking to change the situation, but on the other hand, does not downplay the bad legacy from the past or exaggerate what has been achieved, and create an unwarranted complacency and thereby undermine the continuing efforts that are necessary.

Neither police services nor Aboriginal communities are monolithic in character. Seldom are there uniform attitudes and reactions on either side in a local area, much less across a State or across the whole of Australia, even though it is possible to identify an Aboriginal culture and a police culture. Indeed people have written in a generalised way of a police culture, common at least to police in the common law world, and in some respects much more widely, and on the other side there are often surprising similarities in the cultures of indigenous peoples in different countries in the world. The similarity extends to the relations between police and indigenous people in different countries, and this itself suggests that the beliefs, attitudes and reactions which characterise the interaction between the two cultures are in a considerable degree the product of a common historical situation,

where police, as the front line agents of a dispossessing, invading society, have had to confront and control the dispossessed. But while it is enlightening to note the common features even at this international level, and the increasing solidity of the cultures at national, state, regional and local levels, it is important to remember that there are always conflicting tendencies within each culture, and that individuals always vary in the extent to which they conform.

THE HISTORICAL BACKGROUND

Police have been until very recent times, and in many places continue to be, the section of the non-Aboriginal community with which Aboriginals have had most contact. It has for the most part been a highly repressive contact, which gave Aboriginals much reason to fear and dislike police, and little reason to think well of them. Aboriginal resistance to the taking of their lands was put down by para-military forces along a moving frontier that spread from Port Jackson in 1788 and continued into north-western Australia as late as the 1930s. Originally conducted by troops or armed bands of settlers, these operations were taken over by police as police forces were formed.

In widespread Aboriginal perceptions of police there is an unbroken continuity. When warfare ceased at different times and different points on this moving frontier, control and repression of Aboriginals did not cease. Attempts by Aboriginals to maintain themselves from the settlers' herds that had displaced their game met with police action. The period was a terrible one in Australian history, quite apart from any actions of police. The struggle for the land, between two groups whose views of the world had little in common, was conducted with cruelty and brutality, and Aboriginal women suffered particularly in a situation where the powerful dispossessors for years had few women of their own race with them. There was never a negotiated accommodation between the two groups; the invaders won so overwhelmingly by their superior weapons, settled lifestyle, continual reinforcement from immigration, and superior immunity to the diseases which they brought with them, that they could look down on Aboriginals as little more than pests. Into this situation police came as the representatives of law and order, but it was the law and order of a society which did not include the Aboriginals. It is not surprising that police inherited, and embodied in their own developing culture, attitudes which regarded Aboriginal men as enemies to be subdued and accorded scant respect to Aboriginal women.

Jimmie Barker described how Aboriginal people viewed the police on the 'mission' near Brewarrina early this century: 38

> 'The attitude to the police among people living at the Mission was always one of fear. No Aborigines would ever go near the police station or a policeman. When help was needed the police would be the last people approached, probably because the normal words of greeting from a policeman were; 'What do you want, boong?' or 'Hey, Charcoal, come here'. In those days the police regarded the dark people as something worse than animals ... They were cruel and terrible to all Aborigines. In those days a dark man would run and hide if he saw a uniformed policeman approaching'.

The legacy of violence and disrespect remained long after the situation which gave rise to it, and still has not been entirely eradicated. At Wilcannia a highly respected

Aboriginal gave evidence that many Aboriginals were frightened of the police and frightened to go to them and talk to them. Mark Quayle, a young Aboriginal of good character, needed a driver's licence to get seasonal work with the National Parks and Wildlife Service but was afraid to go to the police to get one, although he could drive. At the Commission's community conference there were still complaints of 'spotlighting' of Wilcannia Aboriginals by police, which one Aboriginal likened to kangaroo shooting. It is clearly reminiscent to Aboriginals of the humiliating scrutiny and violence to which they were constantly subjected in earlier times.

Although attitudes have gradually changed, violence to men and abuse of women remains part of what Aboriginals fear from police, and still sometimes experience. Old attitudes came to the surface in Aboriginal reactions to three recent incidents in Sydney - the death of David Gundy in 1989 in the course of a raid on his home by the New South Wales Special Weapons and Operations Squad (SWOS), an incident at a National Aboriginal Day carnival in Alexandria Park also in 1989, when a number of firearms were discharged in the vicinity of the crowd, including large numbers of children, by plain clothes police, and a TRG raid on a number of homes in Redfern in February 1990. 39

When Aboriginals accepted their dependence on the white economy, it was police who had the task of controlling their behaviour and their movements within limits acceptable to the white community. Throughout the many decades when policies of protection, welfare, segregation or assimilation called for Aboriginals to be controlled, confined or moved, often with great anguish, from areas of traditional attachment, or for their children to be taken away to their irreparable heartbreak, police were always involved. Often police had to carry out the tasks on behalf of the administrative authorities, and there are many Aboriginal adults to-day who learnt as children to run and hide when police were sighted, lest they be taken away from their parents. Even where officers from other departments carried out the policies which Aboriginals feared, they depended on the force provided by police to protect them and enforce their decisions. That police did not make the policies which they enforced would often not have been obvious, and in any event would have been irrelevant, for Aboriginals who suffered under them. As Commissioner Muirhead said in his Interim Report, police were 'the cutting edge of an uncaring society'.

There were of course always police who did care. Harrison Moore's daughter Nellie referred to the way in which her family had been assisted when she was a child at Swan Hill by the efforts of Sergeant Feltham, who apparently was concerned about the education and accommodation of Aboriginal children living on the river bank. She said that 'he put all the welfare workers to shame', even by today's standards. His attitudes may have been paternalistic, but they were appreciated nonetheless.

Until very recent times, Australia did very little to recognise the cultural difference of Aboriginals. Not only was there no recognition of Aboriginal law or custom, but there was little tolerance of Aboriginal norms of behaviour which did not conform to European ideas of decorum. Traditionally, Aboriginal life was lived in the open. With rare exceptions, there was no housing as Europeans know it and any shelter was simply rudimentary and temporary protection against the weather. As Aboriginals were excluded from their traditional lands, and ultimately even from residence on the pastoral properties, where for a period they found employment and refuge, they were increasingly concentrated in and around country towns, under the censorious gaze of white people who found offensive their unconcealed poverty and their apparent obliviousness to European ideas of decorum, their

hygiene, their family relationships and their attitudes to property. All this was exacerbated by alcohol, for the consumption of which there were no traditional norms in Aboriginal society, and which, much to the distaste of many Europeans, was absorbed into the public life which Aboriginals led in the streets and parks and on river banks of towns.

The warfare for the control of the countryside has long since ceased, but in many towns in rural Australia another kind of warfare has continued for control and use of the open space in towns. Rarely has there been negotiation between the contending forces to see whether some accommodation could be found which would allow cultural differences to be maintained without undue violence to the lifestyles of either side. Instead, the white section of society, through its armed agents the police, has continually, although never quite successfully, sought to impose its ideas on Aboriginal communities. The 'warfare' has not been recognised as such because the dominant community has defined disliked Aboriginal conduct as criminal through the various channels of local government law, street offences (significantly often called 'police' offences), 'protection' legislation and planning laws. For present purposes, the point is simply that through all this conflict the police have had the role of controlling and subordinating Aboriginals. Issues that cried aloud for solution in a spirit of toleration and negotiation have been handed to police to resolve by the application of the force of the law. For instance, intoxicated persons, usually of little danger to anyone except themselves, were made the responsibility of police who had neither the training nor the facilities to look after them, instead of being taken into appropriate care.

THE BAD SIDE OF THE PICTURE

The continuing seamy side of Aboriginal/police relations is expressed in many places in police violence to Aboriginal people, discrimination in the application of the law, lack of even-handedness in conflicts between black and white, rough or discourteous behaviour, hurtful or belittling remarks, disrespect or worse to women, harassment of youths or previous offenders, excessive and unnecessary use of the power of arrest, provocative behaviour and multiple charging and so on. Sometimes much of the discontent focuses on the conduct of a minority of officers in the town, whose racist attitudes poison what might otherwise be a good relationship. In larger centres, whether the general pattern is good or bad, Aboriginals usually point to some officers who have a different attitude to the majority. It is usually the younger officers, still learning to handle the power that has suddenly been conferred on them, who are found to be the most arrogant and the least able to listen and understand.

The complaints are much the same in all States. In Tasmania the Commission's Aboriginal Issues Unit reported:

> 'For most Blacks, the only contact with Police usually amounts to a bad experience. It is not surprising therefore, that the reputation of Police in the community is very poor. This is not to say that the community believes that every police officer is bad. However, the intensity of racism demonstrated by those officers who are involved in conflicts with Aborigines has a great impact on the community, as the story of experience while in custody is shared around very quickly'.

It is not necessarily deliberate discrimination or conscious prejudice on the part of

police, although it sometimes is. Particular ways of treating Aboriginals may have become so entrenched as to seem normal or necessary, and be carried on without any individual ill-will, or desire or intention to discriminate. The mindless and pointless enforcement of drunkenness laws against the pleasant, well-behaved Harrison Day is an example.

When police walk into Aboriginal houses without invitation or warrant, and do not respect the privacy of Aboriginals as they would that of white people, they may simply be thoughtlessly doing what police have done from the beginning. Some police will still justify oppressive actions as for an Aboriginal's own good, or maintain that force is all that Aboriginals understand. When a constable brought an ambulance containing Mark Quayle's body in a bag into a main street in Wilcannia and called on Mark's brothers to get in, climb along their brother's body to his head and identify him, on the implied, if not expressed, threat that if they did not do so the body would be taken to their mother's house for identification, he could not understand the criticism his actions aroused.

The consequences of seeing Aboriginals as stereotypes rather than as individual human beings had already been vividly demonstrated when Mark, taken to hospital because he was disoriented and needed treatment, was locked alone in a police cell. The fact that he was taken there at the instance of a nurse and with the approval of a doctor show that the underlying racism was not confined to police.

Police violence

I have referred to the continuation of frontier legacies of violence and sexual exploitation or abuse of women. I have not had the opportunity to investigate specific allegations of bashing or of sexual abuse, and indeed there have been relatively few formal investigations of this sort. Police point to this fact as showing that complaints are not bona fide and cannot be substantiated.

Aboriginals point to it as evidence of the fact that the mechanisms for dealing with complaints are so loaded against Aboriginals, and the fear of retaliation so great, that few Aboriginals dare to complain.

Complaints are dealt with in a formal manner and usually investigated by police; the complainant is usually alone against an array of police witnesses, and handicapped by a record of previous convictions, and as a result unable to discharge the burden of proof placed on him or her. Having lodged one unsuccessful complaint, the complainant feels vulnerable to retaliation. either personally or against relatives. The existence of these problems emphasises the critical importance of improving complaint mechanisms as a step in improving Aboriginal confidence in police.

While the existence of the problems does not enable one to resolve particular complaints adversely to police, it does caution against placing much reliance on the paucity of formally substantiated complaints. Notwithstanding the disincentives, some complaints are made and substantiated. A notable example was the case of Paul Pryor, whose death outside custody was the subject of a preliminary investigation by me at the request of the Victorian and Queensland Governments. A complaint by Paul of a very serious assault by police at Yarrabah in 1986 was upheld by the Queensland Police Complaints Tribunal notwithstanding that Paul was unavailable to give evidence, initially because he was afraid to return to

Queensland and later because of his death.

Complaints include punching, shoving, beating with batons, and the indirect violence of deliberately rough rides in police vans. In New South Wales, many of the Aboriginal people who appeared before the Human Rights and Equal Opportunity Commission's National Inquiry into Racist Violence identified relations with police as the most significant aspect of the violence that they continue to experience. Complaints of police bashing were made to Aboriginal Issues Units by a number of communities in all three south-eastern States. In Tasmania the AIU reported that they were 'very common'. Aboriginals believed that when young police were sent to the town they needed twenty convictions in court in order to get a transfer and that Aboriginals were 'easy targets'.

While some are no doubt unjustified or inaccurate in detail, the widespread but discriminating nature of the complaints, the depth of feeling expressed about them by Aboriginals, and historical sources, can leave no doubt that at various times and at many places police 'bashing' of Aboriginals has been a serious problem and has left a major barrier to Aboriginal trust of police. A convincing form of evidence which I have encountered is where Aboriginals nominate a time where it stopped at the local station, or give a particular officer credit for stopping it.

To what extent such violence continues it is not possible to say, but it does seem reasonable to conclude that it is nowhere near so widespread and frequent as it once was. Today it is not usually at the forefront of Aboriginal complaints about police, and, as I have said, one hears Aboriginals refer to the fact that it no longer occurs at a particular place. Also today one is less likely to hear individual police advocate the desirability of physical punishment. But Aboriginal accounts as told to Commissioners and reported by Aboriginal Issues Units, and such substantiated complaints as that of Paul Pryor, show that at least in some places police violence towards Aboriginals has not been eliminated, and it behoves police forces to stamp it out where it continues. Complaints should he treated seriously, there should he no excusing or turning of the blind eye, and police administrations should make it very clear that such conduct is totally unacceptable and will he severely dealt with.

Senior police should seek frank discussions at the local level with Aboriginal communities to ascertain whether there are concerns about mistreatment, and should not refuse such discussions because no formal complaints are lodged or details given of particular incidents. While such complaints are necessary for disciplinary action, there are other ways in which an officer in charge may respond to general expressions of concern which appear sincere, for example by stressing to his officers the importance which he attaches to the matter, and ensuring appropriate supervision.

Treatment of Aboriginal women

A widespread Aboriginal perspective is put in the report of the Tasmanian Aboriginal Issues Unit:

> 'Of particular concern to the community is the attitude of Police Officers to Aboriginal women. During arrest and detention, Aboriginal women are consistently abused, verbally with terms such as 'black slut', 'whore', etc. While it is improper for individuals to be insulted by police officers in the first place, the nature of such insults is particularly threatening for young

> women who are placed at the mercy of several white males in unfamiliar surroundings.
>
> 'The attitudes expressed by police in these instances refer directly to an historical stereotype which maintains that Aboriginal women can be regarded as available for the convenience of those in power, and accorded little, if any, respect.'

While other women of low socio-economic status may have problems in their relations with police, the position of Aboriginal women merits special attention because of this historical nexus and the fact that they are so disproportionately taken into custody. What I have earlier said about senior officers discussing the issue of violence with Aboriginal communities, irrespective of the lodging of formal complaints, applies equally to the issue of mistreatment of women.

The issue of the treatment of Aboriginal women by a largely male police force is a sensitive issue in Aboriginal communities and assumes a particular importance in view of their alarmingly high level of arrest. Across the country, Aboriginal women made up nearly 50% of all women in police custody in August 1988, although they comprised less than 1.5% of the national population of women. Many of the offences for which Aboriginal women are detained are street offences.

It is not merely a question of physical mistreatment or sexual abuse or harassment. Relatively subtle differences in address or behaviour can be very damaging to self-esteem, and to good relations, especially when obviously discriminatory. A light-skinned woman told me how she was treated and spoken to by police more politely her darker sister, until their relationship became known, when she received the same brusque and discourteous treatment.

In recent years the police services have increasingly recruited women as police officers. While a major impetus has been the pressure for equal opportunity for women, there is clearly great potential for the more diverse and representative force to change some of its attitudes, although there were complaints by Aboriginal women at Commission conferences about the attitudes of policewomen. Hopefully Aboriginal women will be amongst the beneficiaries of change to attitudes that are rooted in a frontier past in which white women had little presence.

Police services should take all possible steps to eliminate any mistreatment, physical or verbal, of Aboriginal women. The obligation to treat them with courtesy and respect, even when intoxicated, should be emphasised to all police. Any complaints of mistreatment should be investigated as serious matters, and if substantiated appropriate action should be taken. Officers in charge in areas of Aboriginal population should take steps to ensure that they are aware of any Aboriginal concerns on this issue, irrespective of the lodging of formal complaints.

Police harassment

'Harassment' by police is another widespread complaint of Aboriginals. Various forms of police conduct are experienced as harassment. The oppressive scrutiny by police in cars slowly cruising up and down the streets of towns in western New South Wales is one, as is the use of spotlights in Aboriginal residential areas. In Victoria complaints to the AIU included Police cars constantly driving past Koori houses and Koori areas 'just checking, keeping a vigil, reminding us that we are

"bad" and need to be kept an eye on. They tried to intimidate us'. Police were reported to have told other children 'not to hang around with blacks'. Koori kids going to a Blue Light Disco felt harassed when they were greeted with comments like 'You're not going to muck up tonight, are you?' Aboriginals who arrived from out of town were stopped by police and questioned as to who they were and what they were doing. It was felt that young people in particular were targeted and harassed by police in a way that gave them little opportunity for rehabilitation if they had offended. In some areas the perception of harassment is clearly linked to the excessive numbers of police assigned to police Aboriginal populations because they are viewed with suspicion. The suspicion becomes a self-fulfilling prophecy.

Harassment can be a difficult issue to come to grips with because of different perceptions of the same situation by different people. A Victorian police officer told how he had set out to cultivate friendly relations with Aboriginal youths in his town by talking to them in the streets, only to be accused of harassing them. What this demonstrates is the importance of frank discussion and negotiation between police and Aboriginal communities about policing methods, with a view to developing mutually satisfactory approaches, or at least understanding of the purpose of police operations.

Police should frankly discuss with Aboriginal communities the methods of policing used, with particular attention to identifying police conduct perceived by the community as harassment and negotiating more acceptable ways of achieving necessary police objectives.

Hurtful language

No doubt some of the offensive language used by police is in response to language addressed to them. While this may make the response understandable in some cases, it does not excuse it. Police are paid professional people performing public duties, Aboriginals are not. Police on duty are sober, while those using language to them are often drunk. Aboriginal persons may have low self-esteem as a result of widespread racist treatment and may be merely expressing pent-up resentment. They may be vulnerable to humiliation. Police should be secure in their role and can afford to ignore abuse. They should be prepared to take the lead in breaking the cycle of abuse rather than perpetuating it.

I have already pointed to the hypocrisy often involved when police purport to take offence at language they commonly use themselves. Certainly mere general abuse cannot reasonably be taken as a licence to use hurtful racist language.

Sometimes the hurtful language creeps into documents. In New South Wales the AIU was told of a case where a Court Attendance Notice directed to an Aboriginal showed his occupation as "bludger". He was in fact employed, although that is irrelevant: the entry was obviously a gratuitous attempt to denigrate and hurt.

Police services should take all possible steps to eliminate the use by police officers of racist or other offensive language to, or in respect of, Aboriginal persons. Any complaints of such language should be investigated as serious matters, and if substantiated appropriate action should be taken. Officers in charge in areas of Aboriginal population should take steps to ensure that they are aware of any Aboriginal concerns on this issue, irrespective of the lodging of formal complaints.

Discrimination

It is clear from AIU reports that many Aboriginals in all States perceive local policing as discriminatory. There were frequent complaints that Aboriginals were charged in situations where white people would not be charged. Aboriginal complaints against non-Aboriginals are not taken up. It seemed to be almost unknown for a white person who assaulted an Aboriginal to be charged, but the reverse situation invariably brought charges. A fight between an Aboriginal and a white person would invariably lead to the charging of the former. In many communities all Aboriginals felt under suspicion when any offence had been committed, even though it might turn out in the end to have been committed by a white person.

The Quayle report gives concrete examples of discriminatory treatment. A prominent white citizen who used offensive racist language to Aboriginals, including Mark Quayle's brother, and abused a police sergeant over a period of time, was treated with tolerance and allowed to go home uncharged. Yet on another occasion another of Mark's brothers was arrested for an isolated offensive remark made when he was so intoxicated that he could not be given ball, and held for six hours in the cell in which his brother had hung himself.

Mark's brother John said:

> 'I seen a lot of white of people up in the town get drunk, hop in a car and drive away dangerous to the public, and the police are there and they don't do nothing about it, but a poor Aboriginal person walking home drunk, they got to pick him up and say he's a danger to himself. Now, which is the dangerous, the one in the car drunk, or the one walking home drunk?'.

Other perceptions of discrimination expressed at Wilcannia included swearing by police at Aboriginals and the failure to arrest non-Aboriginals for swearing.

Local resolution of issues

Again it is important that there should be the sort of dialogue between police and Aboriginal communities at the local level in which such issues can be brought to the surface and resolved. They will never be resolved while police refuse to consider such issues' except on the basis of formal complaints about specific acts. What is needed is not the prosecution of individuals so much as the examination of patterns of behaviour in frank discussion. If community policing means anything it should mean a real willingness to account to local Aboriginal communities, not a holding of them at arm's length by an insistence that complaints must be dealt with by adversarial process.

Usually this cannot be done through organisations representing the whole population of a town, Aboriginal and non-Aboriginal. Too often the latter 'talk down', and promote negative views of, the Aboriginals, who are considered responsible for town problems and are expected to do all the changing.

Until relatively recent times, it has not been easy for Aboriginals to organise themselves for negotiation in ways which the non-Aboriginal community would accept and respect. Through most of Australia traditional forms of Aboriginal authority were undermined or destroyed when land was taken and the social and

religious structures related to it were destroyed. Communities were decimated and, in the more settled parts of Australia, shifted about, broken up and mixed with other communities. As society has become more complex and more paper based, small and inadequately educated communities have been at a great disadvantage in making their views felt. Until recently, neither the education nor the resources required for effective organisation have been available to Aboriginals in most of Australia. Notwithstanding this, there were many notable examples of Aboriginal organisation, both local and sometimes over a surprisingly wide area. Rarely, however, did it gain acceptance as an institution with which negotiation about the accommodation of cultural difference could proceed. More often, cultural difference was seen as something to be eliminated and organisations expressing it were regarded as subversive and trouble making. This attitude is still alive amongst some police today, as is shown by the 1987 police intelligence reports from Brewarrina, quoted in the report on the death of Lloyd Boney.

Today in many communities there are Aboriginal organisations with which police can negotiate if they have the wisdom to do so.

Inexperienced police

Everywhere there are complaints from Aboriginals about the conduct of newly recruited young officers exercising their newly acquired powers arrogantly and without understanding, tolerance or sympathy and the wisdom that experience can bring.

As one Aboriginal said:

> 'I'm worried about the young police who come to Walgett, some get pretty smart. We try to tell them something and they go the opposite way. These young police need to learn to understand Aboriginal people'.

On the other hand, while older police have an established relationship with communities, it may not be a productive one. It may be difficult for them to adapt to new approaches in which Aboriginals are not dealt with in a paternalistic fashion, or to develop the kind of relations with youth that are needed if the appalling involvement of juveniles in the justice system is to be reduced.

Street offences

Most of the conflict with Aboriginals arises from police endeavours to enforce 'street offences' legislation, which seeks to impose on Aboriginals the views of the European culture about the appropriate use of public space. While sections of the Aboriginal population have adopted the values of the dominant community on these issues, the values are in many places constantly challenged by groups of Aboriginals who do not conform to ideas about public drinking, noisiness, language, dress and general decorum. It is thus the constant effort of police to subordinate to the standards of the white society Aboriginal conduct which reflects cultural differences. No doubt police seldom think of their role as maintaining the subordination of Aboriginal people, nor are they the only institution in Australian society that act to do so. Indeed, it is often the relationship with other institutions that is crucial, as for example, with local government or hospitals or the media or hotel owners or schools. Nevertheless, the routine nature of much of police

involvement with Aboriginal people means that their day to day practices act to entrench the subordination of Aboriginal people and, with it, racist attitudes in the dominant society. Only a change in these fundamentally unequal relations can alter the relationship between them. As this report stresses in many places, the time has come for the issues to which cultural differences give rise to be settled by negotiation and with tolerance, rather than by repression and insistence on conformity.

Aboriginal use of police services

Relations with police have been one of many dilemmas for Aboriginal people. Like any other people, they too have a need for the enforcement of some form of law and order to maintain harmony and to control violence and other unacceptable behaviour within their communities. The traditional ways in which Aboriginal communities coped with unacceptable conduct were very different from those of western society, and relied far less on the conferring of power and authority on individuals and institutions. Dispute-settling mechanisms included the responsibilities of certain kin to intervene in disputes; an extensively elaborated set of rules for orchestrating disputes, of which fighting and swearing were an integral part; and avoidance and mobility, which were solutions available in traditional Aboriginal society in a way they are not today. While these mechanisms remain important in some pans of Australia, at least for some purposes, they are often incapable of dealing with the much more complex circumstances of today, or of being applied in the much more concentrated and less mobile populations. In the face of new factors, such as easy access to alcohol, once culturally appropriate behaviour may now produce unintended consequences, such as uncontrolled, instead of controlled violence. Moreover, some of the very mechanisms of social control, such as public action involving sweating and controlled fighting, and the involvement of appropriate kin as monitors, are likely to be seen by police and the white community simply as more unlawful behaviour.

In the absence of any effective internal means of controlling violence in contemporary Aboriginal communities, Aboriginals are dependent on police intervention. The dependence often produces an ambivalent attitude to police on the part of Aboriginals, and sometimes a bewildering situation for police themselves. This is particularly so when police officers are called to deal with one of the most common forms of violence, domestic violence. This conduct presents great difficulties for police in society generally, as women are often torn between the need to protect themselves and their children against violence from a perhaps drunken spouse, and their reluctance to be the cause of his incarceration, either for reasons of affection or for fear of subsequent retaliation. In Aboriginal communities, where people often do not live in nuclear families and a range of kin may see themselves as having some responsibility or right to intervene, the situation may become correspondingly more complex and more difficult for police. It is significant that in a number of the cases that have come before the Royal Commission, it has been women or other members of the family who have called the police in the first instance. This was so in the cases of Glenn Clark in Tasmania and Lloyd Boney in New South Wales. The reports of the Aboriginal Issues Unit in New South Wales showed that Aboriginal communities often rated local police according to the way they responded to calls for assistance with domestic violence, a particular community sometimes being divided as to whether police overreacted or underreacted. I discuss some of the issues in more detail in the next chapter.

Generally speaking Aboriginal people accept the need for police, and do not want their communities to be without their services. What they typically complain of is that police are not 'accountable', and that they themselves are 'powerless' in the face of police. The power they want over police is not physical power, but effective legal power - the power to make police themselves accountable for their actions in the community. A formal right of complaint to a senior police officer or a distant bureaucracy is seen as of little comfort. What they want is a real say at the local level in how their community is policed. There are some outstanding examples, to which I shall refer, in which a mutually satisfactory and workable accommodation has been reached between police and particular Aboriginal communities. These remain very much the exception, but hopefully they will serve as an inspiration to police and to Aboriginals in other places.

POLICE CULTURE

Its nature and importance

It became increasingly apparent to me as I conducted inquiries into deaths, that there was operating what might fairly be described as a 'police culture' - a set of beliefs, values and attitudes which were wide-spread amongst police officers, highly resistant to change, and passed from one generation of police officers to another. It is by no means wholly negative. Obviously some of it - such as traditions of bravery, dedication, loyalty and discipline - are, if properly directed, admirable. There are many police officers who discriminate in their adherence to police culture, and reject parts of it, and it is capable of change. However there are many elements of this culture that are highly resistant to change and certainly cannot be changed merely by the issuing of Instructions or the giving of a few hours lectures to new recruits at a police academy.

Any group of people who work or pursue common interests together on a permanent basis will develop over a period their own 'culture', and this is apparent to a greater or lesser degree in all professional and vocational groups. However it is particularly strong in disciplined bodies like police and military, whose members are marked off to perform certain duties for the community as a distinct force, and who must depend greatly on each other in their day to day activities. This has been noted by many writers in many countries. Its importance was noted in the Fitzgerald Report in Queensland (1987-89, p200):

> The institutional culture of a police force is of vital importance to a community. A police force is numerically strong, politically influential, physically powerful, and armed. It stands at the threshold of the criminal justice system and is in effective control of the enforcement of the criminal law. Each police officer has extensive authority over all other citizens, however powerful, coupled with wide discretions concerning its exercise. Subsequent stages in the criminal justice process, including courts and prisons, are largely dependent on the activities of the Police Force, and will inevitably be affected by its deficiencies, especially any which are cultural and therefore widespread'.

Police stereotypes

One aspect of police culture of particular relevance to this Commission is the way in which particular stereotypes held by police - as they are by many in the general community - are passed on from generation to generation within the culture, so that they are unquestioningly accepted as 'knowledge' or 'common sense'. Moreover they are constantly reinforced and reproduced by routine police practices.

Discretions are exercised differently in regard to people of different status in society. One group of people who attract a particular set of attitudes are 'drunks'. It is very often difficult to get a policeman to acknowledge the possibility that a person who is intoxicated may also have some other condition which needs attention. For many police a drunk is a drunk, not a person who may have special problems and be in need of care. Clearly too, Aboriginals are another group about which there is a strongly embedded set of beliefs or attitudes.

This was exemplified in an interchange with a police sergeant which angered Bruce Leslie's sister, Joan Baker. The sergeant told her that he was stationed at Coonamble for 18 years, and 'knew' how the Aboriginal people lived and drank amongst themselves. She felt that he was stereotyping her brother as a drunkard because of this claimed expertise about Aboriginal people. She said 'That's not true, because you can't take one Aboriginal down, its just like a bunch of apples, you know. You can't blame one Aboriginal person for the rest of them and put them all together like he was trying to tell me'. She felt that he was 'a very rude man on the phone, who didn't have any respect'. A person who, like Bruce Leslie, is both drunk and Aboriginal is at special risk of being treated as a stereotype, rather than with careful attention to the actual condition displayed.

Nowhere was a stereotype of an Aboriginal better illustrated than in the decision to take from the hospital and lock alone all night in a police cell young Mark Quayle, described in the hospital records of his last visit as a 'pleasant gentleman' who helped with the dishes. He had been brought to hospital by his family, well-known in the town, for treatment for the withdrawal condition which was causing him to hallucinate.

In the Report of the Inquiry into the Death of Arthur Moffatt I referred in the discussion of police culture to 'different attitudes and practices in relation to the policing of certain groups, the use of roughness, violence and hurtful language, and the differential application of discretions in many matters, including the relative use of the "blind eye", the caution, the summons and the power of arrest'.

When based on stereotypes of Aboriginals, such practices act as racist practices irrespective of the intentions of the person carrying them out. Such institutionalised practices are then not just discriminatory in relation to Aboriginal people, but also operate to reproduce racist views. This occurs both among police themselves, as their contact with Aboriginal people tends to be routinised, and in the general society, where the over-representation of Aboriginal people in the criminal justice system defines them as disorderly or criminal. In this way, without any deliberate intention on the part of those caught up in it, police culture plays an active role in reinforcing not just the subordinate position of Aboriginal people in the society at large but also the negative views towards them of many of those in the dominant society. It forms an element in the forces of inertia which those trying to turn around the battleship of bad police relations must overcome.

Police 'intelligence'

How far police stereotypes can go in distorting judgment and unfairly criminalising Aboriginals was vividly illustrated in a number of Criminal Intelligence Reports filed from Brewarrina Police Station. They were produced to the Commission by counsel for police officers in the Lloyd Boney inquiry for the purpose of shedding light on the reasons why members of the TRG were brought into Brewarrina in January 1988. If these reports were the reasons why the TRG was brought in, it can only be concluded that they were brought in because of completely unjustified paranoia on the part of local police, reflected in a willingness to report completely unsourced gossip and to misinterpret quite innocent events in amazing ways. An example of the former is a report on 12 December 1987, completely unsourced, which is headed 'Bicentennial Celebrations' and reads:

> 'Information has been received that Aboriginals within the Bourke, Brewarrina, Walgett and Moree areas have come into possession of a large number of firearms. Informant stated that these firearms were purchased in a crate through M. MANSELL by use of Government funding. Believed to be hidden for use in 1988.'

On 2 November 1987 a constable in Dubbo reported:

> 'Information was given to me about the Bicentennial in 1988. I was informed that a hotel owner came into Dubbo on Saturday to do some shopping and whilst in Grace Bros started talking about information he had heard in BREWARRINA about what would happened [sic] in Dubbo early next year. My informant believes that this hotel owner who lives and has his hotel in Brewarrina might have some information that might be helpful to Police. My informant told me that the Aboriginals intended to congregate and make a mess of Dubbo. The hotel owner in Brewarrina is described as not real tall but big in the belly. It is not known what hotel he own [sic] but from what I have been told he might know a bit more about what is going to happened [sic] next year'.

Perhaps the most telling indication of the police state of mind was in two reports filed by Constable Bordin on 16 November 1987. The first was a report on Mr Winters and Mr Bloomfield, the two Field Officers of WALS in Brewarrina. It read:

> 'At about 6.30 pm, on Monday the 16 November 1987, whilst patrolling a bush track which runs off the Bourke to Brewarrina road, Police observed the abovementioned vehicle which is known to Police as the vehicle driven by THOMAS MARTIN WINTERS, A.K.A. 'Thombo' WINTERS. Sitting on the bonnet of the vehicle was a man known to Police as JOHN BLOOMFIELD. He was with another male Aboriginal of about 30 years old. Police thought this strange to see the two men sitting in the bush about ten kilometres out of Brewarrina, with the motor of the vehicle turned off. We did not speak to them, but drove by to 'the Old Piggery'. When Police returned to the track about 15 minutes later, the car and the men were still there, we drove past them, and when going a further kilometre up the track, we observed the Vehicle No. OBH352, a blue 1968 HOLDEN. This vehicle had the owner of the car, PETER JOHN BEETSON, and WINTERS aboard. They were driving down the track, obviously to meet with BLOOMFIELD. Another vehicle was also observed No. OKD093, a grey 1980 Chrysler. This was also heading on a different track towards

> BLOOMFIELD from the opposite direction. All of the abovementioned vehicles were seen at the SIMMONS Service about ten minutes later, in town.
>
> 'Police thought this to be suspicious, as BLOOMFIELD is a field officer in the Aboriginal legal aid service in Brewarrina ... WINTERS is also a member of the Aboriginal legal service, and the above described car is owned by the Aboriginal lands council. This was obviously a meeting of sons, as this is a little used track, it seems strange to see them all congregating for about ten minutes'.

A second report by Constable Bordin on the same incident, filed under the names of Mr Beetson and Mr Clarke, contained the following paragraph:

> 'This is a suspicious circumstance as this is an almost totally unused track and is out of the way for anyone. The persons WINTERS and BLOOMFIELD are both aboriginal legal aid field officers, and are both influential members of the aboriginal community. It is also believed by Brewarrina Police that they may be holding meetings there on a regular basis for an unknown purpose. One possible reason is to organise protests or similar disturbances for the 1988 Bicentenary, which it is believed that there could be trouble in the western part of the State (Brewarrina, Bourke, Walgett). Both BLOOMFIELD and WINTERS are known aboriginal activists who although not vocal in their beliefs, do make it obvious that they are pro-aboriginal and perhaps anti-Police.'

Even allowing for the fact that to Constable Bordin's mind it was a very suspicious circumstance that two Field Officers of WALS should make it obvious that they were 'pro-Aboriginal', the facts as stated seem a surprisingly flimsy basis on which to develop any suspicion. When Mr Winters was in the witness box, I asked him if he remembered and would care to tell the Commission about the occasion. He said:

> 'Well, the occasion was - Mr Clarke had gone fishing - he'd broken down - he walked up to West Brewarrina - I was down at West Brewarrina - he asked me to come down and tow him back up, so I took off, and when I got down there I found that - I didn't take notice of how much petrol I had and I ran out of petrol. I walked back up town, and the first person I saw that I knew was Peter Beetson in the Royal Hotel - Peter had a blue Holden. I said, "Pete, look, how about running me back down to my car with some juice?" We went up to the Simmo's Service Station and got the juice, and we went back down and put it in my car, and I then towed Mr Clarke back home. That was the result of it. If every time you help somebody you are going to get this sort of stuff, you'd feel careful about helping people, wouldn't you?'.

This was the incident which led to four persons, including the two Field Officers of the western Aboriginal Legal Service, becoming the subject of reports filed with the Bureau of Criminal Intelligence, and led Constable Bordin to surmise that meetings were being held on a regular basis to organise disturbances for the Bicentenary.

Truthfulness of police officers

One of the less desirable features of police culture is what I described as 'the high level of toleration of police untruthfulness within the force' *(Inquiry into the Death of Bruce Thomas Leslie* 1990:176). It was illustrated after Lloyd Boney's death by the fact that, in reporting the coroner's finding and making recommendations about it, senior officers did not even mention the coroner's adverse comment as to the truthfulness of two constables. His comment reflected not only on their evidence to him, but on records of interview with police investigators. Yet the matter was treated as simply of no interest whatever to the Police Force. The oversighting officer criticised the coroner for not recommending action against Aboriginal witnesses whose evidence he rejected, but ignored the coroner's comments on the two constables. This aspect of police culture was also exemplified in the Bruce Leslie inquiry by the willingness of officers who were not involved in whatever difficulty the three officers on night shift had got themselves into to tailor their evidence in a supportive way. It was also illustrated in the lenient treatment of a constable who had lied to a police investigation in Wilcannia. In the Revell case a senior officer had no difficulty in accepting all of a series of inconsistent stories told by an officer he was supposed to be investigating. There were other examples.

Everybody would recognise that there are many police officers who are scrupulous in telling the truth, but conversation with people involved in the criminal justice system, be they lawyers, judges, or welfare workers, as well as litigants, elicits a very widespread view that lying by police in the witness box is all too common. This view is shared by many people who are sympathetic (as most judges are for example) to the problems of police in combating crime. Such police conduct may often reflect an attitude that the end justifies the means in bringing criminals to book, but it is not acceptable that police should usurp the role of the court in deciding who is guilty and of what.

Sometimes it seems to reflect another element of police culture, that is that they feel that they are under siege and must defend themselves. This is understandable when police are involved in a Royal Commission inquiry into an Aboriginal death in custody. However if police would reverse their strategy of closing ranks in blind loyalty, and instead assist inquiries and courts to get at the truth, their own reputation and the level of respect accorded them in the end would be greatly enhanced.

That such practices are a part of police culture constitutes a very serious matter for the community. Frequently it is difficult to pin down the specific untruths, and indeed it is sometimes hard to escape the feeling, as I observed in the Bruce Leslie Report, that some police consider that they can say nearly anything and get away with it.

While the examples which came to my notice related mainly to New South Wales, the tolerance, even the requirement, of untruthfulness, has been commented on in relation to many police services. Commissioner Fitzgerald observed in his report on the Queensland police (1987-89:202) that 'the police code effectively requires that it be assumed that whatsoever is done by a police officer legitimately occurs in the course of his duty'.

Police reluctance to criticise police

Another obvious element of police culture that has come to the surface in a number of cases is the great reluctance of police to criticise other police, at all

events publicly. This goes to the extent of unwillingness to conceive the possibility of misconduct by police, an attitude reflected in the repeated failure of investigators to consider whether police acted properly in the care of prisoners. It is also reflected in the fact that, as appeared in several inquiries, even if an investigating officer or senior officer forms an opinion adverse to the conduct of police, he is often most unwilling to express it. All this is understandable, but is an obstacle to public confidence, and in particular Aboriginal confidence, in police investigations.

A related matter is the difficulty, illustrated in many of the deaths inquired into by the Commission and discussed elsewhere in this report, which many police have in investigating the conduct of other police with thoroughness, objectivity and impartiality.

Changing police culture

As I have said, matters which are embedded in the culture of a group are highly resistant to change. Obviously it is important that Police Instructions and training should endeavour to combat unacceptable elements in the police culture, and that when examples of misconduct come to light, there should be no equivocation in dealing with them.

However, exhortation, training and punishment are not necessarily effective. In the long run it would seem important that the existence and nature of police culture should be thoroughly studied and publicly discussed and examined so that police will realise that the public is looking at it critically and they must do so too. In this there is obviously a valuable role to be played by academic and other researchers, journalists and publicists. Such study and examination already occurs to some extent within the police force and outside it. The increased reflection on their own practices which is occurring in some services is a most encouraging sign.

One hopeful sign at the present time is that there is an increasing number of enlightened senior officers in police forces who are willing to acknowledge the existence of the police culture, the problems associated with it and the difficulties of change. No doubt often with the feeling that they are banging their heads against brick walls, they are working for desirable changes. It requires real courage to challenge a culture from within. At the Police/Aboriginal Conference which I attended in Victoria, a police officer commented that other officers looked on police who took an interest in Aboriginals as 'soft', and would taunt them when they went back and said that they had spent three days talking to Aboriginals.

Policing the western towns

A breakdown of the figures in the National Police Custody Survey of August 1988 40 for New South Wales shows very sharp differences between regions. The starkest contrasts may be seen in the levels of over-representation in police custody, the level in Sydney being 7 - that is, Aboriginal people are seven times more likely to be in police custody than non-Aboriginal people. In the NorthWest, this figure is 67 times, and, in the Far West, 223 times.

I have made some general observations about this area earlier in this report. In *the Report of the Inquiry into the Death of Clarence Alec Nean,* I commented:

> 'The North West of New South Wales has the largest concentration of Aboriginal population in New South Wales outside of Sydney. There are a number of towns of which Walgett is one in which there is a high proportion of Aboriginals in the population. These have a number of problems in common as well as specifically local problems.
>
> 'Collectively they form a group of towns which are the source of a large number of Aboriginals in custody in New South Wales and a significant proportion of the deaths in custody. They have high numbers of police and what is felt by many Aboriginals to be oppressive policing. There are many indications of racism that make life unpleasant for Aboriginals'.

The nature of that racism was vividly documented in the *Report of the Inquiry into the Death of Mark Anthony Quayle,* which related to Wilcannia. In the *Report of the Inquiry into the Death of Lloyd Boney,* which occurred in Brewarrina, I wrote of some of the tensions which surround policing in such towns, and commented on the great tendency to stereotype and to classify people as 'goodies' or 'baddies'. I remarked:

> 'Confronted by the operational solidarity of the Police Force, it is not always easy to remember that it too is the site of battles between conflicting attitudes and philosophies. Individual human reactions are often hard to express under the conflicting pressures. From within come demands for loyalty and conformity. From outside the force come irreconcilable claims for harsh law and order policies on the one hand and social engineering on the other. But in night to night work police stand alone to face the hitter resentment and anger of the dispossessed and frustrated when alcohol releases their inhibitions'.

Wilcannia, the western town in which Mark Quayle died, illustrates the contradictions that exist in a police service in the midst of a cultural revolution in which officers are torn between conflicting responses to tensions in the town. In the past the local police and courts in western New South Wales have often been perceived as heavily identified with the concerns of the white community, frequently voiced through councils and their committees. This has served to exacerbate the alienation from the justice system of the Aboriginal population, which is in some centres in a majority. As the white population controls the media in the area, and most of the social and recreational outlets, it requires courage and independence of mind from police and courts to resist identification with its attitudes and demands. The traditional 'law enforcement' response is more police, more weapons and more surveillance. This response is evident in the town, as is the problematic result.

Wilcannia, with a population of 1,000 of whom some 800 are Aboriginal, is serviced by 11 police, a police population ratio nearly six times that of the State as a whole. Aboriginal people often ask 'Why are there so many police?'. The facts are that the State-wide police/population ratio is 1:432. In Chatswood it is 1:926, in Redfern 1:353, in Bourke 1:142, and in Wilcannia 1:77. The bill for policing in Wilcannia was $816,581.00 for 1989-90, with other costs, including the cost of the court, bringing the cost of 'justice' in Wilcannia conservatively to $1,143,381.00 per annum. Some observers see this massive police presence as a cause of, rather than a limitation on crime. A major offence in Wilcannia is swearing at the police. Arrests for swearing at police often arise as police constantly drive up and down the main streets of the town obviously scrutinising the Aboriginal population. Eventually some Aboriginal calls abuse at the police, who seek to make an arrest.

Charges of resisting arrest and assaulting and hindering police are likely to follow.

The other response is community policing, with an attempt to identify the sources of the problems and do something about them. The two responses were mixed together in the events after Mark Quayle's death. There was a turnover of police as those whose conduct had aroused hostility were transferred and a new officer in charge was appointed, who had a reputation for interest in Aboriginal issues. He told the Commission that his policy was to

> 'try and adopt a standard - I would accept certain things and couldn't accept certain things - the aim was to break down the barrier. To have the police more visible - if offences were committed then we had to take appropriate action'.

This was a 'law enforcement' policy, which led to an increase in the charge rate in the months following his arrival. The stringent law enforcement policy on the part of the police has continued, and recently has led to obvious conflict between police and a new magistrate who sees room for a more humane approach to law enforcement. But on the other hand there have been police initiatives which reflect the ideas of constructive community policing, among them the encouragement of young police to take part in sport with Aboriginals and the appointment and intelligent use of two Aboriginal Community Liaison Officers. I observed that in contrast to some other towns, no attempts had been made by the police to make the officers dress and look and act like policemen. They continued to dress appropriately for the climate and informally, very much like other Aboriginals. They had obviously retained community confidence, and this enabled them to be very successful in defusing problems, and for example, persuading intoxicated Aboriginals to go home. They could also relate well to young Aboriginals. They were accountable directly to the officer in charge, and were not subjected to pressures to act as informants or to assist in general police work. They were initially handicapped by lack of an office and lack of transport, but the sergeant later succeeded in getting funds to purchase a second-hand car for their use.

A recent initiative has been the holding of a police seminar at Wilcannia, involving local, Broken Hill and Wentworth Police, at which various members of the Aboriginal community were invited to attend and speak. The object was to promote an understanding by Aboriginals and police of each other's viewpoints.

A more unusual initiative demonstrates that senior police officers responsible for Aboriginal relations are sensitive to the problems of towns such as Wilcannia. The Commission was informed that with a view to ultimately achieving a reduction in police numbers, the Police Service was providing money for an economic survey to find ways of increasing the employment of Aboriginals in Wilcannia and to initiate some of the proposals. I commented in the Quayle Report that this was well motivated, but it remains to be seen whether it is a role which police can play successfully. There have in recent times been a number of economic surveys of Wilcannia by other agencies, none of which has so far led to any impact on the unemployment situation. It is not a role which should be left to police.

Use of para-military groups

A particular source of tension in the west and elsewhere in New South Wales has been the use of special units police units such as the Tactical Response Group

(TRG) and the Special Weapons and Operations Squad (SWOS). Some observers believe that there has been a significant and provocative involvement of these units with Aboriginal people over several years. It was in this context that many Aboriginals saw the death of David Gundy in a SWOS raid on his home. In Brewarrina, the western Regional Command responded to the disturbance on the night of Lloyd Boney's funeral by deploying members of the TRG to the town.

This was not the first contact of Aboriginal people with the TRG, which became operational in May 1982. In 1986 they had been used in Bourke in response to demonstrations of Aboriginal anger over police delay in arresting a white man who was alleged to have deliberately reversed his car over a young Aboriginal man. TRG riot control equipment has subsequently been increasingly located at Bourke, and TRG police intervened in an Aboriginal family dispute there in January 1988. The TRG was subsequently used openly in Redfern (there had been a number of previous allegations of covert use), in August 1988 and again in February 1990. They have also been used in the policing of the Aboriginal communities in Walgett, Dubbo, Wilcannia, and Cobar.

This increased use of special police units in areas that already suffer from already intensive policing parallels the development of particular law and order campaigns also in the last decade. Two of these originated specifically in the northwest in 1985 and 1987. They were organised by members of local government bodies in Bourke and Dubbo, by politicians, and by local and regional police officers. The campaigns were supported by the Police Association and by police officers speaking from the Law and Order platforms.

The use of such units in relation to Aboriginals can reinforce the historical view of police as a para-military force suppressing dispossessed Aboriginals, and seriously undermine other police initiatives to develop better relations with Aboriginals. Police who planned and executed the SWOS raid on the home of David Gundy were obviously quite insensitive to the implications of their actions for Aboriginals, and did not consult with those in the service responsible for Aboriginal relations.

SWOS and its culture

In the *Report of the Inquiry into the Death of David Gundy* I noted that. SWOS has a culture of its own, which in some ways might be seen as an example of police culture in an extreme form.

It is natural that para-military bodies like SWOS should develop a particular culture of their own of very great strength, and it is in the nature of things that in a democratic country there will be real problems in ensuring that the body fully accepts the rule of law and the paramountcy of civil authority. In numerous other countries, particularly newly established democracies without a strong tradition of parliamentary control, we have seen the difficulty of keeping military authority under civilian control. Typically the military in such countries has a conviction of its own purity and righteousness, an impatience with values which fall outside its normal sphere of operation, and a tendency to see the controversy and disputation which are the essence of democracy as a lack of national discipline. However in Australia there is a very well established tradition that the military responsibility is confined to dealing with external enemies under the control of civil authority in wartime.

Para-military police bodies tend to share the tunnel-vision of military authorities, but as their work is continuous and directed at internal rather than external enemies, the problem of keeping their activities under adequate scrutiny, subject to civil control, and obedient to the law, is an ever present one.

It would be difficult to argue against the need for a para-military body such as SWOS in the circumstances of today's world. Although Australia has been relatively free from terrorist activities, there are far too many examples of international terrorism for any country to assume that 'it cannot happen here'. There is a strong case for having appropriate forces in readiness to nip any such activity in the bud. Moreover with the power of modern firearms, the laxity of gun laws and the availability of explosives, it is possible for hardened criminals, or people who are temporarily mentally disturbed, to present a very great threat to life. Hence there are bodies such as SWOS and their counterparts in other Australian States and other countries. Indeed a very apparent feature of the current situation is that SWOS is part of a national and international culture of bodies engaged in such para-military activity.

The work obviously presents a great challenge which appeals only to a certain type of person. It calls for great physical courage, for high physical fitness, for acutely developed skills in personal combat and in the use of certain weaponry, and for a command of some specialised psychological and tactical techniques. It is of its essence that it is the activity of a small elite group who constantly train together, are completely dependent on each other in operation, and in operation must have complete confidence in themselves and in each other. They must also have complete commitment to what they are doing and complete faith in the superiority of their cause over that of those against whom they pit themselves. While this produces qualities of bravery, loyalty and dedication to duty which are admirable within their context, it also produces a high degree of self-righteousness which easily progresses to arrogance, and a tunnel-vision which leaves little room for respect for dissent or conflict of opinion, or for political, legal or moral restraints which stand in the way of what is seen to be the task in hand.

All this, and the memories they revive of frontier warfare, make the use of para-military bodies in Aboriginal communities problematic - they are not likely to be acutely sensitive - but easily perceived as provocative by Aboriginals. There is a widespread belief that special police units like to practise on socially vulnerable groups like Aboriginals. Police Services should be alert to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.

THE CHANGING SCENE

Cultural revolution in New South Wales

New South Wales is a State in which the metaphor of trying to tom the battleship around is particularly apt. The Police Service has traditionally had a very bad image with Aboriginals, and a series of recent incidents has reinforced this image, overshadowing the fact that, in the words of Superintendent Ure, whose responsibilities include Aboriginal relations, the Service has under Commissioner John Avery 'been undergoing a cultural revolution'. There has been an attempt to broaden the philosophy of the Service from the traditional role of simple law

enforcement to a developing concept of 'community policing'. As a step towards greater responsiveness to local communities, the Service has been regionalised, a process which itself has meant a major upheaval to which the Service is still adjusting.

The transitional stage which the Service has reached is reflected in its relations with Aboriginals, which vary enormously from place to place. This was apparent to me in my own visits to a number of centres and was confirmed by the Aboriginal Issues Unit. Some communities hold a very adverse view of local police, their complaints going as far as physical bashing, and some have praise

for them. The praise is often by comparison with a fairly recent past. An example was the statement of Peter Williams' father about police in Lismore:

> "The Aboriginal/police relations have been reasonable in this area, and it is not like the 1980 days when it was very bad. The police are now talking to the young kids whereas before they would grab them.

A large number of communities are ambivalent, pointing to good and bad features, or a fairly even mix of sympathetic and unsympathetic officers, although it is not unusual for these communities to concede that relations were improving, but usually emphasising that there is a long way to go. Some people in these communities articulated the burden of history, saying how hard it was for both police and Aboriginals to overcome their stereotypes and traditional reactions.

Community policing

The idea of 'community-based' policing has been developing in the Service for some years, although it did not become organisational philosophy until the second half of the 1980s. Indeed regionalisation, which is seen as a necessary concomitant, was introduced in August 1987.

In describing the change, Superintendent Ure wrote:

> 'The prevention of crime, and the detection and prosecution of offenders, is still our number one priority, however the theme has now been expanded beyond just taking preventive and/or remedial action, to developing programs which take into account the reasons for anti-social behaviour and therefore have a more realistic base, as well as encouraging police to implement local programs and initiatives to divert people, particularly young people, away from the criminal justice system. These programs, many of which are investments in the future, will of course lead to preventing the type of behaviour which we have been dealing with in a reactive manner for so many years'.

It should be made clear that the 'community' referred to in these developments is not the Aboriginal community but a general community which is assumed to include the Aboriginal community.

What happens in a particular place to implement the community-based policing philosophy depends very much on local police, and in particular on the patrol commander. To quote Superintendent Ure again:

'With the advent of regionalisation and the focus on the patrol for the delivery of policing services, opportunities have been created for Patrol Commanders to introduce programs which will suit their local community. Decisions can be made by those best qualified to make them - the police who are actually working in the community. Patrols are supported by their district, region and headquarters, however the accountability for the delivery of policing services to the community lies with the Patrol Commander.

'It is quite possible that this accountability would not have succeeded under the old promotion system, where a police officer was promoted to a rank and then allocated a duty or location. In saying this I do not in any way denigrate the thousands of police (myself included) who progressed through the ranks under the seniority system. However, it is true to say that in earlier years some of the least-qualified officers were sent to the places of greatest need, including Aboriginal communities.

'The opportunity, and the reward, was just not there for a talented, committed officer to seek the challenge of working in a particular town, with the added responsibility of command. Under the current system of positional promotion, an officer must compete for a position, such as Patrol Commander in a specific location, and if successful will be appointed to the rank that goes with the position. Although not perfect, this system should identify the person best qualified to fill the position and accept that accountability.'

There are a number of initiatives which illustrate the support of senior officers for efforts to improve police/Aboriginal relations. They include Aboriginal Community Liaison Officers, the appointment of a senior Aboriginal Consultant at Head Office, the recruitment of Aboriginals as police officers, components in the training of new recruits, and the holding of police/Aboriginal workshops. There are also initiatives introduced in relation to the general community which have a potential to impact on Aboriginal Police Relations. They include Community Consultative Committees (which have already been mentioned), Community Aid Panels ('Wyong panels'), Visitor Schemes and the search for better ways of dealing with juvenile offenders.

Changes in Victoria

The philosophy of community policing has permeated all States in varying degrees. In Victoria, as in New South Wales, there have been considerable endeavours at a senior level to turn round a situation now recognised to have been very unsatisfactory over many years. Activity has been centred on a State-wide committee, the Victorian Aboriginal/Police Liaison Committee. The view that has been officially adopted is stated in a history of the Committee:

'Police and Aboriginal people have come into conflict due to the role that each has traditionally undertaken within the Community.

This conflict has resulted in both Aboriginal people and the Police being stereotyped by the others. This stereotyping has acted only to exacerbate the conflict, and is born predominantly out of ignorance which results in an identified lack of understanding and communication between them'.

In conjunction with the work of this Committee, Victoria has an Aboriginal Liaison Unit which includes an Aboriginal Liaison Officer, and some members of the Force allocated as Liaison Officers at various centres, but the most important developments are centred on the Community Justice Panels.

Tasmania lags behind

Despite the denial for so long of the existence of Aboriginal people in Tasmania, the level of their over-representation in police custody is still, ironically, quite high: 5 times that of non-Aboriginal people in the National Police Custody Survey of August 1988. Mark Revell, Glenn Clark, and many other Aboriginal people in Tasmania have lived with the contradiction that, on the one hand, the very existence of any Aboriginal people in Tasmania has been denied while, on the other, they have suffered the same disadvantages as Aboriginal people in other parts of Australia. Yet the Tasmania Police, like Tasmanian Government generally, have been grudging in their recognition of an Aboriginal identity, and slow to realise that Police/Aboriginal relations are a problem in that State as in other States.

The grudging attitude is illustrated in the response to this Commission's Underlying Issues Paper by the former Police Commissioner, Mr Horman, who commented that observations about the vulnerabilities of persons taken into custody applied to 'the tribal Aboriginal' and went on to downplay the suggestion that Tasmanian Aboriginals had special needs. He related any high level of incarceration simply to socio-economic factors, and after conceding that this might lead to depression, added: 'Depression is recognised as the greatest factor leading to suicide, and this is true for both the Aboriginal and non-Aboriginal'.

Mr Horman stressed that there were no areas or suburbs within Tasmanian cities which specifically had ethnic groups living as communities in contrast to Redfern in Sydney, for example. He said that in Tasmania 'Aboriginals are so integrated with the European population that their lifestyles do not differ to any marked degree from that of the general population' and that the law was enforced equally on community members regardless of their being Aboriginal or non-Aboriginal. He went on

> 'What might be described historically as the "sins of yesteryear", which required the Police to enforce laws which discriminated against the Aboriginal people, are now seen to have resulted in the Aboriginal people being suspicious and resentful of the Police and the law themselves. With the passing of the years, the application of the laws in the same manner, particularly in this State, no longer applies. The enforcement of laws where anti-social behaviour is detected, is carried out totally, regardless of the cultural background of the offender and is enforced for the purpose of preserving the peace and safety of general public. The public are entitled to, and in fact demand, protection from antisocial behaviour, regardless of the ethnic background of the perpetrator'.

He suggested that because Tasmanian Aboriginals in the main had European features, there was not the pressure felt by them as with tribal Aboriginals and few cases of racial discrimination had been reported. In his view Tasmanian Aboriginals had the same employment opportunities as non-Aboriginals and had the opportunity to attend University to enhance their career choices. He asserted

the view that Aboriginals should simply be treated equally.

> 'No one group in the community should be given privileges over and above any other community group, as that in itself creates disunity and prejudice. Studies would no doubt show that non-Aboriginal people also face being the victims of prejudice and are also the victims of racist attitudes from Aboriginal people. Suggestions have been made that the alienation and high degree of drunkenness and high degree of self harm are, in some Aboriginal context, indicative of psychological and spiritual damage and suffering associated with the dispossession of land and the spiritual processes that were lost with it.
>
> 'It is accepted that, where tribal Aboriginals have had their land taken from them and their sacred areas desecrated, psychological and spiritual effects may be evident. With the passing of time, however, in the integration of Aboriginals into the non-Aboriginal society, one must question whether or not those same damages would continue generation after generation. It must also be recognised that non-Aboriginal persons who become dispossessed of their homes or family properties would also suffer psychological difficulties which could lead to anti-social behaviour. Love of land and heritage is not confined to Aboriginal persons.'

His suggested solution to the problem of over-representation of Aboriginals in custody was the implementation of 'a long term ongoing education program'.

The Commission's AIU representative raised with the present Police Commissioner the question of tackling the problems caused by the attitudes of police officers.

> 'His initial response was to state that he did not believe there was a problem between police and Aborigines in Tasmania, referring to the relatively greater problems experienced in other States. To stress this he phone conferenced a number of Regional Superintendents and Officers in Charge in a "candid manner" to emphasise his point. One Officer made the comment that he didn't think there were any Aboriginals in his area (George Town).'

The continuing problems which Aboriginals face in gaining recognition and understanding of Aboriginality in Tasmania were highlighted by a revealing answer given by Assistant Commissioner Johnston in evidence in the inquiry into the death of Glenn Clark. Asked whether a person involved in an attempted suicide had been Aboriginal, replied 'Yes, I think when we traced it out he was 1/64th of Aboriginal'. There is still only grudging acknowledgment that there is a large number of persons in Tasmania for whom identification as Aboriginal is important, and who form a community of people who have suffered similar historical disadvantages to Aboriginals elsewhere in Australia and have a similar claim for the rectification of injustice. This often tempers attempts to take a sympathetic attitude to Aboriginals.

It is clear that although they have started to acknowledge the issue, the Tasmania Police are lagging behind most other Australian Police Services in their understanding of Aboriginals, in the recognition of Aboriginals as a people, in entering into dialogue with the Aboriginal community, and in seeking constructive ways to improve relations between Aboriginals and police and reduce the numbers of Aboriginals coming into custody. This will appear from the following discussion of developments in the three States.

Mechanisms for change

A variety of approaches have been tried in the three States for improving Aboriginal/Police relations and I will review the major steps here. There are also interesting innovations in other States of Australia, which will he brought together in the National Report. There is no magic formula; States may learn from each other but must always work out what is suitable locally. This must be on a basis of negotiation with local Aboriginal communities and have their full support if it is to succeed. Schemes imposed by well-meaning officers who believe they know best are doomed to fail.

The Victorian Aboriginal/Police Liaison Committee

Only Victoria has established a permanent mechanism for ongoing consultation at the State level. In Tasmania, according to the former Police Commissioner, 'management has met with Aboriginal spokespersons as and when problems have been identified', but this can mean little or nothing in the face of denials that problems exist.

The Victorian Aboriginal/Police Liaison Committee was established in 1983 to act as a mechanism for improving understanding between the police and Aboriginals, and also as a practical forum in which solutions to specific problems could be formulated. The Committee originally comprised ten members - five police and five Aboriginal. In 1990 the membership was expanded to twenty-four and constituted in a way that took into account new Police District boundaries and the regional boundaries of State-wide Aboriginal organisations. From each of nine geographical areas there is one Aboriginal and one police member, and the Victorian Aboriginal Legal Service (VALS) and the Victorian Aboriginal Community Services Association Incorporated (VACSAI) are represented on the Committee as are the two people attached to the Victorian Police/Aboriginal Liaison Unit. There are two Co-chairpersons, one Aboriginal and one police, and each member of the Committee has a nominated deputy.

The purpose of the Committee is 'to initiate, plan, develop and implement programs that will improve Koori/Police Relations'. Its objectives are:

'(a) To establish policies in connection with Aboriginal/Police relations.

(b) To co-ordinate the development of Aboriginal/Police liaison committees throughout Victoria.

(c) To advise Aboriginal/Police liaison committees throughout the State of policies and agreements which have been made at State level.

(d) To consider and attempt to resolve problems referred to it by Aboriginal/Police liaison committees throughout the State.

(e) To consider and implement initiatives in order to resolve problems affecting Aboriginal/Police relations.

(f) To consider ways and implement action designed to improve communication and facilitate understanding between Aborigines and Police'.

The Committee's current activities include the establishment of a comprehensive networking system between Aboriginals and police throughout Victoria, publicising the work of the Committee, maintaining and establishing local Aboriginal/Police Liaison Committees, encouraging Aboriginals to consider the Police Force as a career and 'ensuring continual progress is made in the production of programs to train and develop both Aboriginal and Police persons in understanding the respective role and history of each other'.

Funds to cover the expenses of the Committee including travel to meetings, are provided by the Government through the Ministry for Police and Emergency Services. The Committee meets every second month at different venues throughout the State. The intention is that after each meeting the local Aboriginal communities and police personnel have access to the members to canvass relevant local issues. However members of the Bairnsdale community complained to the Commission's Aboriginal Issues Unit that, when the Committee was to meet in their area, their suggestion that the meeting be held at Bairnsdale where the local community would have access was ignored, and instead it was held twenty kilometres from Bairnsdale, which effectively excluded any local Koori input. The Committee was regarded as an organisation controlled by the Police, who organised the agenda, the venue and took the minutes. It was not seen as a neutral forum, indeed it was suspected that police tried to get information from these meetings, either directly or indirectly, in relation to Koori offenders. I have no doubt that this is all quite contrary to the intentions of those who work with the Committee, but it shows how far the Committee has to go in establishing its credentials with the Aboriginal community.

Central Liaison or Consultant Staff

Victoria and New South Wales have both taken steps in this direction. In June 1988 a Senior Sergeant at the Tasmania Police Academy was nominated as Liaison Officer for the Tasmania Police and the Tasmanian Aboriginal Community. Instructions were given that actual or attempted suicides in custody or incidents involving the Aboriginal community were to be reported to him. The Tasmanian Liaison Officer is a non-Aboriginal senior officer and was not mentioned to the Commission by Aboriginal sources, and does not appear to play any significant role.

In New South Wales an Aboriginal Liaison Unit was established in 1980 as a component of the New South Wales Police Community Relations Bureau. It was designed to promote awareness of and consultation with Aboriginal groups and was involved in the establishment of some Community Consultative Committees. An Aboriginal Client Group Consultant is a relatively recent appointment and the potential of the role is still being explored. It appears that she is concerned with Aboriginal issues throughout the Service, both central policy and local application. Regionalisation means that she has to convince a number of regional commanders to adopt her recommendations, and these officers inevitably vary in their experience and understanding of Aboriginal issues. Only one region now maintains an Aboriginal Police Liaison Unit and it has only one officer. The Consultant is also involved with education in the Police Academy and with local educational

initiatives.

The Aboriginal Client Group Consultant position is of great importance and is difficult and demanding. It needs to be adequately resourced, including the provision of research assistance, and staff in regional offices and regular contact with Aboriginal Community Liaison Officers. It also needs continuing support from senior officers, and indeed officers at all levels, who should not feel that they can now reduce their input into Aboriginal matters and leave it all to her. A desirable adjunct to the position would be an Aboriginal Advisory Committee to ensure that there is adequate support and input from the Aboriginal Community.

The Victoria Police has an Aboriginal Liaison Unit with two officers, one of whom is an Aboriginal. The current Aboriginal member, Mr Ken Saunders, formerly worked with VALS and is widely respected in the Aboriginal Community. His duties include giving lectures to cadets at the Police Academy, although the time devoted to Aboriginal issues is very small.

Aboriginal Community Liaison Officers

New South Wales has developed a staff of Aboriginal Community Liaison Officers (ACLO). Four were appointed and stationed at Bourke and Walgett in December 1986. This number had risen by the end of 1988 to sixteen Liaison Officers through the State. From the Aboriginal point of view the result has been very mixed. Some are trusted by the Aboriginal community and seen as doing a valuable job. Others are not. A great deal depends on the good sense of the local patrol commander in how he selects and how he uses the Liaison Officers. A number of Aboriginal communities complained of lack of involvement in the selection of the officer for their community. If the officer is to carry out his work successfully he must have the confidence of the community, and it is essential that the community be involved through its representative organisations in his selection. Unfortunately there are still too many police officers who believe that they know best and are not willing to listen to and act on the advice of communities. It is not good enough for police officers to select someone whom they believe to be acceptable to the community, or to involve in the selection only hand-picked Aboriginals with whom they get on.

The other major concern is about the role of the Liaison Officers. In the first place it is essential that police recognise the special function of the Liaison Officer and do not seek to involve him or her in law enforcement duties, publicly or privately. They should not be wasted or demeaned by being given routine police tasks, such as serving documents or finding witnesses, or compromised by involvement in investigation. In one community the fact that a Liaison Officer had been involved in the enforcement of an eviction notice had a continuing effect on the community's attitude to him. The Liaison Officer has to walk a tightrope, being accountable in some degree to both the police service on the one hand and the community on the other. Fortunately most police officers seem to recognise this and do not seek to use the Liaison Officers as informers. Some do however seek to make the Liaison Officer conform to many police practices, including standards of dress. I refer to the particular instance of Wilcannia, where a relaxed police attitude on this issue has paid dividends.

Experience shows that Liaison Officers can be very valuable in defusing situations which might otherwise lead to conflict between police and Aboriginals. However a number of communities complained that Liaison Officers were used exclusively in

this way, and were not used to play a general liaison role directed to improving understanding and co-operation between Aboriginals and police. Obviously in these areas the potential of the Liaison Officers is not being realised, and their role should be rethought. However there is a point to be emphasised: the role is to improve Aboriginal police relations, not to replace them. While the work of Liaison Officers should reduce the amount o adversarial contact between regular police and Aboriginals, it should increase, not decrease, the amount of dialogue and constructive interaction.

Non-Aboriginal Police Liaison Officers

At a number of police stations in New South Wales and Victoria general duty officers have been allotted a special responsibility for liaison with the Aboriginal communities. The role is what the officer makes it, and in few cases does it appear to have become important. In Swan Hill the Commission met a sergeant who had taken his role very seriously and worked hard over a long period to improve relations. A considerable amount of co-operation had developed with the Aboriginal co-operative, but there were special problems of divisions within the Swan Hill Aboriginal community which limited what could be achieved.

In one New South Wales town visited by the Commission, in which there was no ACLO, a young police officer was appointed to be a liaison officer between the community and the police. Difficulties arose because he was an officer who on a daily basis was involved in performing duties which required him to arrest Aboriginal people, he was relatively junior and carried no real authority within the police station, and he lacked understanding and knowledge of Aboriginals. He thought that he could establish a means of communication with the community by arranging formal meetings at fixed times and attending in uniform. The experiment was a failure.

Police Community Consultative Committees

In a number of towns in New South Wales where there is a large Aboriginal population, an endeavour has been made to include one or more Aboriginal members on a Police Community Consultative Committee. While these Committees have varied in their effectiveness, on the whole they do not appear to have been successful in involving people who are representative of the Aboriginal community as a whole, and in particular that part of the Aboriginal community which feels itself at odds with the police. Too often the Aboriginals on the Committees are not only in a considerable minority but have been effectively selected by police or local council officers, rather than the Aboriginal community. They are often highly assimilated people with whom the police find it easy to get on, and who find it difficult to assert themselves against the members of the local white establishment who make up most of the committee. While useful work may be done by such committees, they are rarely effective means of involving the Aboriginal community. If, as occurs in at least one centre, the representatives see themselves as real representatives, and discuss issues at Aboriginal Community meetings before attending the Committee, their contribution can be greatly strengthened. However at this stage at least there is a need for *Aboriginal* Police Liaison Committees.

Such Committees have been established with limited success in some Victorian

towns. During the inquiry into the death of James Moore, the Commission was told something of the work of the Police/Aboriginal Liaison Committee in Swan Hill, a town with particularly difficult policing problems arising out of sometimes violent conflict in the Aboriginal community. Informal contact by police with the Swan Hill and District Aboriginal Co-operative was initiated in 1984 and was formalised into the Committee at the end of 1985. However many Aboriginals saw the Committee as a police instrument, meeting at the police station, having its records kept by police, and involving the white administrator of the Cooperative and Aboriginals who had no conflict with police, instead of those who had real problems to work out with police. It is not enough for police to have goodwill; they need a degree of understanding and sensitivity which does not come easily, and a willingness to deal with Aboriginals on their own terms rather than in the authoritarian manner to which they are accustomed.

The situation underlines the importance of strong Aboriginal organisations for successful police/Aboriginal co-operation. Representatives who have the backing of a strong organisation are better able to deal with Police on equal terms and there can be no suspicion that police have chosen the Aboriginal representatives to suit themselves.

Operation Bacchus

An interesting informal local initiative was the development of "Operation Bacchus" in Mildura, a Victorian town which I visited during the inquiry into the death of Malcolm Smith, who was born at Dareton just across the Murray River border. At the time there was a very strong Aboriginal Co-operative with a number of activities, including a successful building company. The Co-operative had negotiated an arrangement with the Mildura police when an Aboriginal was arrested and was immediately able to go to the police station, see the person arrested and discuss the situation with police. This often resulted, for example in a case of drunkenness, in the person being released into the care of the representative. The representative was able to assist with matters such as bail, and notification of relatives. A very good working relationship had developed between the police and the Co-operative.

Community Justice Panels

A panel in action

Operation Bacchus was a precursor to the Community Justice Panels (CJPs), in which some remarkable successes have been achieved in Victoria. I described the success of the Echuca CJP in the *Report of the Inquiry into the Death of Harrison Day.*

> 'Looking back over the years, including the time of Harrison Day's death, Echuca Aboriginals were highly critical of police conduct, but when the concept of Community Justice Panels was advanced they moved rapidly to explore its possibilities. While most of Victoria was still talking about setting up Community Justice Panels, Echuca had had one operating strongly for a year. The basic concept was of a panel of Aboriginals who were on roster and would be called on by the police when an Aboriginal was

arrested or in trouble. The panel member would come to the police station and might be able to resolve the matter without a charge being laid, for example by taking a drunken person home or to hospital, or by taking a young person home or to a supportive environment. A person who was arrested could be helped with bail and comforted if distressed. Potentially difficult situations between police and Aboriginals might be mediated so as to avoid the escalation of conflict and arrests.

'The result was a very much improved relationship between police and Aboriginals. Police, under the encouragement of Chief Inspector Mal McKay of Shepparton, had sought to make a success of the panel and were pleased with the results, which assisted them in carrying out their duties, and allowed them to do so in a much more pleasant environment. While Aboriginals still chafed under past grievances, they acknowledged the very great improvement that has taken place. One panel member proudly said to me recently 'We have decriminalised drunkenness in Echuca'.

'The Echuca Community Justice Panel had not only carried out these basic functions, but had through its meetings established contact with magistrates, probation staff, and child welfare officers. It was able to contribute to intelligent sentencing of convicted Aboriginals, to the placement of children who were in trouble, to the administration of community service orders and in other ways.'

The Echuca CJP has continued to flourish and one of its members has been appointed State Co-ordinator of CJPs. He told the Commission late in 1990 that no Aboriginal had been locked up in Echuca (a town with some 400 Aboriginals) since November 1988, a striking contrast with the previous position. At the end of 1990 there were approximately 20 panels throughout Victoria, although not all were fully operational. There was an average of 5 panel members on each. The panels in Echuca, Mildura and Ballarat were particularly well established.

History of CJPs

CJPs were officially recognised in July 1988, when the Victorian Government announced the funding of CJPs as part of measures to improve the treatment of Aboriginals in the Victorian justice system. The CJP proposal had been developed in 1987 as an initiative of the Victorian Aboriginal Legal Service which had received strong support from the Government, particularly the Office of Corrections and the Victoria Police. The concept was developed within the Koori community in response to the growing awareness of the over-representation of Kooris in the criminal justice system. Consultations were conducted with Koori communities throughout Victoria where there was a general feeling that the criminal justice system in its present form was not only failing to meet the needs of Kooris but was positively discriminatory in its operation. The aim of the Community Justice Panels was to provide a service to Aboriginal communities, to the Community Based Corrections and other components of the criminal justice system, and to reinforce social control mechanisms based on traditional Aboriginal values. It was hoped that the establishment of Aboriginal panels might provide acceptable solutions to reduce the numbers of Aboriginals entering the system. In addition the Office of Corrections which administered community service orders, and Aboriginal communities both desired to provide a more culturally relevant and supportive

service to Aboriginal offenders and members of the offenders' family clan group.

The goals of the project were:

1. To encourage and enable Aboriginal Community Justice Panel members to play an active and positive part in police procedures, legal aid services and court proceedings.

2. To recognise and reinforce those traditional social control mechanisms within Aboriginal communities as a means of lowering the rate of Aboriginal offences and recidivism.

3. To allow for a thorough canvassing of all sentencing and rehabilitation options appropriate to both the nature of the offence and the circumstances of the offender.

4. To ensure that justice is seen to be done by the whole community.

5. To act as a resource for the local Aboriginal community and any other groups which may have involvement with Aboriginal issues.

Panel members would:

- caution Aboriginals who draw the attention of Police but who have not committed an offence; be involved with the defence briefing to a solicitor who will defend the

- Aboriginal offender at Court;

- provide a character witness at the court, and in the assessment offering an outline of the responsibilities the panel is prepared to undertake in relation to the offender, eg

    - supervision

    - direction community work assignments

    - co-ordinate personal development and/or educational programs

    - provide progress reports on individual offenders

    - provide disciplinary action when required

Some Aboriginals see the involvement of Aboriginal people in the social control of Aboriginal community members as the return of the elder system which regulated community behaviour in accordance with traditional Aboriginal values.

A permanent position has been created in the Ministry for Police and Emergency Services to assist CJPs, and following a recent review it is planned to provide funding separately and directly to each CJP. It is likely that DEET will fund a training course for panel members which has been developed by TAFE. It is intended to improve upon the skills of the participants so they are better equipped to take on the duties of a panel member, including the provision of court advice and assessment reports, co-ordinating community work supervision and personal

development programs. Panel members will become gazetted community corrections volunteers after completing this Community Based Corrections volunteers training program.

Problems of CJPs

While the Aboriginal communities acknowledged the enormous potential of the CJP's, they told the AIU that there is still much room for improvement. They said that, generally, a CJP has made the police more accountable and has resulted in less Kooris being locked up. Some said that a potential conflict can be defused by a CJP member and the need for police involvement removed. However police attitudes and community resources can also have a great hearing on the success or otherwise of the CJP.

The CJP scheme places a considerable load of responsibility on the local Koori communities. They pointed out that CJP members work as volunteers to carry out the important aims and objectives of the scheme. The work involves dedication and persistence on the part of community members, however, many cases have needs for which the community is not equipped or resourced. For some community members of the CJP, involvement is an additional burden to their everyday lives. Some am struggling to survive themselves. All have a big area to cover and there is no remuneration for petrol or vehicle costs, bus or rail fares for clients, food or other costs associated with their duties. The CJP members make an indeterminate commitment of their time and effort. As was said in one community and endorsed in many others,

> '... some people don't like going out at midnight. The government and police want us to do it and Kooris want it too, but we have families and homes and jobs. It is stressful, there is burnout ...'

One member said The CJP is needed and can play a very important role but they expect us to operate with nothing.'

Community members do not always have transport to go to the police station, sometimes in another town, to do their job. Community members do not always have phones or beepets. In some communities this has resulted in the panel members relying on the police to come and get them. Members in this situation worry that the police will come and get them only when it suits them to do so. They would prefer not to be dependent upon the police. This may also provide an excuse for the police not contacting them immediately (although it is not mandatory that they do). The provision of beepers would increase the contactability of community members at all times without inconveniencing the members by requiring them to be near their phones unnecessarily.

Many communities identified the pressure which is placed on a member when they are expected to take a stranger into their home. Communities said that many of the Kooris they come into contact with are from other places and not necessarily known to them. While this does not happen often, communities said that it placed the member in a difficult position in which they make their family vulnerable to the risk of violence on the part of the offender. The need to make a bed available is also a problem for some. This situation may be somewhat alleviated by the recent establishment of nine Sobering Up Centres (which operate in conjunction with the CJP's) throughout Victoria which cater for people who are intoxicated. But this

would not be so in all communities nor in all cases. The members often pay the cost of food, cigarettes, bus or rail tickets and other personal needs of those in their care and there is no reimbursement for this.

Another source of stress for panel members is the latent fear that a person may die while in their care. If the need for medical attention is obvious, the Community member is expected to see to it that the person receives medical attention. This includes doing all that is necessary to get them to a hospital or doctor, with or without a phone or vehicle, and at their own cost.

While police co-operation has been excellent in some areas, the communities' experience is that not all police agree with the CJP structure. Those who do not agree are unwilling to co-operate with the local CJP. Several communities indicated that the relations between the community and police had not improved and that continuing poor relations were hampering the establishment of the CJP. From what communities said, it would appear that meetings and good communications between the police and community are crucial to the successful operation of a CJP.

If police do not choose to contact the CJP member, and several incidents of this were cited to the AIU, it is difficult for the CJP to be effective. In some places communities have been in a position to take the initiative to make the scheme work. This includes ringing the police station periodically to see if anyone has been arrested or come into contact with police in any way, and insisting on and arranging regular meetings between the police and the CJP. Smaller communities, with less resources were not in a position to be so active. Some still felt intimidated by the police and were reluctant to attend at the police station for fear of being 'talked down' by the police. Furthermore, many feared reprisals by the police if they 'talked up' to them.

The AIU recommended that the requirement that the police contact the CJP should be mandatory, as while it remains discretionary the onus is on the prisoner to insist if the police choose not to do so. Kooris who have been arrested and were held by police have not insisted on the CJP member being contacted because, they claimed, the police have threatened harsher treatment if they did.

It is obvious that CJPs have the potential to work best where there is a strong and cohesive Aboriginal Community. No doubt for that reason difficulty has been found in establishing CJPs in the metropolitan area of Melbourne. However, in Melbourne, VALS, which is centralised in that city, is better able to look after the interests of arrested persons.

It cannot be expected that Aboriginals will shoulder the burden placed on them indefinitely unless they receive reasonable remuneration and reimbursement. On purely financial grounds this can be justified by the reduction in police and prison custody. Unless adequate resources are provided, the Panels are likely to founder in the same way that many other initiatives have foundered, by placing excessive demands on the small number of people involved and giving them no support.

Aboriginal police officers

It is often suggested that the recruitment of Aboriginals into the Police Service would be a solution to many of the problems with Aboriginals. The reported

reaction of Aboriginal communities in New South Wales and Victoria to the experience of Aboriginal police officers was mixed. The Victorian AIU report said that there was little enthusiasm for the recruitment of Aboriginals to the Police Force, a common feeling being that it would not make a difference unless there were a large number of Aboriginals in the Service. However, one such officer was credited with having improved the situation.

It is obvious that such appointments will achieve little if the Aboriginal police are expected to and do absorb the general police culture and identify with it against Aboriginals. The hope must be that their presence will broaden and help to change the police culture. A revealing story was told at the community conference in Wilcannia of an Aboriginal police officer who was involved in the organisation of touch football games. When some Aboriginals argued with him about the payment of dues he charged them with offensive behaviour. An Aboriginal said at the conference: 'If you are going to play the sport, play it as a man and don't hide behind the uniform'. The Aboriginal police officer, who was present at the conference responded: 'I acted as anyone would act on the day. I was abused and I served a Court Attendance Notice for offensive manner'. To suggest that 'anyone' would take such action against others involved in a sporting argument shows an extraordinarily authoritarian attitude which would not improve Aboriginal/police relationships, whatever the ancestry of the police officer.

The difficulties which Aboriginal police officers have with the conflicting pressures on them is reflected in the high turnover rates. Several Aboriginal police or former police spoke to me of unpleasant experiences of racism amongst other new recruits at the Police Academy, many of whom did not react positively to attempts to instruct them in Aboriginal culture and history. Perhaps the situation might be improved by the recruitment of Aboriginals in groups, so that they can give each other mutual support.

Training of police

Both New South Wales and Victorian Services have set considerable store on initial education in their Police Academies as a means of improving police attitudes. The generally bad reputation of young police amongst Aboriginals shows that the education is missing its mark. Obviously it is a difficult task, and if not carefully handled may produce a backlash rather than improvement. Attitudes of serving police encountered at the Academy are likely to be a more potent influence than those expounded in lectures. As there are severe constraints in time at the Academies, and as only a minority of recruits will go to Aboriginal areas, there is obvious merit in special additional courses for those who do. A frequent suggestion from Aboriginal communities is that new recruits posted to their area should spend some time getting to know the Aboriginal community before commencing work. It would be salutary for those recruits to get their first experience of Aboriginals with those who are living peaceably and engaged in constructive work in their communities rather than with a resentful drunk in the streets.

In Tasmania a component relating to Aboriginal issues is being prepared for inclusion for the first time in Police Training Courses, and the responsibility of the development of this has been given to an Aboriginal person. It is to be hoped that this will lead to a better understanding of the long term historical disadvantages of Aboriginals than was displayed in the Police Commissioners comments.

Unfortunately police do not appear to have taken the opportunity which the proposal for such a course would have given to initiate constructive dialogue with the Aboriginal community and build better relations. This Commission's Aboriginal Issues Unit Report indicated that its discussions with community members have indicated little support for the proposal. The lecturer was chosen without consultation with the Aboriginal community and was told that before delivering any lectures he would have to spend some time 'getting the other side of the story' by spending some time in the back of a patrol car as an observer. The Report gave a community view that 'it is all very well to provide Rookie Police Officers with some sensitivity to Aboriginal people, however, this will do little to stop bashings in the interview room, which are carried out by more senior officers'.

Aboriginal/police workshops and seminars

A number of workshops have been held in Aboriginal areas in New South Wales in which Aboriginals and police speak and take part and share their viewpoints. This too is a valuable initiative.

This approach of joint discussion has been successfully taken further by an initiative of the Victorian Aboriginal Police Liaison Committee which the Government has funded. This is the holding of 'live-in' Aboriginal/police seminars, in which an equal number of Aboriginals and police take part in a residential seminar. Two were held in the year 1988-1989 and two in the year 1989-1990, and a further seminar is planned in the first half of 1991.

I had the privilege of spending some time at one of these live-in conferences at the Dharnya Centre near Echuca which was attended by Aboriginals and police from all over Victoria. Police/Aboriginal problems generally were discussed and particularly the establishment of Community Justice Panels. It was heartening to see the frank discussions and the breaking down of barriers and development of mutual understanding and respect during the conference. I noted one Aboriginal rebuking another for referring to police as 'pigs', saying 'That's like them calling us coons'. One can see in such interchange the potential for breaking down some of the negative police attitudes towards Aboriginals. Conversely Aboriginal attitudes to police can be softener.

Community Aid Panels

The Community Aid Panel program is a police initiative in New South Wales, developed without a statutory basis. A Panel comprises a police officer, a solicitor, community members and young persons who assist the court by providing opportunities for offenders (particularly young offenders), to perform community service prior to being dealt with by the court. The program exists in about 15 courts, including some in western New South Wales, and in the opinion of police has shown positive results in diverting young people from crime. For such panels to establish ready rapport with Aboriginal offenders, or to develop useful proposals, there is need for a strong Aboriginal presence when Aboriginal offenders are dealt with. As with Community Consultative Committees, Aboriginal members may have difficulty asserting themselves against the kind of people who mostly make up the panel. It is important too that they should have the support and backing of the Aboriginal community, who should nominate Aboriginal members. The Commission was told of one town in which the Aboriginal community felt that the

panel was reasonably successful. The Panel aimed to have the offender perform some kind of service for the person against whom the offence was committed.

Lay Visitors Schemes

The Commission heard little of Lay Visitors Schemes. One New South Wales community, which enjoyed a generally good relationship with local police, expressed satisfaction with the working of such a Scheme. There were about six Aboriginal members and one of them was contacted when an Aboriginal was arrested, and they were allowed to visit Aboriginals in custody.

Co-operation with Aboriginal Legal Services

Co-operation between the Victoria Police and VALS has been extensive, and is reflected in joint work on the Aboriginal/Police Liaison Committee, the establishment of CJPs, and the fact that for years there has been a practice that any police officer in Victoria who arrests an Aboriginal must notify the Missing Persons Bureau, which in turn notifies VALS.

Tasmania Police have adopted the policy of advising the Tasmanian Aboriginal Legal Service when an Aboriginal person is detained in custody. In New South Wales this is a matter of local discretion and depends very much on the attitude of the local Patrol Commander and his relations with the representatives of the local ALS, there being several ALSs in different parts of the State. The New South Wales Police Service would do well to negotiate a protocol of relations with each ALS.

Juveniles

Another encouraging development in the New South Wales Police Service has been the active interest in finding policies which will reduce the number of juveniles passing through the justice system. Given the disproportionate representation of Aboriginals in juvenile institutions, and the high rate of graduation from those institutions to gaols, this is of great relevance to the overall reduction of the numbers of Aboriginals in custody. These matters are discussed in the chapter on Juveniles.

In Victoria some Community Justice Panels have played an important role in relation to juvenile offenders.

Local police initiative

The devolution of authority to the local level is obviously one of the factors underlying the great diversity in the quality of police/Aboriginal relations around the State. While room for local police initiative is important, there is a need for the development also of systematic policies suitable for racially divided communities, which will be implemented with full support from senior officers, so that local tensions can be by-passed and appropriate professional practices established. Police are sometimes under great pressure from racially prejudiced or

short-sighted local non-Aboriginal communities.

With local initiative a great deal depends on the personality of the patrol commander and his ability to relate to Aboriginals, on his understanding and recognition of the distinctive Aboriginal community, its organisations and spokespersons, and above all on his ability to listen to Aboriginals and take seriously what they say. There is no more common (and well-justified) complaint by Aboriginals about those with whom they have to deal than that they 'will not listen'. This is not peculiar to police; few white Australians find it easy to escape the assumptions of racial superiority that have been built into their culture and which lead even people of goodwill to proceed on the unconscious assumption that they know better than Aboriginals, and that although one must listen courteously to Aboriginals, the important thing is what one tells them. Not surprisingly Aboriginals are very sensitive to this treatment. Certainly many attempts by police officers to establish relations with Aboriginals founder on this obstacle. An officer in a New South Wales country town told how hard it was to do anything with Aboriginals in his town; they would not even come to meetings or respond to his various initiatives. The Aboriginals in the town explained how frustrated they were in their dealings with the police. If there was to be a meeting, they were simply summoned at a time and to a place fixed by the police. The inspector assumed that he would take the chair and then proceeded to harangue them about the situation as he saw it. When they spoke, they immediately felt 'put down'; there was no serious interest in what they said, which was assumed to be wrong or based on misunderstanding. They were not willing to go to any more meetings.

A sad thing is to see how much well-intentioned effort by police is wasted for lack of the humility to listen and the ability to establish rapport. In one town an officer in charge who does not appear to have been particularly active in his role is remembered fondly by many Aboriginals because he used to talk in a relaxed and friendly way to old Aboriginals drinking in the park. His successor worked with great energy and devotion for several years to bring to pass his own ideas of what was good for the town, but departed a tired and disappointed man who had remained at odds with much of the town's Aboriginal population.

POLICE ACCOUNTABILITY

One of the deep-seated and debilitating feelings expressed by many articulate Aboriginals is powerlessness. They illustrate it in reference to police, with whom they have a grotesquely disproportionate amount of contact, by saying that police are not 'accountable'.

Police investigating police

In my *Report of the Inquiry into the Death of Mark Wayne Revell* I examined three forms of police accountability, namely routine internal investigation, accountability to the coroner, and accountability to the Ombudsman, and found that they had all failed in the object of making police accountable for their conduct. Following Mark's death in the police station, responsibility for investigation devolved on an inspector as the senior officer, and on a detective sergeant who was allotted the task by the inspector and who, also had the job of investigating the matter for the purposes of the coronial inquiry. The inspector seems to have done nothing except speak briefly to the officers concerned shortly after the body was discovered, and leave

them to prepare written reports. The detective sergeant's attitude was a classic example of the reluctance, if not paralysis, that seems to descend on many police officers when called on to investigate other police officers.

A different response was shown by another inspector who was given the task of investigating the conduct of the detective sergeant on another aspect of the matter. When the Ombudsman required an investigation under the *Police Regulation (Allegations of Misconduct) Act the* inspector suffered only partial paralysis; his critical investigative facilities were suspended so that he was unable to notice glaring contradictions and implausible statements in what the detective sergeant told him. In other ways he was most active and became a strong and imaginative advocate for the officer he was supposed to be investigating. His attitude was shared by Police Headquarters, which put some effort into inventing for the detective sergeant legal defences which he had not thought of himself, namely that it was really the coroner's job and not his to inform next of kin, and then, when it was pointed out that there was a quite specific obligation placed on him by the Police Instructions, to rationalise away the breach of Instructions by saying that they were only guides anyway.

Police accountability to Minister

The Kearney case demonstrated an equal failure of two other forms of accountability, that is the consideration of disciplinary action by the Internal Affairs Branch, and accountability to the responsible Minister. The Minister's attempts to call the police to account in relation to the strange event of two deaths in the same cell on the same night, and then in response to strong statements by the coroner, came to no avail. First the Police Department set out to defend itself rather than to examine the issues, and then took advantage of the change of Government to avoid any response at all.

The Atkinson case provided another example, with further implications. Responsible Government depends greatly upon the ability of a Minister of the Crown to be able to report to Parliament fully and accurately on matters raised in relation to his portfolio. The Parliament may have been inaccurately informed, if not seriously misled, as to the true circumstances of the death of Shane Atkinson by the Minister's reply to a question in Parliament but for the fortuitous establishment of this Royal Commission and its consequent effect on the answer given by the Minister for Police and Emergency Services.

Given the findings in the inquiries, it is not surprising that one encounters a widespread lack of confidence amongst Aboriginals in police investigative processes. In relation to the investigation of deaths, this well justified lack of confidence had a great deal to do with producing the discontent that led to the establishment of this Commission.

Complaints against police

In relation to the investigation of misconduct of police officers, the lack of confidence is a quite fundamental difficulty in improving relations between Aboriginals and police. Again and again in talking to people in Aboriginal communities one encounters general and specific allegations of police harassment and mistreatment of Aboriginals. The usual police response to such allegations is

that they should be put in writing and given to the appropriate police officer who will investigate them. The regular Aboriginal response to this is that it is a waste of time to do so because there will be not a genuine investigation but a whitewash. Usually it will be one Aboriginal's word against a number of policemen, and the Aboriginal has no hope of being believed. In the long run the unsuccessful complaint is only likely to lead to further victimisation of the complainant or his or her family.

Police often argue that avenues of complaint are adequate. A glimpse of the reality at the grassroots level was given in an answer by a non-Aboriginal prisoner cross-examined about evidence in the Leslie inquiry of hearing sounds consistent with somebody being roughly handled. When questioned as to whether he reported the matter to a police officer who asked if he had any complaints, he replied:

> 'I mean, you don't run to the police after something like that has happened ... and complain about it. I mean, you're sort of stepping on red hot stones if you do. You've got to be placed in that position to be able to understand what, you know, the situation is. I mean, we had hoses turned on us once because there was too much noise. I mean, so you don't go running back to them and saying, you know, whinging about this, because they'd retaliate and do - lock you in the cells earlier or leave the lights on all night. So they'd retaliate some way. I mean it wouldn't go past the ears of the beholder that you'd spoken to'.

If the very disproportionate arrest rate of Aboriginals is to be overcome, one important step is the improvement of their relations with the police. One important ingredient in doing that is building up confidence in Aboriginals that they can make complaints about police conduct, have them genuinely investigated and not suffer victimisation as a result.

A clean police service

Under its present administration the New South Wales Police Force has attained a very high public reputation for investigating corruption amongst police officers and producing a 'clean' Police Force. This is of vital importance and one can only applaud enthusiasm in pursuing this objective. However there can be 'down-sides' to a single-minded concentration on this issue. One problem has been apparent in a number of my inquiries, in particular that into the Gundy death.

In cases where the challenged conduct arises out of the attempted performance of duties as a police officer, rather than deliberate wrongdoing or criminal conduct under cover of or unrelated to the performance of duties, there is often a defensive or protective, rather than a rigorous, probing approach. The problem may in part be that if criticism is to be made, and wrongdoing uncovered, arising out of an officially sanctioned police operation, then it is not merely a matter of the reputation of individual police officers suffering, but the reputation of the service generally. This was particularly so in the Gundy matter, where the Police Force was confronted with widespread media criticism, including some outrageously inaccurate statements and comments about what happened, which inevitably placed the Police Service on the defensive.

CHAPTER 19: DOMESTIC VIOLENCE

THE IMPORTANCE OF DOMESTIC VIOLENCE

The complexity of Aboriginal/police relations is underlined by the fact that the general Aboriginal call is for less policing and less police interference in Aboriginal life and lifestyles. In one area there are complaints at least by Aboriginal women of insufficient police intervention. Domestic violence is a community-wide problem and police reluctance to involve themselves in domestic disputes has also been community-wide and indeed is a pattern observed in other countries as well.

The community-wide nature of domestic violence is illustrated by the fact that in 1986-87 25% of all offences against the person reported to police in New South Wales occurred in private dwellings. Between 1968 and 1981 in New South Wales 43% of homicides were within the family; 23% of these occurred between spouses, in many cases following previous domestic violence; almost half (47%) of female victims of homicide were killed by their spouse compared with 10% of male victims. Domestic violence occurs in all classes and ethnic groups but little is known about its distribution.

There has been little assessment of domestic violence in Aboriginal communities in south-eastern Australia, but it is clearly a serious problem. Dubbo police estimated to the Commission that about 37% of the domestic violence cases which they dealt with in 1989 were Aboriginal, a figure which would be well beyond the proportion of Aboriginals in the community. Aboriginals expressed concern to the Commission's Aboriginal Issues Unit about this matter in New South Wales in Bourke, Broken Hill, Wilcannia, Menindee, Dareton, Walgett, Moree, Tamworth, Gilgandra and Moruya, and concern was also expressed at the Dubbo and Wilcannia Community Conferences.

POLICE PERSPECTIVES

The Commission encountered disturbing evidence that it is a common police reaction to stereotype Aboriginals as violent towards women and indeed to treat it as a racial or cultural difference. This is ironic as many Aboriginals hold a similar sterotype of police. In fact most Aboriginal violence is associated with alcohol, a commodity introduced by Europeans as part of their culture, and appears to be associated with other social issues flowing from dispossession, including unemployment, poverty and the frustrations created by racism. Some police of course are sensitive to this. Indeed police attitudes generally reflect to a considerable extent those of the white communities in which they work, and often include a similar variety.

Domestic violence has always produced difficult problems for police in whatever community, occasioned in part by the ambivalence of women who, on the one hand want protection from violence but on the other hand, from affection for their spouses or fear of retribution, are reluctant to see them penalised. Community attitudes are by no means generally enlightened, recent surveys showing surprisingly wide support for the view that a man's violence against his wife can be justified, and that violence within the family is a private matter to be settled there. There are additional problems in policing violence within Aboriginal communities

because the emphasis on extended rather than nuclear families widens the class of people who feel that they have an interest in a domestic dispute, and because of the widespread historically-based antagonism of Aboriginals to police and to police intervention in Aboriginal affairs. Thus police intervening in good faith in a domestic violence situation have at times found themselves confronted by large numbers of hostile Aboriginals. These experiences as well as stereotypes of Aboriginal culture, increase the general reluctance of police to intervene in domestic violence matters, and are reflected in widespread complaints from Aboriginal women about police dilatoriness and unco-operativeness in laying charges and in taking out and enforcing Apprehended Domestic Violence Orders (ADVO's). 41

Since 1983 there have been significant attempts in New South Wales to increase the legal support for victims of domestic violence, including new instructions to police in April 1988. The New South Wales Police Department has made a significant effort to overcome police resistance to enforcing the law in these matters with the result that a far higher number of assault charges in relation to domestic violence are being taken to court, and a far higher proportion of both these charges and the ADVO's are being initiated by police.

ABORIGINAL PERSPECTIVES

However the response has been uneven and wide disparities exist between different police patrols. This was reflected in reports from the Aboriginal Issues Units in Mogo, Broken Hill, Tamworth and Dareton where Aboriginals spoke well of police co-operation on domestic violence matters; indeed in the latter town it was the only positive comment which police conduct attracted. In Bourke, Gilgandra, Eden, Menindee and Wilcannia, on the other hand, Aboriginals were very critical.

In Moruya Aboriginal women complained that police merely transported victims of domestic violence to the women's refuge and left them to decide whether they would charge the offender. Many of the women would not press charges, and returned to their homes only to be brought back to the refuge within a short time. The Aboriginal Community Liaison Officer in Walgett said that police had adopted a policy of avoiding arresting people and instead endeavoured to separate the parties by taking offenders to the house of some other family member or friend. This was seen as a way of avoiding confrontation with other members of the family or community which was likely to occur if police made arrests. In any event they felt that charging was a waste of time because so few complainants attended court to give evidence.

The latter experience is of course not peculiar to the Aboriginal community. As Pat O'Shane, the Aboriginal Stipendiary Magistrate has pointed out, there is evidence to suggest that a significant majority of women victims do not want these matters to be dealt with through the processes of the criminal justice system. In particular, they do not want their men to be classified as 'criminal' and taken off to gaol. Nevertheless, they do want some help from some quarter in restraining the violence against them, but in a form which will allow reasonably amicable family relationships to continue. She ascertained that the complex psychological and emotional aspects of their relationships are not to be dismissed simply in terms of their economic dependence on men, or in terms of male domination. These women are aware that they have a right not to be assaulted; but they are unhappy about the fact that the criminal justice system is their only recourse. It is disturbing to bear that recently in Dubbo an Aboriginal woman who attempted to withdraw

from a domestic assault case was charged with laying a false complaint.

Community and Aboriginal services

It is therefore very important that while police should give the assistance to victims of domestic violence which policing can provide, and should do this in a non-discriminatory fashion, society should not leave domestic violence to be dealt with simply by policing. In recent years there has been some distance in development of support services for women, including women's refuges. It has been a common experience however that mainstream services and those run independently of government are not notably successful in catering for the needs of Aboriginal women. To some extent this is an almost unavoidable result of the history and continuing structural limitations of Aboriginal interaction with bureaucracies, as manifested, for example, in widespread Aboriginal mistrust of FACS as the inheritor of the Welfare Board mantle, and as the body which currently polices family life and is responsible for the removal of children. However in some cases it arises from the racism or cultural insensitivity of non-Aboriginal staff and from the failure of the organisations to recruit Aboriginal staff into positions of responsibility and power. There is need for active strategies for recruiting Aboriginal staff to responsible positions.

Even more important is the support of Aboriginal initiatives in this area. However there must be a willingness to support appropriate Aboriginal initiatives, and not merely to avoid necessary police intervention by dumping the problem on agencies designed for other purposes. Thus while there may be situations in which ACLOs can defuse situations, the ACLOs are part of the police department and not community organs. It is important that police should not seek to absolve themselves of their responsibility to take necessary legal steps to protect women victims by charging perpetrators or taking out ADVOs, by burdening ACLOs with responsibilities which they do not have the power to enforce.

Similarly in Victoria there is a tendency to see Community Justice Panels as solutions for problems which they do not have the resources to deal with. The situation of CJPs is discussed elsewhere in this report. It would be quite inappropriate to regard them as bodies that can take over the general solution of problems of domestic violence in the Aboriginal community.

Solutions in terms of conferring powers on Aboriginal local governments which have been put forward in other pans of Australia are difficult to apply in south-eastern Australia, where Aboriginals are rarely a majority of town residents and do not hold significant land areas. However there have been a variety of relevant Aboriginal initiatives in south-eastern Australia over the last decade. One example is the Wyrraway Women's Housing Co-operative established in Moree in 1986, which offers short-term housing for women seeking to leave violent or unsatisfactory relationships and assist women to find permanent public housing. It has seven houses and four two-bedroom flats, has placed about 200 clients since it began, employs three Aboriginal women, and is funded by the New South Wales Department of Housing and FACS. It has survived some opposition from the white community. Moree Aboriginal community also has a women's refuge, Ngala.

The Mygunyah Committee, a regional committee in Dubbo, composed of representatives of local committees now existing in Bourke, Brewarrina, Lightning Ridge/Walgett and Dubbo, is seeking to establish safe accommodation in each

town. Each of the local committees has both women and men as members, although in each women predominate. Mygunyah has now received funding to employ a women's support worker in each of the four towns who is counselling women about ADVOs and other legal and social options and attempting to arrange counselling for both men and women involved in violent relationships.

The first State-wide meeting of Aboriginal women, in Dubbo in June 1990, made a number of recommendations on domestic violence, many of which were general ones concerning adequate recognition and resourcing of workers in the field. Amongst other things they call for:

- a strategy for setting up safe houses for Aboriginal women and children in all relevant towns, to be developed by a team of skilled Aboriginal workers in consultation with community women;

- a holistic strategy for the provision of services to the victims and perpetrators of domestic violence;

- a program to be developed to employ and train Aboriginal women as interviewers/investigators in situations of family violence and trained female Aboriginal police to be employed to deal with Aboriginal women in cases of abuse.

CONCLUSIONS

It is important that the Police Force continues its efforts to ensure that police officers take active steps to protect the victims of domestic violence by the laying of charges and eking of ADVOs where appropriate, and to ensure that this is an active and non-discriminatory policing which extends to the Aboriginal community. It is important too that magistrates, in dealing with such cases, recognise that non-custodial orders, which are generally desirable may not be appropriate where it is necessary to give some protection to women victims.

However there must not be an exclusive reliance on policing. Existing services such as FACS and women's refuges which cater for Aboriginals need to continue their efforts to promote awareness of issues of cultural sensitivity and to employ Aboriginal women as staff in responsible roles. Most important of all is government support for Aboriginal-controlled organisations, concerned in supporting and counselling women and child victims, or in developing community-controlled intervention and counselling strategies. Such Aboriginal initiatives deserve support because of the more effective role they can play and because of the general importance of developing Aboriginal independence and giving Aboriginals more power in relation to their lives. They can thus form part of a wider strategy which hopefully will lead to a reduction in alcoholism and other destructive influences on Aboriginal communities.

CHAPTER 20: JUVENILES

A MAJOR ISSUE

In all States the number of Aboriginal juveniles held in custody is alarming and holds very disturbing implications for the future. I have already referred to the fact that Aboriginal juveniles are 25 times more likely to be in detention than non-Aboriginals in New South Wales, and 20 times in Victoria.

A major national effort is necessary to attack this problem. It is a national crisis by any standard, as the continuation of the present situation means compounding human suffering, social disturbance and economic cost.

While only one of the deaths which I investigated, that of Thomas Can', was a juvenile, 8 were of persons who had been first charged when they were under 14, and 9 others were first charged when they were less than 19 years old. At least 8 had spent time in juvenile institutions. Generally the cases demonstrate the failure of the juvenile justice system to achieve any success in dealing with children and youths who come to the attention of the juvenile welfare or justice systems.

The over representation of Aboriginal juveniles in maximum security units is even higher than in other institutions. The proportion of Aboriginals in Endeavour House at times before it was closed reached 60%, a figure attributed to their propensity to abscond. It is dear that, if the involvement of Aboriginal boys and men with police can be reduced then the rate of incarceration of Aboriginals can be generally reduced.

POLICE AND JUVENILES

The way in which police treat juveniles is of critical importance, as early experiences may be determinative of their subsequent attitude to the law. There is disturbing evidence of their being alienated by inhumane, often racist treatment, both before and during custody. In a study by Cunneen for the Human Rights Commission, 82% of Aboriginal juveniles in institutions in New South Wales reported being either hit, punched, kicked or slapped by police. In addition 80% said that they were the subject of racist abuse by police. Violence by police may often be an attempt to address the non recognition of their authority. This is especially so if the encounter between police and Aboriginal juveniles and any challenge to authority involved were to happen in a public arena such as on the street. Research shows that the major factor in whether juveniles get arrested is their demeanour towards the police. Police officers themselves admit that if they are shown deference they are likely to be more lenient. 42 If their authority is challenged they assert it more forcefully and even punitively.

The complaints of harassment and ill-treatment were forcefully voiced by Aboriginals at the juvenile justice conference in Sydney. An ALS officer said that he had found 'blatant outright discrimination against young Aboriginal kids from the Police Department -- once they do become known to the police they tend to be hounded'. An Aboriginal FACS worker gave a dramatic example of a boy who was grabbed and beaten, charged and convicted by police, although it was someone else who had thrown something at the police. A Redfern woman said 'I don’t think we take into consideration the police harassment. In the police station there were two big boards with [photos of] nearly all the kids in Redfern and grown-ups -- its put there for the trainee police to come into Redfern and sort out these kids and they really harass them ... You know the police harassment there is unbelievable

and we're going to have more of our kids die if they don't get off their backs'.

An Aboriginal health worker told of cases of police harassment. 'Since David Gundy was shot, we've got Aboriginal kids being pulled up in the streets and being hassled and being told would they like to end up like David Gundy. That's not very nice. With this sort of thing going on how can Aboriginal kids respect the police ... I'm not saying it's just one sided. It's both sides but we can say this, we never went out and shot someone because someone else got shot. An adolescent got bashed up on Blacktown railway station. This child was a member of the Gundys ... These two coppers that are bashing you say "We should get SWOS in too'. An ALS solicitor said that his clients constantly complain of police calling them 'black bastards', but this is never accepted as part of the events being dealt with in court.

On the other hand, there is much evidence of a constructive approach to the problems of juveniles being taken by the New South Wales Police Service. The Service has a permanent position for a civilian Youth Client Group Consultant, and has conducted a seminar specifically on Aboriginal youth problems. There is a General Duty Youth Officer Program under which a number of young police officers around the state have the opportunity to work with young people within their patrol and to develop strategies for dealing with youth problems. There has been some encouraging success. No Aboriginal juvenile appeared before the courts in Wagga for over six months after such an officer was appointed. In Kempsey such an appointment saw a 10% drop in the number of Aboriginal juveniles charged. Such successes are of course not easy to achieve. They depend on finding officers who have the appropriate personalities to establish productive relations with juveniles, and the dedication to work with them over long periods. So great are the dividends, however, in human terms and the reduction of present and future demands on police, that when such officers are located, that they should be given every opportunity to stay in the work, and should receive proper recognition, including a career structure.

Through Police Youth Clubs police have initiated a youth exchange program in which young people from such areas as Wilcannia, Brewarrina, Kempsey and Redfern have recreational and development exchange visits to Sydney and other locations. In some places police conduct Blue Light Discos for young people in which Aboriginal Youth took part. In one town the Patrol Commander put great effort into a boxing club in which many young Aboriginals took part.

Late in 1990 the Consultant, together with Inspector Ireland of the Policy and Planning Branch prepared a proposal for change in the juvenile justice system for submission to the New South Wales Parliamentary Standing Committee on Social Issues. The proposal was based on an on-the-spot study of the working of the New Zealand *Children, Young Persons and their Families Act,* 1989, which promises to divert a high percentage of juvenile offenders from the court system and contribute imaginatively to their rehabilitation. Given the high proportion of Aboriginals entering the New South Wales system, it is a pity that the Working Party of four which went to New Zealand did not include an Aboriginal. Nevertheless the report is a very positive attempt by the New South Wales Police Service to tackle a major issue, and does recognise to some extent the role that may be played by Aboriginal communities. In discussing the provision for the supervision of community work orders, the report notes:

> 'This aspect would have relevance to the very large number of aboriginal [sic] young people who find their way into the juvenile justice system in

New South Wales. State funded community based supervision could be provided at considerably less cost than government supervision and would contribute towards a transfer of responsibility for offending and responses to offending, to the community'.

It is to be hoped that any development of the proposals will allot a major role to Aboriginal communities at a much earlier stage than the supervision of orders.

Police guidelines regarding the cautioning of juveniles, which are part of the New South Wales Police Service Youth Policy, direct the maximum use of diversionary mechanisms and the minimum use of arrest and charge procedures. The local patrol commander is responsible for this, and the success will depend on the way police respond at senior and junior levels. Police officers at the Commission's conference recognised that problems exist and that police have to be sensitised to special needs of Aboriginal communities and have to learn to resist the white majorities which often exhibit unproductive racist tendencies. It requires a major change in ideas and practices embedded in police culture, and steps must be taken to avoid the possibility of the intention of the policy being subverted at the local level. There is reported lack of co-operation by many police when Aboriginal people make an attempt to assist the young people. For instance when a phone number was given to police in Redfern to call if they picked up an Aboriginal juvenile, the police said there were too many phone numbers to ring a contact person.

The Commission was informed by the Tasmanian Commissioner of Police that juveniles are wherever possible, dealt with in the presence of their parents, guardians, welfare officers, or some other responsible person, and that as a general rule they were brought before the court by summons rather than by arrest.

COMMUNITY SERVICES INITIATIVES

While all possible co-operation of police is needed, it cannot be left to them to solve juvenile problems. Police are saying that in some places 'there's been a disintegration of the community itself, and that's due to all the social things, such as unemployment, lack of education etcetera etcetera, which manifest in alcoholism, which manifests in crime and all those issues ... Other Government agencies are not really picking up the tab ... so that we put extra people in, basically to use law enforcement to police what shouldn't be law enforcement issues'.

In Victoria the Department of Community Services has committed itself to establishing target numbers of Aboriginals in Youth Training Centres as a focus for endeavours to reduce the present numbers. Mention has already been made of the efforts to ensure that wherever possible juveniles are released on bail, rather than held in institutions awaiting the hearing of charges.

In New South Wales the recently released Departmental Strategy for Juvenile Justice sets specific diversionary objectives to decrease the rate of committal of Aboriginal juveniles in each region by 20% in 1990-91 as compared to the previous year. FACS employs 111 Aboriginal people and involves them in the development of policies. Considerable success was achieved by Gullama, a specialised Aboriginal unit within the department, which engaged in preventative and educational programmes. The truancy rate in Redfern dropped dramatically while

its 'Streetbeat' programme was in place. In this programme two district officers patrolled the streets of Redfern and spoke to the kids on a one-to-one basis.

Officers spoke of the need for greater and more flexible use of resources to enable more involvement of Aboriginals and communities with youth work at the grassroots level. In many cases the communities have the human resources but not the financial resources to reverse the processes whereby young people are criminalised.

Aboriginals complain of bureaucratic secrecy which keeps the family distant from the young offender, and of a lack of communication generally. The difficulties in visiting children in institutions are enormous, with the distances from centres of Aboriginal populations and lack of accommodation available for families. The way children get 'shuffled round the system', and shifted from one institution to another, are also barriers to family ties being maintained. As one Aboriginal woman worker said 'Why bring them from Moree and Bourke to these places down here? Surely to God there's enough money within the Aboriginal business today to keep those kids near their families?'. Funding Aboriginal communities to provide local care would in many cases be less expensive and reduce the risks of criminalisation and institutionalisation.

SEPARATING JUSTICE AND WELFARE

One experienced speaker at the Juvenile Justice conference said 'If you have two kids, one white and one black and they both come up for the same offence in the same town, but because the black kid's parents aren't available, say, at this time, or he's a bit surly and responds to police not as positively as the white kid does, the black kid goes to court and the white kid gets a caution. Then the next time they come up before the police they'll say "he's had a court appearance before --he's got less right to another caution than the other kid"'. In this way the 'deviation amplification' process ensures that those with the most troubled home and community backgrounds are most likely to be treated punitively by a system which confuses social and psychological problems with criminality.

Several speakers said that the welfare system should be far more clearly separated from the courts. It was argued that as 95% of cases are decided before they go to court, and the court is really only for sentencing, courts should not be dealing with kids welfare problems. That is, the roles should be separated and the courts should retain only a legal role. Such a separation would allow for a breaking of the nexus between poverty, race and criminality.

The New Zealand *Children, Young Persons and their Families Act,* 1989, which, as I have described, has been the subject of study by New South Wales police, may offer a useful model, provided it is adapted to give a major role to Aboriginal communities, so that they can take a large measure of responsibility for their young people.

BAIL

There are many indications of deficiencies in the working of the present justice system. Problems with legal representation and with bail are numerous. Unreal conditions are regularly broken meaning that young people are recycled through

the courts. Breaches are common because often the kids were elsewhere and either could not get to the court or got there late, and would then be arrested for another series of offences. There is also a problem with communication. 'Kids a lot of the time do not understand what is going on at the police station - - they will nod their heads and say they understand but they don't.'

Available evidence shows that police are more likely to refuse bail to an Aboriginal than to a non-Aboriginal in similar circumstances. Police argue that this is due to the criteria in the *Bail Act* concerning residence, employment, family situation and prior criminal records. WALS has suggested amendments to the Act, and it appears, in view of what police say, that there is need for a review of its appropriateness for Aboriginals, particularly juveniles.

I have earlier noted that in Victoria no young person may be refused bail on the grounds that they do not have adequate housing, that a Remand Advocacy Program has been established, and that Youth Officers at Training Centres assess the incoming juveniles and endeavour to find appropriate community placements. When such placements are found the juvenile is returned to the court for approval and release.

INSTITUTIONALISATION

Virtually everyone associated with the criminal justice system seems to agree that putting children into detention centres tends to amplify their difficulties, or at least to increase their propensity to criminal behaviour. This is certainly consistent with the life histories of many of those whose deaths I investigated.

The effect of the 1989 *Sentencing Act* in New South Wales, designed to provide 'truth in sentencing' has been to double the period of detention for juveniles. Young people am spending about 190 days in custody, which is almost double what they were previously spending on average. FACS is given no flexibility as to the length of time juveniles are kept in custody. Under the Act the median duration of a term of committal has increased from 98 days to 182 days. Thus it appears that a consequence of the legislation is turning out to be more criminalisation of juveniles, which will lead to a higher rate of Aboriginals in custody and thus more deaths in custody.

The philosophy of harsher and more punitive treatment of offences against the law contrasts with the pattern in other States and overseas where there has been a recognition that the costs of crime to society is not reduced by these means. The creation of a hardened criminal class out of unhappy and troublesome youth by incarceration and inhumane treatment will in the end cost society dear both in economic terms, in social disruption and in human misery. Those policies directed at rehabilitation of young offenders must in the end be of greater value than any other investment the Government might make with the funds for corrective services.

The immediate consequences of taking children from their families or communities are various. According to the HREOC many Aboriginal children become homeless upon release because of lengthy periods spent without contact with their families. Juveniles who have minimal contact with family tend to have problems identifying themselves as Aboriginal and tend to think of themselves as outsiders. The effects of institutionalisation on Aboriginal children is particularly destructive because

Aboriginal culture and 'institutional' culture are virtually direct opposites, the former being permissive, egalitarian, strongly interactive, and kin based while the latter is authoritarian, punitive, hierarchical, individualistic and impersonal.

The restricted access to children in detention is destructive. A senior Aboriginal woman public servant found that she was refused access to her nephew at a detention centre. 'I was told there was no way in the world I was allowed to speak to him, nor was he allowed to speak to any of my children who are his first cousins.' Unlike most Aboriginals, she had friends in high places so the authorities quickly changed their minds.

Families have problems visiting because of limited money: sixty percent of parents of those in institutions are Social Security recipients. FACS gives one way fares, which sometimes leads to people being stranded. It is pleasing to bear that new FACS procedures emphasise Aboriginal children's rights to contact with other Aboriginals and access to Aboriginal welfare and legal services when in institutions.

EMPLOYMENT AND LEISURE ACTIVITIES

The evidence in the Carr case brought out the contrast in the circumstances in which Thomas Carr's father grew up, and the world in which Aboriginal youths are growing up today, especially in country towns. Aboriginals and non-Aboriginals alike in these towns recognise the destructive effects of unemployment and limited leisure activities. Boredom and lack of self-esteem are commonly seen as predisposing reasons for the abuse of alcohol and drugs and the occurrence of many of the relatively petty offences which commonly bring Aboriginals into custody.

The Commission encountered a number of initiatives to provide leisure activities for juveniles, some initiated by Aboriginal organisations and some by police. In some areas the two were co-operating constructively; in others the Aboriginals felt that police were authoritarian and allowed no proper role to the community.

MULTIPLE CHARGES AGAINST JUVENILES

The complaint has frequently been made that young Aboriginals are unnecessarily or deliberately made the subject of trivial charges or multiple charges, with the result that the appearance of a serious criminal record is built up at an early age. This follows them through life, is a handicap against defending themselves or seeking mitigation if they are charged again, and also handicaps them in relation to employment and other ways. The issue was brought to the surface in the Carr inquiry by the multiple charges, no less than five over a single hot-tempered action by a 17 year old Aboriginal. It is important that steps be taken to dispel the concern that exists among Aboriginals on the issue of trivial charging and multiple charging.

PARENTAL CONTROL OF ABORIGINAL CHILDREN

An officer of the Department of Family and Community Services said that a lot of the problems he had in dealing with Aboriginal youths in Dubbo were mainly because of the degree of freedom allowed to them. There is a very strong belief,

which I have found widespread in Aboriginal communities in south-eastern Australia, that parents are forbidden by law to chastise their children, and that if they do they will be prosecuted or the children taken away. On a number of occasions there has been reference to children being able to 'divorce' their parents. That particular phrase no doubt comes from newspaper reports of a case in Victoria, but where the general belief comes from I cannot say. However it is firmly held and has been expressed to me in Walgett, Dubbo and Wellington, and also in Victoria, in meetings of Aboriginals. It may in part be a legacy of the feelings of powerlessness built up by the oppressive supervision and control of Aboriginal families in the past.

The matter was raised in each case on the initiative of Aboriginals, who expressed great concern and gave it as a reason why children were found wandering the street at night and taking up drinking. There seems to be a clear need for some kind of carefully worked out program, involving the police and the Department of Family and Community Services, but mainly implemented by Aboriginal organisations, to explain the true position. It will be difficult, as it is not easy to explain the limits of reasonable use of force under the law, and there may be differing cultural as well as individual views as to what is reasonable. For example, reference is often made approvingly by Aboriginals to the traditional disciplining of children by holding them in the smoke of fires, and this must have been done in a way which did not harm children. 43 Yet it is likely to produce a disapproving reaction from non-Aboriginals who are unfamiliar with the practice, and in whose domestic culture fire has long played a less significant role.

PART SEVEN: SOCIAL CONDITIONS

CHAPTER 21: EDUCATION

THE ABORIGINAL EXPERIENCE

As an instrument for transmitting culture from one generation to the next, education can be a powerful force either for assimilation or for the preservation of cultural identity. From the point of view of an indigenous people, such as the Australian Aboriginals, the education system of the dominant community presents a catch 22 situation. If their children take part in it fully, accepting its values, they will be alienated from their parents and their culture. If they do not participate in it, they will have no opportunity to acquire the skills on which financial and vocational success in the wider community depend, or which are necessary if the indigenous communities are to develop their own professionals and other skilled individuals so as to be independent of the experts of the dominant culture.

Of course the indigenous people are not likely to have a free choice in the matter. Until relatively recent times in much of Australia Aboriginal children were effectively excluded from the opportunity to attend the State schools, in some cases because of remoteness or the itinerant lifestyles of their parents, often because of the objection of white parents to the presence of Aboriginal children in the schools which their children attended.

In more recent times the situation has been reversed and attendance has become compulsory. By and large however the schools which Aboriginal children have been forced to attend have been culturally hostile environments. The schools and their curricula and teaching methods had naturally been developed, and their staffs trained, to be effective instruments for passing on the culture of the invaders. Indeed it rarely occurred to anyone that the schools, or for that matter Australian society at large, did reflect a particular culture and set of values. It was assumed that schools simply taught the truth, in the language, and inculcated the values of civilised society. Hackneyed as it is, there is still no better example than the long unquestioned teaching of Australian history, with Tasman discovering Tasmania, Torres being the first to sail through Torres Straits, Cook being the discoverer of eastern Australia, and the brave settlers being set upon by treacherous blacks who lacked any respect for property. When it came to manners, there was no thought that there could be legitimacy in other attitudes to time than that expressed in the punctuality of an industrial society, or in other attitudes to language and clothing than that of middle-class decorousness. Nor was there tolerance of differences in values which placed ceremonial or kinship obligations above those of school and industrial timetables, sharing above individual accumulation of property, and co-operation above competitive individual achievement.

The alien character of schools designed to socialise children into a different culture inevitably made schooling a bewildering and unpleasant experience for most Aboriginal children. This was commonly exacerbated by the arrogance of those who accepted the dominant culture as unquestionable - impatient and dismissive teachers who saw in cultural difference only delinquency or stupidity, and cruel and prejudiced fellow students imbued at home and in their own communities with the certainty of their own racial, cultural, intellectual and moral superiority.

A widespread result has been that schools have given Aboriginal children neither pride and confidence in their own culture nor the training in marketable skills that would facilitate their participation in the wider economy. Instead many young Aboriginals have been left with neither employment nor a richness of cultural and leisure pursuits, often in surroundings where even sporting activities are limited. In such circumstances the pull of alcohol is strong, drinking providing them with an escape from boredom, a basis of sociability, and sometimes an expression of defiance of the dominant community which they feel has rejected them and despises them. Truancy and drinking, and associated with them petty crime, often are the means by which Aboriginal children are criminalised and start to spend much of their life in custody.

Some Aboriginal children succeed at school despite these obstacles, and other handicaps such as overcrowded housing and ill-health, although atelling comment from an Aboriginal community to the Victorian AIU was that Kooris who do not identify with their communities 'don't seem to have any trouble getting through school'.

There are teachers who make great efforts to help Aboriginal students achieve. In recent years there have been increasing awareness of the problems and varied attempts to improve the position, but overall the results have been disappointing, whether one measures them by the desire of Aboriginal children to remain at school or their achievements by orthodox educational measurements, or by the view of Aboriginal communities. Endeavours which do not seriously involve the Aboriginal community, but are directed at Aboriginal children simply as individuals are not likely to be productive.

ABORIGINAL CONCERNS

New South Wales

The New South Wales AIU reported that the lack of success for Aboriginal people within the general education system is becoming a mounting concern for many members of Aboriginal communities and organisations throughout the State. It is commonly believed that in excess of 60% of Aboriginal children in New South Wales are not completing Year 10 of high school, the bulk of children leave school between 14 and 16 years of age, and many fail to complete the first year of high school. The only exceptions were in centres where there had been reasonably good community relationships over a period of time, or where there was a strong religious influence.

Aboriginal community members saw the failure of children to remain at school as contributing to the increase of young people who are using alcohol and drags at an early age and then committing offences to provide money to supply themselves with alcohol or drugs. They saw the reasons for the children's lack of interest in education as including the fact that they perceived the type of education provided as having no relevance to their position in the community, the negative attitude of many teachers and principals in country towns, and the fact that many Aboriginal parents had a negative attitude towards education because of their own experiences.

In view of the history of Aboriginal education it is not surprising that many of the present generation of Aboriginal parents have this negative attitude to schools. Many Aboriginal parents are unwilling to attend a school under any circumstances, even when there is a problem about one. of their children. The only time they attend in numbers was when there is an Aboriginal Week or other similar celebration. Even when there were Aboriginal Education Assistants (AEA) employed in schools, such parents would use this as an excuse for not going so that saying that the AEA was employed to look after the children at school. The one exception encountered by the Aboriginal Issues Unit was in Menindee. Aboriginal people made up the bulk of the members of the Parents and Citizens Association and held most of the offices.

Victoria

In Victoria the AIU reported that while the number of Koori students reaching and completing form 6 (Year 12) is gradually increasing, the rate of student expulsion is also increasing at a much faster rate. In addition, many Kooris are leaving school at or prior to the legal age. There is a growing sense of disillusionment among young Kooris, with many not attending school because they do not see any hope of becoming employed in their home town even if they were to receive an education and become qualified. Educational standards in Victoria are still very poor by comparison to other states, Victoria having the worst educational outcomes for the general population.

The education system is seen as inappropriate and unfair. School is made more difficult by various factors including lack of understanding on the part of teachers and staff, racist remarks from other students, receiving detention or 'time out' for trivial things such as failing to be in proper uniform, not wearing a dress, not having an apron for class or wearing red, black and yellow beads. Punishment for these

things is discriminatory, in that it is the poor who cannot always afford uniforms and aprons, etc., and demoralising. It distracts students from their studies and interest is soon lost. This has a significant impact on the level of achievement and educational outcomes of Koori students.

A major problem perceived by Aboriginal community members was the fact that the teachers who came to a rural area had mostly been trained in urban areas with little or no contact with Aboriginal children or people. Many of them were inexperienced teachers taking up their first posting. Such teachers had little understanding of the cultural and historical differences between Aboriginals and non-Aboriginals and how this was reflected in the behaviour of children. It was felt that many of these teachers had latent racist attitudes or had little or no idea of how to deal with racism within the classroom. Often when there were disputes between Aboriginal and non-Aboriginal children, action was taken only against the Aboriginal children and the children generally felt they were subject to discrimination. When such action was taken against children who were leaders in the Aboriginal community in the school, there was a very negative attitude from other Aboriginal children who might adopt a similar method of behaviour.

Aboriginal children rapidly fell behind in the general learning standard and this had a bad cumulative effect. They tended to be placed in particular groups and receive less attention than other children who were assumed to be brighter.

While statistics were not available, it was believed that a disproportionate number of Aboriginal students were expelled or suspended from school. Teachers who were unfamiliar with Aboriginal behaviour tended to interpret the behaviour of children as a direct challenge to their authority and to react accordingly. The sensitivity of Aboriginal children to racial comments or slights was not appreciated and complaints were often ignored, as a result of which violent incidents occurred between children, and the Aboriginal child was blamed. All this is very disillusioning for children who may have behaved well.

The Victorian AIU reported that the Koori Educators based at schools throughout Victoria play an important role in encouraging Koori students in their studies, providing support and ensuring that they are not subjected to any differential treatment by the staff. Inevitably, in the ordinary course of events, their job sometimes involves education of non-Aboriginal staff about Koori culture.

Lack of resources, including time and transport, effectively restricts Koori educators from covering their entire area. Some Educators work in several schools and are required to use their own cars for work. However, they cannot get any travel allowance because their cars are not comprehensively insured. This, as in the case of administrators of Koori organisations, puts the Educator in a position of having to work for their community without the full entitlements. It also affects the delivery of this service to Koori students.

I attended a meeting in Swan Hill of these Koori educators and school principals, and also a meeting of an Aboriginal Education Committee, which works with the Aboriginal educators. As at Echuca, I was very impressed with the development of Aboriginal educators, and the co-operation existing between the Aboriginal community and the teacher appointed to assist and supervise the work of Aboriginal educators. Clearly there is room for a very great contribution by these educators, both to the educational development of Aboriginal students, and to the enhancement of understanding between teachers and white students on the one hand and Aboriginal students on the other. What they can achieve is greatly

affected by the attitudes of other teachers, and particularly of principals. I was told that a recurring problem was that, due to the low rate of pay for Aboriginal educators, they were frequently enticed away to other employment once they acquired some experience. In view of the great potential contribution they have to the future of the young Aboriginals in the schools, this is a most unsatisfactory situation.

According to Commonwealth Employment Service representatives, two major problems in increasing Aboriginal employment are that young Aboriginals lack confidence in seeking employment, and lack basic education which, for example, handicaps them in taking up block release study at TAFE as required for apprenticeships. There is widespread concern in the Aboriginal community that many Aboriginal children are promoted in the course of their schooling irrespective of whether they have achieved basic standards, even skills in reading and writing.

Asked to nominate the principal circumstances that were holding back the progress of Aboriginal education, the meeting of Aboriginal educators and school principals nominated the absence of role models; discrimination in schools, particularly amongst children; crowded homes that provided no quiet place for children to work; and lack of parental support and encouragement. Underlying many of these problems is an acute shortage of housing. I was told of one home where 19 people resided in a four-bedroom house.

HEARING PROBLEMS

Permanent hearing defects, from which Clarrie Nean suffered all his life, remain a serious issue for education. A permanent hearing defect becomes a permanent learning defect. 55% of Koori children in Victoria in 1979 had permanent heating defects by the time of entering school and this has affected their learning. These children are now facing the prison system in their twenties. School does not cater for children with hearing defects. As a consequence, children are called 'dumb' because they are unable to learn. Otitis media (middle ear infection) is most common in children of pre-school ages. This sets the pattern for drop out at an early age.

SELF-DETERMINATION AND EDUCATION

The attempts to make schools less ethnocentric, and their curricula more relevant to Aboriginal experience and needs, should be encouraged, but basic to success and to justice in the area of education, as in other areas, is the extension of the control of Aboriginal communities over the education of their children. This may produce different results in different places, as there are differences of many kinds between different Aboriginal communities. It will no doubt also produce results different from those that would have been sought by white educators and white parents, but that is to be expected and welcomed once there is a genuine acceptance of cultural difference. There are few human rights more precious than the right of parents to have their children brought up in the culture of their choice.

The giving of control to Aboriginal communities does mean that the dominant white community must do what it finds so difficult, that is, give up the confident belief that it knows best what is good for Aboriginals and has the right to impose its views on them. This policy has been pursued with varying degrees of brutality over the

years, but if anything should have been learnt by now it is that the attempts to separate Aboriginal children from their parents and communities, whether by forcible removal or by educational assimilation, simply does not succeed. For the most part it simply produces great anguish and social dislocation amongst children and parents alike.

How effective a voice Aboriginal communities can be given in the education of their children will depend largely on where they live. Those who form substantial Aboriginal communities can obviously hope to achieve greater control than those where their children are a minority of school-age children. They may be able to establish their own schools, with their own curricula, if that is their wish, or follow State curricula with whatever modifications they consider appropriate.

Those who live away from Aboriginal communities will no doubt find that that they are confronted with the choice of sending their children to schools in which the school process will be very assimilationist in tendency, or themselves moving or sending their children back to Aboriginal communities. If they make the former choice they may, of course, like other people who bring up their children in another cultural environment, work out their own individual or community methods of passing on their cultural heritage to their children.

But in all schools, whether there are significant numbers of Aboriginal children enrolled or not, there should be a real attempt to bring students to understand the fact that Australia is a country where an immigrant community lives alongside an indigenous community which it dispossessed, and to sensitise them to the problems to which that situation has given rise, historically and at the present time. They should be led to appreciate the long perspective of Aboriginal life in this country, and the international context in which Australian Aboriginals face similar problems to many other indigenous peoples, including the Maoris of New Zealand, the Indians and Inuit of Canada and the United States. Hopefully with this greater understanding, respect will replace prejudice and a willingness will grow to see justice done.

CHAPTER 22: EMPLOYMENT AND ENTERPRISE

EMPLOYMENT HISTORY OF THOSE WHO DIED

Of the 18 Aboriginal persons whose deaths I investigated only one was in regular employment at the time of his death. That one was David Gundy, who did not come into custody as the result of any act of his own or of any allegation against him, but as a result of an illegal police raid on his home. Hence he may be put to one side in considering the relevance of employment to custody, except to the extent that he illustrates the negative correlation between employment and conflict with the law. As five of the deceased, Campbell, Saunders, Williams, Smith and Murray died in prison, there was no question of their employment immediately before their death. However for the purpose of the present discussion I will note their employment history prior to their last imprisonment.

All three Victorian deceased were invalid pensioners, as were Bruce Leslie and Peter Williams in New South Wales. Arthur Moffatt was receiving a pension for a combination of disabilities - leg injuries, epilepsy and diabetes, James Moore for

blood pressure and Harrison Day for epilepsy.

Bruce Leslie also received his pension by reason of epilepsy and Peter Williams for a psychiatric condition suggested to be chronic paranoid schizophrenia.

Three of these pensioners, James Moore, Harrison Day and Bruce Leslie, were men who had worked for substantial periods in their younger years in the pastoral industry. It was probable in that work that two of them received injuries giving rise to epilepsy for which they received pensions. It is also noteworthy that the three of them gave up work and accepted pensions about the time of the considerable contraction of employment in the pastoral industry as a result of mechanisation and closer settlement. In some areas the availability of rural work was also considerably affected by immigration.

Rural employment was the main niche for Aboriginal employment in most of New South Wales and Victoria for many years up to the 1960's. A number of the deceased in New South Wales were men who were born into families and communities where rural work had once been the mainstay of Aboriginal employment, but by the time they came of working age that employment was no longer available and there was nothing to take its place. These men included Lloyd Boney who was born in 1960, Shane Atkinson born in 1963 and Mark Quayle born in 1964. Substantially they had never known employment, at least of any regular or continuous nature. Clarence Nean, born into a similar community in 1948, managed to follow rural work for some years and the increasing difficulty of getting such work may have contributed to his alcoholism towards the end of his life.

Another significant source of employment for Aboriginals over the years was unskilled work with governmental bodies of various kinds. Arthur Moffatt worked for years with the State Electricity Commission in Victoria until he received his invalid pension. Thomas Carr's father had been in such employment but young Thomas was to die at the age of 17. As he had spent most of the previous year in juvenile institutions he had had little opportunity to test the employment market. Peter Williams was another whose father had worked in such areas but, as already noted, he became a psychiatric pensioner.

Three of the deceased had spent most of their lives in custody in one form or another - juvenile institutions, homes or gaols - and had had little experience of employment in the community. These included Malcolm Smith who was taken from his family at the age of 11, Max Saunders who was sent to an institution at the age of 14 and Glenn Clark who was made a State Ward at the age of four. None of them achieved satisfactory adaptation to life in the general community before they met their deaths. Shane Atkinson also spent a substantial period of his youth in institutions, but the Victorian authorities who were responsible for him appeared to be much more anxious to give him opportunities to grow up out of institutions than the authorities who dealt with the others in New South Wales and Tasmania.

Paul Kearney worked regularly until he finally succumbed to his addiction to alcohol and prescription drugs. Mark Revell also worked for a substantial period until he was disabled by alcoholism. Peter Campbell, in his wanderings through the eastern States, found a niche of employment in outdoor work such as parks for several years before he was disabled by a growing mental illness. It is interesting that he had succeeded in returning to regular work for a number of years, notwithstanding that at an earlier period of his life he appears to have lived simply from the proceeds of criminal activity.

The only one of the 18 deceased who does not appear to have evinced any desire to work was Tim Murray. As he died at the early age of 19 one does not know what would have happened had he matured. He was in gaol studying to acquire clerical skills which would have fitted him for employment on release. In his teenage years he had fallen into a homosexual drug-dominated sub-culture and he supported his needs by what can only be described as professional criminal activity. He grew up in the suburbs of Newcastle, not within any Aboriginal community. His situation is not in any way typical, both because of the nature of the white urban community in which he lived and his own problems of sexual identity.

A general review of the persons who died suggests that they were willing workers, and indeed a number of them gave considerable years of service to the rural industries until their avenues of employment dried up. Unemployed or pensioned, they became the victims of alcohol addiction. Others grew up in communities where their natural careers would once have been in rural industries but there was simply no employment available. Others had their lives so disrupted by institutionalisation at an early age that they effectively never had any normal introduction to employment.

ABORIGINALS AND EMPLOYMENT

The stereotype so often put forward of Aboriginals as unwilling to work is negated not only by the life stories of these 18 individuals but by a study of history and by a look at contemporary Aboriginal communities. It is clear that unemployment is a very important factor in the complex of circumstances which keep Aboriginals in a disadvantaged position in the community in south-eastern Australia. I heard from Aboriginals, police and from other members of the white community that drinking and conflict with the law increased considerably in Aboriginal communities with unemployment, and markedly decreased when programs to provide employment were introduced. Indeed even unpaid activity like sport was seen as having a significant effect so that during the football season in areas where there was a competition drinking and conflict with the law decreased.

THE HISTORICAL BACKGROUND

A consideration of the history of Aboriginals in south-eastern Australia shows that unemployment is not a problem for which Aboriginals can be blamed. It is a problem created for them by the dominant white community. Before dispossession by white invaders Aboriginal societies had a smoothly working economy in which everybody contributed in accordance with community expectations to what was needed to sustain the community.

When their traditional economy was disrupted Aboriginals sought new ways to support themselves as pastoral workers in the pastoral areas, as seasonal workers in agricultural areas, and by seeking in those agricultural areas to obtain access to land for farming. In coastal areas there was a considerable history of Aboriginal farming until they were dispossessed from those areas by bureaucratic bloody-mindedness or by the envy of white farmers wanting their land. Opportunities for employment in pastoral and rural industries dried up with mechanisation, closer settlement and development of properties and in some areas, as in the irrigation areas, as a result of competition from immigrants. Another niche of employment in governmental bodies such as local councils and

railway authorities employment has also contracted. In the country towns in which Aboriginals are concentrated there is usually relatively little private employment in the towns and what there is remains within families or amongst a white network and is rarely available to Aboriginals.

Aboriginals have never been accepted as equals in the wider community and they have always looked to their own extended families and communities for the respect, warmth and basis for self-esteem which is not available elsewhere. This together with their strong ties to land and places of past association makes them understandably reluctant in search of employment when they find that the places in which the APB and the AWB and other pressures from the white community have concentrated them are areas of declining employment. A number did accept the opportunity to 'relocate' or 'resettle' in urban areas when offers of housing or employment were held out to them. Many remain in urban areas, but many on the other hand moved back to rural areas when unskilled and semi-skilled employment dried up in the city and the pressures of inflation made life difficult.

A RURAL EXAMPLE

Many Aboriginal communities have been faced with the fact that the niches of employment which they once filled are gone. New niches have not appeared and they have been under very considerable handicap for reasons of geography, education, experience and prejudice in competing in other fields. A typical picture is Swan Hill, a city on the Victorian side of the Murray River. In a city of some 10,000 people, there is a population in the vicinity of 500 Aboriginals, who either permanently reside in Swan Hill and satellite areas, or use it as a primary centre for travelling in the region. At the time of the Commission's hearing, there was not and had not been an Aboriginal member of the City Council; there was no Aboriginal employed on the white collar staff of the Council and only one on its outdoor staff; and there were only two Aboriginals known to be employed by private enterprise in Swan Hill, one being a girl in a shop and the other a long standing permanent employee on the printing staff of the local newspaper. Almost all Aboriginal employment was of fairly recent origin in government bodies, usually in specially designated positions servicing Aboriginals, or in Aboriginal organisations funded by government and servicing Aboriginals.

CDEP PROGRAMS

Nevertheless there is very strong evidence of the continuing desire of Aboriginals for economic independence. It is simply untrue to paint a stereotype of Aboriginals as 'dole bludgers'. There is tremendous enthusiasm for CDEP schemes under which program many Aboriginals have deliberately chosen to work for their unemployment benefit or other pension. The basic concept of CDEP is to make the welfare payments received by members of Aboriginal communities, including in particular unemployment benefits and supporting-parents' pensions, into a fund from which participants are paid wages for work on a chosen project. The scheme is available where ten or more persons wish to participate and it can continue indefinitely. Participants can enter and leave the project at any time and, if they leave, return to the normal receipt of their pension or benefit.

The fund for the payment of wages is formed by pooling all the benefits and pensions currently received by participants including their child allowance

supplements. To this fund can be added income earned by work under the scheme, training supplements and other grants, or other money which may become available from other organisations. In addition to these funds ATSIC gives an untied grant to the group equal to 20% of the combined value of their pensions and benefits each year. This is called a CDEP Administration Grant and is in recognition that the scheme will incur significant administrative costs for bookkeeping, paying wages, insurance and perhaps management.

These sources of funds make it certain that all those participating can receive in wages at least as much as they receive as pensioners or beneficiaries.

A very important feature is the CDEP Capital Support Grant ATSIC provides for equipment and materials. Moreover projects undertaken through CDEP are eligible for training support programs conducted by DEET and ATSIC and for funding by ADC.

Although CDEP communities can and do undertake income-earning projects, eg by hiring out equipment or performing work for local government councils, they are not under pressure for commercial viability. The CDEP activities so far have largely been involved in cleaning up and landscaping Aboriginal community areas and performing 'local Government' functions in relation to them.

There are a number of issues that arise in relation to CDEP projects, but it is clear that they have proved very popular and show that Aboriginals are more than willing to work in what they see as constructive tasks for their communities. They have been extremely valuable in providing what has sometimes been the first employment experience for young people who have grown up in times where there has been no practical availability of regular employment for them.

WORKING IN ORGANISATIONS

The other very considerable proof of Aboriginal willingness to undertake constructive work and to advance their communities can be found in the activities of many Aboriginal organisations. In the chapter on land rights I discuss the activities of Aboriginal Land Councils and in particular the employment providing enterprises that have been established by a number of RALCs and LALCs. But there are many other Aboriginal organisations which have shown a like initiative even though they have often faced considerable frustration in getting access to the necessary resources and in getting recognition of their right to decide and implement what they want. This is a matter to which I return in the next chapter.

I found an outstanding example of Aboriginal achievement in the town of Echuca which I visited in the course of the inquiry into the death of Harrison Day in that town, and I have described it in detail in the final chapter of this report as an inspiration for the future. But in many many communities organisations have been formed and are carrying out all kinds of community work, and increasingly looking to enterprises in which their people can find employment.

FUTURE DEVELOPMENT

The examples to which I have referred indicate very clearly that there is a great deal of Aboriginal initiative and energy which if allowed to blossom can go a long

way to solving problems which 'mainstream' services have been unsuccessful in dealing with. Success is much more likely if Aboriginals are able to set their own priorities and work in accordance with their own cultural values and control resources and their use.

Certainly there will be difficulties although, as I suggest in the next chapter, these are not necessarily or even primarily all on the Aboriginal side.

One difficulty and a continually increasing one is that there is a generation of young Aboriginals who have grown up in communities and in circumstances where traditional fields of employment have been cut off and no others have been substituted. They have grown up without experience of work and in many cases have developed a sub-culture in which alcohol has a destructive role and individual achievement is not respected. In some places drugs other than alcohol are becoming a problem.

The rapidly growing population means that this generation without experience of employment or achievement is growing very quickly in numbers. It is urgent that opportunities for constructive work be provided. The greatest opportunity for this particularly in rural areas is in Aboriginal enterprises and the success of these depends on a real transfer of resources into Aboriginal hands. I later discuss the New South Wales Aboriginal Regional Land Rights legislation as an example of the imaginative way in which that problem can be tackled in southeastern Australia.

CHAPTER 23: HEALTH AND HOUSING

ABORIGINAL HEALTH

I will not attempt to review the notoriously bad state of Aboriginal health. It is illustrated in all the lives of those I investigated, and directly implicated in the three Victorian deaths and a number of those in New South Wales

The implications for children and for the future are very serious. The experience of Clarrie Nean is a reminder of how much many young Aboriginals have been handicapped by health problems. All his life he suffered from ear problems which are notorious as possible reasons for poor performance of children at school. The Superintendent of the Aborigines Welfare Board wrote in 1958 that many children were brought to Sydney repeatedly for treatment of a similar condition and very little if any success had been achieved in any of the cases. Many Aboriginal children are still handicapped in this way.

Heart disease

The deaths of two very young men from heart disease, Thomas Carr at the age of 17 and Max Saunders at 27, reflect one of the staggering statistics of Aboriginal health, or lack of it. Commenting on Max Saunders' death, Dr Torzillo, a consultant thoracic physician with considerable experience of Aboriginal communities, said:

> 'Whilst death from coronary heart disease at such a young age is a rare

> event, it does highlight the high incidence of coronary artery disease amongst Aborigines. In fact, the most recent report of mortality in New South Wales Aboriginal adults demonstrates a greatly increased chance of dying of coronary artery disease for Aborigines compared to the whole New South Wales population. The data suggests that young Aboriginal adults have approximately 40 times the chance of dying from coronary artery disease compared to the overall population risk. In many of these individuals this disease will not produce any symptoms until the first heart attack occurs. This markedly increased risk needs to he brought to the attention of any staff who are responsible for the care of young Aboriginal adults. It may he that more detailed medical evaluation of Aboriginal prisoners should he undertaken when they first enter the prison system. This more detailed evaluation could be justified on the basis of current epidemiological data about their increased risk of death from certain conditions'.

It should be stressed that the high incidence of heart disease is not genetic, but reflects the lifestyle of a minority population living under conditions of stress and poverty, characterised by, amongst other things, poor diet and heavy cigarette smoking.

Alienation from mainstream services

The extremely bad health status of Aboriginals has been well known for many years, as has the very deficient state of medical services in the remote towns where many Aboriginals are concentrated. As the events following Mark Quayle's death show, even such health services as exist are white-dominated and close their ranks rapidly on a racial basis. A very disturbing feature was the action of the Regional Director of Health, who not only took no responsibility for the situation that caused Mark's death, but actively tried to stop the investigation by the Complaints Unit of the Department. His reaction that an inquiry should not take place because 'the whole town is stirred up' and 'the white residents are afraid' showed that he attached less importance to the investigation of factors which threatened the very lives of Aboriginal people in the town, than to pandering to the fears and prejudices of the white residents.

Aboriginal discontent with the health services available to them was strongly voiced at a community conference held by the Commission in Wilcannia. There were complaints of insensitive and even insulting treatment. Lack of transport, poor telephone services and other conditions make the Aboriginal people dependent on help from hospital and health workers who they feel do not respect them. The matron said that nurses had an abrupt manner because they had been trained in a white system where there was no time. However persons providing professional health care services must accept an obligation to proceed with understanding of their patients and to make them feel welcome and respected.

The need for Aboriginal Medical Services

These problems underly the very great importance of Aboriginal medical or health services, and of the use of Aboriginal support and liaison staff. Some examples from the cases are instructive.

The difficulties in getting Peter Williams to comply with treatment regimes while free in the community may also have been a matter in which a community based Aboriginal Medical Service could have helped. In his statement to the Commission, Peter's father said:

> 'An Aboriginal Medical Service is a must in this area as we are using taxis in some areas to get patients to the hospital. The hospital waiting list is very big here, especially at outpatients, and a lot of people just don't bother going because of that factor. There is no other clinic in the area. The medical facilities for Aboriginal children are certainly very limited and there is a big need for our people'.

Dr Jane McKendrick commented:

> 'Peter Williams' life history is not unique. Many Aboriginal families struggle to survive and live in poverty faced with unemployment, poor housing and so on. Service agencies are often ineffective in helping Aboriginal families because they are not culturally appropriate.'

Health is linked to so many factors in Aboriginal society that it provides an important fulcrum for efforts to advance self-determination. In southeastern Australia Aboriginal Health Services, notably the longstanding services based in Redfern and Fitzroy, have been amongst the most successful of Aboriginal organisations. They provide examples of Aboriginal control of non-Aboriginal professionals that have developed into partnerships not only successful in technical terms, but forming major contributors to community strength and self-esteem, and they should be an inspiration to similar action all over Australia, not only in the health field, but in many others.

Aboriginal Health Services and prisons

In a number of reports I commented on the valuable contribution that Aboriginal Health or Medical Services could make to the care of Aboriginals in prison. In reviewing the history of Peter Williams Dr McKendrick commented that Peter would have benefited from regular visits by an Aboriginal health worker or field officer attached to an Aboriginal Medical Service. It was apparent also that the doctors and psychiatrists who treated Peter while in gaol had no special expertise in dealing with Aboriginals such as is acquired by those who work for the Aboriginal Medical Services. Dr McLeod, the Director of the Prison Medical Service, made it plain to this Commission that he is more than willing to cooperate with Aboriginal Medical Services and make use of their expertise. In Sydney at least the Redfern Service makes a significant attempt to attend some gaols. The obstacle to further involvement seems to lie in the limited resources of the Aboriginal Services themselves.

Aboriginal health professionals

My visits to Health Services and hospitals underlined how few Aboriginal people have attained professional status in the health system or even sub-professional status or unskilled employment.

This problem has complex causes, including the failure of schools generally to hold

and train Aboriginal students, the unwillingness of Aboriginals to leave home for training which is often available only in distant places, the isolation of those Aboriginals who do achieve skills and employment, and a general perception that Aboriginals are not welcome in many white institutions. Some changes in the tertiary system have probably worked against Aboriginal participation, particularly the conversion of nursing to a graduate career. However there are tertiary institutions trying hard to increase Aboriginal enrolment in this and other fields, encouraged by equity program funding from the Federal Government.

Community services for sexual offenders and victims

The provision of services within the community for the care and treatment of sexual offenders is obviously a very difficult subject and one that is not in any way particularly related to Aboriginals. However it came to my attention in the inquiry into the death of Peter Williams. The evidence in that case showed that the community seems to have little to offer sexual offenders by way of treatment and care. Locking them up in gaol ensures the protection for the time being of persons who might otherwise have been victims of their offences, but there seems to be nothing offered to the prisoners in gaol to reduce the likelihood of their reoffending when released.

Peter Williams was a victim before he was an offender. His experience did not become known and be received no help or counselling. This is another area in which there is a need for culturally appropriate services.

HOUSING

Inadequate housing has long been a major issue for Aboriginals, as the history chapter shows, and still is today. In Wilcannia housing remains not only a problem in itself but a source of considerable frustration. There are said to be 64 houses for 654 Aboriginal people. Since 1974 Aboriginals' attempts to do something about housing has been frustrated by bureaucratic processes. There were many complaints about lack of consultation by officials involved in housing and other Government administration.

Inadequate housing has many repercussions, in health, education, alcoholism, employment, to name some areas. Until adequate housing is available, other programs are difficult to carry out.

CHAPTER 24: ALCOHOL AND DRUGS

RECOGNITION OF THE ALCOHOL PROBLEM

There are few topics on which it is more difficult to have an unemotional discussion than that of alcohol amongst Aboriginals. There are various reasons for this, chief amongst which is the fact that drunkenness has been one of the cruellest and most denigratory stereotypes imposed on Aboriginals. The stereotype has been used to paint Aboriginals as a depraved group whom it is not worth helping. It is based on

ignorance and prejudice, as it leaves out of account the large numbers of Aboriginals who are teetotallers or drink in moderation; the many individuals who have courageously broken free from the grip of alcohol; the historical context in which Aboriginal drinking habits were formed; the abuse of alcohol by large sections of the white population, if not always so visibly; the attempts by many Aboriginal communities to rid themselves of alcohol, attempts often frustrated by greedy white interests; and the fact that other dispossessed indigenous peoples encapsulated in an unsympathetic dominant community have had similar destructive experiences with alcohol.

The unfairness of the way in which alcohol problems have been used to belittle Aboriginals has made many Aboriginals and their sympathisers reluctant to acknowledge or discuss the destructive effects of alcohol on many Aboriginal individuals and communities. However today Aboriginals are speaking out about the seriousness of the alcohol problem, and also voicing concern at the increasing use of other drugs in some areas.

Alcohol is of enormous importance in bringing Aboriginals into custody, and in many cases has been closely involved in the occurrence of deaths in custody. It is also heavily implicated in widespread violence in many communities, not least violence against women and children. It is an issue that has to be openly faced, discussed and dealt with in whatever ways are most effective.

Some people shy away from openly speaking about alcoholism amongst Aboriginals for fear of being labelled as racist. It is racist to stereotype Aboriginals as alcoholics or drunks, or to imply that it is not also a major problem in the white Australian community. There are many Aboriginal teetotallers and moderate drinkers, and many non-Aboriginal alcoholics. But it does no service to Aboriginals to ignore the immense, deadly and widespread effect of alcohol on many Aboriginal communities. Thoughtful Aboriginals do not do so; indeed they increasingly speak of the potentially genocidal effects of alcohol and other drugs.

To point out that alcohol is a part of contemporary Aboriginal culture is to offer a truism that is of little assistance. It is also a part of the general Australian culture (although perhaps occupying a different place) but it is often individually and socially destructive there also. It is important to recognise that alcoholism should be regarded not as mere individual weakness or aberration, but as part of a reaction to the situation in which Aboriginal people have found themselves as a result of historical processes of dispossession, oppression and racist discrimination. By the same token, it reflects the high degree of unemployment, overcrowded housing, lack of community resources, and prejudice and discrimination suffered today by many Aboriginals. But recognition of these facts makes the consequences of alcoholism no more desirable to Aboriginals or the rest of the community.

It does however emphasise the need to look beyond therapy for individuals already enmeshed in alcoholism to fundamental social changes that will liberate Aboriginals from the pressures that have made alcohol such a marked and destructive feature of Aboriginal life. What these changes could be and bow they may be achieved are fundamental issues for anyone who seeks an equal place for Aboriginals in Australian society, including a reduction in the grossly disproportionate arrest and imprisonment rates which carry with them the risk of deaths in custody. Whatever they are, they cannot be imposed but must come from Aboriginal community initiatives, or from genuine and effective consultation with Aboriginal communities which is satisfying to them.

There are no easy solutions to alcohol abuse, which like the rate of imprisonment, has its roots deep in the history and social situation of Aboriginals and their relation to the rest of the community. It is not likely that widespread or lasting success will be achieved without changes in the factors leading to low self esteem, high unemployment and under-achievement in education. It has to be recognised that these factors include a pervasive and often unconscious racism towards Aboriginals in the rest of the community, some of it embedded in attitudes, practices and institutions which are assumed to be neutral.

TREATMENT OF INTOXICATED PERSONS

The search for fundamental measures to change the circumstances of Aboriginal life which are conducive to widespread alcohol dependence does not remove the need to ameliorate the position of those already entrapped in such dependence. The first step is to decriminalise drunkenness, as a punitive approach to the condition is pointless, and only results in drunks being put at risk to their life and health in unsuitable police cells where they cannot be properly cared for. Alternative sobering up shelters are necessary, and then facilities for detoxification and rehabilitation.

For over a decade drunkenness has been decriminalised in New South Wales, and where it is necessary to detain an intoxicated person for his or her own safety, use is made of a 'proclaimed place'. While police cells are legally 'proclaimed places', intoxicated persons may not be detained there if it is possible to take them to a civilian proclaimed place. These are Government funded, and administered by charitable or community organisations. Some are managed and staffed by Aboriginals.

The material put before me in cases in New South Wales, where I have visited a number of police cells and proclaimed places, has convinced me of the value of civilian proclaimed places to which intoxicated persons can be taken, rather than to the totally inappropriate atmosphere of police cells. It is clear that a civilian proclaimed place can provide more human interaction, counselling, safe supervision, and health, hygiene and dietary care, than is possible in police cells. While taking an intoxicated person home may be the best solution in some cases, in others the person has no real home, or by returning home will impose intolerable burdens on others, including children and those caring for them.

INTOXICATED PERSONS AND PROCLAIMED PLACES

Grafton, where Mark Revert died, may be taken as an example of the value of a civilian proclaimed place. In 1982 there was no proclaimed place under the provisions of the Intoxicated Persons Act in the Grafton area other than the police cells, so that had Mark Revell been dealt with under that Act he would still have been in the cells. That situation changed in 1984 with the establishment of the Matthew Talbot Hostel in Grafton as a proclaimed place. The property is owned by the St Vincent de Paul Society, but all the running expenses are funded by the Department of Family and Community Services. The manager is a member of Alcoholics Anonymous. Those who promoted the scheme originally wished to establish a home for homeless people and were sceptical of the value of a proclaimed place if it meant that a person with an alcohol problem was given a bed

for eight hours and then put out with no on-going assistance. However, the only funds available were for the establishment and running of a proclaimed place.

The manager's way of operating is to sit down and talk to people who come into the Hostel and if they admit to having a problem and request help, he will keep them in the Hostel for several days. He had tapped into the health network and is readily able to get the assistance of the hospital and doctors or to arrange admission to the Detoxification Unit at Grafton Base Hospital. On many occasions he has sat with people going through the detoxification process at the Hospital and can use other volunteers from Alcoholics Anonymous for this purpose.

It is apparent that such a place can offer both immediate and long term assistance which is not normally available if a person is locked in a police cell, whether as a prisoner or as an intoxicated person. The human contact, the opportunity to talk with a sympathetic person instead of being alone in a cell, and the ready availability of other assistance, as well as the more homely atmosphere, all tend to reduce the risk, which is high in a police cell, that an intoxicated person may seek to do acts of self-harm as blood alcohol concentration falls.

The Hostel has a good relationship with the local police, including a sergeant on the management committee. The manager believes that police bring nearly every Aboriginal person affected by liquor, whom they arrest, to the Hostel. However, the Aboriginal people in the area mainly live out of town at places like Baryugil and they do not often come to the Hostel.

The manager sees great value in the conferences organised four times a year by the Department of Family and Community Services for the staff of proclaimed places. He suggests that there would be value in the Department employing a travelling instructor to visit all the centres, and give on the spot advice.

ALCOHOL IN A RURAL TOWN

Wilcannia may be taken as an example of the destructiveness of alcohol, and of the need for facilities to deal with the problem. The town has been described as a place 'committing slow suicide through alcohol'. Figures collected by police showed that in January 1990 over $128,000.00 was spent at the four alcohol sales outlets in Wilcannia. In a population of roughly 1,000 people that meant that $128.00 for every man, woman and child was spent on alcohol, perhaps double that per adult.

A lot of arrests for street offences arise out of the Aboriginal practice of drinking in public. Tremendous conflict is engendered in the town by the barring of people from hotels and this has a considerable effect on the number of Aboriginals in custody. In February 1989 the proprietor of the Wilcannia Hotel had barred 70 people, 60 of whom were Aboriginal, 'for 99 years', although in fact a small number had been reinstated. The ability of a licensee to impose a 'life sentence', excluding individuals from participating in one of the very few opportunities for social contact in the town, causes great resentment. It is unacceptable that such power, with such potential for causing suffering, humiliation and conflict in a small town, should be exercised without accountability.

There is clearly need for finding ways to reduce the consumption of alcohol and to assist those affected by it. There is also an urgent need to address the

consumption of alcohol in very young people. Community members stressed the need for a detoxification centre, as well as a rehabilitation centre, in Wilcannia.

The coroner made a recommendation in the Quayle inquest for a proclaimed place but it was dealt with by bureaucratic buckpassing. It was addressed to the Department of Health, which washed its hands of it because it was a matter for the Department of Family and Community Services (FACS). However the Department of Health did not pass the recommendation on to that Department. When the Commission drew it to the attention of FACS, that Department decided that what was needed was not a proclaimed place but a detoxification centre and a rehabilitation unit, which was a matter for the Directorate of the Drug Offensive. If that body was informed, it does not appear to have done anything. Meanwhile local endeavour has been directed, so far unsuccessfully, at obtaining funds for a rehabilitation unit from ATSIC.

The figures for charges of alcohol related offences, for detentions of intoxicated persons, and for expenditure on alcohol, make it plain that there is in Wilcannia a desperate need for assistance which has not been treated seriously by governments. Until the underlying causes responsible for alcoholism can be dealt with by long term measures, there is a very urgent need to provide both a proclaimed place and a rehabilitation unit.

Local opinion has placed priority on a rehabilitation unit because of its potential to provide a cure for alcoholism for some people, in contrast to the 'band-aid' character of a proclaimed place. This is a commendable long term view if a choice has to be made, but clearly Wilcannia requires a proclaimed place as well. Despite the statement in a FACS letter of 10 October 1989 that intoxicated persons are generally taken home and are usually only detained when they pose management problems, the detention of intoxicated persons in the unsuitable conditions of Wilcannia police cells continues. In the first four months of 1990, 190 people were so detained. In one sense all proclaimed places are band-aid measures, but they are recognised as important elsewhere. To refuse Wilcannia a proclaimed place on the basis that a rehabilitation unit would be more valuable, while not providing the unit in its place, is a deplorably cynical approach.

COMMUNITY ACTION

While measures to assist and rehabilitate individuals are important for reasons of humanity, and to divert intoxicated persons from police cells which are totally inappropriate for their treatment, it is at the community rather than the individual level that one may hope to make some real impact on the problem. Many Aboriginal communities have shown their willingness to tackle the issue constructively and their efforts should receive every support. Their efforts are much more likely to be successful titan those of mainstream or external agencies, however well-intentioned.

It is significant that destructive use of alcohol is a common feature of many communities amongst indigenous peoples in other countries. It is reasonable to see it as linked to the situation of peoples who have been dispossessed and never restored to a tolerable position in society. It is in the working out of an acknowledged and respected place for Aboriginals in Australian society, with reasonable control over their own affairs, that the best hope of overcoming alcohol problems lies.

Following the Lloyd Boney inquest the coroner recommended:

> 'That the government, Aboriginal Health Services, and other medical resources combine as soon as possible to examine the social and health problems in Aborigines created by alcohol abuse. '

The Minister for Health responded on 30 November 1989, recognising the ineffectiveness of current programs due primarily to unrealistic and inappropriate expectations. He outlined departmental consideration of a community Development model, with stronger emphasis on addressing the environmental issues with a holistic approach, in line with the National Health Strategy. He wrote:

> 'It is well recognised by Aboriginal people, Aboriginal health service providers, and experts in drug and alcohol services (e.g. Directorate of Drug Offensive) that alcoholism within the Aboriginal community is a symptom of the broader issues that affect health and well being. These include poor housing, unemployment, inadequate education, loss of land etc. This is the underlying reason for health services taking a community development approach to management of alcohol abuse in Aboriginal communities'.

The approach is encouraging, but it remains to be seen how effectively the measures mentioned by the Minister will be carried out, and what the result will be.

CULTURAL REVIVAL

In the Kearney case I received a statement of an Aboriginal singer who has been engaged in rehabilitation work. He came from Nowra and is now 42 and has been sober for the last seven years. His problems with alcohol began at the age of 15. His father and all his uncles died before they reached the age of 50 because of the effect of alcohol. His statement described the effect of withdrawal and DT's while locked up. His view was that the most important thing for an Aboriginal person in such circumstances was to have another Aboriginal whom he could trust with him.

He believed that most rehabilitation centres and Alcoholics Anonymous groups were unsuccessful with Aboriginal people because:

> '... they haven't got the cultural thing to give to you ... Alcoholics Anonymous is good as a half-way house in that it gets people sober enough to start thinking for themselves, but it still doesn't push them into their cultural theme which you need'.

He rejected the notion that Aboriginal culture was dead in New South Wales, and described in some detail the relevance he saw between his culture and overcoming alcoholism. He described a method which he had applied to himself and to three other people successfully, and commented that the nearest thing he had seen to it was a drug and alcohol rehabilitation program amongst Indians in Alberta. He spoke of cultural programs provided for Indians in gaol in Canada.

One thing that has become clear to me is that there are many different Aboriginal experiences in breaking free from alcohol addiction. For some people Alcoholics Anonymous programs are suitable, for others they are not. Some people break

free as part of a change in life style associated with the adoption of religious beliefs. For some involvement with Aboriginal political or social advancement is the catalyst. Some break free unaided. There may well be many for whom a making or renewal of contact with Aboriginal culture will give strength to break addiction.

SUPPLY OF DRUGS BY GENERAL PRACTITIONERS

Tim Murray died by an overdose of prescription drugs he had accumulated from attending the Prison Medical Service. The evidence relating to Paul Kearney showed that, although he was occasionally refused, he found it remarkably easy to maintain an addictive habit by obtaining prescriptions from general practitioners. Asked by the Commission to review the material available, Dr Jurd of the Royal North Shore Hospital said:

> 'It was pleasing to see that this man's desire to obtain drugs from doctors had been thwarted, at different times, at three levels, bureaucratic, medical and at the pharmacy. The only appropriate response to the requests for drugs from a fulminant polydrug abuser is "No". Detoxification, counselling, rehabilitation and Alcoholics Anonymous should be offered. All of these were offered to Mr Kearney. At the same time it is obvious that a number of the general practitioners are too ready to prescribe benzodiazepines and antidepressants'.

He said that, surprisingly, it is relatively difficult to obtain information on how many doctors a patient has seen or how many prescriptions are written for that patient. The usual means are to ask the patient where else be has been treated and gain extra information from that colleague or institution. He said:

> 'When benzodiazepine dependence is uncomplicated (by alcohol dependence, social disarray or lack of compliance) then outpatient withdrawal is preferable. Clearly Mr Kearney needed to be an inpatient'.

As in the white community, narcotic drags are assuming a threatening role in some Aboriginal communities. This is the judgment of Aboriginals and Aboriginal organisations, as well as police and others. The problem has become particularly acute in capital cities, where one frequently hears stories of tragic deaths in the Aboriginal community. Aboriginals are becoming involved as dealers as well as consumers.

Aboriginals are looking for their own ways to combat drugs in their communities, but they also expect police action. The gathering of evidence on drug trafficking presents special problems to police, and actions taken by police have sometimes led to sharp conflict between police and Aboriginals. Clearly there is need for dialogue between Aboriginals and police, to increase understanding of the problems, and to explore the acceptable limits of police methods.

PART EIGHT: SELF-DETERMINATION

CHAPTER 24: WHAT AND WHY

THE DEMAND FOR SELF-DETERMINATION

The demand for self-determination is a demand not only to have the management of service delivery to Aboriginal communities, but to have the opportunity to make decisions about policies affecting Aboriginals so that Aboriginals may have some real control over what happens to them. It is a step beyond self-management.

There is also an increasing demand for 'sovereignty', although often an unwillingness to define what is meant. Here I will talk of self-determination in the sense of Aboriginals through their communities achieving a high degree of control over their lives and decisions affecting them. This is not a fixed or defined concept. It relates to an indigenous people who have been dispossessed of their land and resources, and encapsulated in the dominant society which dispossessed them. It is unreal to think that that situation can be reversed, but justice and harmony demand that Aboriginals should be accorded recognition as a people, albeit an encapsulated indigenous people, and as much control over their affairs as is possible in that situation, and resources to make that control a reality.

Self-determination is a developing concept, and its limits are being expanded all the time as indigenous people in various countries and in international bodies push their claims. What did not seem feasible yesterday may be acceptable today and commonplace tomorrow. It is not for this Commission to pre-empt the negotiation which must come by seeking to say what should happen. But it is important, if custody and deaths in custody are to be reduced, that the frontiers of self-determination should continue to expand, so that Aboriginals, and particularly young Aboriginals, can build self-esteem and see a future of dignity, independence and opportunity.

During the inquiry into the death of Lloyd Boney in Brewarrina 'Tombo' Winters, who is the senior Field Officer of WALS in Brewarrina, and also the State representative of the North-Western Regional Aboriginal Land Council, was asked by counsel whether he thought there was anything that Aboriginal people needed to do to improve the relationship between Aboriginals and the police. He replied:

> 'Well, I am one of the blokes that feel that Aboriginal people are always asked to be the improvers. We have to be the improvers. We are the most looked after people in Australia. Everyone seems to know what's good for us, and we don't seem to know what's good for ourselves. I feel that through the land rights movement -and if it's left alone - that the Aboriginal people of New South Wales at least after 1998 will have sufficient self determination -and will be able to become self sufficient - without being given handouts by government, and without white people going around saying what's good for us and what's not good for us. It is about time we were left alone to say what's good for ourselves. You know, people have been telling us for a long time as I can remember - I grew up on a mission. I was told what was good for me from the day I was born, and they are still telling us what's good for us'.

ABORIGINAL ORGANISATIONS

Aboriginal society had no widespread political structures, as it did not have to deal with national or international issues, or with more than the local problems of a hunter gatherer society. One of its great challenges in cultural adaptation is to find ways through which community self-determination can be expressed.

All over Australia there are great experiments in organisation building going on. To illustrate by a modest example, in Walgett the home of Clarrie Nean, I noted in my report on his death that a very positive feature is the growth of Aboriginal controlled organisations, through which Aboriginals are gradually increasing their participation in decisions and activities affecting their own lives, and reducing the debilitating feeling of powerlessness so widespread in the Aboriginal community. There is an Aboriginal Legal Service and an Aboriginal Health Service. The Barwon Aboriginal Community Limited has a considerable range of interests and now operates a hire car business. It has acquired the freehold of a hotel which will shortly reopen. The Namoi Aboriginal Cooperative owns 22 houses in Namoi Village (as the Namoi Reserve has been renamed). Other organisations cater for a pre-school and for housing on the Gingie reserve, and there is a Land Council. All these provide opportunities for self-determination, in the sense of Aboriginals exercising a greater degree of control over some aspect of their lives, and increase the self-esteem, skills and independence of Aboriginals. No fewer than three CDEP projects (Community Development Employment Programs) are in operation amongst Aboriginals in Walgett - one in the town proper, one in Namoi Village, and one in Gingie. Through them Aboriginals have voluntarily chosen to 'work for the dole', that is to receive their unemployment benefits only in return for organised work in their communities or in community enterprises. It is also interesting to note that 40% of the clients of the Aboriginal Medical Service are non-Aboriginal. The Service has its own doctor, bulk-bills patients, and turns no-one away. Elsewhere in my report I have described the remarkable developments around the Warma Cooperative in Echuca, and the achievements of Regional Land Councils in New South Wales.

OBSTACLES TO SELF-DETERMINATION

Although for a considerable time there has been an acceptance of the objectives of self-management or self-determination in Aboriginal affairs, and there have been notable successes, the landscape of Aboriginal affairs is littered with proposals and initiatives that never came to fruition, with disenchanted Aboriginals who have worked hard for community projects which they believe were thwarted by official action and white opposition, and officials who are puzzled and disappointed that Aboriginals did not co-operate with their plans.

There is still a very great tendency, at least in the white community, to assume that the problems frustrating advancement are the limitations of financial resources or problems in Aboriginal communities. However the real situation often is that the white officials and white communities are trying to pluck the mote out of Aboriginal eyes without regard to the beam in their own. It makes a mockery of notions of self-management or self-determination if Aboriginals are always expected to conform to the norms of the dominant culture.

ORGANISATIONAL FORMS

A constant tension in many Aboriginal communities exists between the natural

forms of association in the community and the legal structures which are seen by officialdom in the white society as natural, reasonable and democratic. It is not surprising that Aboriginal housing companies, LALCs and other bodies have often failed to conform to legal and bureaucratic requirements, particularly when those who imposed them did not bother to explain them as they considered them so natural and normal.

Aboriginal communities are densely interacting kin-linked groups with shared histories, but they do not for that reason function in terms of a homogeneous, impersonal community interest which all should follow. Such concepts are characteristic of modern mass liberal democratic societies but they are not universal. They have a historical development in western civilisation where they have emerged over centuries by painful processes of fighting privilege and overcoming what was seen to be parochial and regional interests. Aboriginal communities do not have a similar history behind them. Traditionally Aboriginal societies functioned mainly as small kin-based hunting groups which came together only for specific purposes and otherwise minded their own business. They did not find the need to elect leaders or make decisions acceptable to a large number of people. Many of the Aboriginal communities that now exist in south-eastern Australia have not developed by any processes internal to Aboriginal culture but have been created for white convenience by bureaucratic decisions of protection boards and welfare boards or as the result of local government restrictions and decisions. For most of the last 100 years Aboriginals lived under quite despotic control of managers, police and other bureaucrats and had little opportunity to take responsibility for decisions affecting their communities. The election of representatives to act on behalf of a community and to bind its individual members by their decisions does not seem a natural process, nor does the binding nature of constitutions, rules and bureaucratic requirements.

Looking back over the history of many self-management projects it appears almost as if they were set up to fail. To gain access to resources Aboriginal groups have been required to set up certain kinds of organisations with certain set rules. In the wider society with its experience of electing parliaments, local councils, committees for clubs, trade unions, parents and citizens associations and so on, rules about electing representatives, about representing one's constituency, about the making of binding decisions, about adhering to a constitution and to meeting practices, about looking to interests of the whole community rationally and impersonally and avoiding nepotism, and about accountability to funding bodies are all taken for granted. The fact that they are not automatically taken for granted by Aboriginal people should come as no surprise; that is what cultural differences are all about. Not only are such practices often not understood by Aboriginals but in some cases there are other taken for granted practices in conflict with them such as kinship structures.

Much of the resistance to the apparently logical and democratic structure of ATSIC can be understood in these terms.

No culture, least of all Aboriginal culture which has been subject to such stresses and pressures, is static. It has evolved to meet many challenges and pressures and will continue to do so, but it is important that those dealing with Aboriginal communities should recognise cultural differences, should respect them as far as it is humanly possible, and where different norms have to be insisted on, should explain them and provide appropriate training in them rather than simply taking them for granted.

CONFLICTS OVER HOUSING

Problems of conflicting values may be illustrated by looking at housing, an area in which white officials have frequently been insensitive to differing cultural values. Aboriginal wishes about the siting of houses, the design, family size, the spreading of resources through the committee by staging construction and many other matters have been ignored and simply treated as irrational proposals by people who do not understand. If consultation does take place, results are ignored or 'rational' requirements are laid down as a condition of funding or the provision of houses or services. Because of such decisions imposed on them Aboriginal housing companies cannot make decisions acceptable to their members. There often comes to be conflict, not so much about what people want, as about how far they should resist pressures from outside to have something different from what they want. They may be told, in effect, 'If you don't accept what we are offering, you won't get any houses. Other towns are waiting'. If in the end the community ends up with something that is not rational or fair from its point of view, there may be no acceptable basis for allocating what is available and it will become the source of or the subject of factional conflict.

BUREAUCRATIC REQUIREMENTS GENERALLY

Many other requirements, such as rules of meeting and voting, and minutes, create similar problems. They seem obviously rational to people who are used to them, often so obvious that they do not require explanation. But they may be extremely puzzling and make little sense to people from a different cultural background. The requirements may simply end up making people who have formal self-Government the hostage of white people on whom they are dependent for guidance and advice.

The manifold requirements of form-filling and preparation of submissions operates in a similar way. One often meets Aboriginal people wearied by the continual work of making submissions that come to nothing and for which they have little skills and resources. If they go to officials for assistance they often feel that they are pushed into adapting their proposals towards what makes sense to officials, although it may not be what they really want.

Three things are important here. One is that formal requirements should be kept to a minimum and be as flexible as possible. The second is that those dealing with Aboriginal people should be made sensitive to the different perspectives, needs and cultural values of Aboriginals and to the importance of not dismissing ideas and proposals just because they are different to what is usual. The third is that where there are requirements, it should be carefully explained to the Aboriginals involved what those requirements are, what the reasons for them are, and how they can be fulfilled. There needs to be provision of training, not only of individuals to carry out the task, but of the community generally so that the need for the requirements will be understood, and those who are trying to implement them will have community support.

Policies of self-management and self-determination are undermined simply because bureaucrats function in ways that they deem to he appropriate and normal. That is they act within their own cultural priorities which are those of the wider society. When the rules of bureaucratic practice are broken, whether the fault of the local organisation or not, a bureaucratic take-over often occurs rather

than a process of offering assistance, advising, or eking clearer direction from the community.

ECONOMIC VIABILITY

Particularly in this era of economic rationalism, great importance is attached to 'economic viability', the ability to make as big a financial profit as possible, or at least avoid a financial loss. This evaluation can be crippling to Aboriginal projects, which are commonly established for other reasons than profit. The reasons may include the healing of a fractured community, cultural revival, the bringing of delinquent adults or juveniles back into a constructive way of life, the re-establishment of ties with the land, the provision of employment, or many other matters which do not figure in narrowly focused balance sheets.

This is well illustrated in the experience of the Cummeragunja community on the New South Wales side of the Murray River not far from the town of Echuca. Since the Yota Yota Land Council gained title to what remained of the Cummeragunja Reserve in 1985, the people have been attempting to find ways to use the land productively for the benefit of the whole community. There are a substantial number of Aboriginal people living on the reserve and others who would like to return to it. It is a very beautiful area to which the people are greatly attached. Their priorities have been to develop some kind of agricultural production which will provide food and employment involving the maximum number of people, reducing dependence and building pride and initiative. When they sought assistance from ADC it engaged an agricultural consultant at a cost of $10,000. He advised that the most profitable use of the land would he achieved by clearing many of the trees, laser-levelling the ground and planting the whole area as a wheat farm. An expensive permanent irrigation system would be installed and there would be extensive use of chemicals. As the development of the property would be a highly mechanised and technical operation there would be no role for the Aboriginal residents in it and after the property had been developed, with a large capital loan to be repaid, it would provide regular employment for one and a quarter people. The ADC insisted that this rational expert advice should be followed if it was to advance money to the community. In fact the proposal was the negation of everything that was important to the people. What was highly efficient and economically viable from an economic point of view was absurd in terms of community development, opportunities for productive employment and development of skills, the building of self-esteem and independence, the values which were important to the Aboriginal community. Fortunately the Cummeragunja community has had the courage to adhere to its values, but no doubt it will be regarded officially as a group of irrational people who do not wish to advance and refuse to be helped.

Apparently, as is referred to elsewhere in this report, similar ideas are creeping into the administration of claims under the *Aboriginal Land Rights Act* in New South Wales. Economic viability is being regarded as an important criterion for granting a claim when land may have much more important values for Aboriginals.

THE CLASH OF VALES OR PRIORITIES

Many problems arise from the fact that officials and governments and others dealing with Aboriginals take for granted and as indeed unarguable values which

may be totally inappropriate to the circumstances of Aboriginal communities. While the great value attached to economic viability by the dominant society is one of the most destructive obstacles to the advancement of many Aboriginal communities, the clash of values occurs in many areas and these relate not to the needs of people at a particular stage of development, as was the case in the Cummeragunja conflict, but to cultural differences. For example different forms of sociality are expressed in the spacing of houses. In Aboriginal communities outside space is a crucial aspect of social relations. Not only do people live outside their houses to a considerable degree but the reduction of stress is not achieved by retiring inside, but by moving away, so that space between houses is an important reducer of tensions and facilitates preferred patterns of communication.

White people also have cultural values but they are different. For instance houses are typically the private areas of nuclear family life, while outside the house is public space. Culture is not something which Aboriginals have while the rest of society has normalcy. The cultural peculiarities of bureaucratic practice which reflect the priorities of the wider society should be seen as a major source of continuing racial inequality. It is not always necessary for bureaucrats to understand precisely how Aboriginals see things. What is needed is that they should accept that if Aboriginals think something is important, then it is important. Any other approach makes a mockery of ideas of self-management or self-determination.

THE RECOGNITION OF ABORIGINAL CULTURE

What is at stake then is a recognition that Aboriginal people have a distinct culture. They are not people who simply share the values of the rest of the community but are too backward or irrational to appreciate how to achieve them so that they must be guided by experts. If they are to be accorded self-determination this must mean a recognition of cultural differences and an acceptance of its validity. If Aboriginal people are simply regarded in the same category as other members of the community, apart from the fact that they have special 'social problems', the specific historical, social and cultural differences of Aboriginal existence will be ignored. The identity of Aboriginals as a people will be denied. The solution of 'Aboriginal problems' will be seen simply as altering the Aboriginal community so that its members conform statistically and in other ways to the members of the general community. What is needed is a recognition that the dominant community itself may have to change to recognise the rights of the Aboriginal community.

The mainstreaming of services to Aboriginals disempowers Aboriginal communities and denies them self-determination because they see change as a one-way process of bringing Aboriginals into conformity with the rest of the community. Aboriginals are expected to be malleable and to change and the assistance that they are offered is to help them assimilate.

Hence these issues can be seen as part of the major issue of the recognition of Aboriginals as a people, the indigenous people of the country. Like the indigenous people of other countries they are concerned with the struggle to retain or gain 'traditional lands, to cope with Government management of their affairs and to survive as culturally distinct people within nation-states'. 44

CHAPTER 26: LAND RIGHTS

THE SIGNIFICANCE OF LAND RIGHTS

Earlier in this report I expressed the view that fundamental to securing the real changes in the position of Aboriginals in this country that are necessary if disproportionate custody rates are to be reduced is the recognition that Aboriginals are the dispossessed people of this country, the reaching of some real reconciliation with them, and the development of real opportunities of independence and self-management. Fundamental to the latter process is securing the transfer of land, or, failing land, other resources into Aboriginal hands in a significant degree.

In some parts of Australia, notably the Northern Territory, it has been possible to make progress in these directions by the recognition of the traditional ownership of land by groups still living on or near that land. In south-eastern Australia the long-standing and almost complete settlement of land precludes such a program. Nevertheless in New South Wales there has been a very important experiment in land rights legislation which has gone a not inconsiderable distance to achieving some of the objectives which I have outlined, and has at least indicated ways in which the process might be carried further. For that reason and particularly because of the value it may have in lessons for other States, I describe the New South Wales legislation in this report.

My attention was particularly drawn to the relevance and potential importance of this legislation during the inquiry into the death of Lloyd Boney in Brewarrina. I have quoted in the chapter on 'Self Determination' a statement by 'Tombo' Winters, in which he linked the land rights legislation to self-determination and to escape from dependence on the white welfare system. This is perhaps part of the argument for land rights that white people can readily appreciate, but far from a full statement of what land means to Aboriginals.

A CONTINUING SENSE OF PLACE

In recent times there has been a growing appreciation of the great significance, spiritual as well as economic, which land has for indigenous people in many parts of the world including the Aboriginals of Australia. Its taking during the white invasion of Australia not only set the stage for social disintegration, it deprived Aboriginal people of their land and material livelihood, setting the stage for their economic deprivation and continuing poverty in a community where many of their values were rejected and their skills in limited demand.

For most white people of industrialised western civilisation, deep relationships with land lie in the distant past and the pangs of separation from land which are keen and recent to Aboriginals are cast out of collective memory. For many Aboriginals their traditional land retains a deep significance. While in southeastern Australia specific ceremonial and ritual ties have been lost in the aftermath of dispossession, compulsory movement, concentration and dispersal of local groups, most Aboriginals still strongly identify with a traditional area. It remains an important part of their identity.

Reviewing the lives of Aboriginals who died in custody in south-eastern Australia in

the last ten years one is struck by the very strong sense of place and of attachment to a traditional piece of country which survived dispossession, forced movement, dispersion and concentration that Aboriginals have suffered. The territories to which Aboriginals feel attachment do not of course necessarily correspond with boundaries recognised by Europeans. To Aboriginals the Murray River is not a boundary but a feature of a territory which extends on either side. Harrison Day, James Moore and Shane Atkinson moved freely amongst kinsfolk and communities on both sides of the great river.

Most of the other Aboriginals whose deaths were investigated also had a strong connection with a particular area, sometimes centred on one town as with Clarence Nean in Walgett, sometimes on a number, as with Lloyd Boney who ranged between Goodooga, Brewarrina and Bourke, or Peter Williams who moved between Lismore and Grafton. Young Thomas Can' had spent his life in Dubbo and Wellington, and Mark Quayle in Wilcannia and Broken Hill. Although Bruce Leslie moved in to live in Tam worth when he became a pensioner, he retained his affection for Forked Mountain Reserve near Coonabarrabran where he had been born and wanted to be buried. The two Tasmanian born Aboriginals whose deaths were investigated had grown up outside of traditional communities and without attachment to particular land, and spent substantial time wandering on the mainland. Both became alcoholic at an early age and both hanged themselves in a police cell shortly after arrest. The two New South Wales Aboriginals who grew up cut off from traditional lands or communities, Tim Murray and Paul Kearney, both died in custody from self-inflicted drug overdoses.

Of all the deaths there was only one who had deliberately cut himself off from his community and his traditional area. That was Peter Campbell who had not been in touch with his home in South Australia for seven years. He was suffering a mental illness and ended up taking his own life in Long Bay Gaol.

A CONTINUING DEMAND

Those who are tempted to dismiss the land rights movement as a modern political artifact would do well to look at the historical continuity which lies behind it.

The protection and, after dispossession, the restoration of their relations with their lands has been a demand of Aboriginal communities since the invasion began in 1788. The most violent conflicts of the invasion were battles about access to land as an economic resource and as a social and cultural base. Defeats in military conflicts did not end Aboriginal aspirations to regain some of their land. Rapidly incorporated into the rural workforce in pastoral and agricultural areas, Aboriginals soon began to demand recognition of their land rights. By the 1860s some Aboriginals in the south east of the continent had begun to squat on small areas of their traditional country, to reassert their ownership over their lands and to farm them, often with great success, against the opposition of surrounding white land holders. In the early 1880s a number of these pieces of land became the first Crown lands reserved for the use of Aboriginals in New South Wales: 63% of the lands reserved by the Aborigines Protection Board in its first decade of existence were these fertile, independently farmed or settled Aboriginal lands.

Aboriginal people's petitions spelled out what it was they wanted from these lands and from the Government. Groups claimed lands in their traditional areas, which they hoped would provide them with an economic basis, with enough land to use

their skills in farming to become self sufficient. They asked for inalienable rifle, saying quite specifically they wanted the lands never to be sold. The fundamental intertwining of economic and cultural values was repeated in petitions and demands made into the 1900s.

While Aboriginal people had hopes that these lands would allow them economic independence, many of the available pieces of land were simply not large enough or fertile enough to support the extended Aboriginal families living on them. The areas where Aboriginal people were able to fulfil their hopes were the fertile coastal areas from the Burragorang Valley west of Sydney up through the Hunter River into the Macleay and Nambucca River areas. Here Aboriginal people had been able to secure areas of between 30 and 80 acres of fertile land and began farming maize, pumpkins and other vegetables, crops which were labour intensive and which did not require high amounts of capital to begin fanning. These independent farms continued to support Aboriginal families through into the 1920s. They were lost not because of any lack of skills or persistence. The lands were lost instead by a new push for closer settlement from surrounding white farmers from the 1910s into the 1920s.

In the less fertile areas of the State, and on the coast in the far north, where Aboriginal people had not been able to secure the most fertile land against a higher pressure of white settlement, they had less access to land to farm independently. Many people were employed in the pastoral industries of the hinterland of the far north coast, the sheep properties along the northern slopes, and across down the course of the Darling River. Aboriginals here retained a high degree of association with their traditional lands, working on pastoral properties from camps where whole communities were encouraged by pastoralists to live permanently, in order that their labour could be recruited through the busy seasons of the industry's year.

Right through to the 1930s Aboriginal people in many areas of the pastoral regions were able to continue to associate relatively freely with their own lands for social and cultural purposes, while they earned either wages or rations from working within the industry. Reserves were created in these areas far more on white demand, from the desire by white settlers to ensure an accessible work force when pastoral properties were divided, or to isolate and contain Aboriginal residence. Only in the early years of the 20th century was increasing pressure placed on Aboriginals in the pastoral areas to move away from their traditional country. Wherever possible Aboriginals in these areas attempted to retain their links with their lands. They resisted enforced movements away from their country, and where they came under pressure because of lack of employment or lack of housing or education to do so, they moved into towns which were situated at the closest point to their traditional language area.

THE SECOND DISPOSSESSION 1915 TO 1927

It was the people of the coast who suffered the first and most intense pressure on their land holding in the 1910s. As the white population increased, so demands intensified for Aboriginal people to be forced off the fertile patches where their farming had demonstrated the richness of the lands. From 1917 when soldier settlement added to the pressure of closer settlement until the onset of the depression in 1927, Aboriginals all the way along the coast began to be forced off their farms. They were often evicted at gun point and under threat of arrest, turned

away from farms where their crops were ready to be harvested, and forced to take their families and their belongings to the few remaining reserves, from which they launched a campaign to demand their land back.

In the early 1920's the Australian Aboriginal Progressive Association was demanding an end to all revocation of reserves and enough land for economic independence for each Aboriginal family in New South Wales in areas of significance to them. Although the Association gained press publicity and embarrassed the Government towards making changes to its removal of children policy, it had no success in stemming the loss of lands. Thirteen thousand acres were lost between 1917 and 1927. Seventy five per cent of those lost lands were from the North and Central coast of New South Wales and they included virtually all of the independently settled farming reserves. But the Aboriginal demand for land did not disappear.

CHANGING ECONOMIC CONDITIONS 1930-!970

The unemployment of the depression greatly increased the pressure on Aborigines Protection Board funding and resources, because Aboriginal workers were denied unemployment benefits through the normal government channels. The rapid increase in numbers on Board stations and reserves led the Board to decide to concentrate the Aboriginal population in a series of centralised supervised stations. The platforms of the Aboriginal parties in the 1930s show that while by force of this pressure equal civil rights had become their most urgent political demand, their underlying and long term demands continued to be land settlement with the aim of acquiring economic independence for Aboriginal people across the State.

The boom years of the 1950s created enough opportunities for unskilled labouring to allow Aboriginal people to escape the concentration policies on the Welfare Board's managed reserves. Through the 1950s and into the 1960s Aboriginal people continued generally to be associated with the areas they regarded as their traditional country. Changes continued however in the structure of the rural economy throughout New South Wales, and increases in mechanisation and immigration led to the disappearance of the places of unskilled labourers which Aborigines had consistently filled in most rural industries.

These pressures forced many Aboriginal families to make decisions about moving to the urban industrial areas where jobs were offering, and where it seemed possible to escape some of the more suffocating discrimination of small country towns. The people who went to the cities tended to be young people who were able to break into the labour market, although families with children went also, seeking non-discriminatory schooling. Yet there were many Aboriginal people who continued to demand the right to live in the town closest to the areas which were of significance to them. Their tenacity in asserting their rights to live in those areas despite the persistent pressure of white prejudice and segregation was grudgingly recognised even by the Welfare Board's District Officers. They criticised Aborigines as deeply conservative because they were reluctant to disassociate themselves from the communities and extended family networks within traditional country.

In the 1960s pressure also increased on the last of the pastoral areas on the far north coast of New South Wales. For the first time, the inland Bandjalung faced removal from the pastoral camps which had ensured their continued association with land of significance. Forced into small towns like Kyogle and Stony Gulley,

they met intensifying discrimination and the loss of their jobs as well as loss of access to their land. With their coastal relations, they organised to regenerate the calls for Aboriginal rights to land and for recognition of their cultural distinctiveness, and to develop strategies for an economic base on the lands they then held. Despite frustrations, these communities persisted, and were joined both in calls for land and in plans for enterprises by Aboriginal communities on the south coast.

The emphasis in public campaigns for land shifted around 1966 to supporting the Northern Territory struggle of the Gurindji people and the continued demands of those at Yirrkala for recognition of their rights to land, but the New South Wales activism of the early 1960s continued throughout that decade and formed the basis for the renewed calls in the south east for land rights from 1970. This movement resulted in political pressure being exerted on the State Government in attempts to stop the sale of remaining Aboriginal reserves in 1969 and 1970, including the Drews' land at Kinchela which had for many years formed the site of the Boys Home.

THE LANDS TRUST 1973 TO 1983

The New South Wales initiated Tent Embassy in 1972 on the lawns of Parliament House in Canberra dramatised demands for land as compensation for dispossession, for land as a social and cultural resource and for land as an economic base, and had a role in pushing the Federal Labor Government, elected later that year, to mount an enquiry into Northern Territory land rights. In New South Wales the mobilisation of opinion in relation to land led the State Government in 1973 to establish the Lands Trust.

The Lands Trust was an elected body of 10 Aboriginal people from various areas of New South Wales, whose brief was to advise the Minister for Aboriginal Affairs. The Trust was unsatisfactory to Aboriginals calling for recognition of their rights to land for a number of reasons. It had no power independent of the Minister, who could override its decisions and indeed sell land without its permission; the ten members of the Trust were isolated from their communities by the centralised structure; and the amendments to the Act allowed no transfer of title from the Crown and its holding body the Lands Trust to Aboriginal communities themselves.

INSECURITY GROWS IN THE 19708

Aboriginal dissatisfaction with the Lands Trust intensified through the mid 1970s as Aboriginal communities around the State faced increasing pressures. In the mid-1960s, the Department of Housing decided not to build new Housing Commission homes in the country towns where Aboriginal populations were highest but to transfer housing planned for these populations to urban areas because employment prospects were believed to be better there. The Government-sponsored 'voluntary family resettlement scheme', known as *relocation,* added to this pressure. Aboriginals believed to be leaders of social networks were targeted in order to stimulate chain migration. They were often encouraged to move to an urban industrial area by the offering of a house and job, even when these individuals already held jobs in their rural town.

The new cotton industry provided significant numbers of jobs for Aboriginal people, but they were arduous and lasted only for a few months of the year. Towns

profiting from the cotton industry did not wish to attract large permanent Aboriginal populations, but wanted them to move on rapidly at the end of the season's work. Councils refused to supply anything more than the most basic of services and amenities to seasonal workers, who consequently lived under very poor conditions.

In 1975 the manufacturing industries in urban areas began to be affected by the recession, with loss of the unskilled and semi-skilled factory work to which Aboriginal people had often come in the decade before. Rising inflation increased the cost of living in the cities, particularly for families with a number of children, and the trend which had been apparent through the 1960s for Aboriginal people to move towards urban industrial areas began to reverse. This led to a heightening of the concern about loss of Aboriginal lands in rural areas.

In 1976 this concern among a wide range of Aboriginal communities led to the formation of the New South Wales Aboriginal Land Council. The most active members of this independent organising body were from the south coast and the north west and far west of the State. These communities were facing increasing hostility and conflict with rural white townspeople, with resulting residential insecurity, as they attempted to break down the segregation of the towns' services and residential areas. Unlike the movements throughout the early 1970s to establish service organisations such as the legal and medical services, which tended to have been initiated in the cities, the major thrust for the land rights movement tended to emerge in the late 1970s from rural areas which were under continuing or increasing pressure.

LAND RIGHTS IN THE 1970S

The years from 1976 to 1980 saw a series of meetings of the New South Wales Land Council in various areas, often at sites from which Aboriginal people had been forcibly removed. The meetings represented a symbolic confrontation with all of the policies which had sought to separate Aboriginal people from residence on lands of significance to them. The restoration of significant areas of land was proposed as the essential foundation of just and sound future development. Land was not seen as the only need of Aboriginals, nor were rights to land believed to be the immediate or total solution to the economic and other disadvantages which Aboriginals faced. Rather land was seen as a precondition for effective programmes in specific areas such as housing and health.

A series of land claims from various parts of the State were presented to the New South Wales Government from around 1978. These claims called for land as compensation for effects of the invasion on their original ownership, their population and independence, and as a path to economic and social independence.

Each of the claims focussed on defined and small areas of land for which a form of title was sought which would be inalienable, to be held in perpetuity by representatives of the Aboriginal community and never to be sold or otherwise lost.

Despite the alarm of white landholders at the emergence of these claims, they were all relatively small-scale, pragmatic demands, with strong indications of interest in negotiation and accommodation with white neighbours. The claims were, however, demands for recognition of separate Aboriginal fights, as well as for Aboriginal rights to participate equally in the political processes of the European

system which would inevitably shape their lives.

SELECT COMMITTEE RECOMMENDS LAND RIGHTS

In 1979 the Wran Government agreed to enquire into a number of aspects of Aboriginal conditions through a joint Parliamentary Committee and, under Aboriginal pressure, agreed to make land the priority area for the inquiry. The Committee recommended in 1981 that land rights should be implemented in New South Wales, as a just response to demands by Aboriginal people, which could provide an economic base to enable Aboriginal people to escape from dependence on Government funding permanently, and could be achieved with little detriment to white citizens of the State.

The Select Committee did not recommend that Aboriginals should be able to claim land alienated previously, either by freehold or leasehold. For available Crown land it recommended a claims process, in which Aboriginal communities could claim on the basis of their need for a project which would provide either economic resources or cultural or social resources; on the basis of long term association, that is as an area where people had lived and developed a strong sense of significance in terms of that place, such as an old reserve; or on the basis of traditional rights that is, that Aboriginal people demonstrated their associations in traditional terms with pieces of land. All Aboriginal people were seen as entitled to compensation for the intense pain and suffering which had occurred since 1788.

As only limited areas would be available for claims, the Committee recognised that purchase would be the main means by which Aboriginal people would acquire a significant share of the land of the State. It proposed an innovatory scheme to fund the purchase of land from a percentage of the land tax revenue gained by the State Government. It was argued that this would be an equitable and just means to fund an Aboriginal land acquisition programme: the taxpayers who funded Aboriginal land acquisition would only be those who were already profiting from substantial holdings of land.

A crucial recommendation was that the title of land acquired by claim or purchase was to be held in a new form of title, called Aboriginal land, which would be held communally and in perpetuity: the land was to be inalienable. This recommendation fulfilled the Aboriginal demand voiced from at least the 1880s for land which could not be sold.

Finally the Select Committee proposed a structure for organising the administration and acquisition of Aboriginal lands which reflected the view put to it strongly by many Aboriginal people in evidence, that centralised bodies like the Lands Trust were inadequate to represent their interests. Aboriginal submissions had called for the recognition of culturally appropriate bodies, by which they meant not romanticised approximations to 'traditional' organisation, but the historically and contemporarily demonstrated preference of New South Wales Aborigines for organising primarily in regional bodies, usually reflecting developments on traditional culture areas, which then enter coalitions with other regional bodies.

The Committee recommended a three-tiered structure. Local Aboriginal Land Councils (LALCs) would be the bodies which held title to land and which ultimately made the decisions about acquisition and use of that land. All Aboriginal people with an association with land in the area of the LALC could be members. The

major organising bodies were to be Regional Aboriginal Land Councils (RALC), made up of two representatives from each LALC within the region. The RALC would co-ordinate the LALCs' administration and would enable them to organise regionally to make decisions about distribution of funds, strategies for land purchases and sharing of machinery and other resources. The regions were felt to be units large enough to allow economies of scale and unity of political organisation, but still accessible geographically and socially, which would make the RALCs truly accountable to their constituents at a local level. Finally, there was to be a greatly reduced State body, made up of one representative of each RALC, who would convey regional opinion and be bound by regional decisions. The State Land Council was envisaged as doing little more than liaising with the State Government.

WHITE OPPOSITION TO LAND RIGHTS

There was considerable opposition to the proposals, particularly among white residents in rural areas. Much of this was based on ignorance or misunderstanding, and was sharpened by campaigns conducted by sectional interests. Worth noting here is one widespread response which reflected the development of an ideological reaction to what had been, after all, only a minimal transfer of resources to Aboriginal peoples since 1972, including for example Abstudy and other benefits earmarked for Aboriginal people to compensate for decades of educational disadvantage. Such benefits were portrayed by the mid 1970s as an attack on the fundamental principles of 'equality'. Hypocritically previous discrimination against Aboriginal people was ignored in this argument in which it was asserted that all people were now 'equal'. To 'give' Aborigines land or other special benefits would, it was argued, undermine democracy. Fear within the Labor Party that opposition to the land rights proposals would cost the party its little remaining rural support led to delays in implementing the Committee's recommendations.

THE LAND RIGHTS ACT 1983

When a draft bill was produced, little time was allowed for consultation with Aboriginal communities about the changes from the original recommendations. These included reducing the amount of land which could be legally claimed to the barest minimum and modifying the proposed administrative structure by removing Regional Land Councils. Only vocal Aboriginal resistance stopped this ill conceived attempt to cut expenditure at the expense of effective Aboriginal organisation.

As it eventually went to Parliament, the Bill retained the concept of inalienable freehold title 45 and the structure of maximum representation and decision making power at the local and regional levels, the LALCs and RALCs. It maintained also a commitment to facilitating Aboriginal purchase of land, in recognition of the inadequacy of the claims process to return land to Aborigines. Purchasing was to be funded by 7.5% of land tax revenue which would pass to the State Land Council each year for 15 years. One half of this was to go immediately into a fixed deposit fund which would accrue interest each year for 15 years. The other half of the funding was to go into an account which could be drawn on each year to purchase land. At the end of 15 years funding would cease, by which stage the interest generated by the investment fund would provide an ongoing and

permanent source of funding for Aboriginal land acquisition and indeed for Aboriginal community support. This has emerged as an innovative and important area of the Act, producing the only Land Rights legislation in the country which has a substantial and pragmatic funding mechanism.

The Act as finally passed reflected the contending forces outside and inside Parliament. The Minister for Lands was given virtually unlimited rights to defeat any claim by issuing a certificate which asserted that the land was required for an essential public purpose, and which was not open to judicial review in any way.

In the months prior to the Bill's introduction to Parliament, it had become public that in 1979 the Crown Solicitor had advised that revocation of the majority of Aboriginal reserves since 1913 had been illegal. Given the Government's intention to pass land fights legislation, Aboriginal people argued that injustice it ought to regard this old Aboriginal reserve land as still being the property of Aboriginal people, particularly as so many land claims related directly to lost reserve lands. The Government however argued that as much of the fertile reserve land on the coast had been alienated to freehold, to support the restoration of these lands to Aboriginal people would be to undermine the basis of real property in the State. Although the Solicitor-General advised in late 1982 that the revocations were effective, the Government was not willing to allow the matter to be determined by the courts. It insisted that it would pass the *Aboriginal Land Rights Act* only if there was concurrent and associated legislation which would retrospectively validate the revocation of all of the lost reserves.

The Aboriginal Land Rights Act 1983 transferred to Aboriginal land councils the lands held by the Aboriginal Lands Trust, which amounted to around 6,000 acres. The retrospective validating legislation passed in the same session validated the revocation of 20,000 acres of Aboriginal reserve lands. The amendments and the retrospective validating legislation ensured that initial Aboriginal response to the Act was suspicious and negative. However despite their severe criticisms, a number of the activists who had been most consistently involved in land rights organisations since the mid 1970s believed that the Act provided at least a basis from which to work towards a more satisfactory organisation and so they agreed to participate in the Interim New South Wales Land Council, the first body established by the Act, with a brief to begin the process of setting the Act in motion. This body was not empowered to acquire land, but to assist local communities to establish their organisational base.

THE WORKING OF THE LAND RIGHTS ACT

Despite difficulties, some of them genuine but many of which have been magnified out of all proportion by opponents of the legislation, the *Aboriginal Land Rights Act* of New South Wales can be seen in retrospect as one of the most important and constructive experiments in bringing a measure of justice to the dispossessed people of south-eastern Australia. It holds a promise for increasing Aboriginal independence, self determination and well-being in a way that mainstream welfare-orientated services have failed to do. I will note some of the problem areas, although it is not appropriate to attempt here to discuss them

Housing has been a difficult area for Land Councils. With the remaining Aboriginal reserves they inherited from the Lands Trust old and poor quality housing stock, and historically based opposition to rental collection and disputation with local

councils about previously accumulated rates bills. The ADC refused to fund housing on Land Council land and the New South Wales Housing Commission had a long-established assimilationist policy of refusing to build on reserve land despite Aboriginal preferences. The only exception was a program called Homes On Aboriginal Land (HOAL) which operated under a sympathetic Minister for a few years.

Aboriginal housing companies often held 99 year leases on such land. These companies had developed a corporate identity and were often associated with particular family or factional interests and functioned as vehicles for those interests. The leases ensured their continued existence, often as rivals of the LALC.

The LALCs were expected to be land holding, relatively 'transparent' or neutral organisations. They remain the most open and democratic of all organisations operating in Aboriginal communities, in that every single Aboriginal person can hold membership of at least one Land Council. However the dispersal of funds to LALCs which has allowed the development of administrative infrastructure such as office rental, cars, telephones etc, has produced the unsurprising result of the LALCs emerging in some communities as an organisation in competition with others such as the housing companies. The LALCs, in other words, have sometimes become administratively associated with one group within Aboriginal communities and thus have added to the issues of organisation within communities which relate to family and factional interest, as well as contributing simply to the overburdening of many Aboriginal communities with numbers of organisations which appear to be duplicating some of each other's functions.

The most common attack levelled at Aboriginals over land rights has been that funds have been handled at least inappropriately and at worst dishonestly. Problems concerning finances within the Land Council network have been treated with blanket assertions of mismanagement and fraud, but there has been little attempt to examine the details of such accusations or to clarify the changing organisational methods for meeting what may be real problems.

The major problems of poor management occurred in the Land Councils in the earliest two years of funding, 1984-85 and 1985-86. 46. Despite the organising attempts of the Interim Land Council in 1983-84, the Act unavoidably meant that a large amount of money and a complicated piece of legislation were dropped without adequate preparation on the sector of the population which had in some areas been systematically excluded even from the public schools until the late 1960s. As the Auditor General commented, the Land Councils suffered from 'an almost total lack of basic accounting knowledge by many Council office bearers and employees'. 47 There were no guidelines in the Act or regulations as to the proper expenditure of the allocations, nor any indication of accounting procedures. There was no action taken by Government to facilitate training in accounting. In 1985 the Land Councils themselves began a series of training workshops on bookkeeping and on the Act, conducted by Tranby College for Land Council employees and members. 48 Before this, however, many Land Councils, particularly the LALCs, had made payments *ultra vires the* Act. These included 'donations and grants to sporting associations, funeral expenses, traffic and parking fines, bail sureties, loans to individuals and welfare payments'. 49 By 1988, the Auditor General was stating that such *ultra vires* payments were 'considerably reduced', but where they continued to occur they were for reasons like 'emergency relief. 50

In the first two years of funding, LALCs and RALCs could continue to receive funding even if their audits were not clear. This confused practice ceased with the 1986 Amendment to the *Land Rights Act,* and from then on, no allocations could be made until clear and unqualified audits were shown for each of the years for which funding had occurred. Not surprisingly, it took some years to sort through the usually minor but confused problems in each of the 117 LALCs and 13 RALCs. By 1988, after training workshops and clarification of accounting systems, the Auditor General was noting a 'marked improvement' in organisation and 'some improvement in the financial management of Regional Councils'. 51 By *1989, the* Auditor General was still unhappy with the level of 'effectiveness and efficiency' achieved, but explained: 'The Councils have been very co-operative but their performance has reflected the dearth of experience and accounting expertise within the Councils and their officers'. 52 The majority of the Auditor General's complaints concern poor, inconsistent documentation and inappropriate formatting of Councils' returns. 53

There have been occasions where Aboriginal people's view of land rights payments as being generally payments in compensation for the pain, suffering, depopulation and dispossession which has occurred since the invasion has meant that they believed they were justified in using these funds as they chose fit for the benefit of their communities. A number of examples emerged in the process of clarifying procedures in 1985 and 1986, and they included most often situations such as those where land rights funds had been used to fund funerals, or to pay the cost of transporting bodies long distances back to the birthplace of that person for burial. Such examples reflect differing priorities as well as differing pressures on the part of Aboriginal communities. While such uses are not legally appropriate under the terms of the Act they nevertheless do not represent dishonesty but rather differing cultural practices and imperatives by people who had not been trained in correct procedures.

Since the 1986 amendments, no Aboriginal Land Council, regional or local, can receive an allocation of funding without a clear and unqualified audit, which includes monitoring of detailed bookkeeping procedures. That is, there have been no opportunities for mismanagement since 1986, let alone for dishonest practices.

In general terms the 1986 amendments can be seen as a response to the widespread white rural campaign against Aboriginal people, which included criticism of the Land Rights Act but also included law and order campaigns throughout western New South Wales. A significant clause in the amendments was the clause which succumbed to the demands of local government councils (major figures in Law and Order campaigns) that Land Councils must pay rates. The 1986 amendments made the payment of rates compulsory one year after they had fallen due, with 22% interest added to them. This made Aboriginal Land Councils the only completely reliable rate payers in the State. The major beneficiary of the 1986 amendments were local Government councils who had a sure flow of rates at least from the Aboriginal land holders in their Shire even if not from the white landowners.

The process of claiming land has proved to be frustrating and almost futile. The land available for claim is vacant Crown land not wanted for any essential public purpose, that is, land that is left over after 200 years of settlement, free selection, soldier settlement and development. It is scattered, small in size and often poor in quality as an agricultural resource. There is now increasing competition even for land previously regarded as 'waste' land in coastal areas where tourist development is expanding. Locating these small pieces of land requires significant

research skills in order to find it on Lands Department maps. Nevertheless, Aborigines have indicated their sustained interest in gaining land by continuing to make claims: to August 1990, 3577 claims had been lodged altogether. However the most recent statistics indicate that overall 16% of claims have been granted; 24% are still under investigation and 60% have been rejected.

The process of claim is open to frustration, firstly because the unit within the Lands Department which must process the claims and review the competing interests in any piece of land has been under-resourced and has made only slow progress in evaluating and deciding on claims. The opponents of claims have usually been local government councils, surrounding white land owners or developers. They can delay furnishing particulars of their own interests until very late, thus delaying the whole process, and when they have furnished such details they have often made ambit claims which require further questioning and investigation to assess appropriately.

This Act is actually under the direct control of the Minister for Lands, not the Minister whose portfolio oversees Aboriginal Affairs. It appears that the attitude of the Minister can affect greatly the process of evaluation of claims. Of all the claims granted until July 1988, 44% had been granted in the four months beginning December 1987 during which the portfolio was held by a sympathetic Minister. 54

The Minister can also intervene directly to block a land claim by issuing a certificate which states that the land is needed, or likely to be needed, for an essential public purpose. There is no definition in the Act for this phrase, but since the 1986 amendments it specifically includes the purpose of residential use, despite the fact that Aboriginal people may be claiming land with the purpose of themselves using it for residential development.

The claim process promised to recognise and fulfil Aboriginal land aspirations but it has in fact added to the levels of frustration faced by Aboriginal people in attempting to develop viable land bases for themselves. Lack of faith in the process and this increasing sense of frustration has meant that a number of Aboriginal Land Councils have made ambit claims for all the travelling stock routes in their area for example, a process which has exacerbated the anxieties of surrounding white land owners as well as adding to bureaucratic delays. Critics have used such examples of the Aboriginal strategies born out of frustration, to blame Aborigines themselves for the delays which caused them to develop such strategies. The Lands Department is now insisting that Aboriginal people submit not only land claims but a statement of their intentions for use of the land, arguing that this will help to prioritise competing claims by allowing comparison between Aboriginal plans for profit making development and those of local councils or private white land owners. 55 A fundamental principle of the Land *Rights Act* was that it acknowledged the validity of non-profit-making social and cultural uses for land, as well as profit-making enterprises. The Lands Department has begun to narrow the focus by insisting that Aboriginal people justify their claims in terms of profit-making enterprise. This shift away from the recognition of non-profit-making uses for the land can only diminish in real terms the land actually available for Aboriginal people to claim.

BUYING BACK THE LAND

The claims process has added to the sense of frustration felt by Aboriginal people

but the funding of Aboriginal Land Councils to purchase land has been a substantial success, causing a real transfer of assets to Aboriginal people. The funding is the equivalent of 7.5% of land tax coming into the State Government. Contrary to initial Aboriginal fears, this tax revenue has actually risen in the years since 1983. In 1984 the Land Council was allocated $15 million; in 1988 the allocation was $34.6 million and in *1989* had fallen only slightly to *$29.9* million. With half of these funds each year available to Regional and Local Land Councils to administer their operations and acquire land by purchase it is clear that there has been significant re-distribution of economic resources.

Under the Act, half of the yearly allocations must be invested to provide a base of ongoing funding for the Land Council network. The fund currently amounts to $88 million and is expected to rise to an investment base of between $400 and $500 million in 1998. In that year allocations from the New South Wales Government will cease. After that the interest from this investment will provide the funding source by which Aboriginal people will be able to continue to purchase land and to fund enterprises and other social and cultural needs relating to land. This funding arrangement, with its far-sighted and effective plan for economic independence for Aboriginal people, has been the most significant change in the distribution of resources in New South Wales in the last decade.

It has been estimated that 40% of funds so far allocated have been spent on land purchase, but complete figures are not yet publicly available. What is clear is that some RALCs have spent a far higher proportion: the Far Western RALC has used 67% of its funds on land, $3m out of an expenditure of $4.5m from 1984 to 1990. 56

The opportunities tend not to be as great as might be initially imagined. When $17 million (to take the 1988 figure) is divided between 117 LALCs, and the price of land in many areas of New South Wales is considered, it will be clear that there are not huge amounts of land that can be acquired with the money available. Nevertheless significant purchases have been made, and these have invariably involved the strategy of pooling money at a regional level, further emphasising the significance of the existence of RALCs. The first Regional Aboriginal Land Council to do this was the Western RALC, whose area of responsibility extends from Tibooburra near the Queensland border to Dareton on the Murray River border with Victoria. Retaining allocations at the regional level and using the accumulated funds to purchase large properties one at a time means that some LALCs must wait some years before acquiring a property close to their centres of Aboriginal population. The fact that this strategy has been implemented in the West since 1984 reflects the high level of confidence placed by local Aboriginal communities in the RALC, indicating the successful negotiation of the complex and competing interests which local communities have. Co-operation across wide areas of land and across a diversity of historical experience and interest has been demonstrated in this strategic planning. Such planning is even harder given that Aboriginal communities in the west of the State are those which show the lowest levels of employment, the lowest levels of education and health opportunity and overall the highest levels of poverty.

In the west the purchase of land has resulted in six substantial properties, totalling 93,500 ha, being acquired. The titles of five of the six properties are now held by the relevant Local Land Councils. These properties each employ 8 to 10 people permanently as well as seasonal workers at shearing and other busy times. A number of enterprises have been established as well as training facilities on Weinteriga and Auley stations, both of which are producing high quality wool as

well as training numbers of young Aboriginal people in management and land care skills. Just as important for Aboriginal people of this region have been the social and cultural uses to which they have put some of these areas of land. The significance of successful claims to land at Winbar and to the acquisition of the

old mission site at Menindee, as well as land associated with the significant sites at Lake Mungo, have been most important in reinforcing the movement towards cultural regeneration which has been in evidence in this area for some decades. The Western RALC argues that the benefits of its land go beyond the modest profits of the enterprises which they are establishing or sustaining. They include amongst the benefits of acquiring land:

i) the return of traditional country
ii) the freedom to camp and get bush food,
iii) the power to care for heritage
iv) the giving of choices of where to live,
v) income from sheep, wool and other farm enterprises
vi) employment on stations
vii) training in enterprise management and work skills
viii) a capital base to attract project funding
ix) a base from which to develop other enterprises
x) a greater equality with white people
xi) a share in the region's economy
xii) a feeling of pride and motivation.

Pooling funds at a regional level has also been successfully implemented in the Wiradjuri and North-Western regions. In the Wiradjuri region, Land Councils operate a grazing property at Euabalong, a motel at Leeton and a specialist motor vehicle accessories workshop. While none are yet independent, they are making modest profits with contributions from DEET to training components in employees' wages. 57 In the North West region two properties known as Kaituna-uno, comprising altogether 14,000 acres near Coonamble, have been purchased by the RALC and are currently producing wool and 3000 acres have been sown with barley. In the Bourke and Engonnia areas the RALC holds a further two adjacent properties totalling 130,000 acres, on which they are running the bulk of their 25,000 sheep and 800 head of cattle. A total of 16 young Aboriginal men are enrolled in rural management courses run on these two areas in Coonamble and Bourke, while a shearing course is being run concurrently.

In the last 12 months the North-western RALC has made a profit of $1 million from these properties. These profits have been used by the RALC to buy enterprises, including the franchise for a Kentucky Fried Chicken shop in Narrabri which has 10 employees. The RALC currently employs 57 Aboriginal people and expects to employ a further 50 in the following 12 months. It is about to purchase a funeral parlour business operating in the region, reflecting the high level of tragic and early deaths among Aboriginal people and the importance they attach to ensuring appropriate funeral services for their people. The RALC has purchased fanning equipment worth $150,000, as well as housing and other materials for the properties around Coonamble and Bourke worth $200,000, all from the profits generated by the properties. At a recent public function at Kaituna-uno, local non-Aboriginal graziers acknowledged that the Aboriginal Land Council had become a positive force for development in the region, while stock and station agents congratulated the regional Land Council on selling a higher wool yield than any other grazier in the area. 58

During the hearing of the inquiry into the death of Lloyd Boney at Brewarrina, the State representative of the North-Western RALC gave some idea of his vision for the future. He said:

> 'We anticipate that by the year 1998 every community within the North West Region will have a property that they can call their own. There will be a property bought in every location of communities within the North West Region, and those Aboriginal people will be running those properties themselves'.

He foresaw that money would be coming back into the community to go into better housing, better sporting facilities, and people would be able to get jobs again. He hoped that such things as supermarkets would be bought or created and would employ Aboriginals. He foresaw many opportunities for employment that would take away a lot of the idleness that was now a cause of problems. He said that on one small property they were planning to set up a shearing shed, and get the older men to train young men for the shearing industry. On one of the properties there was a farm technology course training 12 Aboriginal youths.

Although the flow of funds into regional and local councils has only recently begun to show an effect, it is clear that there are significantly more resources in the hands of Aboriginal people than there were 5 years ago. In the view of Aboriginal Land Councils there are a range of priorities for enterprises and profit making is only one of them. As Les Trindle, the co-ordinator of the North Western Regional Land Council has argued, it is important to differentiate between enterprises which will provide profits and those which will aim at maximising employment opportunities for Aboriginal people. The North Western RALC aims to acquire both types of enterprise so that one will develop the capital base of the region's economy and the other will increase the access to individual employment opportunities for Aboriginal people.

At the time of my visit Weinteriga, a pastoral property near Wilcannia, had been purchased and was providing employment and income for Aboriginals as well as a source of pride and a place for enjoyment of the river and the bush. This is a small start, but a sign of considerable potential for the future.

There is extraordinarily little employment available in the Wilcannia area. Pastoral properties no longer employ much labour, and the limited employment in shops and service industries in town go almost exclusively to white people.

In the long run the control of resources and with it employment by Aboriginals through the operation of the land rights legislation may make considerablecontribution to the restoration of Aboriginal independence and employment. In western New South Wales the Regional Land Councils appear to have had a key role in ensuring that resources of the region are brought together in a way necessary to achieve purchases of substantial assets, including pastoral properties.

THE 1990 AMENDMENTS

At the end of 1990 events occurred which placed a large question mark over the bright picture of the land rights legislation which I have given. There has not been an opportunity for me to investigate these recent events, but they have caused

great concern to many of those who were working most constructively under the legislation. Some very fundamental changes have been made to the legislation: land has been made relatively easily alienable, the powers of the Minister have been considerably extended, the RALCs which have played such an important role in planning and executing programs of major regional importance are no more, and the State Land Council itself has been converted into a body of full-time elected officials. Although the amendments were agreed to by the State Land Council it was by a slender and transient majority, it was under the threat of much more extensive amendments, and the amendments carried potential benefit in the way of salaried office to some who agreed to it.

Whether the promise of the Act as an avenue to self-determination can now be fulfilled remains to be seen.

CHAPTER 27: HOPE FOR THE FUTURE

SOME REASONS FOR HOPE

It would be easy to conclude this report on a note of despondency and despair. By most of the usual tests by which welfare is measured the Aboriginal community fares badly - health, housing, employment, income, education, alcohol and drug dependency, juvenile detention, arrest, imprisonment, violence in the community and early death. All this is after 200 years of European presence on the continent and 20 years of substantial effort under Commonwealth leadership to improve the position of Aboriginals in the community.

One thing that has impressed me greatly has been the number of occasions I have met individual Aboriginals who have dramatically changed their lives from a self-destructive course to a forward-looking constructive one. Often this is associated with giving up alcohol and sometimes giving up a life of crime. It often means turning to constructive work in Aboriginal organisations. The Aboriginal woman who narrated to me her uncontrollable impulse to hang herself while in custody, which I quoted earlier in this report, told me how alcohol had played a big part in her life for many years from the age of 15 or 16 but she and her family had given it up. Her mother had been sober for six years and her father for eight. 'I don't know, you just reach a decision.' One man related his change to religious conversion. For some the motive was an insight into what their conduct was doing to their family. For some it was an opportunity to pursue education in prison. Some of them have become drug and alcohol counsellors. Most seem to have found some role of taking responsibility and giving leadership in organisations or in the community.

One moving piece of evidence came in the inquiry into the death of Peter Campbell. His brother, Alan, who had shared with him an early life of conflict with the law and brutalising experiences in a boys' home and in gaol, told how he had come to hate white people but he went on:

> '... it took me a long time to change. Around about in the - 75, 76, you know, because I thought that racial discrimination and racial prejudice were just the one way - black way you know. Then in 1975, 1976 through the Aboriginal Community College I entered into a lot of debates there and

> I found out then racial discrimination worked both ways ... for whites as well as other ethnic groups, you know. But as for me, because I was black, I thought it was just racial discrimination just one way, but it was a two track sort of way'.

A stalking feature going beyond individuals and expressing community reaction has been the reception of CDEP (Community Development Employment Programs). In a wide range of communities, confounding one of the popular stereotypes of Aboriginals, many communities have with great enthusiasm elected to 'work for the dole'. Young men who have never had a job have welcomed the opportunity of regular and constructive work for their community. Often it has expressed itself in a pride in cleaning up, renovating and restoring and beautifying their housing areas. Some have succeeded in taking their resources and labour force into the market place and earning funds for their communities.

In the chapter on land rights I quoted the vision for the future that had been developed in the North-West Regional Land Council and the great enthusiasm for the possibility of achieving some degree of Aboriginal economic independence.

While in Brewarrina I attended a ball organised by the Aboriginal community at which some 500 Aboriginals were present. In moving ceremonies they expressed their respect for the elders in their community and presented awards to individuals and organisations working for community advancement. In Sydney the long-standing Aboriginal College, Tranby, continues imaginative programs to train Aboriginal individuals and to provide services for Aboriginal communities. These are just a few of many observations which carry hope for the future. There are many communities whose positive approach to the future could be mentioned. I will refer in detail to one.

Echuca

My inquiry into the death of Harrison Day took me to the Victorian town of Echuca on the Murray River. In recent years the local Aboriginal people have responded strongly to the opportunities and funding available to them and built a strong web of activities around their Co-operative. For those looking for signs of Aboriginal communities standing up and seeking to take control of their affairs and achieving success, Echuca is a heartening place.

Quite a number of Aboriginals in the town were employed in Government services directed to Aboriginals or by the Aboriginal Co-operative and its enterprises. However very few were employed in private enterprise, and Aboriginals felt very strongly that they did not get 'real' or 'true blue' jobs from private employers, but were mainly employed in subsidised work promotion jobs where employment ceased when the subsidy ceased.

To meet this situation they had moved strongly to create employment in their own enterprises. Building teams had been organised for the construction of homes and buildings and for maintenance. A white supervisor was employed to help with contracts and accounting, and a white builder was employed to head each team, but the remainder of the staff were Aboriginal. After initial difficulties, a number of Aboriginals had settled down to regular employment and study, and were well into apprenticeships. One of the builders told me how the initial reluctance to work regularly and stick with study had changed dramatically when the first house was

completed. There was great pride in achievement, and enthusiasm to go on, and the team was now building houses competitively on the open market.

As more houses were obtained for Aboriginals, there was a problem in furnishing them. At the time of my visit, the Co-operative set up a workshop to repair and renovate furniture. The workshop not only renovated furniture for Aboriginals, but bought furniture at Government auctions, repaired it and resold it on the open market, thereby providing employment for another group of Aboriginals.

A course in sewing was organised through the Co-operative's education officer, and, when a group of women completed it, a small factory was started making T-shirts, windcheaters, track suits and the like. These were completely made from the original cloth and elegantly screen-printed with the workshop's own designs, and marketed widely under the Warma brand.

The Co-operative obtained a 99 year lease at a peppercorn rental of the beautiful old court house at Echuca and obtained funds to restore it. It was developed to house a museum and workshop where tourists could see artefacts being made, and a shop where artefacts and souvenirs were being sold. The shop was already operating selling the Warma clothes and a variety of Aboriginal artefacts.

With the assistance of an education officer provided by the Ministry of Education to work with the Aboriginal educators, the Co-operative had developed strong support for Aboriginal children in the schools. There had been a number of programs to improve teacher awareness, and Aboriginal mothers took a strong interest in school activities and supported the work of the Aboriginal educators employed in the schools. An endeavour had been made to tackle the variety of problems which commonly lead to Aboriginal children leaving school at an early age, and to encourage them to remain and receive a good education.

The list of achievements goes on and includes child care and health work. Most importantly it includes a flourishing Community Justice Panel. The panel itself was a very considerable cause for hope, revealing as it did not only the great capacity and willingness of Aboriginals to work for a better life for their community, but successful co-operation between police and Aboriginals. In its first year of operation not one Aboriginal went to gaol in Echuca.

The people of Echuca are not unique, although they are furrier down the track than most. I have in Chapter 25 referred to the community of Cummeragunja, which knows what it wants and courageously turned its back on funding which carried unacceptable conditions. Wilcannia, a community with many disadvantages, has amazed its critics with its use of the opportunities offered by CDEP. There are many others.

On the other side of the divide

Although it will take a long time to fully break down Aboriginal suspicion of police and police stereotypes of Aboriginals, there is heartening evidence of attempts by the Victoria Police and the New South Wales Police to make major breaks with the past. I have described these in Chapter 18. As police have often been felt by Aboriginals to be a major adversary to their advancement, these efforts are encouraging. Although it may take some time to seep through to the grassroots, there is change on the way, and importantly it is supported not only by senior

police but by the Police Federation.

The New South Wales Probation and Parole Service is another body which has been moved to undertake a major rethinking of its relations with Aboriginals with constructive results. Many departments and agencies are endeavouring to formulate new Aboriginal policies, and learning in the process to listen to Aboriginals, and not to assume that the 'experts' know best.

Australia Day 1988

Amongst the many sad and discouraging things I came across as a Royal Commission, there were occasions which gave hope. One of the most remarkable was what happened on Australia Day 1988 in Sydney. There was on the part of the Aboriginal people of Australia a tremendous demonstration of pride and hope, of constructive attitudes and of solidarity as they came together from all over Australia in large numbers. They expressed their pride in having survived their last 200 years. They spoke without rancour or bitterness and offered their hands to the white community in a spirit of brotherhood and cooperation. It was a remarkable and encouraging event.

The sad thing is how little response there was on the part of the white community. There was great relief and approval that Aboriginals had been so well behaved, but little in the way of a positive response. Has this opportunity been lost as its memory slips into the past? Hopefully not.

A process of reconciliation

An opportunity to recapture the spirit of that day is being provided by the Minister for Aboriginal Affairs in announcing a Commonwealth initiative for 'a process of reconciliation between Aboriginal and Torres Strait Island people and the wider community'. It is proposed that 'the process would involve a coordinated campaign to build better bridges between Aboriginal and non-Aboriginal Australians'. It would be complemented by a decade-long national commitment by Governments at all levels to work together to address Aboriginal disadvantages. The endeavour is to unite all Governments and all political parties in the process. If it succeeds it could be a fitting response to the Aboriginal gesture of 1988.