COUNCIL FOR ABORIGINAL RECONCILIATION ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

REGIONAL REPORT OF INQUIRY INTO INDIVIDUAL DEATHS IN CUSTODY IN WESTERN AUSTRALIA VOLUME 1

BY
COMMISSIONER THE HONOURABLE D.J. O'DEA

AUSTRALIAN GOVERNMENT PUBLISHING SERVICE
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ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

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30 March 1991

His Excellency the Honourable William George Hayden, AC
Governor-General and Commander-in-Chief of Australia
Government House
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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. D.J. O'Dea of the overall findings of his inquiry in Western Australia.

The same report is being provided to His Excellency the Governor of Western Australia in accordance with a Commission issued by him.

Yours sincerely

Elliott Johnston
COMMISSIONER

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

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29 November 1990

Commissioner The Hon. E.F. Johnston, QC
Royal Commission Into Aboriginal Deaths in Custody
Second Floor, Flinders House
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ADELAIDE, SA 5000

Dear Commissioner

In accordance with Letters Patent issued to me in the name of the Sovereign by His Excellency the Governor General on 27 October 1988 and subsequently varied, and consequent upon completion of my inquiry into particular deaths, I furnish herewith, for your consideration, a report of further findings of my inquiry into deaths in the State of Western Australia of Aboriginals and Torres Strait Islanders.

Yours sincerely

DJ O'DEA
COMMISSIONER

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

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30 March 1991

His Excellency the Honourable Sir Francis Burt, AC, KCMG, QC
Governor of Western Australia
Government House
PERTH WA 6000

Your Excellency

In accordance with the Commission issued to me on 8 August 1989 and subsequently varied, I have the honour to present to you the report of Commissioner the Hon. D.J. O'Dea of the overall findings of his inquiry in Western Australia.

The same report is being provided to His Excellency the Governor-General in accordance with Letters Patent issued by him.

Yours sincerely

Elliott Johnston
COMMISSIONER

PART ONE: SUMMARY

1.1 INTRODUCTION

Towards the end of 1988 1 was appointed to inquire into Aboriginal deaths in custody. I was appointed by the Commonwealth and the State of Western Australia to carry out my commissions according to the terms of reference which are fully set out in Pan Two of this Report.

When I began my inquiries there were already four other Commissioners, two of whom had begun conducting inquiries in Western Australia. Each Commissioner was empowered in similar term to investigate and report upon individual deaths where designated. Each of us also had the right and obligation to investigate those matters which were likely to provide some insight into the gross overrepresentation of Aboriginal people in custody and the causes of custodial deaths. These came to be referred to as the underlying issues.

Commissioner Muirhead, QC, left the Royal Commission in April 1989. Commissioner Dodson was appointed with a direction to inquire specifically into underlying issues associated with the custodial deaths. He was also empowered to take account of social, cultural and legal factors which appeared to have a bearing on those deaths. Commissioner Dodson has now produced his Report.

In the meantime I have completed my inquiries into twenty-eight individual deaths and have provided separate reports of my findings as to the cause of death, the circumstances in which the deceased came to be in custody, how he/she was treated by custodial authorities and the investigations that were carried out after the death to help explain the death to the relatives of the deceased and the public. In a number of my reports I was able to identify underlying issues so that they might be considered by Commissioner Dodson and included in his Report.

The individual cases were generally heard in the town where the death occurred. I went to many places around the State where it could be seen that Aboriginal communities were living in most depressing conditions, where they occupied substandard housing or squatted in fringe camps. I heard evidence, or was informed at conferences and in submissions, about the poor state of Aboriginal health and oppressive living conditions. I heard complaints of harassment and close control by police and officials. The family circumstances and the medical and criminal history of each of the deceased was provided from official records. I met family members. I inspected lockups and prisons. I had some contact with inmates. What was put to me and what I heard and saw in place after place showed evidence of what Commissioner Dodson has described of the plight of Aboriginal people, *'their destabilised and powerless position, compared to the dominant non-Aboriginal population'.*

In my reports I have touched on ways in which Aboriginals who have died in custody have experienced aspects of the criminal justice system, like policing methods, the courts, prison practices and the whole process of arrest, detention, prosecution and punishment. When the reports are looked at collectively they show a link between the relative disadvantage of Aboriginal people of high risk of arrest and detention, and high imprisonment rates and premature deaths in custody.

The Royal Commission's research has shown that Aboriginals are overrepresented 43 times in police custody and at least 26 times in prison custody in Western Australia. Moreover almost a third of the total number of Aboriginal deaths in custody investigated throughout Australia occurred in Western Australia.

This Report is submitted in compliance with a provision in my Commissions which authorises me, after completion of my inquiry into individual cases, to report any other findings and any recommendations considered appropriate.

The Report contains an account of the activities of the Royal Commission in this State which gave rise to investigations of thirty-two Aboriginal deaths in custody. I have drawn on that collective experience and general information which has come to me from reports, consultations and various sources and I present a description of the adverse impact of the criminal justice system on many Aboriginal people and examine changes which appear to be necessary if the incidence of deaths in custody is to be reduced. Each aspect which has been analysed contains the views which I have formulated. In that sense it is a report of my 'other findings'.

However there are no specific recommendations although there are suggestions for change in the Report because it was agreed between Commissioners that, except in purely local matters, recommendations should be reserved for the National Report so that the National Commissioner can take advantage of the experience of Commissioners in all regions. The information in this Report is intended to achieve that object and each of the reports from this region is designed to complement the other.

Though the Report makes no positive recommendations I found it necessary to examine what was done about interim recommendations under Pan Five which deals with prevention of death. The Royal Commission Interim Report presented on 21 December 1988 contained recommendations to deal with the more immediate factors affecting deaths in custody. Even before that the Government of Western Australia was aware that Western Australia had the second highest imprisonment rate in Australia and it recognised the need for initiatives to reduce high imprisonment rates as an effective means of reducing the likelihood of deaths in custody. The State appointed an interim inquiry and the Vincent Committee reported to the Ministers for Aboriginal Affairs, Corrections and Police its real concerns and recommended measures to try and cope with custodial deaths.

Two years on, the recommendations of the Interim Report of the Royal Commission and the Vincent Report have not been fully implemented by Government. There have been commendable changes but as the Report shows many of the recommendations are not fully implemented and measures proposed are unlikely to be fully effective.

The Report analyses each recommendation and shows the limitations of legislative and administrative initiatives taken. I most strongly urge upon the Government and those responsible to recognise that there is a need for immediate and effective measures to reduce Aboriginal imprisonment.

1.2 MY FINDINGS - AN OVERVIEW

I began my inquiries into individual deaths on 12 December 1988, at which time it was believed that there were thirty-four deaths in Western Australia required to be investigated. It was later found that one of those listed (Tony Majurey) was not of Aboriginal descent and his death was held to be one which did not qualify for investigation under the terms of reference of my Letters Patent.

Commissioner Muirhead held an inquiry but decided not to submit a report in another matter (Daniel John Green) because he held that the death was excluded from the terms of reference.

A chart setting out all the relevant details concerning the remaining thirty-two deaths is attached as an appendix to this Report. I conducted an inquiry and submitted a report in respect of all of those deaths listed on the chart with the exception of Charles Sydney Michael and Paul Farmer, which were investigated by Commissioner Muirhead; Robert Walker, which was investigated by Commissioner Wyvill; John Pat, which was investigated by Commissioner Johnston.

1.2.1 CAUSE OF DEATH ACCORDING TO CATEGORY

For the purpose of this Report I have found that the deaths investigated in Western Australia fell roughly into three categories: natural causes/medical cases; suicide/hanging/self harm cases; and other cases involving violence.

1.2.2 NATURAL CAUSES/MEDICAL CASES

This comprised the largest group consisting of nineteen persons. Four males died as a result of a heart attack, three of them were in their twenties, the eldest was 52 years.

Three persons, two men and one woman, died as a result of head injuries caused accidentally. Three males died from the effects of epilepsy.

Three men died from the excessive effects of alcohol, one of acute alcohol poisoning, one from delirium tremens, and the other from either alcoholic hepatitis or delirium tremens.

Nine others contracted a fatal illness. The diseases included miliary tuberculosis, bronchial pneumonia, acute pancreatitis, lobar pneumonia and acute meningitis, asphyxia due to a fulminating infection.

One woman died as a result of a severe attack of asthma.

1.2.3 SUICIDE/HANGING/SELF HARM CASES

Nine people died as a result of a self-inflicted injury. One woman and six men died as a result of hanging by self-suspension. One man died by strangulation as a result of a bandage which he applied to his neck. Another man died by cutting his throat. Suicide in legal terms involves the intention of taking one's life and it is usually very difficult to determine what was the deceased's intention. In only three of the cases could it be said it was likely that the result was intended. Six of the deaths occurred in police

lockups and most were the result of an impulsive act within a relatively short time of entering detention. The ages of those involved ranged from 20 years to 55 years, the mean age being 30.12 years.

At least five of those concerned were suffering from a recognised mental illness. The effects of alcohol were directly involved in six of the hanging cases. Each of the deceased who died in police custody had a blood alcohol reading of or approaching 0.2%.

Six of the hanging deaths occurred in an eighteen month period between June 1987 and December 1988. The influence of media publicity cannot be determined but there were reasons to suppose that most, if not all, the prisoners were at risk of self harm (or suicide), not that it was necessarily apparent to their custodians.

1.2.4 OTHER CASES INVOLVING VIOLENCE

In this category I have placed the cases of Charles Michael and Robert Walker who died after a struggle with those who had responsibility for their custody in prison. I have also included the case of John Pat which is not yet determined but death is thought to have resulted from head injuries following a struggle in police custody.

I investigated the further case of Ricci Vicenti who was shot while attempting to escape from Canning Vale Prison. He died in hospital of head injuries caused by a bullet. It was my finding that the shooting was justified in the circumstances presented to the responsible prison officer. In my report of that death I examined the principles of law governing the use of firearms to prevent the escape of prisoners and suggested possible changes.

1.2.5 THE LOCATION OF THE DEATHS

Police Custody - 14

Fourteen persons died while in police custody, one of them a young Aboriginal woman. One of the males was born in the Torres Strait Islands, the remainder were males born in Western Australia. Six of these deaths were from hanging, the person being suspended or partially suspended by a variety of materials. A seventh death resulted from strangulation with a crepe bandage. All of these were self-inflicted.

The remainder were found dead in police cells.

Prison Custody - 6

Five male persons died whilst in prison and an Aboriginal woman died of a severe asthma attack while being taken from a prison for medical aid. Two of the prison deaths resulted from suicide. Two other deaths followed a violent struggle with custodians. One death at the prison resulted from a heart attack.

In Hospital - 12

Twelve deaths occurred in hospital to where the deceased had been removed for attention and treatment. Seven persons had been removed from prison custody and five persons from police custody. One of these was a woman.

None of these cases was excluded from investigation, inquiries were made into each death and it was held that there were grounds for concluding that injury was suffered in custody within the meaning of the terms of reference, which had caused or contributed to the death. Reports were submitted in each of these cases.

1.2.6 LOCATIONS AROUND THE STATE

Deaths occurred at or in relation to police lockups at Central (East Perth), Midland, Broome (3), Kalgoorlie (5), Fremantle, Geraldton (2), Carnarvon, Roebourne (2), Wiluna, Halls Creek and Port Hedland.

Deaths also occurred at or in relation to prisons at Fremantle, Canning Vale, C.W. Campbell Remand Centre, Bandyup, Wooroloo, Eastern Goldfields (Boulder), Albany, Greenough and Broome.

My findings as to cause of death fall into one or other of the categories I have mentioned. In no case did I find evidence of deliberate foul play on the part of custodians but the general lack of care that I observed in the course of my investigations was alarming. In particular police officers appeared indifferent to procedures designed to meet the legal responsibilities of those having a duty of care over people in custody, and assessment and screening of Aboriginal detainees for injury, illness or mental well-being was often minimal or nonexistent. The most glaring cases are those where unconscious persons who were unable to be roused were detained by police and placed in lockups.

Despite decriminalisation of drunkenness the latest statistics available to the Commission show the detention rate still decidedly disproportionate. There can be no reasonable expectation of lessening the risk of Aboriginal deaths in custody unless recommendations designed to reduce the numbers in custody or to ameliorate its effects are fully implemented.

It is of course inevitable that numbers of Aboriginal people will continue to be detained in police and prison custody. A major focus of this Commission has been to examine the provision of care to persons held in custody in this State. I emphasise that the sections of this Report that deal with the issue of custodial care should not simply be seen as directed at custodial authorities exhorting them to assume greater responsibility with the same limited resources. The issue of custodial care must be seen as the obligation of both the government and the wider community. If our society is sincere in an expressed desire to eliminate or greatly reduce the incidence of deaths in custody, if it holds that there are certain fundamental human rights that apply to all its citizens, including those detained in police and prison custody then it is incumbent upon it to accept the responsibility of providing not simply more but better trained police and prison officers to provide adequate resources for Aboriginal health care (and appropriate structures for the delivery of that care) and to take proper account of cultural differences between Aboriginal and non-Aboriginal Australians.

There may be a financial cost in changing existing custodial practices, at least in the short term. However, this must be contrasted with the human cost of neglecting to make those changes where the need has become demonstrably apparent.

PART TWO: THE ROYAL COMMISSION IN WESTERN AUSTRALIA

2.1 THE ROYAL COMMISSION IN WESTERN AUSTRALIA

2.1.1 ROLE OF COMMISSIONERS IN WESTERN AUSTRALIA

The Royal Commission was established on 16 October 1987 when J.H. Muirhead QC (as he then was) was appointed Commissioner pursuant to Commonwealth Letters Patent. He was appointed in response to concerns in the community about the number of Aboriginal deaths in custody, particularly the increase in hanging deaths during 1987.

It was initially contemplated by Government that the work of the Commission would take about twelve months to complete. It was not long before the enormity of the task was appreciated, due to the increase in the number of cases identified and the amount of preparatory work that had to be done.

On 6 May 1988 a further three Commissioners were appointed, Commissioner Wootten QC, Commissioner Wyvill QC and Commissioner Johnston QC. Commissioner Wootten QC was responsible for cases conducted in New South Wales, Victoria and Tasmania. Commissioner Wyvill QC conducted inquiries in Queensland and assisted with one case in Western Australia. Commissioner Johnston QC was initially responsible for inquiries conducted in South Australia, Northern Territory and assisted with one case in Western Australia.

After the appointment of the additional Commissioners, Commissioner Muirhead, as National Commissioner, was responsible for overseeing the work of the Royal Commission throughout Australia, as well as continuing with the inquiries into the individual deaths. The first three inquiries conducted by Commissioner Muirhead were held in South Australia (Dixon and Highfold) and New South Wales (Edward Murray). After the appointment of the three further Commissioners he came to Western Australia to commence the inquiries in this State.

Western Australia had the greatest number of cases to be heard with 36 deaths being reported to the Commission. Of those, 32 were found to be within jurisdiction and reported upon. A formal inquiry was held in another case but it was found to be outside the terms of reference (Daniel John Green). A further three cases were found to be outside the terms of reference (Majurey, Johns and Simpson). These are discussed in more detail later in the section.

Commissioner Muirhead commenced the first inquiry into a death in Western Australia on 28 June 1988 with the hearing into the death of Charles Michael. Due to the enormity of the task in Western Australia with the number of deaths to be investigated and size of the State, it was decided that another Commissioner was needed to assist with the conduct of inquiries in this State. On 27 October 1988 I was issued with Commonwealth Letters Patent to conduct inquiries into the deaths of Aboriginals who had died in custody in Western Australia and elsewhere in Australia as directed by Commissioner Muirhead.

The Terms of Reference as amended (7 December 1988) required me to inquire into:

(a) deaths
  (i) in the State of Western Australia; and
  (ii) where in a particular case, or abdy particular cases, you are so requested by the Honourable James Henry Muirhead under the original Commission - elsewhere in Australia;

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

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

In early 1989 Commissioner Muirhead QC announced his intention to resign his Commission and on 28 April 1989 his resignation became effective. Commissioner Johnston QC was appointed as the National Commissioner to replace Commissioner Muirhead QC. I was required to consult with Commissioner

Johnston QC and to submit my reports to him. The terms of reference of my letters Patent were amended accordingly (27 April 1989).

The terms of reference were also amended so that deaths occurring after 31 May 1989 would not be included within the inquiries of the Royal Commission.

I commenced my first formal inquiry in Western Australia on 12 December 1988. 1 had completed inquiries into the deaths of Christine Jones, Wayne Dooler and Darryl Garlett, and commenced the inquiry into Njanji's death prior to Commissioner Muirhead's resignation. Commissioner Muirhead conducted inquiries into the deaths of Charles Michael, Paul Fanner and Daniel Green in Western Australia prior to leaving the Royal Commission.

After Commissioner Muirhead's resignation there was some reluctance on the pan of the Government of Western Australia to appoint a Commissioner to replace him.

The Western Australian Government appeared persuaded by the argument of the Police Officers Union of Workers that comprehensive inquiries into individual deaths were not warranted and that the government would be better benefited by an inquiry concentrating on underlying issues.

However on 28 June 1989 Commissioner Dodson was appointed to inquire into and report upon any underlying issues associated with deaths of Aboriginals and Torres Strait Islanders in Western Australia.

Commissioner Dodson was the only Aboriginal appointed to be a Commissioner. He was also the only non-lawyer.

Commissioner Dodson's appointment was of course welcomed by me and to a great extent relieved me of the task of examining the broader underlying issues associated with deaths in custody in Western Australia. However subsequent to Commissioner Dodson's appointment I was still left with the formidable task of conducting inquiries into and reporting upon the deaths of a further 25 persons who had died in custody or subsequent to detention.

Assistance in conducting inquiries in Western Australia was given by Commissioner Wyvill QC and Commissioner Johnston QC. Commissioner Wyvill commenced the inquiry into the death of Robert Walker on I November 1988 at the request of Commissioner Muirhead and Commissioner Johnston conducted the inquiry into the death of John Pat. The Pat inquiry occupied three months of hearing time, most of it being held in Roebourne. Indeed both the Robert Walker and John Pat inquiries were complex and controversial. They were lengthy and extremely demanding of the Commissioners' time and I am most grateful to Commissioner Wyvill and Commissioner Johnston for their assistance in conducting those inquiries, especially given the enormous demands upon them in the States where their major responsibilities lay.

Commissioner Johnston not only had the responsibility of conducting inquiries into the individual deaths in South Australia and the Northern Territory but as the National Commissioner was responsible for overseeing the Royal Commission at a national level and preparation of the **final** report to Government.

In carrying out his responsibilities at a national level Commissioner Johnston required that the other Commissioners consult with him. For this purpose Commissioners Wootten, Wyvill, Dodson and myself met with Commissioner Johnston regularly to discuss issues pertinent to the work of the Royal Commission.

During the course of the Royal Commission in Western Australia Commissioner Dodson and I had consultations to ensure that all issues were being addressed without unnecessary duplication.

After the completion of the inquiries into the individual deaths (mid July 1990) 1 participated in several joint sessions with Commissioner Dodson when we met with heads or representatives from State government departments.

Ongoing consultation was established between Commissioner Dodson's staff (mostly based in Broome) and my staff in Perth to ensure that the issues involved in Aboriginal deaths in custody in Western Australia were being thoroughly examined.

2.1.2 CONDUCT OF INQUIRIES IN WESTERN AUSTRALIA

As noted above, during the course of the Royal Commission, I was required pursuant to my Letters Patent to inquire into and report upon the remaining 28 deaths in Western Australia.

Generally the inquiries were held in the town where the death occurred. This meant the hearings were held in locations all over the State from Halls Creek and Broome in the north, to Wiluna and Kalgoorlie in the east. Inquiries were also held in Geraldton, Carnarvon, Port Hedland and Perth. The geographical size of Western Australia and the diversity of Aboriginal communities put demands upon the investigations of both Commissioner Dodson and myself which no doubt were quite different from the other States of Australia.

The large number of deaths to be investigated and the geographical dimensions of the task placed parameters on the extensiveness of the pre-hearing investigations, the formal inquiries and the subsequent reports into the individual deaths. In many instances it was a matter for regret that I was unable to spend more time in the communities which I visited, as this would have further assisted me in my inquiries. However the legal staff and Aboriginal **field** officers employed by the Royal Commission worked hard to ensure proper community contact was made. Despite the limitations discussed above, I did visit a number of Aboriginal communities and organisations particularly in relation to my inquiries in Port Hedland and Broome. These meetings are discussed in more detail below.

The limitations placed upon me also dictated that my focus be largely restricted to examination of the facts and circumstances surrounding the deaths. This inevitably meant that many aspects of my inquiries were centred on the criminal justice aspects of the deaths, i.e., the background of the deceased, particularly in relation to the criminal justice system, the reason for the deceased's arrest and detention prior to death, the circumstances of death, and the action following the death. To a large extent I relied upon the inquiries of Commissioner Dodson and the Aboriginal Issues Unit, whose work is discussed in more detail below, to address the underlying issues involved in the deaths. I am confident that they consulted widely with both Aboriginal and non-Aboriginal people and organisations in their investigations. The extensive examination of underlying issues by Commissioner Dodson is reflected in the Report he has prepared.

2.2 PROCEDURES AND SOURCES OF INFORMATION

2.2.1 CASE INQUIRIES

'Guidelines for investigations and hearings relating to particular deaths' were issued by Commissioner Johnston on 19 July 1989 which replaced the original document 'Procedures Guidelines'. These documents outlined the methodology and procedures followed by Commission staff in collating relevant documents and in pre-hearing investigations and the processes adopted in formal hearings of the Commission.

The guidelines provided for collection of documentary material such as police, court, Crown Law Department, probation and parole boards, Community Services, Coroners, Corrective Services, medical, social security, Aboriginal Legal Service and education files together with media reports. This material

provided a great deal of information about the background of the deceased. These files were available for copying by the parties involved in the inquiry into a particular death.

Royal Commission staff identified witnesses from whom statements were sought. Those statements were distributed to the parties.

In the individual case inquiries leave to appear was granted to all interested parties who sought leave to appear. Counsel for the family, Counsel for individual police and prison officers, Counsel for the Police Officers Union and Prison Officers Union and Counsel for the Western Australian government were granted leave to appear in all cases. In addition Counsel for the Committee to Defend Black Rights (CDBR), Counsel for National Aboriginal and Islanders Legal Services Secretariat (NAILSS) and Counsel for Aboriginal Legal Service regularly requested and were granted leave to appear, in relation to underlying issues in the cases.

Attempts to shorten the formal hearings were made throughout Australia. In Western Australia this was a necessity given the number of deaths to be investigated.

One method, mentioned by Commissioner Muirhead in the Interim Report, was for the Commission to instruct counsel to seek leave to appear at the inquest into deaths which occurred after the commencement of the Royal Commission. In Western Australia, Counsel Assisting the Royal Commission was granted leave to appear in the inquests into the deaths of Cameron, Wongi, Walley and Chatunalgi. Because of the thoroughness of the inquests into these deaths, the Royal Commission was able to investigate them far more quickly and hearing time was used to concentrate on underlying issues involved in the deaths, e.g. one hearing was held into the deaths of Cameron, Wongi, Walley over a one week period.

Pre-hearing conferences were also adopted in an attempt to shorten hearings and provide consultation between counsel assisting and counsel for the parties. The conferences were used for the purposes of the identification of issues and which of them were in dispute; identification of witnesses who should be called to give oral evidence and witnesses whose statement only need to be tendered.

The cooperation of many witnesses in providing statements to the Royal Commission greatly assisted in shortening the formal hearings. In some instances witnesses were asked to provide additional statements to cover particular concerns of parties raised at the prehearing conferences. In one inquiry because of the comprehensiveness of the documentation and availability of witness statements it was found unnecessary to hold a formal hearing (Ginger Samson). For the same reason, in another five inquiries the formal hearing process occupied less than two days (Ronald Ugle, Steven Michael, Donald Harris, Kim Polak, Donald Chatunalgi). It should also be noted that in the Samson case the family expressed no interest in participating in a formal hearing.

Unfortunately the Royal Commission in Western Australia was mostly unable to interview and obtain statements from prison and police officers, even when their involvement in the circumstances surrounding the death was peripheral. The reason for this was that most officers declined on legal advice to provide statements to the Commission. This generally meant that the officers had to be summonsed to give evidence before the Commission thus increasing the duration and costs involved in the hearings. However during the investigations into the deaths conducted by the Royal Commission in 1990, 1 found that the police officers involved, particularly in relation to the investigations into the deaths, were more willing to provide statements to the Royal Commission than had earlier been the case.

Subsequent to the investigation and hearings of the deaths, I was required to report my findings on each individual death to Commissioner Johnston QC. The writing of reports occupied much of my time when I was not conducting hearings and reports were submitted on the 28 individual deaths into which I inquired. The individual reports in most cases concentrated on the background of the deceased, the circumstances of the deaths and the action following death. The underlying issues involved, were often flagged for further investigation and reporting upon by Commissioner Dodson and myself.

2.2.2 UNDERLYING ISSUES

Commissioner Dodson provided the following explanation of underlying issues in his report.

> *In determining what constitutes an 'underlying issue', I have examined all social, cultural, legal and economic matters as they directly and indirectly affect the constantly high rate of imprisonment of Aboriginal people in this State. In sum, an 'underlying issue' can be defined as understanding the 'why' and 'how' of high rates of Aboriginal incarceration. Examining the 'why' and 'how' has meant attempting to cover a broad range of complex and wide-ranging issues, that impinge on the lives of Aboriginal people in Western Australia. Some of the major 'underlying issues' which form the foundation of Aboriginal powerlessness include: the ongoing marginalisation of Aboriginal matters in areas of government policy and practice at Federal, State and Local levels; the power of vested interests which, often in association with government instrumentalities, seek to deny Aboriginal aspirations; misinformed beliefs and practices toward Aboriginal people among many sectors of non-Aboriginal Society, that impact on the day by day lives of Aboriginal people; the ongoing effect of mission and other-forms of institutionalisation on the socio-cultural and economic lives of Aboriginal People; and some of the adverse effects of contemporary Aboriginal social life brought about by Aborigines themselves, as well as those from outside of Aboriginal society. Underlying issues are therefore those phenomena that arise in considering the legal, cultural, social and economic factors as they occur independent of the other society or through their interrelatedness to it.*

Commissioner Dodson's inquiries in regard to underlying issues were far more wide-ranging than mine. The nature of my inquiries resulted in my examination of underlying issues being largely confined to their impact on the immediate cause and circumstances of the deceased's involvement with the criminal justice system and their deaths.

Commissioner Johnston did not issue guidelines for investigations relating to underlying issues and I did not promulgate any guidelines myself. As mentioned before, to a large extent I relied upon Commissioner Dodson and the Aboriginal issues Unit to investigate those areas. However throughout my inquiries I have gathered a great deal of information about underlying issues which was obtained in a number of ways.

During the individual inquiries into the deaths, witnesses were called who were able to provide information about underlying issues that were particularly relevant to the death being investigated. In the cases in which the facts were complex the amount of time able to be devoted to underlying issues was quite limited. However, in cases where counsel assisting had appeared at the Inquest and the facts were well known to the Commission or in cases where the evidence as to the facts was straightforward and provided through statements and other documentation, I was able to focus more closely on the underlying issues.

As mentioned above, in the inquiries into the deaths of Cameron, Wongi and Walley, who had all died in Geraldton and into whose deaths comprehensive coronial inquiries were conducted, the week allocated to the formal hearing into the three deaths was devoted almost entirely to investigating underlying issues. Only one witness was called whose evidence related primarily to the facts of one of the deaths. The rest of the hearing was conducted in a more informal manner, by way of a conference session, with two or three witnesses giving evidence on the same topic to the Commission at a time. A round table discussion was held with Counsel, instructing solicitors, the witnesses and myself present. All present were free to ask the witnesses questions. A similar format was used at other times.

Statements and reports were also obtained from witnesses in relation to underlying issues without them being called to give oral evidence.

Requests for submissions were also made by the Royal Commission. At a national level a discussion paper about the underlying issues involved in Aboriginal deaths in custody was distributed widely to

Aboriginal and non Aboriginal organisations and individuals throughout Australia as well as to the Commonwealth and State governments inviting submissions or comments in response. At a national level over 200 submissions were received although only 12 came from persons or organisations within Western Australia. I suspect the main reason for the paucity of Western Australian submissions was largely due to the comprehensive work Commissioner Dodson had carried out in relation to obtaining information from the Western Australian community in relation to underlying issues.

Information about underlying issues was also obtained through formal conference sessions which were held outside the context of individual case inquiries.

During the course of my inquiries into the individual deaths, I also had a number of informal meetings with the families of the deceased and Aboriginal organisations. I also visited the police station lockups and the Corrective Services institutions where the deceased had been last detained or which were relevant to my inquiries.

2.2.3 ABORIGINAL ISSUES UNIT

As mentioned above, the Aboriginal Issues Unit (AlU) in Western Australia assisted Commissioner Dodson and me in obtaining the views of Aboriginal people and communities, on the reasons for Aboriginal deaths in custody, particularly in relation to underlying issues. The AlU submitted their Final Report to Commissioner Dodson and myself in September 1990.

The AlU in Western Australia was initially headed by Mr Rob Riley and later by Mr Darryl Kickett. Their small team worked in conjunction with the Aboriginal Advisory Working Group (AAWG) which was established to assist the AIU determine directions and keep the Aboriginal community informed of developments within the Royal Commission. Members of the AAWG were Aboriginal people who held prominent positions within the Aboriginal community and their assistance was of great value to the work of the AlU.

The AlU adopted a consultative approach holding community meetings with Aboriginal communities to ensure comprehensive input from Aboriginal people. They were of a workshop style and designed to encourage discussion within the Aboriginal community about why such a disproportionate number of Aboriginal people were taken into custody and why some of these people died.

2.2.4 CRIMINOLOGY RESEARCH UNIT

The Criminology Research Unit of the Royal Commission is located in the offices of the Royal Commission in Canberra. The Unit is headed by Mr David Biles, the Deputy Head being Mr David McDonald. In addition to the Unit's research programme approved by the Commissioners, the Research Unit has assisted my staff with Western Australian research projects and with individual research requests. Their assistance has been of great value to the work of my office. In particular, the Research Unit, assisted with a study of arrest and bail patterns in 1987 and 1990 at Kalgoorlie Police Station. The Unit analysed the initial data collected for the 1987 study period and designed a data collection form for the 1990 study period and analysed the results. Their findings were presented in Criminology Research Unit Research Paper No. 18 by D. McDonald: 'Arrests, Custody and Bail, Kalgoorlie, 1987 and 1990'. The Unit has also produced a report based on data collected about each of the Western Australian cases. This has formed the basis of the section of this Report dealing with the characteristics of the deceased persons. The Unit has also been of great assistance in providing statistical information and advice for this Report.

2.2.5 SUBMISSIONS

In addition to submissions invited in response to the Royal Commission discussion paper on underlying issues, referred to above, the Royal Commission also received a number of General Submissions relating to underlying issues. Submissions were received on issues relating to health, mental health, the criminal justice system, suicide, custodial facilities, and training in Aboriginal issues. A list of the 40 General Submissions received by me are annexed to the Report.

2.2.6 EXHIBITS

During the course of my individual inquiries a great many exhibits were tendered to the Commission; 1711 such exhibits were tendered. The number of exhibits tendered in each case varied with 187 exhibits being tendered in the Pat inquiry to 16 exhibits being tendered in the Chatunalgi inquiry. In some instances a submission, statement or report has been of such significance to the overall work of the Commission that I have made it a General Exhibit. Thirty-five General Exhibits were received by me during the course of my inquiries. The General Exhibits included Police Routine Orders, submissions of the Perth Coroner, reports on alcohol use, reports on Aboriginal/Police relations, reports on housing and land needs, reports on medical and mental health issues, manuals for police officers, police aides and the Aboriginal Visitors Scheme, submissions on juvenile justice issues, Annual Reports of State Government departments and a report on the implementation of interim recommendations of the Royal Commission. A list of the General Exhibits are annexed to the Report.

2.2.7 CONSULTATIONS AND VISITS

In addition to the more formal means of informing myself of the issues involved in the deaths, I also met with individuals, family members and representatives of organisations on a more informal basis. Twenty-nine meetings of this nature that took place in Western Australia have been documented. They included consultations with family members on their home ground, visits to formal Aboriginal communities, a visit to an Aboriginal alcohol rehabilitation centre, meetings with members of the Aboriginal Visitors Scheme plus visits to police station lockups at Port Hedland, South Hedland, Broome, Carnarvon, East Perth, Fremantle, Wiluna, Kalgoorlie, Geraldton, Halls Creek and to the following Corrective Services institutions: Wooroloo Training Centre; Greenough Regional Prison, Geraldton; C.W. Campbell Remand Centre, Perth; Canning Vale Prison, Perth; Broome Regional Prison and Eastern Goldfields Regional Prison, Kalgoorlie. The juvenile institutions run by the Department for Community Services in Perth were also visited (Longmore Remand Centre, Nyandi Training Centre and Riverbank Training Centre).

2.2.8 CONFERENCES

Several formal conference sessions were held after the completion of the individual hearings. On 16 July 1990 a one day conference was held on juvenile justice issues. The conference was divided into two sessions. In the morning session I met with representatives from different organisations involved in providing legal services to youths. Representatives attended from the Youth Unit of the Legal Aid Commission, the Youth Legal Service, the Aboriginal Legal Service of Perth and Port Hedland plus an observer involved in the juvenile justice **field.** In the afternoon session Commissioner Dodson and I met with Judge Jackson, the President of the Children's Court, together with several magistrates from the Children's Court. This session was held in confidence.

On 20 July 1990 Commissioner Dodson and I met with Mr Monger, a representative from the Crown Law Department. Prior to the session a list of questions had been forwarded to the Department and the Department had provided responses (G/W/34). Matters requiring clarification were raised during the session, in addition to other matters. An additional list of questions was subsequently directed to the Department to follow up matters that were unable to be answered during the session.

On 31 July 1990 Commissioner Dodson and I had another joint conference session with Mr Brian Bull, Commissioner of Police in Western Australia. Again prior to this session the Police Department had been provided with a list of questions to which they had responded. Many matters pertinent to Commissioner Dodson's and my inquiries were raised with Commissioner Bull. Again a further list of questions was forwarded to the Police Department subsequent to the session.

On 31 August 1990, 1 held another conference session with Mr David McCann, the Perth Coroner. This was attended by Counsel for the parties as well as by Royal Commission staff. Discussion papers on Coronial Issues had been distributed prior to the session.

2.3 DIFFICULTIES OF THE ROYAL COMMISSION IN WESTERN AUSTRALIA

2.3.1 CHALLENGES

2.3.1.1 Terms of Reference

There have been a number of legal challenges to the terms of reference of the letters patent issued to various Commissioners in Western Australia. These challenges arose out of the hearing by Commissioner Wyvill into the death of Robert Joseph Walker and that challenge caused further legal proceedings to issue against me in relation to the inquiry into the death of Wayne John Dooler. Other legal action was taken out in the Supreme Court of Western Australia in relation to the Walker matter prior to the Federal Court challenge. There was also an appeal to the Federal Court under the Administrative Decisions (Judicial Review) Act in relation to the decision of Commissioner Johnston refusing the application of the Counsel for the police officers to prohibit publication of the inquiry into the death of John Peter Pat.

It is acknowledged that the Government of Western Australia funded the legal actions concerning the Walker and Dooler matters. The details of the legal proceedings are set out in more detail below.

Inquiry into the death of Robert Joseph Walker - Supreme Court of Western Australia proceedings

The first of a series of actions was taken in the Supreme Court of Western Australia on 22 November 1988. On that day eight motions were filed ex parte for a Writ of Prohibition to be issued against Lewis Wyvill QC the Commissioner inquiring into the death of Walker. The Applicants were seven prison officers and John Robert Quigley, the legal representative for the individual prison officers in the Walker inquiry.

Pidgeon J. granted orders nisi on 22 November 1988 in relation to each of the above applications save for the application of Quigley which was dismissed.

These matters arose out of the issue of a subpoena by Commissioner Wyvill on 22 November 1988 directed to Quigley and to Paul Price, also a legal representative for the prison officers, requiring them to attend the Commission hearing on 23 November 1988 and to produce items set out in the schedule as being all notes, records, documents, correspondence, communications, files, taken or recorded or prepared relating to conferences held between 27 August 1984 and the date of the subpoena with persons named therein including the Applicants in actions no 2615 of 1988 and 2621 of 1988.

The issue of the production of documents was set in motion on 18 November 1988 by the cross examination of the Applicant Hanna by Mr Kevin Ryan, Counsel for the family of the deceased. At page 1226 of the transcript, Hanna testified that when he gave his evidence at the inquest into the death of Walker he had refreshed his memory from a document which contained his instructions to his lawyer. On 21 November 1988 Hanna testified that he had attended a meeting at 18 The Terrace, Fremantle

which was used by the union for social occasions. Other officers who were involved in the death of Walker including Boath, White, Hide, McLaughlin and Miller also attended the meeting with their legal representatives, Messrs Quigley and Price. Hanna testified that at the meeting, everyone gave an account of what had happened in the incident which led to the death of Walker. Notes were taken at a later meeting with Price and a copy of those notes was provided to Hanna which he used to refresh his memory before the Coroner.

Mr Ryan called upon Mr Quigley to produce the original or any copy in his possession of that statement at page 1244 of the transcript.

The issue of whether the document was the subject of Legal Professional Privilege was argued at pages 1253 to 1301 and the matter was adjourned on 21 November for the Commissioner to consider the argument.

On 22 November 1988, Quigley and Price were served with the aforementioned subpoenas and the Commissioner advised all Counsel that he considered that before he could rule on the question of privilege, he would first have to hear evidence from Quigley as to what took place at the meeting and what notes were taken. The matter was then adjourned to 23 November 1988 when Quigley would be required to give evidence.

During the course of the hearing on 23 November 1988, Commissioner Wyvill was advised that orders nisi had been issued in the Supreme Court at 10.00 pin on the previous evening.

This matter was eventually transferred to the Federal Court under the provisions of the Jurisdiction of Courts (Cross-vesting) Acts on 13 March 1989.

Inquiry into the death of Robert Joseph Walker - Federal Court proceedings

On 7 December 1988 a further Application, no. WAG 184 of 1988, was taken out in the Federal Court of Australia in the Western Australian District Registry. 'Me Applicants were the same seven prison officers and the police and prison officers unions.

In this action the Applicants sought the following orders:

1. Orders pursuant to the Administrative Decisions (Judicial Review) Act

    (i) review of the action of the Respondent in issuing the subpoena against Quigley and Price;

    (ii) review of the conduct of the Respondent in requiring Quigley and Price to produce documents subject to the subpoena;

    (iii) review of the decision of the Respondent that the legal professional privilege had been waived.

2. A Writ of Prohibition against the Respondent prohibiting him from proceeding with the inquiry under the Letters Patent issued by the Commonwealth Government and the Government of Western Australia and an injunction to restrain the Respondent from proceeding further with the inquiry and from exercising or purporting to exercise compulsive powers. In the alternative, a Writ of Prohibition to issue in so far as it related to documents or papers the subject of a claim of legal professional privilege and an injunction to restrain the Respondent from proceeding further with the taking of such evidence.

The Federal Court matter came on for hearing on 8 December 1988 and was referred to the Full Court of the Federal Court sitting in Sydney for hearing on 21, 22 and 23 December 1988. Questions raised during this hearing related to whether Commissioner Wyvill had been validly appointed by both the Commonwealth and the State Governments. The argument centred around the wording of the Letters

Patent requiring the Commissioner to report to Commissioner Muirhead (who at that time was the National Commissioner) rather than to the Executive. The Full Court of the Federal Court gave their decision on 22 February 1989 that Commissioner Wyvill had been validly appointed by both Governments under the appropriate legislation.

The Applicants on having their Application dismissed, sought special leave to appeal to the High Court and such special leave was refused.

It was agreed that the action taken in relation to the Legal Professional Privilege issue was premature as Commissioner Wyvill had at that time made no determination on the issue of privilege other than to direct Quigley and Price to give evidence on the matter. A programme was determined on the future progress of that matter, which allowed time for an appeal to be made to the Federal Court in the event that the ruling was that the documents sought were so privileged. It is of note that following all of the expense, time delay and aggravating factors of the police and prison officers unions bringing the actions in the various courts that when Hanna resumed giving evidence on 20 October 1989, eleven months after he commenced his evidence, the document called for by Mr Ryan and the subject of the subpoena to Quigley was produced by his Counsel without objection. It is apparent that the Counsel for the prison officers determined not to pursue the issue of Legal Professional Privilege at this time.

Inquiry into the death of Wayne Dooler - Federal Court Action

On 18 January 1989 an application was filed in the Federal Court of Australia, Western Australian Registry directed against me by the Police Officers Union and two police officers seeking the the following orders:

(i) A Writ of Prohibition against the Respondent prohibiting him from proceeding further with the inquiry into the death of Dooler or any other death in custody under Letters Patent issued by the Commonwealth Government and the Western Australian Government.

(ii) An injunction to restrain the Respondent from proceeding further with the conduct of such inquiry and from exercising or purporting to exercise compulsive powers pursuant to the Royal Commissions Act 1902 (Cwth) and the Royal Commissions Act (WA) 1968.

This matter arose as I commenced an inquiry into the death of Wayne John Dooler in Carnarvon on 16 January 1989 and at that time the issue of the validity of the Letters Patent was before the Full Federal Court. This action had less to do with the facts of the Dooler hearing than the fact that the challenge to another Commissioner's letters patent had not yet been determined.

The Application for interim relief came on for hearing before Lee J. on 19 January 1989, the final day of the heating, and was refused on the basis that there was no evidence of any harm or detriment to the witness Atkinson. The Applicant Brajkovich had already given evidence. The matter was adjourned sine die to allow evidence of detriment to be placed before the Court. The matter was not proceeded with and was formally discontinued on 26 May 1989.

No such action was taken in relation to my commencing the inquiry into the death of Christine Jones which commenced in Perth on 12 December 1988 and concluded on 9 February 1989.

Federal Court Action

On 12 January 1990 during the course of the first pre-hearing conference in relation to the Pat inquiry, Counsel for the WA Police Union of Workers advised of an application in relation to the nature of the hearing to be conducted having regard to a possible contempt of the Supreme Court of Western Australia.

This Application was brought before Commissioner Johnston on 22 January 1990 seeking an order that the inquiries be restricted from publication on the basis that the hearing was to be conducted in Roebourne. Mr Quigley reserved his position in relation to any pan of the hearing occurring elsewhere.

Commissioner Johnston ruled on 6 February 1990 rejecting the Application.

On 22 February 1990 an Application was filed in the Federal Court of Australia at the New South Wales Registry by the five police officers who had been acquitted of the unlawful killing of Pat. The Application sought orders to review the decision of Commissioner Johnston of 6 February 1990 and was argued on 2 March 1990 before Foster J. Judgment refusing the Application was handed down on 5 March 1990.

The background to this Application was that the five Applicants had stood trial and had been acquitted of the unlawful killing of Pat. Subsequently the ABC televised a programme dealing with the death of Pat. The five Applicants instituted an action for defamation in the Supreme Court of Western Australia seeking damages for alleged libel in respect of the programme. At an early sitting of the Commission in Canberra in December 1987 the question of a public inquiry constituting a contempt was raised. It was agreed that the inquiry into the death could not be commenced until the latter part of 1988 and the issue was adjourned to be further considered.

The matter came on for mention before Commissioner Muirhead on 19 September 1988. Counsel for the police officers made his position clear that his only concern was that the matter should be heard in camera. The pleadings in the Supreme Court were still not finalised and the matter was again adjourned until 6 February 1989. At that date the pleadings had still not been finalised and they were subject to interlocutory applications. It was clear that the matter would not be heard before September 1989 and I would assume responsibility for the inquiry.

I asked that the parties make submissions by 21 April 1989 and submissions were made including that neither the Plaintiffs nor the Defendants were seeking a jury trial. On 28 June 1989 parties were advised that I intended to deal with the inquiry by way of a public hearing which would commence in Roebourne on 5 March 1990. No steps were taken by any party in respect of that ruling.

In November 1989, due to the number of cases still to be heard in Western Australia, it was determined that Commissioner Johnston would hear the Pat matter instead of me and in December 1989 he invited parties to make submissions on this point and indicated that he would be prepared to come to Perth for a hearing if that was required. Counsel for the police officers advised that he would prefer to make his application at a pre-hearing conference listed for 12 January 1990 and it was at that time he advised that the pleadings were still not finalised and his advice from Counsel was that the Plaintiffs should seek trial by jury. The application was made, refused and the subsequent appeal to the Federal Court as set out above was also refused.

2.3.1.2 Problems of Interpretation

The terms of reference caused a considerable amount of legal argument as **to** the meaning of several phrases. The full terms of reference have been set out elsewhere, but the sections which caused difficulty are as follows:

Aboriginality

> *... the deaths in Australia since I January 1980 of Aboriginals and Torres Strait Islanders ...*

The death of Tony Majurey (King) was referred to the Commission by Counsel for the family at the initial sitting of the Commission in Canberra and evidence was taken before Commissioner Muirhead on 14

December 1987 as to the acceptance of Mr Majurey by Aboriginal people at a young age when he arrived in Australia from New Zealand and later lived in a de facto marriage with an Aboriginal women with whom he had children.

Commissioner Muirhead ruled on 5 February 1988 that Majurey was Aboriginal for the purposes of the Commission's inquiry and that the death would be investigated.

On the resignation of Commissioner Muirhead, the inquiries in Western Australia fell to be considered by me and I was required to satisfy myself that all such matters were within jurisdiction and upon considering the matter of Majurey's Aboriginality, with the benefit of an additional letter from a member of Mr Majurey's family in New Zealand setting out his family background, came to a different conclusion. I published my ruling on 19 March 1990 and the name was removed from the list of deaths for inquiry.

Custody

> ... *whilst in police custody, in prison or in any other place of detention* ...

There were four deaths before the Commission for inquiry in which in each case at the time of the death, the deceased was not in custody.

Commissioner Muirhead determined on 22 December 1988 that Victor Simpson who suffered fatal injuries in a struggle at the Railway hotel at Mullewa with the publican who restrained him with a neck hold did not die in police custody or in a place of detention within the meaning of the Terms of Reference of the inquiry.

The remaining deaths of Bobby Bates, Albert Dougal and Jimmy Njanji occurred in hospital following their release from a period of custody. The authority to inquire into their deaths is subject to the restrictive 'hospital' clause which is discussed later. Commissioners favoured a construction of the clause which did not exclude such a death merely because custody had ceased.

Bates died in hospital of bronchial pneumonia following a period of incarceration for fine default. On being made aware of the seriousness of Bates' illness and the likelihood of the death of Bates whilst in custody, by an Order of Executive Counsel the fine was remitted. Jurisdiction was challenged by Counsel for the prison officers. I determined that the matter was within jurisdiction as:
... what caused his death was related to the illness which developed while he was in custody ...

Dougal died in the Derby District Hospital on 9 December 1980 after having been arrested for drunkenness on the evening of 4 December. The drunk charge was dismissed on 5 December 1980 when the police advised the Court that the defendant was in hospital and offered no evidence. Jurisdiction in this case was challenged by the State Government and by the Western Australian Union of Police Workers and this challenge is discussed below as a 'hospital death'.

Njanji died at the Port Hedland Regional Hospital on 2 June 1985 from asphyxiation due to laryngeal oedema which was a complication of a wound he had received whilst in custody at the Port Hedland Lockup when hit over the head with a piece of wood by a fellow detainee on 16 May. He had been released from custody on 19 May and was admitted to hospital the same day. Jurisdiction was challenged in this matter by the State Government and also by the Counsel for the treating doctor. This challenge is discussed elsewhere as a 'hospital death'.

Deaths in Hospital

> *... deaths ... whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre*

unless injuries suffered while in police custody, in prison or in any other place of detention caused or contributed to that death; ...

The following deaths occurred in a hospital and were subject to the restrictive clause, being the matters of the Aboriginal man who died in Sir Charles Gairdner Hospital, Faith Barnes, Bobby Bates, Albert Dougal, Darryl Garlett, Daniel Green, Donald Harris, Jimmy Njanji, Ronald Ugle, Roy Walker and Milton Wells. Challenges to jurisdiction were made on the matters of Daniel Green, Darryl Garlett, Albert Dougal, Jimmy Njanji and Ronald Ugle on the basis that there was no injury suffered whilst in police custody, in prison or any other place of detention that was the cause or that contributed to the death. In each case, apart from Njanji, the challenge was made by both the State Government and the relevant police or prison officers union.

In rejecting the challenge on Njanji I was moved to say:

> *The case was one in which an Aboriginal died after being assaulted in a police lock-up, where there is evidence to indicate that the assault would have gone unrecorded if death had not followed, where there is evidence upon which findings could be made that both the sudden death investigation and the CIB investigation fell below what may be regarded as adequate. In these circumstances I find it strange and discouraging that the State Government which has commissioned me to inquire into Aboriginal deaths in custody, seeks to challenge my authority to do so in this case.*
>
> *It is lamentable that in a case such as this in the course of which the conduct of police officers has been called into question and where there has been no submission on jurisdiction by their counsel, the State Government should make such a submission.*

The death of Daniel Green was found not to be in jurisdiction by Commissioner Muirhead on 17 April 1989 and no report on that death was forwarded to the Executive.

Daniel, unlike Darryl Garlett and Ronald Ugle, had a history of heart disease and had suffered at least three previous heart attacks caused by myocardial infarctions. His case may be distinguishable on that ground alone. Commissioner Muirhead came to a preliminary conclusion that the death of Ugle was not within jurisdiction however he did not formally decline jurisdiction before resigning his Commission. I explained in the Report of the Inquiry into the Death of Ronald Mack Ugle the reasons for coming to a different conclusions from Commissioner Muirhead.

At all events Commissioner Muirhead found that:

> *There was a physiological deterioration on about the morning of 13 March which occurred in custody and heralded approaching death. (In a sense it was a definite phase of his illness which ended in death.) But in the view I take of jurisdictional matters it did not fall within the classification of an injury suffered in custody which caused or contributed to death.*

He then went on to enlarge upon the general question of jurisdiction in the 'hospital cases' saying:

> *A phase or symptom of pre-existing heart disease or progressive malfunction suffered in custody is not, if death ultimately results, an 'injury' which caused or contributed to that death merely because the phase or symptom was experienced in the custodial situation. It will be different if that phase, symptom or illness can be associated with an aspect of custody, e.g. specific contributory effort, neglect of or delay in treatment, misdiagnosis or other matters of this nature.*

In the Report of Inquiry into the Death of Darryl Horace Garlett, I took a different view and said that:

> *... progressive physiological changes due to underlying diseases may in my opinion constitute an injury. In this respect it is necessary* to *take a broad view of injury which may include harm of any kind done or sustained.*

In reaching that view I placed importance on the express reference in the Terms of Reference to a temporal relationship between the injuries suffered and the fact of custody. In the absence of express words I declined to import the additional causative element favoured by Commissioner Muirhead, but, so far as I am aware, by no other Commissioner.

The deaths of Njanji, Garlett, Dougal and Ugle were found to be in jurisdiction and reports were forwarded accordingly.

2.3.2 THE APPROACH TAKEN TO THE COMMISSION BY THE WA GOVERNMENT AND THE POLICE UNION

2.3.2.1 The Government of Western Australia

On 30 October 1987, the then Premier, Brian Burke, wrote to the Prime Minister and confirmed the State's willingness to cooperate with this Royal Commission. The letter referred to the cost sharing and administrative arrangements for the Commission. The Government of Western Australia agreed to fund a legal officer, a research officer and a typist, would make available court facilities and cover the costs of any of its officers representing Government Departments who were to be called as witnesses.

Accordingly the State Government issued me with Letters Patent to conduct my inquiries in this State. This was in addition to the Letters Patent issued to me by the Commonwealth. The State Government also issued Letters Patent to the other Commissioners who conducted inquiries in Western Australia: Commissioner Muirhead (as he then was), Commissioner Wyvill and Commissioner Johnston.

Although the letter from Premier Burke clearly expressed a commitment on behalf of the State to cooperate with the Royal Commission there were a number of events which from time to time caused me concern that the Governments level of cooperation was less than full. Matters which led me to have such concern included:

(a) In a number of instances Counsel appearing before the Royal Commission on behalf of the State Government, submitted that I had no jurisdiction to inquire into a particular death. Those Submissions were, on occasion, made well after I had made a ruling on my jurisdiction to inquire into the deaths concerned. For example, at the pre-heating conference held before the commencement of my inquiry into the death of Jimmy Njanji, Counsel for the State Government explicitly stated that he was not instructed to challenge jurisdiction. Yet, in his final Submissions in that matter (and presumably upon instructions) the same Counsel submitted that I had no jurisdiction to report on Njanji's death.

In the matter of Albert Dougal I made a decision following Submissions from all Counsel, that the death was within my jurisdiction to inquire. Counsel for the State did not attempt to appeal that decision. I was therefore surprised when, in his final Submission in that matter, Counsel again submitted that the death was outside jurisdiction.

(b) Counsel Assisting the Royal Commission sought leave to appear at the coronial inquest into some of the deaths which occurred during the life of the Commission. Leave was so sought in order to reduce the Royal Commissions hearing time in relation to those deaths. In the first such matter, the inquest into the death of Edward Cameron, Counsel for the State Government opposed the granting of leave to Counsel Assisting the Commission. He submitted to the Coroner:

> *To sum up, Sir, in our submission this application by counsel on behalf of the Royal Commission is misconceived. If successful it would have far reaching and dangerous consequences for the administration of justice in this state insofar as it concerns the conduct of coronial inquiries insofar*

as it may be seen to threaten independence and autonomy for the running of coronial inquests in this state. In our submission the application should be refused.

This is a surprising attitude to take to an initiative of a joint Commonwealth/State Commission which was attempting to avoid further public cost. It is incongruous, indeed, extraordinary that where my Letters Patent specifically authorise me to consider the conduct of Coronial inquiries that Counsel for the Government, presumably on instructions, should submit that if leave were given to Counsel Assisting the Commission, it might be seen as a threat to the independence and autonomy of the conduct of Coronial inquiries.

(c) The State Government funded actions by the WA Police Union and the WA Prison Officers Union challenging the Royal Commission in the Supreme Court and the Federal Court. This led to the remarkable situation of the State funding a challenge by a third party against the validity of Letters Patent which it itself had issued.

Details of the challenges in the matters of Robert Walker and Wayne Dooler have been set out in section 2.3.1.1 of this Report.

(d) Requests made by the Royal Commission to State Government Departments for documents or information often appeared to have been afforded low priority by those Departments. This was particularly so in the early months of the Commission's operation in this State. From time to time there were considerable delays between the request and the supply of the material. Some of the delays were, of course, understandable.

The John Pat inquiry provided a dramatic example of some of the difficulties the Royal Commission encountered in its dealings with State Government Departments. In that matter it would appear that documents were deliberately withheld from the Commission and it was by accident that the existence of these documents were acknowledged to the Commission.

The majority of documents listed were received on 26 January 1990 but two documents were retained. One of these documents was delivered to the Commission on 16 February 1990 and the other was provided by the Crown Law Department on 27 February 1990. In relation to the latter document, the Police Commissioner maintained that he had a claim of Legal Professional Privilege but did not pursue the matter as the Crown Law Department had produced the document. The Pat inquiry commenced on 6 March 1990. Further documents were produced during the course of the heating including Commissioner Bull's handwritten notes taken at the trial of the five officers in May 1984.

Because of the withholding of documents in the Pat matter, a letter was written to Crown Law on 26 September 1989 asking for confirmation that the Police Department had delivered all relevant documents, (or a list identifying any documents which had been withheld) in all matters which were before the Commission, either heard or part heard. No reply was received and the matter was pursued. On 5 February 1990 a letter was written by Crown Law advising that due to an oversight, they had not communicated an assurance given by Chief Inspector Foley of the Police Royal Commission Liaison Unit on 12 October 1989 that all relevant material located by the Police Department had already been supplied. It is patently clear that this was not the case on 12 October 1989, as the Commission had not by that date even been provided with the list of previously non-disclosed documents.

Despite the subpoena, a police officer had decided of his own motion not to produce certain documents as he considered them either 'privileged' or not to be relevant. His views were not communicated to the Commission which would have been unaware of the existence of the documents were it not for the incidental disclosure of their existence when a Commission staff member requested a document mentioned in the materials already produced.

The above examples should not be taken as representative of every contact between this Commission and State Government Departments. In many instances considerable assistance and cooperation was

received by the Commission. Without that cooperation much of the work of the Royal Commission would not have been possible.

However, in some instances Government Departments (and/or individuals within those Departments) appeared to adopt a defensive stance to inquiries from the Royal Commission. There was on their part, a perhaps understandable reluctance to accept or recognise criticism of their past and present practice and procedure.

In that regard I stress that, although the approach of this Commission has, at times, been to criticise the operations of Government as they have impacted upon Aboriginal people, it has also been to highlight those areas of positive and innovative approach by Government and its departments in addressing the tragedy of deaths in custody. That approach has continued in this Report.

2.3.2.2 WA Police Union of Workers

In contrast with the State Government's expression of willingness to cooperate it is a matter for regret that the Police Union bitterly opposed this Royal Commission and for the most part declined to cooperate.

On a number of occasions individual members of the union who were themselves willing to assist the Commission were dissuaded from providing statements to the Commission. In instances where police officers (members of the union) would not provide a statement to the Commission, or even speak with Commission staff to be able to ascertain whether their evidence could potentially assist the Commission, oral evidence was required.

This prolonged process of obtaining evidence from police officers involved considerable cost for the Commission and the State, sometimes involving the cost of a replacement for a witness required to travel to give oral evidence, and costs associated with his travel and legal representation. 'Mere were some occasions when the value of oral evidence in hindsight was outweighed by the cost of obtaining it.

In his report to Union members in the Police News of December 1988, the President said:

> *When we look* at *the Muirhead Royal Commission, its costs, results and controversy, there is no justification in real terms for its continuation in my view. The costs incurred in WA alone during this past year must be millions of dollars. The Aboriginal community of Australia is publicly reported as decrying it as a waste of time, with no credibility, and openly stating the results of* it *will never be accepted. Is* it *addressing the proper issues in the proper manner now begs an answer.*
>
> *Obviously the time has come to cancel the Commission. Let's face it* - it has not finished one inquiry in WA, still hasn't produced a *report on that. Can it, or will it, ever finish? Cost effectiveness alone should rule it out* ...

In fact at the time of publishing this article, one inquiry had been completed and two were in progress. Commissioner Muirhead, who was initially the only Commissioner, had completed three inquiries, with another one part heard in New South Wales and South Australia before coming to Western Australia in June 1988. He had also prepared the interim report of this inquiry which was released in December 1988.

In the March 1989 edition of Police News, the union newspaper, it was reported that the union had commenced legal proceedings challenging the validity of the Royal Commission. The members were told that:

> *The current situation follows frequent clashes between the Police Union's lawyer John Quigley, and Royal Commissioner Wyvill which culminated in Quigley being called as a witness before the*

Commission and refusing to answer questions in conversation he had with Police clients back in 1974 which he claimed were privileged.

He has had to withdraw his appearance on behalf of the Police/ Prisons Unions who are now represented by 3 Q.C.'s for which the WA government, is picking up the tab.

This completely misrepresents the situation which gave rise to the action and which is set out in more detail elsewhere, but suffice it to say, the matter had nothing to do with Police clients, 1974 or Mr Quigley refusing to answer questions.

The above extracts from the Police News reveal that the members of the Union were misinformed about the true situation in each case. That is regrettable and although the harm done by such carelessness is not quantifiable, potentially it could prejudice otherwise cooperative police officers against the Commission.

It is understandable that police officers might feel defensive about an inquiry which is obliged to investigate in detail their work practices, decisions taken in the course of their work and their behaviour in the context of a person in their care dying. I appreciate that honest, hard working police officers might have some affront at being investigated. However, I cannot understand why the Union should be fundamentally opposed to any Inquiry whose task it is to uncover not only malpractice but also to reveal and commend the strengths of police work. In the former case I would expect the Union to cooperate to expose any members who did not live up to the high standards set for police officers.

It is unfortunate to say the least that the Union was unable to see the benefits of the Commission not only to the public and in particular the Aboriginal community but also to the police force.

PART THREE: THE DEATHS

Part Three of the Report deals with the deaths of the 32 Aboriginal persons who died in custody in Western Australia from 1980 to 1988. The first section 3.1 presents a profile of each of the individual deceased providing a brief summary of the background of each person. The second section 3.2 examines the characteristics of the 32 deceased as a group including the demographical information, information about the last apprehension and detention, the final period of custody, details of the deaths. The following three sections (3.3-3.5) provide an analysis of the 32 deaths grouped into the three categories previously discussed: natural causes/medical cases; hanging/self-harm cases and other cases involving violence. By examining the deaths in this way I attempt to provide some insight into the lives of the individuals who died in custody, how they came to be in custody and how or why they died.

3.1 PROFILES OF THE DECEASED

Introduction

The following section provides a brief summary of the background of each person who died, how they came to be in custody and the cause of their death. Initially I would like to apologise to the family, relations and friends of the deceased for any further distress or embarrassment that discussion of the personal details of the deceased may cause them. However it is important that it is remembered that the individuals who died in custody had their own lives and families. Many of the deceased suffered badly as a result of government policies, the European criminal justice system and an uncaring non-Aboriginal society. Perhaps the lives and deaths of these 32 Aboriginal people could be seen as an illustration of the way in which non-Aboriginal society, laws and culture have been involved in the oppression and destruction of Aboriginal people's lives.

In many instances the Royal Commission has had to rely to a large extent on information in government records about the deceased. I recognise that this information is sometimes inaccurate and presents a rather biased view of the deceased with emphasis being placed on aspects of their lives which required them to have contact with government departments and agencies.

I should also point out that characteristics of the deceased are discussed more generally in the following section of the Report. Aspects of the deceased's lives are also summarised in chart form in Appendix 1 of the Report. I also refer to Commissioner Dodson's Report which discusses the people who died in custody. Finally I refer to the individual reports of the inquiries into the deaths which provide more detail on the life and death of each deceased and the investigations which followed their death.

Charles Sydney Michael (W/1)

Charles Michael was born on 16 July 1953 at Wandering. He was the fourth of a family of six children. At the age of 5 he was committed to the care of the Child Welfare Department and admitted to Marribank Mission near Katanning. Three years later he was returned to his parents' care at Wandering Mission.

At the age of 12 in 1966, he made his first court appearance at Beverly Children's Court after committing several dishonesty offences. He was sentenced to twelve months' supervision by the Child Welfare Department. He continued to be convicted of offences as a juvenile and in 1967 at the age of 13 was admitted to Hillston, a juvenile institution. From this time on he spent lengthy periods in Hillston and departmental reports indicated he yearned for his family and resented institutional life and authority. He worked with his father for a short period in a shearing team but repetitive offending continued. In 1970 when he was only 16 years old he was sentenced to six months imprisonment for the offences of unauthorised use of motor vehicle, driving under the influence and no motor driver's licence. He was placed in Fremantle Prison. This commenced a pattern of existence in the course of which he spent much of his life in custody.

As an adult Charles Michael was convicted of 41 offences, most of which were dishonesty offences, unauthorised use of motor vehicle and driving offences. Charles Michael was a heavy user of alcohol and many offences were committed whilst intoxicated. For these offences he received many sentences of imprisonment for periods ranging from one month to 12 months. The cumulative effect of which resulted in his spending many years in prison for minor offences. The only serious offences of which he was convicted were a sexual offence and deprivation of liberty for which he received a cumulative sentence of 6 years 4 months (no minimum). He was serving this sentence at the time of his death.

Charles Michael married some years before his death and in spite of his lengthy periods of imprisonment, his relationship with his wife and family endured.

Charles Michael died on 9 October 1984, aged 31, from a heart attack (myocardial infarction). At the time he was a prisoner at Barton's Min Prison, he was suffering a serious heart condition, atheroma and coronary thrombosis. His medical condition was unknown to the prison medical authorities. He died following a struggle with several prison officers.

Robert Walker (W/2)

Robert Walker was born in Port Augusta on 25 December 1958, the second youngest in a family of 15 (three of his siblings died before he was born). His father died in a car accident when he was almost four years old. Robert spent most of his childhood living with his mother.

In 1971 at the age of 12 years Robert Walker made his first court appearance. He was charged with illegal use of a motor vehicle and stealing three bottles of milk. He was placed on a three year bond with

supervision. He committed several offences at the age of 13 years and on one occasion was found drunk and placed in the Adelaide city watchhouse overnight. In 1974 at the age of 15 he was sent to a juvenile institution (McNally Training Centre) where he spent much of the next two years. He consistently reoffended, the offences being of a dishonest or violent nature (including sexual assault). The departmental records are illustrative of many occasions in Walker's life where he and his family were stereotyped by governmental officers who imposed upon him their view of the proper way for Aboriginal persons to live.

In 1976 he was imprisoned at Yatala Prison after being convicted of assault. After his release from Yatala he joined a 'bikie gang' and commenced experimentation with a variety of drugs. In 1978 he met Vivian Moore who became his fiancee. In 1979 he was convicted of a sexual offence and sentenced to three years imprisonment for an offence committed in 1977. In prison he sniffed glue and thinners.

After release from prison in 1981 Robert Walker attended the Aboriginal College of Music for six months. In January 1982 he had enrolled in a course with a view to obtaining a Community Development Certificate. He also worked part time playing the guitar. He published a booklet entitled 'Up, Not Down Mate! Thoughts from a Prison Cell', a book of poetry written whilst imprisoned. He completed the first six months of the Community Development course but his world fell apart again when in mid 1982, intoxicated with a mixture of alcohol and drugs, he indecently assaulted a patient in the Port Lincoln Hospital. He committed another sexual assault offence in Perth in September 1982. He was sentenced for this offence in September 1983 and was sentenced to 6 years imprisonment and declared an habitual criminal under section 661 of the Criminal Code. This was the sentence he was serving at the time of his death.

Robert Walker died on 28 August 1984 at Fremantle Prison. He was 25 years old. The cause of death was asphyxia resulting from compression of the chest which he suffered during a struggle with prison officers.

Christine Jones (W/3)

Christine Jones was born in Carnarvon on 27 October 1958. She was one of eight children, although the children did not grow up together. Christine spent her early childhood living with her parents in Carnarvon and grandmother in Meekatharra. When Christine was 5 years old she was declared a neglected child and committed to the care of the Child Welfare Department until 18 years of age. After a short period of foster care Christine was sent to the Church of Christ Mission at Carnarvon. She remained at this and related missions for the next ten years. At, the mission she met her older brother, Rodney, the existence of whom she had previously not known. Like other institutionalised children, Christine was provided with care, education and subsistence but at the cost of family and cultural dislocation.

Christine Jones commenced drinking at the age of 14. This is when her involvement with the criminal justice system commenced. In 1973 at 14 years of age she was convicted of her first offence, disorderly conduct.

Christine had a child when she was 16 years old. She had a second child four years later. It appears she was unable to cope with the care of her children and both were sent to her mother for upbringing. During this time Christine developed a severe alcohol problem where she was drinking constantly and would exhibit sudden mood changes and outbursts of temper. It seems that her self-esteem was low and from about 1976 she engaged in acts of self mutilation by wrist slashing.

Between 1978 and 1979 Christine was convicted of eight offences, all directly related to alcohol usage: disorderly conduct (4), re-enter licensed premises (3) and driving under the influence. About three weeks before her death Christine was arrested for unauthorised use of a motor vehicle ('joyriding') and was granted bail to appear at a later date but failed to appear. Some time before this offence she had

come to live in Perth from Broome and Carnarvon. At the time of her last detention she was arrested by police on a warrant issued because of unpaid fines.

On 18 October 1980 Christine was detained at Midland Police Station. She died at the lockup when she hanged herself by the sleeve of her cardigan. Christine was 21 years old when she died.

Wayne John Dooler(W/4)

Wayne Dooler was born on I October 1960 at Carnarvon. He was the fourth of six children born to Mitchell and Peggy Dooler. He was brought up with his family in the Carnarvon area. The children were often separated from their parents because the parents were apparently unable to look after them all. Consequently Wayne's sister, Susan, and her two brothers, Michael and Rex, spent some time in missions as wards of the State. It appears that Wayne stayed with his parents who were anxious to keep the family together.

Wayne Dooler spent some of his childhood at the Carnarvon Reserve where the conditions were appalling. He attended school and left Carnarvon High School in his second year. While still at school he started drinking alcohol. He was first charged with an offence at the age of 13 for being unlawfully on the curtilage. It was dismissed under section 26 of the Child Welfare Act. When he was 15 he was charged with drunk and at 16 with unseemly behaviour on a native reserve. Thereafter he was regularly convicted of minor offences in which alcohol played a part: drunkenness (7) and juvenile on licensed premises (2). His sister, Susan, told the Commission that when Wayne was visiting her and her husband on the station where they worked he did not drink and seemed happy. However, when he returned to Carnarvon, he would again indulge in heavy drinking due to boredom and unemployment.

On 19 June 1980 Wayne Dooler was arrested for drunk by the police and taken in an unconscious condition to the Carnarvon Lockup. A short while later he died in the lockup as a result of acute alcohol poisoning. Wayne Dooler was 19 years old when he died.

Paul Fanner (W/5)

Paul Fanner was born on 19 April 1951 at Gnowangerup. His parents were Meryl Fanner and Cecil Bolton. His father died in about 1966 and it appears that Paul Fanner was raised by his mother, his stepfather, his grandmother and other members of his family. He was one of six children.

Some time prior to 1961 Paul Fanner and his family moved from Gnowangerup to the Tambellup Mission near Katanning. Paul Fanner was described as a bright and happy child and it is clear that he had strong ties with his family and relatives. He went to school at Tambellup and had left school by the time he was 13 years old. Information on Child Welfare Department files stated that Paul Fanner was of low intelligence. However information before the Commission showed otherwise and his lack of interest and success in the education system should be seen as a reflection on the inadequacy of the education system to cater to the needs of Aboriginal children, a problem which still exists today. The picture presented to the Commission was that Paul Fanner was a man of considerable artistic and intellectual ability.

Paul Fanner had his first contact with the criminal justice system at the age of IO years when he appeared at the Gnowangerup Children's Court on a charge of break, enter and steal. It was dismissed under section 26 of the Child Welfare Act. At the age of 11 he was convicted of two counts of stealing and placed on probation. At the age of 14 years years he was again convicted of stealing and sent to Longmore Training Centre, a juvenile institution, for four months. He was further institutionalised for six months the following year for interfering with a motor vehicle.

In 1966 at the age of 15, Paul Fanner was convicted of a sexual offence and sentenced to eight years imprisonment with a minimum of five years. He was sent to Fremantle Prison. After spending some of the most formative years of his life in prison it is not surprising that after his release his involvement with the criminal justice system continued. By the time he was released in August 1971 he had not only suffered the emotional deprivation of isolation from his friends and family but had received no counselling in relation to the offence he committed. He had been punished under white law but still had to face his own community.

In March 1972 he again appeared in court on a minor offence. In 1974 he was sentenced to six months imprisonment for driving offences. His parole was cancelled and from this time until the time of his arrest in June 1981, which heralded his final period of imprisonment, he had a regular history of offences that resulted in short periods of imprisonment. It appears that he spent approximately 13 of the last 18 years of his life in prison (for 22 offences).

The departmental files suggest Paul Farmer began drinking heavily at a very early age. It appears that whenever he was out of prison he had problems with excessive alcohol usage. Paul Fanner had been institutionalised by the criminal justice system and had difficulty coping in the world outside prison. He had unresolved problems with the Aboriginal community and it is doubtful that his sense of shame for his original offence ever left him.

In June 1981 Paul Fanner was arrested and placed in the C.W. Campbell Remand Centre. During this period he made his first suicide attempt by cutting his left arm. It was the **first** of five suicide attempts reported during his imprisonment from June 1981 until his death in 1984. Whilst in prison Paul Fanner received some psychiatric treatment and assessment. He was diagnosed as suffering from schizophrenia illness and depression. The psychiatric services available to prisoners, particularly Aboriginal prisoners, were very inadequate and Paul Fanner did not receive any culturally appropriate help with his spiritual fears and anxieties. Such assistance may have helped to alleviate his mental health problems. On 11 April 1984 Paul Farmer died in Albany Regional Prison when he cut his throat with a razor blade. He was 33 years of age.

Darryl Horace Garlett (W/7)

Darryl Garlett was born on 7 June 1954 in the small country town of Tammin. He was one of 13 children. Darryl and his brothers and sisters were educated at the local school which Darryl attended until 14 years of age. He then worked as a farm worker in the area. The family was close and the older children helped care for the younger ones.

Darryl Garlett commenced drinking at a relatively young age. His first involvement with the criminal justice system was in 1971 when he was aged 17 years and he was convicted of disorderly conduct. Between 1971 and 1980 he was convicted on 12 offences, all of which involved alcohol in some way: disorderly conduct (5), driving under the influence (4), no motor driver's licence (2), park drinking (1). Darryl Garlett was reportedly a heavy user of alcohol. However, generally speaking he appeared to be a relatively healthy, fit young man.

Darryl Garlett had apparently developed coronary artery disease over a considerable period of time which remained undiagnosed and symptom-free until shortly before his death.

On 17 March 1980 he was sentenced to six months imprisonment for his fourth driving under the influence offence. It was the first time he had been sentenced to imprisonment.

Darryl Garlett died on 26 May 1980 at the Wooroloo District Hospital. At the time of his death he was a prisoner in the Wooroloo Prison Farm. He died from a coronary occlusion due to an atheroma as a result of coronary artery disease. He was aged 26 at the time of his death.

Jimmy Njanji (W/8)

Jimmy Njanji was born in the Gibson Desert country on the western edge of the Pilbara region of Western Australia. His date of birth is unknown although it was probably in the 1920s. He lived in a traditional manner and his language group was probably Putittjarra. In the early 1960s Njanji, his wife, Mulalla, and children were brought into the Jiggalong Mission from the Lake Disappointment area in the Gibson Desert.

In 1967 Njanji and his family moved to Wiluna Mission. Njanji worked as a stockman on stations around Wiluna and Meekatharra for short periods of time. In about 1969 Njanji and his wife separated. It is believed that his wife may have gone to live at Jiggalong with another man. In 1971 Mulalla returned to Wiluna with her new husband.

According to traditional law the other man had to submit to punishment from Njanji for having taken his wife. Punishment was carried out but apparently Njanji also threw a spear at the time which pierced his thigh, an additional punishment which he had no right to inflict. The man was hospitalised and discharged after treatment. Some ten days later the wound re-opened and the man haemorrhaged to death. I refer to Commissioner Dodson's Report for a detailed discussion of this matter.

Jimmy Njanji was arrested on 20 February 1971 and charged with manslaughter which was later changed to unlawful wounding. This was Njanji's first encounter with the European criminal justice system. Njanji pleaded guilty and was sentenced to 18 months imprisonment with a minimum term of one month, the sentencing judge taking into account Aboriginal traditional law and the fact that Njanji would face traditional punishment if he returned to the Wiluna area.

Upon release Njanji did not return to Wiluna and spent the remainder of his life in the Pilbara, principally Port/South Hedland. From time to time he lived in the Warralong community where alcohol was banned but when he was in Port/South Hedland he drank heavily. He mainly lived in the drainage ditches surrounding South Hedland together with other destitute Aboriginal people. His first conviction of drunk occurred after his release and over the next 15 years he was convicted of 25 offences most of which related to alcohol.

Njanji also suffered from diabetes which was poorly controlled due to his reluctance to seek medical treatment and follow instructions.

On 16 May 1985 Njanji was arrested for being drunk and placed in the Port Hedland Lockup. Whilst in the lockup Njanji was hit on the head by a fellow prisoner. Njanji's laceration was treated at the Port Hedland Regional Hospital and he was then returned to the lockup. On 17 May 1985 he was convicted of drunkenness and sentenced to two days imprisonment. He was released on 19 May 1985 and that day he attended at Port Hedland Hospital and was admitted suffering from facial cellulitis and scalp infection. In hospital the cause of the cellulitis was not recognised and inappropriate treatment was given. A tracheostomy was required but it was not performed. The cellulitis was caused from an infection of the head wound.

On 22 May 1985 Njanji died at the Port Hedland Regional Hospital as a result of asphyxia due to laryngeal oedema. In other words Njanji had choked to death. He was approximately 55 to 60 years old when he died.

The Aboriginal Man who died at Sir Charles Gairdner Hospital (W/9)

The deceased in this inquiry who was not referred to by name out of respect for the traditional beliefs of his family, was born on 30 March 1957 at Roebourne. His mother was Sylvia Allen and his father is now deceased. All of the deceased's life was spent in and around Roebourne. His parents lived at both the Woolshed and the Village, Aboriginal communities in Roebourne. The deceased was the eldest of eight

children. He attended Rocbourne Primary School and then Karratha High School until the age of 10 years. He spent periods of his youth living at the Weerianna Hostel in Roebourne and attending school from there.

The family background of the deceased was strong in cultural traditions and he was taught Aboriginal dances and law. However during the deceased's childhood his family life was characterised by excessive alcohol consumption and unemployment.

The deceased commenced drinking in his early teens and he continued to drink heavily for the rest of his life. He was arrested for drunkenness 51 times.

The deceased was first imprisoned in 1973 at the age of 16 for stealing two blocks of chocolate and he was sentenced to one month's imprisonment. He appeared in the Children's Court on eight occasions and was sentenced to imprisonment five times, all for trivial offences. Between the age of 16 and his death (at age 26 years) he was sentenced to imprisonment 14 times.

On 22 October 1982 the deceased was convicted of a sexual offence and sentenced to four years imprisonment (no minimum term). He had previously served his terms of imprisonment at Roebourne Regional Prison however because of the type of offence and length of sentence he was sent to Fremantle Prison where he was admitted on 16 November 1982.

On admission to prison he underwent a routine medical examination including a micro chest X-ray. On 7 December 1982 the deceased underwent an X-ray examination at the Chest and Tuberculosis Services Clinic in Fremantle. Shadowing on the X-ray was interpreted as a pneumonic infection of the lungs and treated with antibiotics. Followup X-rays were not carried out in accordance with medical advice. The deceased became seriously ill in February 1983. On 23 February 1983 he was transferred from Fremantle Prison to Fremantle Hospital and then to Sir Charles Gairdner Hospital.

The deceased died late on 25 February 1983 without the miliary or acute generalised tuberculosis which caused his death having been conclusively diagnosed. The deceased's family were not notified by prison authorities of his illness or transfer to hospital, in fact they did not learn of his death until five days after it had taken place. The deceased was 25 years old when he died at Sir Charles Gairdner Hospital.

Nita Blankett (W/l0)

Nita Blankett was born at Narrogin on I April 1941. She was one of 12 children born to Connie and Theo Narkle. When she was 5 years old she was placed with three of her brothers and sisters at Roelands Mission. The mission was run by non-denominational fundamentalists along very strict lines.

Nita attended Bunbury High School. She was withdrawn from school in 1957 at the age of 16. Nita left the mission at the age of 17 and began training as a nursing aide at Busselton District Hospital. A year later she was dismissed from her job as a result of an altercation.

Nita Blankett moved to Perth and prior to the birth of her children was in regular employment. Her first child was born in 1968. She later formed a relationship with Henry Blankett, a Thursday Islander, and they were subsequently married. Nita Blankett and her husband had a further four children.

Nita Blankett's first involvement with the criminal justice system occurred in 1970 when she was 29 years old and charged with harbouring an absconder (her nephew). Later that year Nita Blankett and her husband moved to Queensland where they spent the next six years. Little is known of her life in Queensland apart from the fact that it was during this time that she first suffered from asthma.

Nita Blankett and her family returned to Western Australia in 1976 and from that time on she had steady contact with various government departments and agencies principally due to her medical condition, her contact with the criminal justice system and welfare problems.

In September 1976 Henry Blankett was convicted on serious charges and sentenced to 12 months imprisonment. A short time later in December 1976 Nita Blankett was convicted of disorderly conduct and resisting arrest. It was the commencement of a pattern of offending which continued until her death.

Nita Blankett had difficulty in managing the care of her children and from 1977 onwards they spent time in foster homes and in the care of her mother.

Between December 1976 and the time of her death (11 January 1982), Nita Blankett had 30 convictions recorded against her. They were mainly petty offences or motor vehicle offences, usually committed under the influence of alcohol. Her convictions were as follows: disorderly conduct (8), resisting arrest (2), refuse/false name and address (5), assault (2), stealing and receiving (1), driving under the influence (3), no motor driver's license (4), on premises without lawful excuse (1) drunkenness (1) and wilful damage (3).

Nita Blankett was sentenced to imprisonment on two occasions. She was first sentenced to two months in 1981 for no motor driver's licence, this being her third offence of this nature. The second time was on I 1 January 1982 when she was sentenced to three months imprisonment for her third conviction for driving under the influence and a further three months for no motor driver's licence, this being her fourth conviction of that nature. She was serving these sentences at Bandyup Women's Prison at the time of her death. Nita Blankett had spent time in Bandyup on four other occasions as a result of non-payment of fines.

Nita Blankett was a chronic asthmatic for approximately 12 years prior to her death. Her asthma was never well controlled and intermittently required emergency attendances at hospitals, the AMS and community health.

Nita Blankett suffered an asthma attack in Bandyup on 14 January 1982. The seriousness of her attack was inadequately assessed by prison and nursing staff. In addition there were delays in removing her from the prison for medical treatment.

That same night Nita Blankett died in the back of a prison van en route to a medical centre to obtain medical treatment for the acute asthma attack which she was suffering. She was aged 41 years when she died.

Albert Dougal (W/11)

Albert Dougal was born in Broome on 26 February 1956, to Jack and Josephine Dougal. Jack came from Lombardina and Josephine from Beagle Bay. They had eight children, although one died in 1954.

The Native Welfare Department had considerable involvement and control over the lives of Albert Dougal's parents. Until 1966 Albert Dougal lived with his parents at Broome, Beagle Bay and Lombardina.

Albert Dougal and his three young sisters were committed to the care of the Child Welfare Department in January 1966. The reason for the committal was that according to the Department the father was not adequately supporting the family. The children resided at Beagle Bay Mission. Albert Dougal left the mission in 1972.

Albert Dougal had a very minor record of criminal convictions. He was fined for stealing a sausage in 1978 and for disorderly conducted (urinating in public) in 1980.

On 8 December 1980 Albert Dougal was involved in a fight outside the Roebuck Bay Hotel in Broome. He was punched and fell to the ground Although he was unable to get up, no one went to his assistance. He was later noticed by the police lying on the roadway and was arrested for drunkenness. He was unconscious and the police were unable to rouse him.

He was then taken to the Broome Lockup and before being placed in the cells, he was hosed down because he had excreta on his clothes and person. He was then carried into the lockup, placed on the concrete floor and left in his wet clothes.

He was left in the lockup overnight and never regained consciousness. The next morning the OIC of the police station noticed that he appeared to be having a **fit.** A nurse attended and Albert Dougal was removed to the Broome District Hospital. He was later transferred to Derby Regional Hospital where he died on 9 December 1980 from brain damage caused by the head injury suffered when he hit his head on the ground in the fight. Albert Dougal was 24 years old when he died.

Hugh Wodulan (W/12)

Hugh Wodulan was born to Molly Wodulan and Peewee Cooper on I July 1953 at Liveringa Station near Derby. He had a younger brother, Willy, and a sister, Joy. When Hugh was five years old he was placed at the United Aborigines Mission Hostel at Derby where he remained until he was 13 (1966). During this time his family lived at the Derby Native Reserve, the Looma Community and then Broome where they settled at One Mile Reserve. This was where Hugh Wodulan was living at the time of his death. After completing primary education at the mission Hugh Wodulan attended Derby High School until he was 15 years old and had completed second year.

Hugh Wodulan's involvement in the criminal justice system commenced when he was 15 years old and was convicted of unauthorised use of a motor vehicle, driving under the influence and two counts of break, enter and steal. The offences all occurred on one occasion whilst he was drunk. He was committed to the care of the Child Welfare Department until 18 years of age and sent to Longmore Remand and Assessment Centre in Perth for assessment. He was returned to the Derby Native Reserve. He had an initial placement doing station work at which he excelled but when the station was sold he was returned to the care of the Child Welfare Department.

From this time on he was continually involved in the criminal justice system and accumulated an extensive criminal record. He received stem treatment for many minor offences and imprisonment was often the first, rather than the last, resort.

The result was from the time of young adulthood until his death he spent most of his life in penal institutions. He was convicted of a total of 76 offences, many of a petty nature, and involving alcohol.

Hugh Wodulan was a chronic alcoholic and in June 1983, the month preceding his death, he was admitted to Milliya Rurnurra, an Aboriginal alcohol rehabilitation centre. He was required to leave Milliya Rurnurra because of his disruptive behaviour towards other inmates.

On 12 July 1983 he was convicted of aggravated assault and placed on probation. He sought readmission to Milliya Rurnurra but the manager refused because of his previous conduct. At this time, his mental state had deteriorated, he appeared to be suffering from alcohol withdrawal and needed alcohol detoxification. There were no beds available at Broome District Hospital for treatment there.

On 19 July 1983 Hugh Wodulan was arrested for drunkenness and placed in the Broome Lockup. Less than three hours after he was placed in the cell he was found hanging. Hugh Wodulan was 30 years old when he died.

Stanley Brown (W/13)

Stanley Brown was born on about I June 1945 at DeGrey station in the Pilbara. He was the second of six children. He was a full Gnarla man and his family were Berrigurrah people. Until 1973 he lived and worked at DeGrey station doing seasonal station work. He received no European education. He was involved in Traditional Aboriginal Law and in 1986 when his people returned to the DeGrey River area he was engaged in the revival of traditional ceremonies and initiations.

In 1967 he was married to Mary Walters under traditional law. The relationship was stormy being marked by episodes of drinking and violent behaviour, they separated and were reconciled many times.

Stanley Brown developed a serious alcohol problem and had numerous convictions for drunkenness and drink related offences. The most serious of these concerned violent assaults upon his wife which resulted in his conviction for aggravated assault and imprisonment on a number of occasions. Their relationship ended in 1983 when Stanley Brown was convicted of assault occasioning bodily harm and was sentenced to a minimum of one year's imprisonment. At about this time Mary Walters left Port Hedland and went to live in Broome.

Stanley Brown was released from prison on parole in November 1984. Shortly after his release he returned to the Pilbara and spent most of his time at Yandeearra station. At the expiration of his parole he left Yandeearra and returned to the South Hedland area where he lived, as many other homeless Aboriginal people, in the drainage ditches around the town. He was drinking very heavily at this time.

Three weeks prior to his death Stanley Brown and some other relatives went to Broome to visit the deceased's brother who was in Broome Regional Prison. During that time Stanley Brown spent some time with his ex-wife, Mary Walters. He was arrested on four occasions for drunkenness while in Broome, the fourth occasion being on 27 June 1987.

Stanley Brown was placed in the Broome Lockup at 3.40 pm on 27 June 1987. He was found hanging at 6.30 pm partially suspended by a mattress cover. He was aged 42 at the time of his death.

Misel Waigana (W/14)

Misel Waigana was born on 30 November 1947. His place of birth was Saibai Island which is in the Torres Strait. Little is known about his life prior to coming to Western Australia.

Misel Waigana came to Western Australia in about the mid 1960s. He was among the first so-called 'Thursday Islanders' who came to Western Australia to work on railway construction for the iron ore industry in the Pilbara. He also worked on the Western Australian section of the standard gauge railway to the Eastern States and from 1966 to 1977 he worked as a seaman and engine attendant on pearling luggers.

In about 1978, he married Valerie Janet Licciardello. There were two children of that union. In the early 1980s Misel Waigana commenced a de facto relationship with Rita Spratt which continued until his death. They lived together in Perth, Fremantle and Rockingham.

Information about Misel Waigana's health commences in 1976. He was known to be a heavy consumer of alcohol and there are numerous admissions to hospital for alcohol-related conditions. In 1986 the deceased was diagnosed as having epilepsy and was prescribed Dilantin, an anti-epileptic medication. His compliance with the medication was poor.

Misel Waigana's drinking problems are reflected in his criminal record. He had 23 convictions in Western Australia, of which 11 were for park drinking, street drinking or being drunk. Other offences were committed whilst under the influence of alcohol. He was sentenced to imprisonment on two occasions;

the first in 1984, for seven days for disorderly conduct and the second in 1986, for three months, for aggravated assault.

The deceased was arrested twice on 4 March 1987. On the first occasion he was arrested early in the morning for being unlawfully on the curtilage. He was charged and released on bail.

A little later in the day he was arrested again after being found behaving in a bizarre way, calling out 'Don't kill me', yelling and screaming and waving his arms about. He was arrested on a charge of disorderly conduct and lodged in the East Perth Lockup. At about 12.15 on the afternoon of 4 March 1987, Misel Waigana was found dead in a cell of the lockup. The cause of death was delirium tremens. Misel Waigana was 39 years old when he died.

Benjamin William Morrison (W/15)

Ben Morrison was born at Pinjarra on 2 November 1932. He was the son of Annie Stack and Wilfred Morrison. In 1938 when Ben Morrison was five years Old he was living with his parents in their camp at Guildford. An incident occurred which resulted in his father being convicted of disorderly conduct. As a consequence, the Commissioner of Native Affairs directed that Ben Morrison be removed to Moore River Native Settlement. Ben Morrison spent his school years at New Norcia Mission, leaving there at the age of twelve to live with his mother.

In 1950 when Ben Morrison was almost eighteen living in the Northam district, a warrant was issued for his removal to the Moore River Nature Settlement, due to what was referred to as his 'unsatisfactory behaviour and liking for liquor'. He remained there until 23 October 1950 when he was released. Thereafter he travelled widely.

His mother, Annie Stack, died in 1961.

Ben Morrison had two children by Mary Kathleen Northover who died shortly after the birth of her second daughter. Eight days after the birth the child was committed to the care of the Child Welfare Department despite attempts by Ben Morrison to make arrangements for her care. Throughout his life he spoke of his family, his daughters and grandchildren with concern.

Ben Morrison was well regarded when he was not drinking. He was well read and discussed topical events. fie was a good and reliable worker and took great pride in his appearance and made continual efforts to be well dressed and clean.

Ben Morrison's 'home' was an open-air camp under the Freeway Bridges in West Perth. He was reported as not liking to stay indoors overnight preferring the freedom and fresh air of outside life. He was also regarded as a bit of a loner. When Ben Morrison had been drinking he was known to have a change in personality and he would became aggressive and violent. He had a serious alcohol problem and sought treatment from time to time at alcohol rehabilitation centres.

At the time of Ms death Ben Morrison had an extremely extensive criminal record having accumulated approximately 275 convictions. The majority of the convictions were for drink related offences (121) with 95 for drunkenness. Most offences in Ben Morrison's criminal record were committed under the influence of alcohol. For many offences he received small fines and it is not possible to say how often he served periods of imprisonment in default of payment of the fines. It also emerged from his criminal record that Ben Morrison had travelled extensively with convictions recorded in South Australia, Victoria, NSW and the ACT. At the age of 32 he once said he had spent 17 years of his life in goal.

Ben Morrison had a history of mental health problems and several times had displayed suicidal behaviour in custody. On one occasion he ripped up a blanket and told the police he was going to hang himself with it. He was charged with wilful damage.

The various governmental records make numerous references to assaults on innocent persons for imagined slights. This was described by medical experts as a paranoid state. The medical evidence suggested that Ben Morrison also suffered from a condition known as mania a potu which affects the person each time he drinks alcohol. He was also suffering from the early stages of Alzheimer's disease which according to medical evidence was made worse by alcohol consumption.

Ben Morrison's final encounter with the police was on 6 April 1988. After an altercation with an off duty officer he was arrested for disorderly conduct. He was placed in a cell at Fremantle Police Station lockup. Less than half an hour after placement in the cell, Ben Morrison was found hanging from the bars of the cell door by a strip of blanket. Ben Morrison was 55 years when he died.

Robert Anderson (W/16)

Robert Anderson was born in the Wiluna area on about 10 March 1956. His birth was not registered and the precise date is not known. His mother was Barbara Anderson, now deceased and his natural father is also deceased.

Robert Anderson had four older sisters, one younger stepbrother and two younger sisters. When Robert Anderson was three or four years old, his mother married Pluto Jones, according to traditional law, and the community thereafter treated Pluto Jones as his father.

The community into which Robert Anderson was born was very traditionally oriented with its Aboriginal law and culture intact. Wiluna is an important place to Aboriginals of the Western Desert Culture for traditional reasons and as many as 300 to 400 people may come to Wiluna from other areas for ceremonial occasions.

During 1956, the year of Robert Anderson's birth, the Seventh Day Adventist Church established a mission at Wiluna. The mission initially served as a ration distribution point but the activities of the mission gradually increased with the establishment of a primary school, dormitories for boys and girls and huts for pensioners.

Robert Anderson was admitted to the Wiluna mission in October 1963 to attend school. Although his mother initially resided at the mission, by 1965 she was living at Bondini Reserve, located about six kilometres from the mission.

In 1967 the mission records note that Robert Anderson tended to take a 'slight fit occasionally' and that he was examined by a Meekatharra doctor.

In February 1968, Robert Anderson became a boarder at Karalundi mission, another Seventh Day Adventist mission, located approximately 200 km west of Wiluna. The deceased finished school at Karalundi at the end of 1971 at the age of 15 years. By the time he left the mission his epileptic condition was clearly recognised and he had received treatment at Perth and Meekatharra hospitals. He was placed permanently on anti-epileptic medication in 1969.

Very little is known about Robert Anderson's circumstances from 1972 until his death in 1983. Apart from the fact that he lived at Nganganawili Village which stands on the former mission site. He was regarded as a good worker and was working on the building and maintenance of houses at the Village at the time of his death. He only drank on weekends. He never married.

Between 1973 and 1983, Robert Anderson was convicted of thirty offences: drunk (I 1), disorderly conduct (9), re-enter licensed premises (3), street drinking (2), assault (2), stealing (2), wilful damage (1). They were all of a minor nature and for many he received short sentences of imprisonment. The majority of offences committed by the deceased were alcohol related or committed under the influence of alcohol.

Robert Anderson's epileptic condition was well known in the Aboriginal community in Wiluna. His compliance with his anti-epileptic medication was generally poor and his fitting was poorly controlled.

Robert Anderson was arrested on Saturday 26 February 1983 for drunkenness. He was placed in the Wiluna Lockup. Instead of being released to bail when he sobered up, Robert Anderson was detained in the lockup over the weekend. On Monday 28 February 1983 at about 7.00 am he was found dead in a cell. The cause of death was epilepsy. Robert Anderson was about 27 years old when he died.

Bernard Albert McGrath (W/17)

Bernard McGrath was born on 30 September 1967 in Kalgoorlie. He was the youngest son of Edward (Ted) and Betty McGrath who had seven children, three of whom are now deceased.

Bernard McGrath was brought up in Kalgoorlie. His father, Ted McGrath, was employed by the Railways and was in steady employment. Ted McGrath believed strongly in the work ethic and discipline, which led to conflict with Bernard when he was in his teens. By the time Bernard was 18 he had grown distant from his father because of his failure to get a job and his excessive drinking. These differences led Bernard to leave home but he still lived in the Kalgoorlie area and would stay at the homes of friends or other family members. He remained close to his mother and would visit his parents' home to see her.

Bernard McGrath showed little interest in primary and high school although he was regarded as an intelligent student with potential. He had a history of truancy and rarely applied himself to school work. He presented as a cheerful person who could display a defiant and anti-authority attitude towards teachers and staff at the Child Welfare Department.

After leaving school Bernard was generally employed apart from periods spent on community service work.

His defiance of authority and his behaviour resulted in numerous appearances before the court. At the age of ten he was charged with breaking and entering, after breaking into his primary school to steal some coloured pencils. The charge was dismissed by the Children's Panel. He first appeared in the Kalgoorlie Children's Court at the age of 13 for one count of break, enter and steal (stealing cigarettes and soft drink). He thereafter appeared six more times in the Children's Court on a total of 11 offences, all of a petty nature.

Between his 18th birthday and his death (two years), he appeared before the Kalgoorlie Court of Petty Sessions on nine occasions for 15 offences, again of a petty nature: disorderly conduct (2), break and enter with intent (2), breach of probation (2), aggravated assault (1), resist arrest (1), unlawful damage (2), stealing (1), driving under influence (1), no motor driver's licence (1), unauthorised use of motor vehicle (1), drunk (1). On two occasions he was ordered to perform community service work. The latter Community Service Order (CSO) was not complied with and Bernard McGrath reoffended, which resulted in his receiving a six month sentence of imprisonment for the offence, together with a six month concurrent sentence for breach of the CSO. Bernard McGrath found prison a difficult experience. He was released on 4 March 1987. At the time of his release Ms first CSO was still outstanding.

On 14 November 1987 Bernard McGrath was arrested by two police officers for breach of the outstanding CSO. He was apprehended under a warrant issued under the Offenders Probation and Parole Act 1963. One of the arresting officers knew Bernard McGrath and Bernard had previously complained of harassment by this officer.

Bernard McGrath was lodged in the Kalgoorlie Lockup shortly before midnight. At 12.35 am on 15 November 1987, approximately 45 minutes after placement in the cells, he was found by another prisoner

hanging, partially suspended by a strip of towel from the bars of the cell door. His body was not discovered by the police for nearly five hours. Bernard McGrath was 20 years old when he died.

Kim Polak (W/18)

Kim Polak was born on 24 January 1957 at Leonora, the child of Rosie Polak (or Rosie Thunagoody) and Jimmy Polak. His father was from the Wiluna area and his mother was born at Warburton. They were traditionally oriented. At the time of Kim Polak's birth his parents were living at Mount Margaret Mission.

Rosie and Jimmy Polak had five children, although one child died in infancy. Kim Polak's older sister, Dorothy, died in 1983. During the children's early years the parents were often working on stations, leaving the children in the care of the mission.

Kim Polak's father died in December 1966 and after that his mother moved to Mt Margaret Mission to be with her children.

Polak's first involvement with the criminal justice system commenced when he was 12 years old and appeared in the Leonora Children's Court charged with unauthorised use of a motor vehicle. He was 're-committed' to the care of the Child Welfare Department. At the time his mother was living at Cosmo Newberry Mission in conditions that were described by a departmental officer as 'very dirty and depressing'.

Kim Polak attended Cosmo Newberry School for a short period of time during 1970 however in July 1970 government records indicate that he was living at Kurrawang Mission and his mother was still at Cosmo Newberry.

Kim Polak had extensive involvement with the criminal justice system as a juvenile. He was convicted in the Children's Court on 29 occasions of a total of 43 offences. The most common offence was unauthorised use of a motor vehicle. As a result Kim Polak served a period of detention in Hillston, a juvenile institution outside Perth. He absconded from there and committed further offences. His pattern of offending in his youth consisted of traffic offences, petty dishonesty, drunkenness and drink-related offences.

As an adult, Kim Polak's criminal record shows a similar pattern of offending with additional convictions for assault, or similar crimes of violence. From 1969 until his death in 1985 he was convicted of approximately 120 offences. He was sentenced to imprisonment on 43 charges, the longest single term being for 12 months in 1978 for aggravated assault.

Throughout the 1970s Kim Polak had little contact with either his mother or his siblings. His mother started drinking some time after her husband's death and a government record from 1979 states that she had been diagnosed as paranoid schizophrenic. The three older children, Russell, Dorothy and Kim, when not in custody, lived as fringe dwellers in the central and north-eastern Goldfields area. They all had substantial alcohol abuse problems.

During the 1980s Kim Polak's alcohol problems worsened and his mental condition deteriorated. He was diagnosed as being a chronic alcoholic who was brain-damaged and suffering from schizophrenic illness. He was shuffled between police and prison custody, psychiatric hospitals and life on the fringe.

Kim Polak was arrested for street drinking on 26 March 1985. Upon his arrest outstanding warrants for non-payment of fines were discovered to exist. At the time of Kim Polak's arrest he was seriously ill. Against advice, he had discharged himself from hospital the previous day. Kim Polak died in Kalgoorlie Lockup on 28 March 1985. The cause of death was either alcohol withdrawal or acute hepatitis. He was aged 28 at the time of his death.

John Peter Pat (W/19)

John Pat was born on 31 October 1966 in Roebourne District Hospital. He was Jinjibandji. Mavis Pat, his mother, was 16 years old and his father, Len Walley, was approximately 36 years of age. They were married according to traditional Aboriginal law.

Mrs Pat left Mr Walley when John Pat was still a young child. She commenced living with Mick Lee who was regarded as a leader within the Aboriginal community in Roebourne. He worked at the Youth Centre in Roebourne for a number of years and Mrs Pat became a teacher's aide at the school in Roeboume.

John Pat was the eldest of three children born to Mrs Pat. He lived at the station in Mt Florence with his family before coming to live at Roebourne Reserve with them when he was 9 years old. About a year later the Reserve was bulldozed and the Aboriginal people were moved out to the Aboriginal village in Roebourne.

John Pat went to school until second year high school and then went to work at Pyramid Station as a stationhand. He only worked there for a couple of months before returning to Roebourne.

At the time of his death John Pat had been unemployed for almost three years.

In July 1981 John Pat was convicted of two charges of aggravated assault (police). This resulted in his being placed under the control of the Department for Community Welfare. The order expired on 30 October 1982 when John Pat turned 16.

On 8 September 1982 he was convicted of disorderly conduct and aggravated assault (police). These offences occurred when he was intoxicated. He was convicted of a further four drink-related offences. It appears that it would have been common for John Pat, who was a juvenile, to spend the night in Roebourne Lockup after being arrested on drunk charges.

On 28 September 1983 John Pat was involved in a **fight** outside the Roebourne Hotel. The fight involved three off duty police officers and one Aboriginal police aide and a number of young Aboriginals. John Pat was injured in the fight. He was arrested and taken to the Roebourne Lockup. John Pat died in the juvenile police cell at the lockup. The cause of death given by the forensic pathologist was closed head injury. John Pat was 16 years old when he died.

Edward Cameron (W/20)

Edward Cameron was born at Carnarvon on 26 December 1964. His parents were Beryl June Cameron and Leedham Donald Cameron.

Beryl and Leedham Cameron had six children, Edward being the eldest child. He had two brothers and three sisters. When Edward was approximately 7 years old the family was living at Boulder. His father was employed as a labourer with the Main Roads Department. There were a number of marital separations, sometimes because of the imprisonment of Leedham Cameron. The marriage broke down in 1977. Edward Cameron then went to live with his grandmother and other relatives in the Geraldton area. He attended local primary and high schools. He was an average student and remained at school until he was 15 years old,

During the latter part of 1980 Edward Cameron worked at the Desert Farm citrus orchard at Wiluna for a few months. In 1984 he enrolled in a four month stationhand course. He then worked for one month at the Geraldton Brake and Clutch Centre. For the next 12 months he worked as a fencing contractor in the Northern Territory and returned to Geraldton at the age of 21.

From 1985 until his death in 1988, Edward Cameron was unemployed. Edward was a keen footballer and was well-known, well liked and highly respected in Geraldton, largely through his position in a local football team.

Edward Cameron first appeared before the Geraldton Children's Court at the age of 15 on a charge of stealing. The charge was dismissed under section 26 of the Child Welfare Act and he was placed under the supervision of the Department for Community Welfare for six months.

He had nine convictions as a juvenile, mostly for break and enter offences. He was placed under the control of the Department for Community Welfare until 18 years of age. His wardship expired on 26 December 1982. From 1983 until his death he was convicted of five offences of a relatively minor nature. Edward Cameron had a de facto relationship with Nadelia Champion and they had a child in January 1988. They had been living together since approximately December 1987.

Two weeks before his death Edward Cameron and several male friends were accused by a young woman of having committed sexual assault. The allegation was reported in the local press and was apparently believed by Edward Cameron's friends and relatives. The allegation was also believed by his de facto wife, who left him, taking their son. It should be pointed out that the co-accused charged with sexual assault were all acquitted at their trial.

On 8 July 1988 following a drinking session with some friends, Edward Cameron was arrested at 2.30 am upon being discovered 'shopping' in a local grocery store. He was taken to Geraldton Police Station. His mood fluctuated from laughing at a joke to being surly and uncooperative. He was placed in a cell and checked once at 3.00 am. At 6.25 am he was discovered hanging. Edward Cameron was 23 years old when he died.

The Young Man who died in custody at Geraldton on 31 December 1988 (W/21)

The deceased in this inquiry was referred to as 'Wongi', rather than by name, out of respect for the traditional beliefs of his family.

Wongi was born on 5 March 1960 in Kalgoorlie. His parents were Joyce and Percy Maher. His family members included an older half brother, two sisters and a younger brother. At the age of II months Wongi and one sister were committed to the care of the Child Welfare Department until the age of 18. They were both declared to be neglected under the Child Welfare Act. Wongi and his sister were released to the care of the Native Welfare Department and were admitted to the Church of Christ Mission at Norseman shortly after their committal.

Wongi remained at Norseman Mission from 1961 until he was released into his mother and stepfather's care in September 1974. Little is known of Wongi's life during his time at the mission apart from the fact that he attended the public primary school and high school at Norseman.

Wongi had his first encounter with the criminal justice system at the age of 14 when he appeared before the Coolgardie Children's Court and was convicted on four charges of unauthorised use of a motor vehicle, five charges of break, enter and steal, one charge of wilful damage and one charge of breaking and entering. He was re-committed to the care of the Child Welfare Department and placed in the Medina Hostel in December 1974. This was despite the fact that Wongi's mother was noted as having stable living conditions and that Wongi and his mother both wanted him to go home. While living at Medina Hostel he committed further offences. He was convicted of a total of 27 charges as a juvenile and spent further periods of time detained in Longmore Training Centre, the Church of Christ Working Boys in Kondinin and the Hillston Training Farm.

In 1976 he was returned to his mother in Coolgardie. After further offences he was placed in the Department's maximum security institution Riverbank in 1976 and again in 1977.

By the time Wongi reached his 18th birthday he had no prospects for employment, no social support, a personality disorder developed as a result of an institutionalised upbringing in which he was deprived of parental affection and support. The adult lifestyle of crime and custody which followed appears almost inevitable.

On 10 January 1978 Wongi appeared in the Kalgoorlie Children's Court on charges of break, enter and steal and wilful damage. He was sentenced to three months imprisonment and admitted to Kalgoorlie Regional Prison. On **5** March 1978 he turned 18 and Ws wardship expired.

Over the next eight years Wongi was convicted of numerous offences which were primarily for drinking/public order, motor traffic and property offences (principally break and enter). Between 10 January 1978 and his death, Wongi was convicted of approximately 80 offences. His only conviction for a serious offence occurred in 1986 when he was convicted of robbery with violence and break enter and steal.

He was sentenced to three years for robbery and one year for break, enter and steal to be served cumulatively with a non-parole period of two years. Wongi was released on parole from Fremantle Prison on 7 November 1988. A special condition of Ws parole was that he reside at Mullewa Rehabilitation Centre for not less than three months. When he arrived at the alcohol rehabilitation centre they were preparing to close over Christmas and were not expecting him. An alternative placement could not be found and on 2 December he was brought to Geraldton. Between that time and the time of his final arrest on 31 December 1988 Wongi committed several offences. His parole **officer** noted that he had committed the offences because 'he says he can't hack parole and wants to go back inside where he feels he is most settled'. Wongi was arrested on 30 December 1988 for breaking into a locked car and was taken to the Geraldton Police Station. He threatened to 'string himself up' and tore up a blanket in the cell. A member of the Aboriginal Visitors Scheme attended and talked to him. Wongi was released on bail and taken by the Visitors to his accommodation. Wongi was arrested again at 12.45 am on 31 December 1988 when trying to break into a hotel and taken to Geraldton Police Station. He was placed in a security cell in the lockup. Wongi was found not breathing with a bandage wound around his neck at 2.04 am. Attempts at resuscitation were unsuccessful. He died from asphyxiation as a result of self-strangulation. Wongi was 28 years old when he died.

Graham Trevor Walley (W/22)

Graham Walley was born on 4 December 1966 at Northam. His mother was Vera Slater and his father was Malcolm Cyril Walley. He was the youngest of eight children and had a half-brother, three brothers and three sisters.

Graham Walley came from an especially deprived background. His mother struggled to provide shelter and support for her family after she became separated from her husband. She was forced to proceed with maintenance action against her husband otherwise her financial assistance from the Department of Community Welfare would be discontinued. Walley's father was imprisoned on several occasions for non-payment of maintenance. His mother had difficulty in providing accommodation for the family and applications for a State Housing Commission house met with long delays (sometimes years) and regular rejection. Graham Walley's family experienced years of homelessness and Graham in turn experienced years of institutional care, firstly through the family's destitution and later as a result of juvenile offending. Graham Walley spent years in and out of juvenile institutions throughout the State, including Bridgewater, Centre Care in Beverley, Sister Kates, Nazareth House, Mt Lawley Reception Home, Hillston, Longmore Training Centre and Riverbank. Walley was also placed in foster homes during his early childhood. The end result was that Graham Walley was totally institutionalised. In 1982 when he was aged 16, he told staff at Riverbank, the State's maximum security juvenile institution, that he would prefer to spend Christmas at the institution. As one staff member commented 'It is tragic that he feels like that'.

In 1981 it was discovered that Graham Walley had practically no heating in his right ear and very little in his left ear. It is not known how long he had been suffering from these hearing problems. Once detected he was operated upon and the defect was remedied however it is probable that his undiagnosed hearing defect had affected his education and had resulted in his behaviour being misinterpreted for many years.

Graham Walley's involvement in the criminal justice system was extensive. His first appearance was recorded in 1976 when at the age of 9 he pleaded guilty to one charge of break and enter with intent, four charges of stealing and receiving, and one charge of being unlawfully on the curtilage. As a juvenile he appeared in the Children's Court on 42 occasions and was convicted of approximately 80 offences. He also appeared in the Supreme Court on 19 August 1983 and pleaded guilty to a sexual offence. Apart from this offence, the common offences he committed as a juvenile were property offences (theft, break and enter, damage) and traffic offences (unauthorised use of a motor vehicle and no motor driver's licence).

Some time in 1982 Graham Walley commenced a de facto relationship with Marilyn Dianne Adams. Their first child was born when Graham Walley was only 16 years old. He and Marilyn Adams had two more children, Tayha Marie and Kristen. As an adult his pattern of offending continued with convictions being recorded against him for drunk driving, driving whilst under suspension, escaping legal custody and unauthorised use of a motor vehicle. On 15 April whilst still on parole Graham Walley was convicted in the Geraldton Court of Petty Sessions on three counts of break, enter and steal, four counts of driving whilst his licence was under suspension and three counts of unlawfully driving a motor vehicle. For these offences he was serving a total of 24 months of imprisonment. Walley was serving his sentence in Greenough Regional Prison at Geraldton in order to be near his children.

Whilst in prison, Graham Walley learnt that his de facto wife had commenced a relationship with another man. Letters he wrote in prison reveal that he missed his family greatly, especially his children.

On 23 October 1988 Graham Walley was found in his cell hanging by a prison issue belt. He was 21 years old when he died.

Ginger Samson (W/23)

Ginger Samson was born on Millstream Station in the Pilbara region of Western Australia in 1944. The exact date of his birth is unknown. His father was Jack Samson, however the name of his mother is not known to the Royal Commission. It is also not known how many brothers and sisters Ginger Samson had.

Ginger Samson seemed to have lived his whole life in the Roebourne-Onslow area in the Pilbara. He was said to have worked extensively on pastoral stations and for mining companies. Ginger Samson was married to Violet Beirung and they had seven children. At the time of his death he was living on a permanent basis in Roebourne, dependent upon Social Security and was fighting a losing battle with alcohol.

Ginger Samson had been convicted of a total of 128 offences, the bulk of which occurred in the last ten years of his life. Most of the charges he faced were directly related to the consumption of alcohol. Ginger Samson's fir-St appearance in court was in 1963 on driving charges for which he was convicted and fined. He was 18 years old at the time. Between 1966 and 1983 he was periodically charged with offences related to alcohol, but no more than two or three times per year. It was after 1983 that his criminal record showed almost continual convictions for drink-related offences such as drunk and re-entering licensed premises. From that time it seems that Ginger Samson's life was centred on alcohol consumption. During his life Ginger Samson was convicted of 88 offences which were related to the consumption of alcohol.

Ginger Samson appears to have been a chronic alcoholic during the last six years of his life. To compound his alcohol problems, he also suffered from epilepsy, which was probably a result of an earlier head injury. The police at Roebourne were generally aware that Ginger Samson was an epileptic and prone to take fits.

On 29 March 1988 Ginger Samson was arrested at the Victoria Hotel in Roebourne for drunkenness. He was unable to walk or stand and was carried into the cells at Roebourne Lockup.

At 6.30 am on 30 March 1988 Ginger Samson was found dead in the lockup by a police **officer.** His death was found to have resulted from epilepsy resulting from a closed head injury and excessive alcohol consumption. He was 44 years old when he died.

Dixon Green (W/24)

Dixon Green was born at Wyndham in Western Australia on 14 February 1960. His father was Donald (known as Don or Darky) Green and his mother was Dora Green (nee Bradshaw). They were married in Halls Creek in 1952. Both parents are now deceased. It is believed that Dixon Green's father was traditionally orientated however Dixon himself did not go through the law.

Dixon Green's father, Don Green, did contract work on stations in the East Kimberley and neighbouring areas of the Northern Territory. Towards the end of Don Green's life he was in the process of establishing a small property for himself and his family. Land for his family and relations were very important to him. He died on 9 January 1990.

The property is now known as Dillon Springs Outstation Homelands Centre Inc., and was taken up by Ws sons and daughters and their families.

Dixon Green had eight brothers and sisters. He attended several schools including Halls Creek, Wyndham, Kununurra and Nightcliff in Darwin.

Dixon Green appeared in the Children's Court on five occasions during his youth. His **first** appearance was in 1973 when he was aged 13 years. All the offences were committed in the company of other boys and generally involved the theft of small amounts of money or food.

As an adult Dixon Green worked mainly doing stock work. He had a de facto relationship with Martina Parry and they had one child, a daughter named Carmel. With the exception of his final offence, Dixon Green had only a minor criminal record as an adult. Between 1980 and 1984 he was convicted of eight offences, these being driving under the influence (2), no motor driver's licence (3), false name (1), possession of unlicensed ammunition (1). On 13 February 1984 Dixon Green was convicted of a sexual offence. He was sentenced to **five** years, six months imprisonment with a minimum of two years, nine months. He was serving this sentence in Broome Regional Prison at the time of his death.

Dixon Green died on 19 November 1985 in Broome Regional Prison. His death was a result of ischaemic heart disease. He was 25 years old when he died.

Donald Harris (W/25)

Donald Harris was born on 29 March 1959 at Kalgoorlie District Hospital. His mother was Margaret Harris (or Margaret Stanley) of Balladonia and his father was Gordon Harris of Dalyup.

Donald was the eighth of nine children, five boys and four girls. Three and a half years before his birth, five of his brothers and sisters were declared neglected, committed to the care of the Child Welfare Department and placed in the Church of Christ Mission at Norseman. In December 1961 Donald, aged

3, and two of his siblings were also declared neglected and committed to the care of the Child Welfare Department until 18 years of age. They were also placed in Norseman Mission. Donald was to spend some 13 years at the mission. Donald's sister, Joy McPhee, believed that the Mission destroyed their family life. Although the Mission provided for basic physical needs such as food, clothing and shelter, mission upbringing resulted in social and emotional deprivation.

Donald Harris attended Norseman High School. He wanted to be a hairdresser but this ambition was never achieved. He left school at the end of 1974.

Donald Harris's first involvement with the criminal justice system was in 1974 when he was charged with stealing and receiving. The charge was dismissed pursuant to section 26 of the Child Welfare Act.

Upon leaving the mission, Donald Harris had difficulty in adapting from the highly regimented mission life to a situation where there were few controls and little support. He commenced drinking and a pattern of petty offending was established that continued into adulthood. Between 1975 and 1988 he was convicted of 43 offences, mainly property offences, driving offences (including driving under the influence, no motor driver's licence and unauthorised use of a motor vehicle) and drink-related offences.

On 2 January 1988 Donald Harris appeared in East Perth Court of Petty Sessions on a number of traffic offences. Bail was refused and he was remanded in custody until 8 January 1988. He was taken to Canning Vale Remand Centre. He was further remanded to appear on 18 January 1988. On that day he was sentenced on all outstanding sentences, save a charge of breaking and entering to which he maintained a plea of not guilty. He was bailed and a hearing date was set for 25 March 1988. In respect of the other offences he was fined but not given time to pay. He was returned to Canning Vale Remand Centre to serve the fine default period. He was due for release on 20 February 1988 but on this date was unable to meet the bail conditions requiring a surety of $1000 so he remained in custody as a remand prisoner.

On 4 March 1988 Donald Harris complained of severe stomach pains. He was promptly transferred by ambulance to Fremantle Hospital. There he died of acute pancreatitis on 10 March 1988 in the intensive care unit. He was 29 years old when he died.

Steven Glenn Michael (W/26)

Steven Michael was born on 29 November 1957 at Beverley. His mother, Susan Michael, was born at Katanning and his father, George Michael, in Brookton. The family lived at the Native Reserve, Beverley. Steven was the fifth in a large family comprising seven boys and three girls.

On 11 November 1958 five of the then six Michael children were found to be destitute or neglected and were committed to the care of the Child Welfare Department. No order was then sought in respect of Steven, then aged l 1 months. The children's father was in prison at the time. The children were admitted to Marribank Mission. In December 1961 the children were returned to their parents.

Steven Michael's first court appearance was at the age of nine in December 1966 when charges of breaking and entering and wilful damage were dismissed in the Beverley Children's Court. Four months later Steven was committed to the care of the Child Welfare Department after being convicted of being unlawfully on premises. As a juvenile he appeared in various Children's Courts on 33 occasions to answer some 89 separate charges. Thirty-seven of these were for stealing offences and 40 charges related to unlawful use of a motor vehicle or driving without a licence.

In April 1968 Steven Michael was admitted to St Francis Xavier's Native Mission, Wandering. In May 1969 he was in Mt Lawley Reception Home. The next five years involved continual movement between his parents at Beverley and the juvenile institutions, Hillston, Longmore and Riverbank.

As an adult, Steven Michael's extensive criminal record continued. The pattern of offending also continued. Between 1976 and 1986, Steven Michael's criminal record lists 26 appearances involving 91 charges. Break, enter and steal, break and enter with intent and stealing offences accounted for 33 convictions, while offences involving motor vehicles accounted for 42 charges. Steven Michael was often intoxicated at the time of the offence.

In April 1985 he was sentenced to 28 months imprisonment for traffic, theft and breaking and entering offences. He received a further four months sentence for escaping.

Prison records show that in 1979 he had a de facto wife, Dallas Nannup, and their **first** child was due. The records also show that Steven Michael gave a history of heavy alcohol intake and in July 1986 he reported smoking 30 to 40 cigarettes a day.

On 23 May 1987 Steven Michael suffered a heart attack while playing football at Canning Vale Prison. He was taken to Fremantle Hospital where he was pronounced dead. It was ascertained that the cause of death was ischaemic heart disease. Steven Michael was 29 years old when he died.

Ricci John Vicenti (W27)

Ricci Vicenti was born in Perth on 15 January 1963. His mother was Heather Myrtle Vicenti who had been brought up in Mogumber and Roelands Missions. In 1953 she married Arnold Rudolph Vicenti who was German. They had two children before they separated in 1961. In 1962 Mrs Vicenti had a relationship with another man, it was probable that Ricci was his son. Prior to Ricci's birth Mrs Vicenti was reunited with her husband who had no wish to see the child, Ricci. Mrs Vicenti made arrangements to have him adopted. Initially Mrs Vicenti consented to his adoption but later changed her mind, and in June 1963 took him home from the Ngala Home. Ricci thereafter had an unusual childhood. During 1963, with the full consent of his natural mother, Mrs Joan Smith and Mrs Rene Heisler, both non-Aboriginal, assumed the day to day care of Ricci, although he still was able to see his natural mother.

Joan Smith became a major influence on Ricci's upbringing. When Ricci Vicenti was about six months old, with Mrs Vicenti's consent, Mrs Smith and Mrs Heisler took Ricci to live with them in Sydney and later Melbourne. In 1964 they took Ricci and another young Aboriginal boy to live with them in Eastern Europe. Mrs Smith and Ricci Vicenti returned to live in Melbourne in 1969. Mrs Vicenti learned of her son's return and continued to enjoy intermittent contact with Wm.

Ricci Vicenti was educated at St John's College and the Baysbrook High School in Melbourne. He left school without completing his third year and worked variously as a stablehand, cleaner and labourer.

In late 1978 or early 1979 when he was barely 16, Ricci Vicenti formed a de facto relationship with Anita Marks. They had a child whom they named Tony. In late 1979 Ricci Vicenti, Anita Marks and their son, Tony, travelled to Perth to live with Mrs Vicenti in her flat in Kwinana for a brief period.

In November 1979 Ricci Vicenti appeared in the Rockingham Children's Court and was convicted of unauthorised use of a motor vehicle and disorderly conduct. Shortly after this Ricci Vicenti and his family returned to Melbourne. In 1981 they returned to Western Australia where Ricci Vicenti remained until his death. In Western Australia he and his partner separated, Anita Marks retaining custody of their son.

When Ricci Vicenti returned to Western Australia he appeared in court on a further three occasions in 1981 and was convicted of six offences, all involving petty dishonesty. In December 1981 he received a sentence of three months imprisonment for three convictions for stealing and receiving and one of break and enter with intent.

Ricci Vicenti spent his period of imprisonment at Karnet Prison Farm.

Ricci Vicenti was arrested for the last time on 6 March 1982 only 8 days after his release from prison. He was apprehended during the commission of a breaking, entering and stealing offence at a suburban Woolworth's store in Penh. On 8 March 1982 he pleaded guilty to this charge and an additional three charges of break, enter and steal and one charge of stealing and receiving. He was remanded in custody until 29 March 1982 for the preparation of a pre-sentence report.

On 28 March 1982 Ricci Vicenti was a remand prisoner at the C.W. Campbell Remand Centre in Canning Vale. He was shot by a prison officer while attempting to escape. He died at the Royal Perth Hospital on 31 March 1982 as a result of a gunshot wound to the head. He was 19 years old when he died.

Ronald Mack Ugle (W/28)

Ronald Ugle was born on 17 August 1930 at Tamala Station near Shark Bay. He spent most of his first thirteen years on Dirk Hartog Island where his father was employed as a stockman. His father died in 1943 causing his mother to take the family to Carnarvon. Ugle's formal education ended when he completed primary school. He spent most of his life in and around Carnarvon. Not a lot is known of his early life.

Ugle lived in a de facto relationship with Stella Jackamarra for around thirty-two years. The couple had thirteen children born between 1952 and 1972, twelve of whom survived. Ugle was granted citizenship rights in 1959. For some twenty years he was employed in a pattern of seasonal work as a station and shed hand on stations in the Carnarvon area. Department records prepared in relation to their children claim that both Ugle and his wife were heavy drinkers, and that this led to violent outbursts. Ugle appears to have been in steady employment. From October 1980 until May 1982 he was employed as a gardener by the Carnarvon Shire.

Ugle's criminal record commenced in 1948 with a disorderly conduct charge. From that time up until 1982 he was convicted of relatively minor offences. These included two charges of assault, and four charges of disorderly conduct by fighting. There were eleven offences for drunkenness during the period 1971 to 1979, but no convictions for traffic offences.

On 22 May 1982 he was charged with two counts of manslaughter and one of driving under the influence of alcohol. He had been driving with a blood alcohol level three times the legal limit. The vehicle left the road and collided with two pedestrians. Both pedestrians were killed.

In November 1982 Ugle was convicted of the charges following a trial. He was sentenced to a term of four years but was eligible for parole, which meant a minimum sentence of two years. He entered Geraldton Prison on 10 November 1982. His estimated earliest date of release was 21 August 1984. The Reception History Sheet records that neither Ugle himself nor the reception officer who questioned him was of the opinion that any medical treatment was required. There is no record of an initial medical screening having been conducted.

In August 1984 Ugle applied for a transfer to Broome Regional Prison so he could be near his children. He arrived in Broome on 3 May 1983. There is no record of his having received an initial medical screening upon arrival at the prison.

On 12 December 1983 Ronald Ugle was observed to be breathing heavily and making funny noises. He was semi-conscious. Prison authorities immediately took him to the Broome District Hospital.

Ronald Ugle died in Broome District Hospital on 12 December 1983 of a heart attack due to severe coronary artery disease. He was 53 years old when he died.

Donald Chatunalgi (W/29)

Donald Chatunalgi was born at Alice Downs Station in the East Kimberley Region of Western Australia on 18 January 1961. His parents were Daisy Chatunalgi and Johnny Mulligan. Chatunalgi's father worked as a stockman, mainly at the Alice Downs Station fifty or so kilometres north of Halls Creek. For much of his youth Donald Chatunalgi lived with his mother on the Halls Creek Native Reserve, while his father worked out at the station when work was available. Generally stock work in the Kimberleys provided only seasonal employment, with most stations closing down during the 'wet' season. His father was unemployed during the summer months. Chatunalgi had four sisters and two brothers, born between 1949 and 1970, he was the second child and the oldest son. While living at the reserve with Ws mother and brothers and sisters, he attended school in Halls Creek.

It appears that that during his youth Chatunalgi only had limited contact with the police and the judicial system. He appeared in the Children's Court on only three occasions, each involving relatively minor offences.

His first appearance was on 21 June 1975 when he was fourteen. He was charged with breaking into the school and removing a guitar. The charge was dismissed pursuant to section 26 of the Child Welfare Act. As a juvenile he was convicted of four charges all of a petty nature and committed to the care of the Child Welfare Department until he was 18 years of age.

Between the age of eighteen and his death eight years later, Chatunalgi accumulated eight further convictions, all but one of which related to traffic offences. The exception is a charge of disorderly conduct on which he was convicted and sentenced to seven days imprisonment. At least four of the offences were alcohol-related.

In the latter part of his adult life he appears to have become a 'binge' drinker, and irregular excessive drinking seems in turn to have precipitated severe epileptic seizures following withdrawal of alcohol. Moderate psychiatric disturbances appeared about the same time and in conjunction with the epileptic seizures.

On 15 December 1988 Donald Chatunalgi was arrested on warrants of commitment for unpaid traffic fines imposed in October 1988. He was placed in the lockup at Halls Creek Police Station at 11.30 am. At 7.30 pin Donald Chatunalgi suffered a fit in the male cell block. Prisoners were unable to attract the attention of a Police Aide who was the only staff member on duty at the lockup at the time. Help was raised but no signs of life were detected and resuscitation was not attempted. At 8.00 pin a doctor certified life extinct. The cause of death was found to be epilepsy. Donald Chatunalgi was 27 years old when he died.

Faith Marilyn Barnes (W/30))

The Royal Commission has no certain information about when and where Faith Barnes was born. It is likely that she was born on about 4 December 1954 in Kalgoorlie.

Her mother was Hazel Wuni. She died in August 1957 when Faith was not yet three. Her father Bordie Parker, was usually employed as a station hand in the Leonora area. He died in August 1966. Faith had a younger sister Christine born in July 1956.

After their mother's death, Bordie Parker gave Faith and her sister Christine to be brought up by his sister, Marie Barnes, and her husband, Jimmy Barnes, who had no children of their own. At this time Mr and Mrs Barnes lived in a tworoomed hut on the Leonora Native reserve. Mr Barnes died the following year and his wife was left to raise Faith and Christine on a widow's pension. Some time after the death of her husband, Mrs Barnes and the two children moved to live in Menzies.

Little is known of Faith Barnes' childhood or schooling. In February 1962 the Assistant District Welfare Officer of the Native Welfare Department in Leonora reported that Faith had been absent from school during 1961 for 138 half days.

Faith Barnes suffered during her childhood from a considerable number of minor ailments of a kind which generally result from poverty and deprived living conditions. These are noted on her records from the Menzies Nursing Post from 1968 to 1975 and include sore eyes, infected wounds, bums, boils and scabies.

Between the time when she was twenty-one and her death Barnes was the victim of numerous severe assaults. She was admitted to Kalgoorlie Regional Hospital for head injuries on **five** occasions, received outpatient treatment on two occasions and was treated at the Menzies Nursing Post on nine occasions for head injuries. During this period she also received treatment many times for other traumatic injuries to various parts of her body.

Quite apart from injuries, she also received treatment for fits and diabetes. The fits were almost certainly the result of the head injuries. In the last two years of her life her health deteriorated significantly.

She was hospitalised some months before her death in an attempt to stabilise her diabetes. She was suffering from high blood pressure, rheumatic heart disease and diabetes associated with her excessive alcohol intake. Her problems with her diabetes continued after discharge.

Barnes had a substantial alcohol problem. Between 1974 and her death, she was arrested on forty occasions for being found drunk in a public place. In most instances these offences resulted in the imposition of a fine.

However Faith Barnes frequently served a prison term in default of payment. During her life, Faith Barnes was convicted of 48 offences being convicted of disorderly conduct (6), unlawfully on premises (1) and unlawful assault (1), in addition to the drunkenness convictions.

It appears that for most of her life Barnes lived with her aunt, Marie Barnes. In records from 1981 and 1982 her next of kin was recorded as Malcolm McDonald, who is variously described as her de facto husband and her uncle.

On 26 October 1982 Faith Barnes was arrested for drunkenness. She was unable to be roused and was lifted into the police van. She was taken to the Kalgoorlie Police Station Lockup and half dragged, half carried into the female cell block. Later in the day she was found with blood on her head and attempts to rouse her were unsuccessful. She was taken to the Kalgoorlie Regional Hospital by ambulance. She was transferred to Royal Perth Hospital where she was found to have a severe head injury. On 27 October 1982 Faith Barrnes died as a result of an acute subdural haematoma from an injury to her head. She was approximately 27 years old when she died.

Bobby Bates (W/31)

Bates was born on 1 July 1952 at Warburton Range. His parents, Kiwinjikunu Bates and Kuntjari Bates, were traditionally married in approximately 1951. His father died at Warburton Ranges Hospital in mid-1962 of spear wounds to the thigh. His mother was born in 1933 at Warburton Ranges. In 1962 she was living at the Laverton Native Reserve with her children Bobby, Enid (born 1.8.58) and Eliza (born 23.8.62).

On 28 September 1965 Bates first appeared before the Laverton Children's Court and was found guilty of driving a motor vehicle without a licence and without the owner's consent. He was committed to the cam of the Child Welfare Department until age 18 years and was disqualified from holding a licence until I July 1969. A recommendation was made that, due to lack of parental control, he be placed in an institution

outside the Laverton District to receive corrective training. The Department of Native Welfare was not able to place Bates in an institution in its Eastern District and he was sent to the Child Welfare Reception Home in Perth. Bates entered Longmore in October 1965 aged 13 years.

Bobby Bates appeared five more times in the Children's Court on nine charges, including unauthorised use of a motor vehicle (3), stealing (2), drunk (3) and no motor driver's licence (1), escaping legal custody (1).

During his youth he spent periods of time at Hillston Training Farm and the Esperance Hostel.

Bates's criminal history from 1965 until 1986 records 26 convictions as follows: Drunk (8), Unauthorised Use of a Motor Vehicle (5), No Motor Driver's Licence (2), Assault (4), Stealing (3), Disorderly Conduct (2), and one escaping legal custody and driving under the influence. He was only convicted of one offence during the period December 1977 to March 1984.

Bates and his family lived at Warburton Community, located about halfway between Kalgoorlie and Alice Springs. Bobby Bates was traditionally oriented and he eventually became the Vice Chairman of the Warburton Community Council and its works supervisor.

On 24 January 1986 Bates was fined $800 and costs with 41 days imprisonment in default for driving under the influence of alcohol. On 16 April 1986 a Warrant of Commitment in respect of the fine was issued and Bates was arrested at Laverton, on 29 April 1986.

Bates entered Eastern Goldfields Regional Prison at 5.40 pm on 29 April 1986 from Laverton Lockup. His sentence was recorded as $822.50 or 41 days.

On 9 May 1986 Bobby Bates was seen by a doctor in his surgery in Kalgoorlie. The doctor admitted Bobby Bates to Kalgoorlie Regional Hospital having diagnosed lower lobe pneumonia. On 14 May 1986 he was transferred to Sir Charles Gairdner Hospital. On 20 May 1986 Executive Council approved remission of the balance of Bobby Bates' sentence. He died on 2 June 1986 at Sir Charles Gairdner Hospital of bronchopneumonia. He was 33 years old when he died.

Roy Norman Walker (W/32)

Roy Walker was born on 26 October 1918 in Laverton, Western Australia. After the death of his father, Ws mother re-married. He had one brother and one sister. His mother died in 1940, and his step-father in 1963.

Walker was educated at the Mt Margaret Mission School until he was 14 years old. There is no record of him committing any criminal offences as a juvenile.

In 1944 he married, and had eight children, three boys and five girls. He had quite an extensive employment history in the course of his life showing that he worked on various stations in the Leonora area, as well as in prospecting, mining and shearing.

It was not until February 1942 when he was approaching twenty-four years of age that Walker was convicted for the first time. In the Laverton Court of Petty Sessions he was sentenced to imprisonment for seven days for being found in a prohibited area. It was his first offence. Between 1942 and 1963 he was convicted on six occasions for drunkenness.

His problems with alcohol appear to date from that spell in prison, leading to a deterioration in both Ns health and Ws lifestyle.

Between 1965 and 1979 he was convicted on some twenty-eight occasions for being found drunk in a public place. While the Commission has not been able to obtain his criminal record between 1979 and his death in 1981, a warrant card shows that in April and August 1980, and again in January 1981 he was arrested in Kalgoorlie on warrants issued after fines remained unpaid. It appears that the fines were imposed after conviction for drinking offences. It would appear likely that there were others.

He suffered from numerous injuries and illnesses in the last six years of his life, an indication of the way in which his life and health generally deteriorated.

On 26 March 1981 Roy Walker was found by the police lying unconscious near the pipeline on the outskirts of Kalgoorlie. He was carried to the police van and taken to the Kalgoorlie Police Station where he was placed in the lockup at about 8.00 am. At 3.50 pm he was still unconscious and found to have fresh blood around his mouth and nose and was breathing noisily. He was taken to Kalgoorlie Regional Hospital by ambulance. There he was found to have a fractured skull with a haemorrhage inside the skull. He was transferred to Royal Perth Hospital. He died in Royal Perth Hospital on 2 April 1981 as a result of a subdural haemorrhage from a serious head injury, suffered as a result of a fall.

Milton Wells (W/33)

Milton Wells was born in Kalgoorlie on 10 January 1955. His parents were Len Wells and Pearlie McIntyre who married in February 1954. They were born at Mt Margaret Mission and were residing at Laverton at the time of their marriage.

Wells was the eldest of their eight children. He was to be followed by five sisters and two brothers between 1956 and 1965. He spent his early years on a sheep station near Kalgoorlie where his father was a station hand.

In 1957 his parents were granted Certificates of Exemption from the provisions of the Native Administration Act 1905-1947 which gave them the lights and responsibilities of Australian citizens for the first time. They were then able to vote, legally to possess alcohol, and obliged to fill in census forms.

In February 1969, at the age of fourteen, Wells was sent to Wongutha Training Centre for farm and station training. He did not return after holidays and was discharged to his parents at Kalgoorlie later that year. He left school at the age of fifteen and then worked as a station hand for four years.

Wells first appeared before the Kalgoorlie Children's Court on 31 October 1970 at the age of 15 on charges of giving a false name and resisting arrest. The charges were dismissed pursuant to section 26 of the Child Welfare Act.

Following his initial appearance in the Kalgoorlie Children's Court, Wells's Criminal History Sheet records twenty-six court appearances in Kalgoorlie, Leonora, Laverton, Mt Magnet and Adelaide during the period 1972 to 1985. The charges were for the most part directly alcohol related or motor vehicle offences: found drunk, six of park drinking, eight of disorderly conduct, driving under the influence, five of refuse a breath test, two of re-entering licensed premises, unauthorised use of a motor vehicle, dangerous driving, driving without a licence, eight of driving an unlicensed motor vehicle. There are also two convictions for aggravated assault, two for stealing, one of escaping from legal custody, three of resisting arrest and one of being found unlawfully on premises.

In the late 1970s Wells lived in South Australia surviving on unemployment benefits and casual fruit picking work.

Prior to 1977 Wells formed a de facto relationship with Jenny Caner and the couple had one child.

Milton Wells appears to have had some alcohol problems but did not become completely dependent on the drug.

Milton Wells was arrested on 5 August 1985 for unlawful damage of a motor vehicle. He was placed in the Kalgoorlie Police Station Lockup. At the time he was extremely ill suffering from meningitis associated with lobar pneumonia. The following morning he was found to be suffering from a fit, an ambulance was called and he was taken to Kalgoorlie Regional Hospital. He died there on 6 August 1985 of lobar pneumonia and acute meningitis. Milton Wells was 30 years old when he died.

3.2 CHARACTERISTICS OF DECEASED PERSONS

3.2.1 DEMOGRAPHIC CHARACTERISTICS

The following information provides a brief summary of the demographic characteristics of the deceased.

3.2.1.1 Age and gender

During the period I January 1980 to 31 May 1989 there were 32 reported cases of Aboriginal deaths in custody in Western Australia. There were 29 males and three females. The mean age was 31.4 years, the median age (i.e., the point above and below which half the cases fell) was 28 years and the range was 16 to 62 years. In 30 cases the person was born in Western Australia. In one case the person was born in South Australia and in another case the person was born in Queensland. The following tables list the age, gender and marital status of the deceased:

TABLE 3.1: AGE AND GENDER

Age group	*Male*	*Female*	*Total*
0-14	-		-
15-19	3	-	3
20-24	4	1	5
25-29	10	1	11
30-34	5		5
35-39	1	-	1
40-44	2	1	3
45-49	-	-	-
50-54	1	-	1
55-59	2	-	2
60+	1	-	1
TOTAL	29	3	32

3.2.1.2 marital Status

TABLE 3.2: MARITAL STATUS

Marital status	*Total*
Never married	12
Married by law	3
Married - de facto	7
Separated - not divorced	1

Separated - de facto	9
TOTAL	32

3.2.1.3 Employment

The employment status for each of the cases immediately prior to the final detention showed that 26 were unemployed, five were employed full time and in one case the information was not known. The full time occupations were: gardener (Carnarvon Shire Council); labourer; Works Supervisor (Warburton Aboriginal Community); and in two cases as stockman.

The usual occupation for all of the cases is displayed in the table below.

TABLE 3.3: USUAL OCCUPATION

Usual occupation	*Number*
Labourer	8
Farm labourer	6
Stockman	5
Unemployed	4
Invalid pensioner	4
Gardener	1
Shearer, farm worker	1
Student/musician	1
Works supervisor	1
Not known	1
TOTAL.	32

3.2.1.4 Highest Education

The table below indicates the highest level of education attained by the deceased.

TABLE 3.4: HIGHEST EDUCATION LEVEL ATTAINED

Level of education	*Number*
No formal	3
Some primary	3
Completed primary	2
Some secondary	21
Not known	3
TOTAL	32

3.2.1.5 Community

The following table provides information about the community previously lived in by the deceased.

TABLE 3.5: TYPE OF COMMUNITY DURING FIVE YEARS PRIOR TO APPREHENSION AND IMMEDIATELY PRIOR TO APPREHENSION

*Type of community**	*Previous 5 years*	*Prior to apprehension*
Major urban	7	10
Minor urban	13	13
Aboriginal community	5	3
Fringe camp	4	3
Rural	2	1
Rural pro	1	2
TOTAL	32	32

* Major urban = 100,000+; Minor urban 1000 to 99 999;
Rural = 200 to 999

3.2.1.6 Childhood Separation

The data indicated that 15 cases had been separated during childhood from the family through intervention by the state, missions, etc., while 13 case had not experienced separation and the information in four cases was not known.

3.2.2 IDENTITY

All cases identified as Aboriginal, were accepted as Aboriginal and were of Aboriginal descent. A named Aboriginal group/tribe to which the person was affiliated was identified in 14 cases. In 17 cases the information was not known and in one case, the person did not affiliate with a named Aboriginal group/tribe. In eight cases the person's first language was an Aboriginal one, in nine cases the first language was not an Aboriginal one, in two cases the first language was an Aboriginal one but the name of the Aboriginal group/tribe was not known and in 13 cases the information was not known.

3.2.3 LAST APPREHENSION AND DETENTION

3.2.3.1 Place where last taken into custody

In 31 cases the place where last taken into custody was Western Australia and in one case the person was taken into custody in South Australia. In all cases the arresting authority was the State Police.

TABLE 3.6: PLACE WHERE TAKEN INTO CUSTODY

Location	*Number*
Kalgoorlie	*5*
Perth	5
Broome	4
Fremantle	3
Geraldton	3
Carnarvon	2
Halls Creek	2
Roebourne	2
Adelaide, S.A.	1
Laverton	1
Port Hedland	1

Rural town, W.A.	1
Wiluna	1
Woodbook Station, Roebourne	1
TOTAL	32

3.2.3.2 Reason for apprehension

Six cases were apprehended under warrant and 26 cases were apprehended for offences; nine of the latter were drunkenness.

3.2.3.3 Most serious offence leading to last detention

TABLE 3.7: MOST SERIOUS OFFENCE LEADING TO LAST DETENTION

Offence	*Number*
Homicide	1
Assault	1
Sex offences	*5*
Break & enter	6
Property damage	1
Justice procedures	1
Drunkenness	9
Good order	3
Drink driving	5
TOTAL	32

3.2.3.4 Reason for bail denial

There were 19 police custody cases where an offence was involved and one prison remandee. Bail was denied in these cases for a number of reasons, shown in the table below, as: 'sentenced' - cases where the person was sentenced by a court to a period of imprisonment, which was being served in the police cells; 'antecedents' - where there was an outstanding warrant or the person was on bail at the time of the offence; 'remand' - cases where the person was being held on remand; and 'intoxication' - where the person had been arrested for an offence but was too intoxicated to be released.

TABLE 3.8: REASON FOR BAIL DENIAL
(Includes all police cases and one prison remand case)

Reason	*Number*
Sentenced	4
Antecedents	3
Remand	1
Intoxicated	10
Threatening behaviour	1
Not known	1
TOTAL	20

3.2.3.5 Physical condition on apprehension

The table below shows the physical condition of the 19 persons detained in police custody when apprehended by police.

TABLE 3.9: PHYSICAL CONDITION ON APPREHENSION

Condition	*Number*
Well	2
Sick	2
Injured	2
Intoxicated	9
Unconscious	4
TOTAL	19

3.2.3.6 Observed level of intoxication on apprehension

The following table shows the observed level of intoxication of the deceased in police custody when apprehended by the police.

TABLE 3.10: LEVEL OF INTOXICATION

Category	*Number*
Alcohol-level not known	2
Alcohol-mild	3
Alcohol-high	11
None	3
TOTAL	19

3.2.3.7 State of consciousness on apprehension

The following table shows that 13 of the deceased detained in police custody were awake when apprehended, four were unconscious, one was difficult to arouse and in one case the state of consciousness on apprehension has not been determined (Pat).

TABLE 3.11: STATE OF CONSCIOUSNESS

Category	*Number*
Awake	13
Arouse-difficult	1
Not arouse	4
Not determined*	1
TOTAL	19

* In the Pat case, there were conflicting reports as to the state of consciousness. Presently awaiting the Commissioner's findings.

3.2.3.8 Demeanour on apprehension

Of the 13 police and one prison remand case which were reported as awake, the demeanour on apprehension was recorded as normal in nine cases, aggressive in one case, distressed in three cases and not determined in one case (Pat).

3.2.4 CUSTODY

3.2.4.1 Custodial authority and legal status

The following table shows whether the deceased was in police or prison custody and their legal status whilst in custody.

TABLE 3.12: CUSTODIAL AUTHORITY AND LEGAL STATUS

	Custodial Authority		
	Police	*Prison*	Total
Legal status			
Charged	15	1	16
Servinq sentence	4	12	16
TOTAL	19	13	32

3.2.4.2 Prison custody

Of the 13 cases in prison custody the security ratings were described as maximum in six cases, medium in one case and minimum in six cases. Participation in prison programmes was noted as educational in two cases, sporting and/or educational in five cases, nil for five cases, and in one case the information was not known.

Two cases were assigned work as farm duties, two cases as laundry duties, one case as garden duty, one case as cleaning duties, one case as metal work, four cases did not have work assignments and for two cases the information on work assignment was not known.

3.2.4.3 Outside contacts

Eight cases were noted as having had contacts with family or friends prior to death, one case was noted as having contact with aid organisations, 18 cases had no such contacts while in custody and for five cases the information was not known.

3.2.4.4 Durations of custody prior to death

The lengths of custody prior to death are detailed below.

TABLE 3.13: LENGTH OF TIME IN CUSTODY PRIOR TO DEATH

Time in custody	*Police*	*Prison*	Total
Under 2 hours	6	-	6
2 and under 6 hours	5	-	5
6 and under 12 hours	4	-	4

12 and under 18 hours	1	-	1
18 hours and under 1 day	-	-	-
1 and under 14 days	3	1	4
14 days and under 1 month	-	1	1
1 and under 6 months	-	4	4
6 months and under 1 year	-	1	1
Over 1 year		6	6
TOTAL	19	13	32

3.2.5 DETAILS OF DEATH

3.2.5.1 Custodial authority

The following table summarises the year of death and the custodial authority.

TABLE 3.14: YEAR OF DEATH AND CUSTODIAL AUTHORITY

	1980	*1981*	*1982*	*1983*	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*	* Total
Custodial Authority											
Police	3	1	1	3	-	3	-	3	5	-	19
Prison	1	-	2	2	3	1	1	1	2	-	13
TOTAL	4	1	3	5	3	4	1	4	7	-	32

* 1 January 1989 to 31 May 1989

3.2.5.2 Place of Death

TABLE 3.15: PLACE OF DEATH AND CUSTODIAL AUTHORITY

	Place of death			
	Police	Prison	General Hospital	Total
Custodial Authroity				
Police	14	-	5	19
Prison	-	6	7	13
Total	14	6	12	32

3.2.5.3 Time of Death

The time of day that the deaths occurred is displayed in the table below.

TABLE 3.16: TIME OF DEATH

Time of death	Number
Midnight to before 0600 hours	6
0600 to before 0800 hours	1
0800 to before 1000 hours	-
1000 to before 1200 hours	1

1200 to before 1400 hours	4
1400 to before 1600 hours	6
1600 to before 1800 hours	3
1800 to before 2000 hours	3
2000 to before 2200 hours	3
2200 to before midnight	
TOTAL	32

3.2.5.4. Maanner and cause of Death

A summary of the reported cause of death, the Coroner's finding and the Commissioner's finding in each case, where available, is displayed in the table below.

TABLE 3.17: REPORTED CAUSE OF DEATH, CORONERS' FINDINGS AND COMMISSIONERS' FINDINGS

Cause of Death	Reported cause	Coroners' finding	Commissioners' finding
Suicide	10	5	3
Self inflicgted-intention not determined	-	4	6
Homicide	1	2	1
Accident	1	4	5
Naturalk causes	14	15	16
Not determined	6	2	-
TOTAL	32	32	31 (*)

(*) Commissioner Johnston's finding is not available in the Pat case.

As can be seen in the table above, the Commissioner's findings of the cause of death was reported as natural causes in 16 cases. The actual natural cause of death has been categorised as follows: heart condition in five cases; respiratory condition in three cases; condition resulting from alcohol abuse in three cases: epilepsy in three cases and other disease in two cases.

TABLE 3.18: CUSTODIAL AUTHORITY AND MANNER OF DEATH

Manner of death	*Police*	*Prison*	*Total*
Hanging	7	1	8
Head injury	5	-	5
Gunshot	-	1	1
Other external trauma	-	2	2
Alcohol use	3	-	3
Natural causes	4	9	13
TOTAL	19	13	32

3.2.5.5 Resuscitation attempts by custodial staff and/or prisoners

TABLE 3.19: CUSTODIAL AUTHORITY AND RESUSCITATION ATTEMPTS

Resuscitation attempted	*Police*	*Prison*	*Total*
Yes	3	4	7

No	11	4	15
Not applicable (died in hospital)	5	5*	10
TOTAL	19	13	32

* In one prison custody case (W/27) the actual place of death was at hospital. However resuscitation was attempted prior to transport to hospital.

3.2.5.6. Level of intoxication at time of death

The mean of the blood alcohol content at the time of death was 0.08 per cent, the median was nil and the range was nil to 0.61 per cent.

TABLE 3.20: LEVEL OF INTOCICATION AT DEATH

Intoxication level	*Number*
Alcohol-high	6
Alcohol-moderate	3
Alcohol-mild	1
None	22
TOTAL	32

3.2.5.7. Time since last seen alive

There were 16 cases attended at the time of death: eleven were in hospital; and five died in the presence of other detainees/officers. The time since last seen alive for the remaining 16 cases is shown in the table below.

TABLE 3.21: TIME LAST SEEN ALIVE

Length of time	*Number*
Under 1 hour	7
1 and under 2 hours	4
2 and under 3 hours	2
3 and under 4 hours	1
4 and under 8 hours	1
8 and under 12 hours	1
TOTAL	16

3.2.5.8. State of consciousness when last observed (e.g. awake, asleep but easily aroused, could be roused with difficulty, unable to be roused)

Fourteen cases were reported as awake when last observed prior to death, four cases were asleep, three could not be aroused and the information in one case was not known.

3.2.5.9 Demeanour when last observed (e.g., normal, aggressive, distressed, depressed)

Of the 14 cases reported as awake, two cases were noted as ‘agressive’, two cases as ‘distressed’, eight cases were noted as ‘normal’ in demeanour and two cases were affected by acute illnesses.

The next three sections of the Report examine the 32 deaths in three broad categories: the natural causes and medical cases; the self-inflicted/hanging cases and the cases involving violence where the custodial authority was apparently involved. In these sections I identify and attempt to explain some of the common threads and patterns found in each of the categories.

3.3 ANALYSIS OF THE NATURAL CAUSES/MEDICAL *CASES*

Nineteen of the deaths investigated in Western Australia fall within the category of cases described as the natural causes and medical cases which I will discuss under two classifications. Firstly those who died as a result of physical injury or the gross effect of alcohol misuse. Secondly those which resulted from some underlying process of disease.

3.3.1 BACKGROUND

This general category of cases involved the deaths of two females and seventeen males. The ages of the deceased ranged from 29 years to 62 years, but only six of them were over 30 years of age and only four over 40 years. The mean age was 33.8 years.

These deaths occurred at various places throughout the State, some whilst the deceased was still in custody and had not received medical assistance, others after the prisoner had been removed to hospital for treatment and died in hospital. I have stated elsewhere and need not elaborate why it is that the Commission had jurisdiction to hear cases, where injury suffered whilst in custody has been held to have caused or contributed to the death in hospital.

3.3.2 INJURY

Five persons were taken to police lockups in an insensible state, unable to be roused and were later found to have been suffering life threatening injury which was masked by signs of intoxication.

I refer to their deaths in order of event: Wayne Dooler 1980, Albert Dougal 1980, Roy Walker 1981, Faith Barnes 1982, Ginger Samson 1988. 1 need not repeat the circumstances of their detention and the fatal consequences which are described in section 5.2.3 where I examine what the cases have shown concerning the detention of unconscious persons. These were part of a common pattern in which an Aboriginal person found by the police unconscious was assumed to be drunk and was arrested. In most cases it was more probable than not that the detainee would have survived if he/she had been taken for medical attention. In section 5.2.3 1 have referred to amendments to Routine Orders to deal with the assessment of intoxicated and insensible persons but as shown in the case of Ginger Samson they are regarded by police as guidelines only.

Further lockup deaths are dealt with under this 'injury' classification because death related to the extensive use of alcohol by the deceased.

Kim Polak, was arrested for street drinking. He was a chronic alcoholic with other serious health problems and was at the time of arrest in an extremely poor state of health. For 48 hours from the time of his arrest Polak could not retain any food or fluids. Police officers knew that he was ill but did not appreciate that his condition was so serious. His death in the lockup probably resulted from alcoholic hepatitis. Police recorded Ns condition simply as 'intoxicated'.

Misel Waigana was a Torres Strait Islander. He too had a history of alcohol abuse which directly contributed to his premature death in Central (East Perth) Lockup as a result of delirium tremens. He

had received treatment over the previous ten years as a result of alcohol's effects, leading ultimately to brain damage which was a catalyst giving rise to epilepsy.

He was arrested twice on the day of his death. After his first arrest he appeared vague and uncomprehending and his condition was noted as 'affected by alcohol'. He was released and rearrested after an hour at which time he was exhibiting signs of extreme agitation. No assessment was attempted but his condition was noted as 'good (intox)'. He continued to exhibit signs of agitation and disorientation but those who observed him were unable to appreciate that these were the signs of a seriously ill man. No effort was made to obtain medical attention and he was later found dead in a cell. Cases like this tend to show what little is known by the police of the serious effects of alcohol and withdrawal from alcohol.

The cases which fall within the group covering deaths from injury and the direct effects of alcohol show a recurring theme in which a person is taken into custody because he cannot look after himself yet having deprived him of his liberty his custodians failed to provide the care and attention that may have averted the person's death.

3.3.3 DEATH FROM DISEASE OR UNDERLYING CAUSE

The most striking feature of the Aboriginal deaths occurring in custody was the generally poor health of many of the deceased. The section on Health (5.4) illustrates the risks of death in custody and the general poor health of those whose deaths were investigated.

A remarkable illustration of this was the death from ischaemic heart disease of Darryl Garlett, Ronald Ugle, Dixon Green and Steven Michael.

These deaths have confirmed evidence of low life expectancy amongst Aboriginal men due to the high incidence of heart disease. Garlett and Michael died prematurely in metropolitan hospitals where they were taken from prison. They were 26 years old. Ugle and Green were prisoners at Broome. In 1983 Ugle died aged 53 in Broome Regional Hospital. Two years later, to the consternation of members of his family, Green had a fatal heart attack in Broome prison when he was only 25, was active in sport and had no previous indication of heart disease.

The results of autopsies left no doubt that each of these deaths resulted from acute myocardiac infarction and each deceased showed evidence of ischaemic heart disease in atherosclerotic changes.

A common issue in these cases was the method of assessing the health of prisoners on intake and transfer to other prisons. There is a standard procedure providing that each prisoner is subjected to a medical examination by nursing staff and an examination by a doctor. There is provision for medical records to accompany a prisoner on transfer. A standard examination is not likely to diagnose ischaemic heart disease which would require more active and expensive procedures and is unlikely to be considered unless a particular prisoner is suspected of heart trouble.
The following deaths were attributable to the effects of epilepsy:

1 . Robert Anderson was arrested whilst drunk and found dead in the Wiluna Lockup two days after his original arrest. His condition was not assessed at the time of his arrest because of his drunkenness and on the following day two cell checks were carried out seven hours apart. He was known within the community to be an epileptic and police ought to have been aware of this. In any event he should have been released on bail when he had sobered up but was retained in a cell without adequate supervison and no means of obtaining anti-convulsant medication should he have needed it.

The pathologist had difficulty determining the cause of death but finally decided it was attributable to epilepsy.

Investigation of this case produced medical evidence from a specialist in neurology of interaction between epilepsy and a heavy intake of alcohol which may produce epileptic seizure.

The deceased had a history of non-compliance with his medication. While in the lockup he was prone to suffer an epileptic attack due to his prior history, a state of alcohol withdrawal, and the absence of anti-epileptic medication.

The case again raised the question of the need for police to follow procedures for assessment and care of detainees.

2 . As late as December 1988 there occurred a similar death which appeared to have resulted from epilepsy. Donald Chatunalgi died in the lockup at Halls Creek Police Station while serving a default term for non-payment of fines. Some eight hours after being placed in the lockup and after prisoners had been locked into a cell block detached from the station, he suffered a fit. There was no alarm system but a fellow prisoner was able to attract the attention of a civilian who alerted the police. The deceased was found to be dead.

No attempt was made to resuscitate him and it is unlikely he could have been revived. A forensic pathologist was unable at first to decide the cause of death but after reviewing the deceased's medical records he determined that the cause of death was epilepsy. Chatunalgi had a history of epileptic seizure and was last known to have consumed alcohol 5 or 6 days before his death.

These cases demonstrate the need for police to make active inquiries to ascertain whether a detainee is vulnerable in a lockup. My individual reports examined the inadequacies of the custodial care practices of police in remote areas with significant Aboriginal populations.

The remaining cases in this category which involve death in relation to police custody concern Milton Wells and Jimmy Njanji.

Milton Wells was taken into custody at Kalgoorlie, one of the bigger country police stations. His death was an indictment on the deficiencies of lockup practice. On the evidence before the Commission he should not have been taken into custody in the first place. He protested his innocence of the charge of wilful damage but this was ignored. He was not permitted to go to bail but was put in a cell when the state of his health warranted medical assessment and treatment. His condition deteriorated and his worsening condition should have been discovered during periodic cell checks, but it was not. He was not sent to hospital until 8.30 the following morning and later died of lobar pneumonia and acute meningitis.

The death of Milton Wells highlighted issues so frequently raised about the deficiency of custodial care and its tragic effects. It also revealed serious inadequacies concerning the investigation of the death for the purpose of a Coronial inquest.

Jimmy Njanji died in Port Hedland Hospital where he was admitted after completing a sentence of imprisonment and being released. However his death resulted from a terrible infection which caused him to eventually become asphyxiated and choke to death. The infection was a direct result of a head injury which was inflicted by a fellow prisoner while Njanji was in custody. [Hence the case was investigated.] Hampered by inability to communicate with the patient, doctors failed to recognise the nature of his illness and its inexorable progress brought about his death from largyngeal oedema. The circumstances of this death were highly unusual.

Njanji was from traditional desert people. He was virtually an outcast who lived **in** deprived conditions unable to communicate in English. His death raised questions about the professional competence of those who were required to treat him and about inadequate investigation of the circumstances of his assault whilst in prison custody. Those were matters which were not the subject of investigation in the Coronial inquiry.

The propensity to underlying disease has been borne out in my findings in the last four cases in this category in which four prison inmates died of natural causes in or following custody in prison. The cases also demonstrate the need for expert medical management of those suffering disease.

1. Nita Blankett was a 40 year old Aboriginal woman who suffered from chronic asthma. On the day of her death she had a bad attack but those responsible for her care failed to send her for medical treatment until it was too late. She died en route to the medical centre. The urgent need for medical treatment was not understood by nursing and prison staff. Her death could have been prevented if those responsible had known of the potentially fatal nature of an asthma attack. There were also further problems of delay when the decision to seek medical help was finally taken. The case illustrates the inadequacy of using a prison van instead of an ambulance to remove her.

A competent inquest in this matter led to recommendations for the treatment of asthmatic prisoners which recommendations were adopted by prison authorities.

2. Bobby Bates was a young traditionally oriented Aboriginal who died in hospital of broncho-pneumonia which apparently developed whilst he was in Eastern Goldfields Regional Prison. Witnesses spoke of the possible influence upon his death of traditional Aboriginal practices but he was found to have died of natural causes. His treatment in custody and his medical and hospital treatment was reasonable and proper.

3 . Donald Harris, developed a fatal condition, pancreatitis, whilst in Canning Vale Prison. His general treatment by prison officers and medical treatment by prison medical staff left no room for complaint. He was promptly moved to hospital where medical treatment failed to avert his death.

4 . The remaining death from natural causes concerned An Aboriginal Man Who Died at Sir Charles Gairdner Hospital. He was convicted of a serious offence in the north of the State and was sent away to serve imprisonment at metropolitan prisons. Apparently during this time he contracted a rare and virulent form of tuberculosis which was not diagnosed or treated. In the area of his medical diagnosis and treatment at the prison the evidence was complex and I had to consider the responsibility of prison authorities and others who were involved in caring for him. I found that the medical care afforded him by the prison medical authorities was deficient. He should have been admitted to hospital, notwithstanding failure to make a definitive diagnosis and, I found that the Prison Medical Officer should have acted on his own assessment and initiative to arrange earlier hospitalisation. However, I did not consider that there were shortcomings sufficiently grave to give rise to charges against individuals.

These last three deceased died in hospital having been transferred from prison custody for treatment. The investigation of their cases concerned the role and performance of the prison medical service and health professionals outside the prison system. I found in the case of Bates and of Harris that every reasonable effort was made to diagnose and treat the prisoner's condition. Those who treated the Sir Charles Gairdner Hospital case were confronted with a condition which is rarely found today in the general community. This may have adversely affected their efforts to avert his death. Those cases, also, raised the matter of the use of restraints on dying prisoners and illustrated an over-emphasis by custodial authorities on security over humanitarian considerations.

I have referred in a summary way to the main features of the cases that fall into this category. They illustrate the general poor health of many of the deceased and the prominence of alcohol as a factor exacerbating the debilitated condition in the case of deaths in police custody. In appropriate sections of this Report I have considered the responsibilities of custodial authorities and measures to reduce the incidence of further deaths.

3.4 ANALYSIS OF THE HANGING/SELF HARM CASES

3.4.1 CHARACTERISTICS

In this section I have attempted to describe and analyse the relevant cases in a manner which highlights the immediate causes (where apparent) and suggests possible explanations for those deaths found to have been self-inflicted. I refer to the opinion of several psychiatrists who gave evidence before the Commission. Details of those psychiatrists and the matters in which they gave evidence or provided reports to the Commission are contained in section 5.4.5 of this Report.

1. Background

Nine Aboriginal people died in custody, by their own hand, during the period covered by my terms of reference. These people share many similarities in background and the similarities far outweigh the differences:

- Eight of the nine were separated from their families during childhood, brought up in a Mission or detained at a juvenile institution (or both).
- Eight of the nine had orders made committing them to the care of the Child Welfare Department.
- Every one had convictions recorded against them while they were juveniles.
- All had convictions for alcohol-related offences (with one exception, although he had a history of excessive drinking when out of custody).
- Every one of the nine was either single or had separated from their partner at the time of death. Only two had recently separated.
- Each of the deceased was unemployed. None had been in regular employment either at all or for many years.

While there are many similarities, it should not be thought that the deceased were in any simple sense, an homogenous group. Some of these deceased adhered to traditional culture and practices, although this was more difficult for others due to separation from family and relations as a result of their mission upbringing and/or detention at juvenile institutions. Another contrast could be made between Hugh Wodulan who lived at Broome at the time of his death but had a rural upbringing in a very distant part of the State and Edward Cameron or even Bernard McGrath both of whom lived in large regional centres and lived pretty much an urban lifestyle. Again by contrast Stanley Brown was an important 'lawman' in his area (the Western Pilbara). He played an important part in the revival of traditional ceremonies.

2. Death

Commissioner Muirhead and I have already found that all 9 deceased died by their own hand. In only one case was it established that other persons were involved in the death. That case was the death of Bernard McGrath. I have already reported that in my opinion the involvement of another prisoner was limited to assistance, therefore none of the deaths was a homicide.

Seven of the nine were under thirty-five years of age at their death. Four were between twenty and twenty-four years old. There was only one female, Christine Jones.

The method used in each of the nine cases was as follows:

Hanging by partial suspension (7);
Self-strangulation, i.e. no suspension point (1);

A razor cut to the throat (1).

Christine Jones used the sleeve of her cardigan; Hugh Wodulan employed a bandage which had been used to dress a burn; Paul Farmer used a razor blade concealed in his clothing; Stanley Brown used a mattress cover; Bernard McGrath used a Government issue towel, torn into a strip**;** Ben Morrison used a strip of government issue blanket; Edward Cameron used one of his own shoelaces; Graham Walley used his prison issue belt; and Wongi strangled himself with a bandage used to dress a laceration. With the exception of Bernard McGrath, each of the prisoners was alone in a cell at the time of death.

Each of the deceased died within three hours of being taken into custody or, in the case of the prison deaths (Walley and Farmer), within three hours of their confinement following disturbed behaviour.

CHRISTINE JONES	18 minutes from lodgement, I I minutes from last check
HUGH WODULAN	discovered dead less than three hours from confinement, body cold.
PAUL FARMER	discovered within three hours, last check one hour 15 minutes earlier.
STANLEY BROWN	discovered within three hours. Last check two hours earlier.
BERNARD McGRATH	died within a half hour of lodgement, probably within 15 minutes
BEN MORRISON	died about one hour from lodgement, 10 minutes from the last cell check.
EDWARD CAMERON	discovered three and a half hours from lodgement. Body cold and early signs of rigor mortis. Forensic Pathologist estimated death within minutes of lodgement.
GRAHAM WALLEY	one and a half hours from final lodgement. 20 minutes from last cell check.
WONGI	died about a half hour from lodgement and 15 minutes from the last cell check.

Each of the seven people who died in police custody was under the influence of alcohol. The postmortem blood alcohol levels were as follows:

Christine Jones (0.250%);	Hugh Wodulan (0.264%);
Edward Cameron (0.2%);	Stanley Brown (0.270%);
Wongi (0.162%).	Bernard McGrath (0.223%);
Ben Morrison (0.195%);	

It is disturbing to compare the above figures with the police assessment that Christine Jones, Bernard McGrath, Ben Morrison, Edward Cameron or Wongi were not drunk or heavily affected by alcohol.

The community perception, unfortunately shared by the police, is that a person who is suicidal will be depressed and show signs of sadness. The only one of the deceased in that category was Bernard McGrath. Christine Jones, Ben Morrison, Edward Cameron, Graham Walley and Wongi were all considered to be agitated at the time or shortly before their lodgement in police cells. Hugh Wodulan was considered to be his usual self although slightly quieter. Stanley Brown appears to have given no sign of his emotional state, at the time of arrest or lodgement in the lockup.

The Criminology Research Unit of the Royal Commission considered all reported incidents of self-inflicted harm (short of death) in custody in Australia for a six month period, I April 1989 - 30 September 1989. The results of their survey was published in Criminology Research Unit Research Paper No. 16 entitled: 'Self-Inflicted Hann in Custody'. Data for that study was provided to the Royal Commission by police and prison authorities in each Australian State and Territory.

A total of 375 cases of self-inflicted harm in prison and police custody were reported as having occurred during the six months period. 223 cases occurred in prison custody and 152 cases in police custody. I note areas of similarity with the circumstances of death of those who died by self-inflicted means in police custody in Western Australia : 73% of reported attempts in police custody took place within the first three hours of custody. Further, in 86% of the reported incidents, people were alone at the time of the attempt.

That six of the nine who died by their own hand were in a high emotional state, considered by the police to be agitated or aggressive, bears out the evidence heard from psychiatrists that the typical suicide in custody is impulsive rather than a result of prior planning and I can confirm the following excerpt from the submission of Cawte that agitation frequently precedes suicide. 'Its [suicide] *signs include (a) high tension, (b) high anxiety and (c) strong emotions of guilt, rage or revenge'* (Rowan, 1990:293). 1 have heard evidence that the typical suicide out of custody will occur after weeks or months of depression and follows hints, threats or attempts.

From my investigations I can say that four of the deceased had a history of previous suicidal behaviour or self-harm. Christine Jones had a history of selfmutilation by cutting herself on her non-dominant arm. Paul Farmer had previously slashed his arm with a razor on more than one occasion. Ben Morrison had been caught in the act of attempting suicide by hanging at a lockup, some years before his death and Graham Walley had discussed suicide both before and after his final arrest. Bernard McGrath had previously threatened suicide and had stolen some of his father's medication. In the months before his death he had openly discussed suicide and engaged in morbid behaviour i.e. visiting his sister's grave and mourning her loss (she had been dead for some years).

Seven of the deceased did give hints or make threats shortly before their death: Hugh Wodulan told a relative 'you will *miss me, you won't see me again';* Paul Farmer threatened to kill himself shortly before being placed into an Observation Cell; Stanley Brown said he was *'going to do himself up'* a few days before his death, after his wife refused to return to him; Bernard McGrath told friends two weeks before his death that he was thinking he might *'end it all'* ; Ben Morrison threatened to kill another prisoner at a lockup and then kill himself (and he was overheard by a prisoner, shortly before his death, to be talking about Jesus and about 'going home'); Graham Walley was heard by a prison officer to say *'You will be answering to my people. I am going to hang myself. I've had enough.'* before he was apparently calmed by the Superintendent and locked alone in his cell; Wongi had earlier on the day of his death threatened to kill himself and also tied a sock around his neck.

3.4.2 IS AN EXPLANATION POSSIBLE?

As the psychiatrists have so frequently said, it is never possible to know with certainty why a person takes their own life. The best assessment I can make for the reason(s) behind these deaths is as follows. I am conscious of my limitations in doing so.

Christine Jones

I do not believe that Christine Jones was contemplating suicide when she was arrested. She was a person capable of extreme or explosive emotional reactions which even friends found would take twenty minutes or more to control. In the opinion of Professor German she suffered from brain damage principally as a result of her alcohol consumption which commenced when she was a teenager. She had a history of slashing her non-dominant arm during episodes of extreme frustration.

When she gave herself up to police she expected to be taken immediately to prison. Upon being informed that this would not occur she became extremely upset and agitated. When placed in a cell by herself she kicked a bucket, breaking the handle and then began kicking the mattress. She was expressing uncontrollable frustration and anger. She had nothing in the cell with which she could harm

herself, apart from any item which could be used as a ligature. I consider that her death was impulsive and arose out of her uncontrolled emotional state rather than depression, much less any depressive illness. She may have also been frightened by her surroundings as she had very little experience with police custody and had previously expressed her fear of the police. In this respect she is quite different from most of the other deceased. Hugh Wodulan, Paul Farmer, Stanley Brown, Ben Morrison, Graham Walley and Wongi were all very familiar with police custody.

Hugh Wodulan

My inquiry revealed no single or overriding reason for Hugh Wodulan to take Ns own life. However, it is also possible that from his perspective he felt that he had no particular reason to go on living. He had been separated from his family and relations because of his mission upbringing and detention in juvenile institutions. He had no wife or children of his own. His life was a cycle of drinking, a record of petty crime, police custody and short prison sentences. A way to break the cycle was to give up alcohol. He had been unsuccessful at his first attempt and had been refused re-admission to the local alcohol rehabilitation centre in Broome as his behaviour was considered too disruptive. Those who knew him considered that his behaviour and psychological state had deteriorated in the weeks before his death, he may very well have appreciated that this was happening.

Approximately three weeks before his death he was admitted to Broome Hospital with a diagnosis of alcoholic hallucinosis. In many respects his lifestyle would be similar to that of Ben Morrison and Wongi. I cannot say whether he had been contemplating suicide for any significant period before his final arrest. I accept the evidence of the psychiatrist for the Kimberley Region, Dr McLaren, that people rarely commit suicide for a single reason. His death surprised the police on duty as he was known to be a gentle soul who 'had the run of the lockup'. The sadness of the case is difficult to convey in a few words.

Paul Farmer

Paul Farmer had a history of diagnosed mental illness and of prior suicide attempts. There was evidence that he may have ceased taking his anti-psychotic medication. Commissioner Muirhead found it probable that he had been dispensed this medication but had failed to take it on the days prior to his death.

Paul Farmer had spent approximately 13 of the last 18 years of his life in prison. He had first been sentenced to adult imprisonment at the age of 15 years. In the Report of his inquiry into this death, Commissioner Muirhead stated:

> *He wished to die. For him life, largely spent in prisons, no longer had any meaning; he had attempted to kill himself on previous occasions. Throughout his life he had been proud of his Aboriginality, conscious of traditional culture and tied by bonds of affection to hisfamily. It may be said, without undue emotion, that he felt impelled to die. For him death held no fear; it was a passing over to join his deceased relatives. He was not proud of the crimes that resulted in his incarceration* ... (Report page 1)

Stanley Brown

Shortly before his death Stanley Brown had unsuccessfully attempted to reunite with his wife. He had recently suffered what must have been a very unpleasant episode of alcohol withdrawal and at the time of his death may have been about to experience the same ordeal. To find himself once more in the lockup on a charge of drunk with nothing in particular in the future to hope for and the possibility of another dreadfully unpleasant experience of alcohol withdrawal only a few hours away, may have been more than he was willing to bear. I should emphasise that he would not be thinking clearly, rationally or reasonably

with a blood alcohol content of .270%. His thinking would be disordered and his perceptions would be affected. He would be much more vulnerable to suicidal impulses.

Bernard McGrath

Bernard McGrath had been expressing suicidal thoughts for some weeks before his death. He also often complained of harassment by the Kalgoorlie police. One week before his death he received injuries whilst at the Kalgoorlie Police Station Lockup. On the night of his death he appeared to have been singled out by two police officers, one of whom was the principal subject of his complaint of police harassment. He was lawfully arrested on an outstanding warrant. To add to his dismay of being arrested he may have believed he was facing six months imprisonment because that had been the sentence handed down for an earlier offence of a similar description.

Bernard McGrath was crying at the police station following his arrest and after being placed in the lockup he rushed into a cell and began to tie a towel around one of the window bars. Two other persons saw this but did not attempt to dissuade him and one indeed even assisted him to commit suicide. Although he was no doubt unhappy at the time, I believe the catalyst for his death was the arrest, and further that the prospect (arising from his misconception of the charge) of six months imprisonment may have been a significant factor.

Ben Morrison

Ben Morrison suffered from two mental conditions at the time of his death: *mania a potu* which is a transient drug induced psychosis which causes abnormal behaviours, and the early stages of Alzheimer's disease i.e. dementia. The former condition is brought on through alcohol consumption and the latter condition is exacerbated by alcohol consumption. One expert psychiatric opinion was to the effect that, under the influence of alcohol, Morrison's behaviour would be affected to the extent that *'anything could happen'.* Shortly before his arrest he was considered by a civilian to be senile. In short, he was a mentally ill person under the influence of alcohol distressed by the circumstances of his arrest.

Edward Cameron

A combination of factors in this case may provide an explanation for the death of Edward Cameron. He was a well-known and popular local figure chiefly through his football prowess. He and several other males had been accused of what amounted to a 'pack rape' (subsequently, all of his co-accused were found not guilty at trial). The allegation was published in the local press and seemingly believed by relatives and friends alike. Cameron suffered a dreadful fall from grace. His wife left him taking his only child. On the night of his death he became heavily intoxicated and committed a break and enter. He was arrested and denied bail and the offence if proven would have amounted to a breach of probation. I would not find it surprising if, upon being placed alone in a cell, Cameron reached the dcpths of despair.

Graham Walley

Again, in this case, there were a number of factors which may explain Walley's death by his own hand. While he was in prison, his wife had taken up with another man. She had declined to arrange for any visits from his children which deeply distressed him. The Department of Corrective Services had made an error in calculating his parole and shortly before his death informed him of their mistake which meant that he was to serve several more months in prison than he had expected. He had an outstanding assault charge against a prison officer when he died.

On the day of his death, under provocation from another prison officer, he lost control, barricading off the maximum security section of Greenough prison and threatening prison officers. He also threatened to take his own life. As I have stated, he was subsequently locked alone in his cell. His correspondence with other family members reveals he was deeply depressed and had been contemplating suicide for some time.

Wongi

Wongi's death has some parallels to that of Hugh Wodulan. Both were in their late twenties, both had unsuccessfully attended an alcohol rehabilitation programme, they each had an extensive criminal record for minor offences, a severe drinking problem and they were both loners without much social support. They were both 'institutionalised' and consequently unable to function effectively outside prison (they would have this in common with Graham Walley). Wongi's parole plan had failed because of his unsuccessful attempt at alcohol rehabilitation, although that was mostly due to poor execution of the plan on the part of the Department of Corrective Services. Wongi had committed a number of blatant offences and was expecting to return to prison which he literally regarded as home.

On the night of his death he had been arrested three times within twenty-four hours. After the second arrest he had threatened suicide and behaved in a suicidal manner as a means to obtain bail. After Ns third arrest it seems that he no longer cared whether his suicidal behaviour was successful in obtaining bail or resulted in his death. Again, my strong impression is that he was a person who had reached the end of the road, not for any single reason, but because he was sick of his life and he could see no prospect of changing it.

In summary this Commission received evidence that at least five of the nine were suffering a recognisable mental illness (in terms of western psychiatry) at the time of or shortly before their death:

Christine Jones	(Organic Brain Disorder)
Hugh Wodulan	(Alcoholic Hallucinosis)
Paul Farmer	(Schizophrenia, depressive disorder)
Stanley Brown	(Alcohol Withdrawal)
Ben Morrison	(Mania a Potu, Alzheimer's disease)

Two had revealed clear expressions of suicidal ideation and depression weeks before their death (McGrath and Walley).

Edward Cameron's life had been shattered as a result of the allegation of rape (of which he was innocent).

Wongi's death has a number of elements which make it difficult to classify: accident; manipulative behaviour; protest; despair.

3.4.3 DISCUSSION

Although there are demonstrably significant personal factors in most of these cases which may explain the reasons for the individual deaths, there remains the question of why six of the eight hanging deaths occurred in an eighteen month period (June 1987 to December 1988). The explanation put forward by the Police Officers' Union is that the individual deceased were affected by media publicity of deaths in custody at the time. Such an explanation is not to be dismissed lightly. Each case was carefully

considered for the possible significance of media publicity i.e. suggestion as an explanation for the death. Commissioner Dodson has also examined the possible significance of media publicity in his report.

I also note that the Police Department have provided the Royal Commission with their own records of attempted suicide in police custody between I January 1980 and 1 September 1988 (attachment to GO/W/31). Police records revealed that, similarly with successful incidents of suicide/self-inflicted death, there was a dramatic increase in attempts in 1987 and 1988. In 1987 it was noted that almost all Aboriginal attempts were by hanging.

I do not believe that any of the deaths was a protest or attempt to embarrass police or prison authorities. It is true that newspaper clippings of Aboriginal topics, including deaths in custody and also concerning the death of Edward Cameron, were found in the cell of Graham Walley. However at that time he was concerned with Aboriginal issues. More importantly he was already clearly thinking about suicide, as revealed in his correspondence. I have heard psychiatric evidence that people contemplating suicide are often very interested in the deaths of others, so rather than the publicity encouraging Walley to think of suicide I believe it was more likely that Walley was already thinking of suicide and the newspaper clippings were simply an expression of his suicidal thinking rather than instruments of suggestion upon an otherwise healthy mind.

So one is left with the choice of publicity as the catalyst for the deaths to explain the frequency or coincidence as the explanation for so many deaths in such a short period. Neither explanation is especially compelling.

I have not found any of the explanations that have been put forward as being particularly satisfactory. I consider that all of the Aboriginal people who died by their own hand in custody within the period, were suicide risks whether there had been media publicity or not at the time.

At least two other deaths which were due to natural causes could, I believe, almost as easily have been hanging cases. Kim Polak, who was a chronic alcoholic, had a previous history of psychotic behaviour including episodes in prison where he heard voices telling him to kill himself by hanging. Ginger Samson, also a chronic alcoholic, had expressed thoughts of suicide when in custody.

There is much evidence before the Commission on alcohol acting as the catalyst to suicide, in a multiplicity of ways. At initial high levels the subject loses touch with reality. Alcohol also exacerbates the impulsive behaviour. As the alcohol level falls the subject can experience *'a morbid and unpleasant state of alcohol withdrawal which is associated with feelings of fear and anxiety; nightmarish thoughts of death and pain; and frequent active suicidal ideation.'* (German).

It has already been noted that arresting alcoholics and placing them in a police lockup is *'Concentrating a suicide vulnerable population'* in custody.

This leads me to conclude that the chronic alcoholic who dies of natural causes or as a result of trauma (head injury) is not necessarily part of a distinct population from that group which dies by hanging, although the ultimate cause of death may be different. The populations overlap.

Two other points need to be made about alcohol as a factor in the hanging deaths. The first is that the police in this State seem to have had no appreciation that a person who is heavily intoxicated is *ill.* If the same person was brought to the police station in a similar condition but the explanation was that they had taken an overdose of recreational drugs or prescription medicine then I have no doubt that the police would act on the basis that the prisoner needed medical attention. But it does not seem to matter how intoxicated the prisoner is, medical attention is not sought if the person is *just drunk.*

The second point is that the sort of behaviours which a prisoner in an advanced state of intoxication will often display have been considered by the police dealing with the prisoner to be *normal for a person of that race,* or less commonly, *normal for a drunk.* This point is made by Professor German during the Morrison Inquiry:

The third point I would make is that if you have a population, like an Aboriginal population, about whom there are stereotypes, behaviours which might be regarded as very abnormal in a white Anglo-Saxon resident of Nedlands, may be disregarded and I think that is another factor that has to be borne in mind, that one has to have some sort of awareness that these behaviours are abnormal in any population. They are not culturally characteristic. They are characteristic of pathology, and I would see that as the most important lesson that I would perceive as requiring to be absorbed from the cases I have been involved with.

Seven of the nine died in a police lockup and the remaining two died in prison. What I find especially significant about the location of death, at least in the caseof police custody, is that every death occurred at a large police station in a heavily populated area: Broome (2); Geraldton (2); Perth (2); and Kalgoorlie (1). I regard this as a surprising result. It cannot be due to the larger regional police stations having a much greater detention rate than any of the smaller country towns. Small centres such as Halls Creek and Fitzroy Crossing have arrest and detention rates per head of population as high or higher than any regional centre.

One of the most significant factors in custodial deaths, that has been identified by research, has been the post mortem level of alcohol of the deceased. Yet Halls Creek and Fitzroy Crossing, which are communities in which literally thousands of arrests or detentions for drunkenness have been made per year, have not had one hanging death in custody. Conversely Geraldton, a community which I am informed by the police does not have a public drinking problem (and which records confirm has few arrests or detentions for drunkenness), has had two hanging deaths in police custody.

This has not led me to doubt that alcohol is a very significant factor in custodial deaths, but it emphasises that it is only one of a number of inter-related factors and that due attention must be given to the lockup environment. By that I mean the combination of cell conditions and custodial care.

I gained the strong impression, during my visits to lockups throughout the State, that some of the most 'primitive' lockups in terms of facilities were also among the least conducive to suicide. In the smaller lockups such as Wiluna the prisoners had the run of the grounds of the police compound (of which the lockup was only a part) during the day and provided they informed the Officerin-Charge, could leave the lockup to visit the nearby store or nursing post. "le in the lockup they could be visited by their friends or relatives. There was a minimal feeling of *confinement.* This system depended upon mutual respect and trust.

This lockup could be contrasted with that of South Hedland: a modem brick structure with internal cells, none of which are open to the elements. In summer the heat is so unbearable that the Officer-in-Charge has no choice but to leave the prisoners in the corridor outside their cells.

Police lockups are discussed in more detail later in the Report.

The other factor of relevance that I have mentioned is the standard of custodial care. This has many aspects, most of which are discussed in other sections of this Report. But one aspect, which must be mentioned in the context of the hanging cases, is whether the police on duty or those who deal with prisoners have a *caring* attitude.

I could not help but notice the difference in the way Aboriginal people in the smaller country centres spoke about the police compared to the regional centres. In the former there was a degree of mutual respect. In the latter this was rarely the case. A local Aboriginal arrested in one of the smaller country towns may have little fear of the lockup. He will usually know the policeman who arrests him or at least some of the officers on duty including the Officer-in-Charge. He will likely be among friends in the lockup and knows that he will be able to talk to friends or relatives outside the lockup. I do not mean to suggest that such an Aboriginal would be pleased to be in the lockup, but rather it is less likely to be a place of terror.

This can be contrasted with the regional centres and metropolitan stations where Pe lockup is a place to be feared. Many of these centres have a rostered police complement of 30 to 50 officers. The arrestee is not likely to know many or any of the officers on duty and the attitude of the officers is palpably impersonal compared to the smaller lockups. Let me give an example drawn from one of the cases. Christine Jones was agitated, aggressive, and complaining. None of the police officers on duty at Midland Police Station attempted to calm her down or deal with any of her complaints. She was put in the lockup to 'calm down' by herself.

The attitudes of the police officers on duty in the cases of Morrison, Cameron and McGrath were illustrative of a similar lack of care. I repeat the caring attitude is much more readily found in the smaller country centres. Further discussion about the attitude and responsibility of police officers is found later in the Report.

3.4.4 PREVENTION OF DEATH IN CUSTODY

This subject is dealt with elsewhere in the Report. However, it is convenient at this point to stress what I consider to be the most important measure to prevent self-inflicted death in custody and that is placement. Any prisoner, especially an intoxicated or emotionally affected individual (whether the signs are of agitation, distress, aggressiveness or frustration etc.) should not be placed alone in a cell. The person must be constantly under observation by another prisoner or a custodial officer. Only one of the self-inflicted deaths occurred in the presence of other prisoners, and that case must be considered unusual in that the prisoners instead of alerting the authorities, either stood by or assisted the death.

I regard placement of a prisoner either with other prisoners or subject to constant supervision as far more important than placement in a mesh modified cell i.e. a cell modified to eliminate any suspension points, which is the preferred choice of the Western Australian Police Force. Wongi easily demonstrated how ineffective such modifications are, even to prevent a death by asphyxia. Indeed the only successful Aboriginal suicide in police custody since the cell modification program was substantially implemented, was in such a cell.

3.5 OTHER CASES INVOLVING VIOLENCE

The deaths that I have included in this category are those of John Pat, Charles Michael, Robert Walker and Ricci Vicenti. The reasons for examining these deaths separately are largely because of the violent nature of the deaths which resulted in concerns in the community that unnecessary force may have been used against the deceased by custodial authorities. The public outcry about these deaths were very much a part of the impetus in the call for a Royal Commission.

John Pat, Robert Walker and Charles Michael all died following a fight or struggle involving custodial authorities. Ricci Vicenti died after being shot in the head by a prison officer. Allegations of unnecessary use of force by custodial officers have not been substantiated in two of the cases (Charles Michael and Ricci Vicenti). In the inquiry into the death of Charles Michael, Commissioner Muirhead was of the view that there was insufficient evidence to find a connection between the struggle between Charles Michael and prison officers and the death. In the inquiry into Ricci Vicenti's death I found that the lethal shot fired by the prison officer was justifiable according to law. However in the individual report into Ricci Vicenti's death and later in this Report I examine the adequacy of the current statutory provisions in this regard. In the inquiry into Robert Walker's death Commissioner Wyvill has made findings that excessive force was used to restrain Robert Walker during his struggle with prison officers and that the application of batons to Robert Walker by some prison officers was unreasonable and unnecessary. Commissioner Johnston had not reported on the inquiry into the death of John Pat at the time of writing this Report so I am confined to a fairly perfunctory examination of the issues in that matter.

Below I set out very brief summaries of each of the deaths for the benefit of those unfamiliar with the circumstances of these cases.

Charles Michael

Charles Michael had been suffering a depressive illness for which he was treated for some years. Some days, possibly a few weeks prior to his death, Charles Michael suffered a silent myocardial infarct. 'Mere was no previous confirmed evidence of heart disease. He made no complaint of symptoms calling for treatment for heart disease. On the day of his death, Charles Michael was distressed by hearing of the death of a relative. At tea time he was observed to be acting strangely. His depression intensified and he reached the stage of agitated psychotic depression. He visited the prison office probably for help. It was suggested that he be breathalised which he found threatening. He clutched at the officers not intending any hostility but his actions were interpreted as such. A struggle ensued during the course of which he was handcuffed with his hands behind his back, his ankles were secured with a belt. These two restraints were secured by a further belt running between the handcuffs and the ankle belt and it was tightened by a baton being twisted. The officers, varying from five to three used their body weight and their own limbs to force Charles Michael to remain still. He was not kicked or struck in the process. The struggle commenced at about 9.50 pin and continued until 10.25 pm when it was observed that Charles Michael had urinated. He was placed on his side and his airway cleared. It is probable that Charles Michael was then dead, the consequence of a heart attack. In his finding, Commissioner Muirhead was not prepared to find that there was any connection between the struggle and the death.

There is insufficient evidence to enable me (or perhaps anyone) to predict events had there been no struggle. He may have died at any time. Had the true situation been known, major treatment may have perpetuated life - but to predict his future involves speculation.

Robert Walker

Walker was permitted to stay in his cell for three days, approximately three weeks before his death because he was feeling uptight. Four days before his death he was behaving oddly according to his cell mate, pacing up and down and mumbling. From then on the mumbling became almost continuous. On the evening before his death he did not eat his meal, he paced up and down, mumbling, playing guitar, turning his radio up and playing louder. He was told to turn the music down on several occasions. A further complaint was made about loud noise at I 1.10 pm. At this time, it appeared to the officer that he was under the influence of alcohol or drugs. The Chief Officer was called. The power to the cell was cut off. There was no further noise and the prisoner was not inspected. At 1.00 am and 2.00 am noise was coming from his cell but there was nothing unusual about Walker's appearance.

Shortly before 4.00 am, further noise was observed and Walker was seen to have bloodied strips of sheet wrapped around his wrists. He was talking about phantoms. Three officers and the medic went to the cell, he was reluctant to allow examination by the medic, continued to talk of phantoms, was sweaty and tense. He was reassured by the medic and was to be taken to the hospital for treatment to his cut wounds. Walker agreed to go but appeared reluctant to leave the cell. He observed a firearm and yelled 'Murder, murder'. There was a struggle on the stairs and the medic was kicked and fell. The other officers rushed Walker to the ground floor. Walker and two officers left the division and once outside Walker knocked an officer to the ground and then moved further along the pathway. He was charged by one of the officers and grappled until they fell on the grass and the other officers came to the assistance. Up to rive officers restrained Walker with various holds and he was hit with a baton by one officer in the arm and by another officer on one or both legs. Watching prisoners alleged a severe beating which was discounted by Counsel Assisting in final submissions.

An injection of largactil was administered to Walker after the struggle had been in progress for some time. Walker calmed very quickly, stopped struggling and went limp. He was handcuffed and carried to New

Division and placed in an observation cell. It was observed that his breathing was shallow and his pulse was weak. A doctor was summonsed and resuscitation equipment obtained from the hospital and commenced. He was dead within seconds of the arrival of the doctor.

John Peter Pat

The following summary is very brief due to the nature of the Royal Commission inquiry into John Pat's death. Many of the factual issues surrounding the death were contentious and no findings have yet been made. 'Me bald outline of facts is as follows.

John Pat died at the Roebourne Police Lockup on the night of 28 September 1983 following an incident at the hotel involving three off-duty police officers and a police aide fighting with a number of Aboriginal youths. Pat was involved in the fight and blows were exchanged between Pat and one or more police officers. When the police van arrived at the scene John Pat was on the ground. He was put into the back of the police van.

At the police station John Pat was taken to the cell by the police. Some time later he was found dead by the police. The post mortem results showed that he died of closed head injuries. In addition he was found to have fractured ribs, a torn aorta and other minor injuries consistent with being in a fight.

Ricci Vicenti

Ricci Vicenti died in the Royal Perth Hospital on the evening of 31 March 1982. Ricci Vicenti was a remand prisoner at the C.W. Campbell Remand Centre, Canning Vale. On the evening of 28 March 1982 Ricci Vicenti climbed onto the roof of the Remand Centre. He ran along the rooftop and then jumped down onto the lawn area surrounding the building and ran towards the perimeter. Then he scaled a low inner perimeter fence and began to negotiate his way through the razor wire marking the outer boundary. While he was doing this he was struck in the back of the head by a .22 bullet. He fell backwards to the ground where he remained until a prison officer arrived at the scene. He died three days later in hospital. The Commission was unable to determine the precise reasons for his attempted escape.

The issues raised by the John Pat case can be considered separately from the three other deaths. John Pat was in police custody at the time of his death whereas Charles Michael, Robert Walker and Ricci Vicenti were in prison custody.

The deaths which occurred in prison raised a number of issues associated with policies and practices in relation to prison and prisoner management which have been examined in detail by the Royal Commission in Western Australia. I refer particularly to section 5.3 of this Report on Prevention of Death in Prison Custody.

Some of the issues raised in the Inquiry into John Pat's death are discussed below. I have not included some of the more controversial issues which were canvassed during the inquiry due to the denial by police officers and the lack of findings by the Commission.

However, the issues involving police policies and practices that arose in this matter could be broadly described as:

(a) very poor police/community relations in Roebourne;
(b) police involvement in the fight at the hotel;
(c) whether there was adequate, if any, assessment of the condition of the prisoners detained at the police station;
(d) quality of the police investigation.

Many of these issues arose generally in the inquiries into the other deaths in police custody and are discussed in more detail elsewhere in the Report.

However, the issue highlighted by the three deaths discussed in this section is the emphasis that consistently has been placed on prison security over and above the welfare of the prisoners. The deaths of Charles Michael and Robert Walker demonstrate the way in which prison officers reacted to an emergency situation involving a prisoner who was in a distressed and mentally disturbed state. In both instances the perception was that security concerns demanded that the prisoner be restrained at all cost by whatever means were available without any consideration of the well-being of the prisoner and the effects of their action upon the prisoner.

Ricci Vicenti's case also demonstrated the primary concern of the government policies in relation to escaping prisoners was on security. Evidence before the Royal Commission showed that the Minister of Prisons at the time of Ricci Vicenti's death regarded the need to protect the public as outweighing all other considerations relating to the rights and welfare of prisoners. This policy resulted in the lethal shooting of a prisoner who was remanded in custody and may not have received a sentence of imprisonment.

PART FOUR: OVER-REPRESENTATION OF ABORIGINALS IN CUSTODY

Part 4 of the Report looks at the overwhelming extent of the over-representation of Aboriginals in custody in Western Australia. The level of over-representation illustrates the extent to which the criminal justice system in this State has worked against the poor and disadvantaged, and more particularly Aboriginal people. 'Me first section of this Part, 4.1, examines the nature of this over-representation, the reasons why Aboriginal people are detained, the offences for which they are detained, the extent of the disproportion of Aboriginal people in police and prison custody and, finally, how the juvenile justice system contributes to the massive over-representation of Aboriginal in custody.

The second section in this part, 4.2, examines how the level of overrepresentation of Aboriginals in custody may be reduced. In examining the avoidance of custody I have focused on aspects of the criminal justice system which are particularly oppressive of Aboriginal people and which contribute to their over-representation in police lockups and prisons. I have identified the changes that should be made to policies and practices in relation to arrest, use of summons, warrants, bail, the legal system, and sentencing, that may reduce the number of Aboriginal people in custody. I urge the Government to accept that the investigations of the Royal Commission have shown a need for changes to the criminal justice system to bring about a more just and equitable treatment of people who become involved in the criminal justice system, and to make the necessary commitment to bring about the changes I have identified.

4.1 NATURE OF THE OVER-REPRESENTATION IN WESTERN AUSTRALIA

4.1.1 THE OFFENCES

The reasons why people end up in custody are many. The underlying issues which result in Aboriginal people becoming involved in the criminal justice system and ending up in police or prison custody are largely examined by Commissioner Dodson in his Report. Obviously, one of the major reasons Aboriginal people are apprehended and detained is because of behaviour and activities classified as offences against law. In the following section I examine the offences which resulted in the 32 deceased being apprehended and detained in police and prison custody, during their lives and prior to their death.

I then look more generally at the offences for which Aboriginal people are detained in custody in Western Australia.

4.1.1.1 Offence Histories of Individuals

The offence histories of the 32 Aboriginal deceased reveal a number of similarities in their offence histories and the fact that many of the deceased were continually involved in the criminal justice system for the same offences. Many commenced involvement with the criminal justice system at a young age. Most of the deceased did not commit serious offences, although six of the deceased were convicted of rape during their lives.

Juvenile Offence Histories

Twenty-four of the deceased were convicted of offences as juveniles (between the ages of nine and seventeen years). The common offences that the deceased committed as juveniles were dishonesty offences such as theft and break and enter (13 of the deceased), unauthorised use of motor vehicle (8), no motor driver's licence (6), and behavioural offences such as drunkenness, and disorderly conduct (7). Many of the dishonesty offences committed were committed in the Company Of other children and often involved the theft of small amounts of money or food. There was also a pattern of the children breaking into schools and stealing items such as coloured pencils or musical instruments. Three deceased were convicted of sexual offences as juveniles.

Eight of the deceased spent considerable time in juvenile institutions. The three persons (Farmer, Robert Walker, Walley) convicted of sexual offences as juveniles, spent a considerable period in their youth incarcerated and inevitably suffered the effects of institutionalisation. These three spent lengthy periods throughout their lives in prison and were all in prison custody at the time of their death. Two of the three committed suicide (Farmer and Walley). The other five who spent time in juvenile institutions were Wodulan, Polak, Bates, Steven Michael and Wongi. Polak, Steven Michael and Wongi had extensive juvenile records, Polak being convicted of 43 offences, Michael of 89 offences and Wongi of 27 offences. Bates and Wodulan had more minor records, being convicted of ten and six offences respectively. Of the five, four had extensive involvement with the criminal justice system as adults. Wodulan had 76 prior convictions at the time of his death, Polak 120, Steven Michael 187 and Wongi 107. They all had problems with alcohol and spent a considerable amount of time in and out of police and prison custody.

Adult Offence Histories

The extent of involvement of the deceased in the criminal justice system varied considerably. Some persons had very minor offence histories, having been convicted of only a handful of offences, whereas others had extensive criminal records with over 100 convictions. Despite this variation, there were consistent similarities in the offence histories of the deceased, the sons of offences which brought the deceased into contact with the legal system, the involvement of alcohol in the lives of the deceased and the offences which they committed. The significance of alcohol is discussed in more detail in section 5.5 of the Report dealing with alcohol.

The range of offence histories is illustrated in Table 4.1 below which sets out the number of prior convictions of each of the deceased.

TABLE 4.1: NUMBER OF PRIOR CONVICTIONS OF DECEASED

No. of prior	*No. of*	*Name of deceased*

convictions	*Deceased*	
0-9	4	Dougal (2), Jones (9), Vicenti (9), Pat (7)
10-19	4	Dooler (10), Garlett (12), Cameron (14), Chatunalgi (12)
20-29	6	Ugle (24), Farmer (27), Robert Walker (25), Green (20), Waigana (26), McGrath (26)
30-39	5	Blankett (31), Anderson (30), Njanji (3 1), Wells (37), Bates (32)
40-49	3	Roy Walker (45), Barnes (48), Harris (43)
50-69	1	Charles Michael (63)
70-99	3	SCGH case (90), Wodulan (76), Brown (72)
100-149	3	Polak (120), Samson (128), Walley (145), Wongi (107)
150 +	3	Steven Michael (187), Morrison (275)
TOTAL	32	

Table 4.2 shows the most serious offence for which the deceased was convicted during his of her life. It should be kept in mind that the most serious offence of the deceased is not indicative of the offence histories and patterns of many of the deceased as will be illustrated in the discussion below on the individual offence histories.

TABLE 4.2: MOST SERIOUS OFFENCE OF THE DECEASED IN LIFE

Offence	*No. of Deceased*	*Name of Deceased*
Good Order Offence	2	Dooler, Jones
Drink Driving	2	Garlett, Chatunalgi
Theft offences	5	Dougal, Roy Walker, Vicenti, Steven Michael, Cameron
Assault	14	Blankett, Barnes, Anderson, Wodulan, Pat, Polak, Njanji, Wells, Bates, Waigana, Brown, McGrath, Harris, Samson
Robbery	2	Morrison, Wongi
Manslaughter	1	Ugle
Sex Offence	6	Farmer, Robert Walker, Charles Michael, Green, Walley, SCGH case
TOTAL		32

Four of the five persons who had committed up to ten offences were aged up to 21 years (Jones, Vicenti, Pat, Dooler). All five were under 25 years of age. The most serious offences which had been committed by these five deceased were behavioural (Dooler, Jones), theft (Vicenti, Dougal) and Pat had

been convicted of assaulting a police officer. The other common offences committed by these five were offences involving alcohol such as drunkenness, disorderly conduct, re-enter licensed premises, driving under the influence and petty dishonesty offences. Four of the five were in police custody prior to, or at the time of their death. Vicenti was the only one in prison custody.

Garlett, Cameron and Chatunalgi were each convicted of between twelve to fourteen offences. They were aged between 23 and 27 years when they died. Again the common thread in their offence patterns was alcohol and the petty nature of their offences. Garlett's early convictions were for disorderly conduct and he later received four convictions for driving under the influence with highblood alcohol levels. Cameron and Chatunalgi both had committed a variety of petty offences involving dishonesty offences (break, enter and steal, unauthorised use of motor vehicle), drinking offences (drunkenness, reserve di-inking) and driving offences (No MDL, DUI). Cameron had also twice been convicted of assault.

In the category of persons with 20-29 convictions a variety of offence patterns are represented by the deceased. Farmer and Robert Walker as discussed earlier were both convicted of sexual offences as juveniles which led to lengthy periods of incarceration and institutionalisation. They both spent much of their adult life in prison and when not in prison had a history of problematic alcohol and drug usage. The offences committed in adult life generally involved dishonesty offences and offences against other persons. Both were serving sentences for sexual offences at the time of their death.

The offence histories of Waigana and Ugle, who had 24 and 26 prior convictions respectively, are again illustrative of problematic alcohol usage leading to involvement with the criminal justice system. Both had numerous convictions for drunkenness, disorderly conduct and assaults associated with intoxication. Ugle however was convicted on two counts of manslaughter when he killed two pedestrians whilst driving under the influence of alcohol.

Green had a history of committing dishonesty offences when young. As an adult his primary involvement with the criminal justice system was as a result of driving offences such as DUI and no MDL. However Green was convicted of a sexual offence in 1984 for which he received a five and a half year sentence of imprisonment.

McGrath was only 20 years old when he died and had been convicted of 26 offences. The offences were all of a petty nature and included dishonesty offences, disorderly conduct, damage, DUI and no MDL.

Five of the deceased committed between 30 and 39 offences (Bates, Wells, Anderson, Njanji and Blankett). They were aged from 26 years to 55 years when they died. The most serious offence committed by each of the deceased was for assault, some of the assaults were aggravated assaults upon police officers and women, mostly in domestic disputes. Most of the offences committed by each of the deceased were of a relatively minor nature and the offences usually involved alcohol. The offences which most frequently appear in the adult criminal histories of each of the deceased are drink related offences such as drunkenness, disorderly conduct, DUI and street drinking. The number of assault offences is minor in comparison to the balance of the offence histories with Bates being convicted of four assaults, Wells of two, Anderson of two, Njanji of four and Blankett of two. It is clear from Blankett's offence history that many of her offences arose because of lack of cooperation with the police with numerous convictions for resist arrest and refuse/false name and address. Bates was the only one in this group with any extensive involvement with the criminal justice system as a juvenile. He was placed in juvenile institutions in Perth and Esperance for five years from the age of thirteen years.

Roy Walker, Barnes and Harris each committed between 40 and 44 offences during their lives. Roy Walker was aged 62 years, Harris was 29 years old and Barnes was 27 years old at the time of death. For each of them, their extensive involvement with the criminal justice system was a result of problematic alcohol use. They were all from the Kalgoorlie area. Walker and Barnes were both regularly convicted for drunkenness, with drunkenness offences comprising 34 of Walker's 45 offences and 40 of Barnes. Harris was convicted of a variety of offences during his life, all of a petty nature, including dishonesty offences, damage, drink related offences, unauthorised use of a motor vehicle and disorderly conduct. Each of the deceased spent considerable amounts of time in police and prison custody during their lives.

Walker and Barnes often served periods in police lockups for fine default arising out of their drunkenness charges.

Charles Michael, the Sir Charles Gairdner Hospital case, Wodulan and Brown were convicted of between 63 and 90 offences. Their ages ranged from 25 to 42 years. Charles Michael and the Sir Charles Gairdner Hospital case, had juvenile criminal histories which mostly involved petty dishonesty offences such as theft and unauthorised use of a motor vehicle. In adult life the Sir Charles Gairdner Hospital case was convicted of drunkenness 51 times and, on numerous occasions, for disorderly conduct, assault and other minor offences. Charles Michael's involvement in the criminal justice system, whilst also lengthy, was mostly for dishonesty offences, unauthorised use of a motor vehicle and driving offences. Both the Sir Charles Gairdner Hospital case and Charles Michael, until convicted of the offences for which they were serving sentences of imprisonment at the time of their death, had offence histories which although very extensive and involving numerous terms of imprisonment were for offences of a relatively minor nature. However both Michael and the Sir Charles Gairdner Hospital case were serving sentences for sexual offences at the time of their death. These offences were quite uncharacteristic of the rest of their criminal history.

Wodulan and Brown were both regarded as chronic alcoholics by the medical professionals who reviewed their histories. Their involvement with the criminal justice system was extensive. Brown's offences were all directly related to alcohol consumption with many convictions for drunkenness, disorderly conduct, driving under the influence, no motor driver's licence, re-enter licensed premises and assaults. The majority of assaults were committed upon his de facto wife and on several occasions resulted in severe injuries. These assaults resulted in Brown serving several sentences of imprisonment.

Wodulan's offence history was lengthy and varied. The majority of offences were also dishonesty offences of a petty nature (break and enter, unauthorised use of a motor vehicle, interfere with motor vehicle), driving offences (driving under the influence, no motor driver's licence) and other offences arising directly out of his drinking behaviour (drunkenness, disorderly conduct, street drinking and refuse to leave licensed premises).

Polak, Samson, Walley and Wongi had offence records of 100 to 145 offences. Polak, Walley and Wongi were involved in the criminal justice system from a early age and all were placed in juvenile institutions for lengthy periods of time during their youth. All four had problems with alcohol which was involved in most of their offences. Walley was the only one of the four in prison custody at the time of his death. He had been imprisoned for break and enter. Polak and Samson were both in police custody for for drink related offences, street drinking and drunkenness respectively. Wongi had been arrested for an attempted break and enter.

The offences which led to their final period of imprisonment are perhaps indicative of their offence histories. Walley had an extensive juvenile record mostly for dishonesty offences. As an adult, the majority of offences he committed were related to driving (driving under the influence, no motor driver's licence, false plates, unlicensed vehicle) and petty dishonesty offences.

Polak's offences as an adult were generally alcohol related and were mostly dishonesty offences, offences related to drinking such as drunkenness, disorderly conduct, re-enter licensed premises and offences arising out of conflict with the police, such as insulting words (police), resist arrest, and aggravated assault (police).

Samson also had an extensive record of offences which were all alcohol related. Throughout his adult life he was regularly convicted of drunkenness, street/reserve drinking, re-enter licensed premises, driving under the influence and no motor driver's licence, and assaults committed whilst intoxicated.

As mentioned above, Wongi had an extensive juvenile history involving dishonesty offences and unauthorised use of a motor vehicle. He was institutionalised as a child and as an adult tended to be convicted of similar offences i.e. dishonesty offences and unauthorised use of a motor vehicle. He also had numerous convictions for alcohol related offences such as drunkenness and street drinking.

Steven Michael had 187 prior convictions at the time of his death and Benjamin Morrison had approximately 275 convictions. Although both criminal records are extremely lengthy, with many convictions for petty offences, there were considerable differences in their involvement in the criminal justice system.

Steven Michael, despite the size of his criminal record, was relatively young at the time of his death. He was 29 years old. He was only nine years old when his first criminal charge was recorded. He had an extensive juvenile record appearing in children's courts on 33 occasions to answer some 89 separate charges. Thirty-seven of hisjuvenile offences were for stealing and 40 related to unauthorised use of a motor vehicle or no motor driver's licence. He served periods in juvenile detention centres and was largely institutionalised by the time he reached adulthood. He trod a similar path in adult life being convicted of 60 dishonesty offences (break and enter, break, enter and steal, stealing, stealing and receiving), 51 times for unauthorised use of motor vehicle, many driving offences (no motor driver's licence, driving under the influence, careless and unauthorised driving) assault offences and damage charges. It is no surprise that Steven Michael spent much of his adult life in prison. Steven died in prison custody.

Benjamin Morrison was 55 years old when he died. He was a chronic alcoholic. The majority of his offences related to alcohol with 121 convictions specifically related to drinking (drunkenness, street/park drinking, receiving liquor, re-enter licensed premises). He was convicted for disorderly conduct 30 times and for a variety of other minor offences. The more serious offences of which he was convicted were robbery, aggravated assault and assault occasioning bodily harm. He was regularly in police and prison custody and, at the time of his death, was in police custody having been arrested for disorderly conduct.

4.1.1.2 Offences for which Individuals detained at time of Death

Prison Custody

The thirteen persons in prison custody had been convicted of a total of 38 offences.

One person had been convicted for ten offences, one person had been convicted of eight offences, two persons had been convicted of four offences, two of three offences, three of two offences and four of one offence.

One prisoner was remanded in custody with four charges outstanding.

The 38 offences for which people were imprisoned were:

TABLE 4.3: OFFENCES OF 13 DECEASED DETAINED IN PRISON CUSTODY

Offence	*No. of Offences*	*Most Serious Offence*
Sexual Offence	*5*	*5*
U.U.M.V.	6	2
Break and Enter	4	1
Stealing or B. E. & S.	4	1
Assault (serious)	3	-
D.U.I.	4	3
No M.D.L.	6	-

Breach of Recognisance	1	-
Manslaughter	2	1
False Name	1	-
Escape Legal Custody	1	
Deprivation of Liberty	1	-
TOTAL	38	13

The most serious offences for which people were imprisoned were sexual offence (5), DUI/No MDL (3), UUMV (2), B&E with Intent (1), B&E & Steal (1), Manslaughter (1).

Two people were imprisoned for DUI and No MDL only. They had previously committed alcohol related traffic offences. One person was imprisoned for DUI only. He had been fined $822 but was imprisoned when he defaulted. The fourth person convicted of DUI and sentenced to imprisonment was involved in a motor vehicle accident in which two people were killed. He was also convicted of two charges of manslaughter.

The people in prison custody who had been convicted and sentenced to imprisonment for minor offences (e.g. breach of recognisance, false name) were also serving sentences for other more serious offences.

The four people in prison custody for the 14 theft offences, i.e. B&E, Stealing and UUMV, had previously been convicted of similar types of offences. Only one of the four had been convicted of only one such offence at the time of his last detention.

Given the range of offences for which people were in prison custody, it is not surprising that the sentences ranged from 41 days to 6 years. The five people convicted of rape were all serving sentences of 4 years or more. Those serving sentences for DUI were serving periods from 41 days (the person being in default of fines of $822), to 6 months, (the person having previously 3 DUI offences with blood alcohol levels of .23%,.223% and .301 %). The breakdown of global sentences to be served by the 13 people in prison custody is as follows:

TABLE 4.4: LENGTH OF SENTENCES OF 13 DECEASED DETAINED IN PRISON CUSTODY

Length of Sentence	No. of Deceased
Unsentenced(a)	2
0 - less than 8 days	Nil
8 days to less than 1 mth	Nil
1 month to less than 2 mths	1
2 months to less than 3 mths	Nil
3 mths to less than 6 mths	1
6 mths to less than 12 mths	1
12 mths to less than 2 yrs	2
2 yrs to less than 3 yrs	*Nil*
3 yrs to less than 5 yrs	3
5 yrs plus	3
	13

(a) One prisoner had been convicted but had not been sentenced and one prisoner had not been convicted but was remanded in custody

Police Custody

Nineteen persons were or had been in police custody at the time of their death. The offences for which they were detained were as follows:

TABLE 4.5: TYPE OF OFFENCE FOR WHICH PERSONS IN POLICE CUSTODY WERE DETAINED

Offence	*No. of Offences*	*Most Serious Offence*
Drunkenness	9	9
Stealing	5	2
Disorderly Conduct	4	2
DUI	2	2
No MDL	1	-
Breach CSO	1	1
Street Drinking	1	1
Assault Police	1	1
Damage	1	1
TOTAL	25	19

Only three persons were arrested for more than one offence. one person was arrested for four stealing offences and one disorderly conduct, and one person was arrested for assault police and disorderly conduct, and one person was arrested for DUI and No MDL. The other 16 persons in police custody had been charged with one offence only, nine for drunkenness, two for disorderly conduct, one for breach of the Liquor Licensing Act. Only two persons were arrested on warrants; one arrest on warrant was for fine default having been previously convicted of DUI. The other was arrested on warrant for breach of a Community Service Order.

4.1.1.3 Offences for which Aboriginal People are Detained in Western Australia

In the sections above I have discussed the offence histories of the individuals who died in custody and the offences for which they were detained at the time of their death. In this section I examine the offences for which Aboriginal and nonAboriginal people are detained in Western Australia in police and prison custody, and compare this information with the national and interstate picture.
The information presented in this section is quite detailed and may not be of interest to all readers. The following summary provides an outline of the information in the section.

Summary

- The Royal Commission August 1988 survey shows that in Western Australia public drunkenness accounted for 29% of all detentions in police custody during the survey period.

- During August 1988 'other good order offences' accounted for 20% of all detentions in police custody. This was almost double the national level of detention for this offence.

- In Western Australia during August 1988 almost half (48%) of Aboriginal people were placed in police cells for drunkenness compared to 7.7% of non-Aboriginal people. Drunkenness and other good order offences accounted for 70% of all Aboriginal offences leading to police custody.

- In Kalgoorlie the proportion of Aboriginal people arrested for the offence of drunkenness has decreased from 66% in the 1987 survey period to 5% in the 1990 survey period (shortly before the offence of drunkenness was decriminalised).

- In Western Australia during the August 1988 survey period 78% of Aboriginal female custodies were for drunkenness or other good order offences, compared with 68% of Aboriginal male custodies. 97% of all female detentions for drunkenness were Aboriginal women.

- Aboriginal people are over-represented in Western Australian prisons for the offences of assaults, unauthorised use of motor vehicle, other property offences, offences against justice and good order offences.

- A greater proportion of Aboriginal women are imprisoned for drunkenness and other good order offences than all other male and female prisoners.

- Following a dramatic decrease in the number of Aboriginal persons imprisoned for drunkenness and disorderly conduct from 1980 to 1986, imprisonment for drunkenness has continued to decrease whereas there has been an increase in the number of Aboriginal people imprisoned for disorderly conduct. This needs to be closely monitored, in view of the recent decriminalisation of drunkenness.

- Western Australia has a greater proportion of Aboriginals imprisoned for offences against the person and for traffic offences than the national Aboriginal proportion for these offences.

Police Custody

If anything can be inferred from a sample of only 19, the offences committed by the 19 persons detained in police custody prior to or at the time of their death, suggest that the offences for which Aboriginal people are detained in police custody are of a relatively minor nature and that they have usually committed only one offence.

The material available from which one can draw a more accurate picture of the offence patterns of persons detained in police custody is fairly limited. The Royal Commission has carried out studies which help to provide more information about police custody and the offences for which people are detained.

In August 1988 the Criminology Research Unit of the Royal Commission with the cooperation of all Police Departments in Australia conducted a survey of all persons who were taken into police custody during the month of August 1988 and lodged in the police cells anywhere in Australia. (McDonald,1988) Note that not all persons *arrested* were included in the survey. Additional data collected in Western Australia during the survey period, but not reported upon, was also made available by the Criminology Research Unit to my office of the Royal Commission in Western Australia.

The Criminology Research Unit also assisted my office by carrying out an analysis on arrest and bail data collected from police records of Kalgoorlie Police Station for two periods, one in October/November 1987, the other in March/April 1990 (Biles,1990; McDonald,1990).

The Kalgoorlie studies provide an example of marked changes to the arrest, custody and bail patterns in one country town in Western Australia, particularly in relation to arrests for the offence of drunkenness.

The following tables set out details of what were reported to be the most serious offence that led to a person being in police custody during the August 1988 survey period. Table 4.6 sets out the offences for which Aboriginal and nonAboriginal persons were detained in Western Australia and Table 4.7 sets out the national data.

TABLE 4.6: NATIONAL POLICE CUSTODY SURVEY AUGUST 1988
MOST SERIOUS OFFENCES BY ABORIGINALITY (WA)

	Aboriginal				Non-Aboriginal				
Offence	M	F	Total	%	M	F	Total	%	Total (a)
Homicide	3	0	3	.14	3	1	4	.2	7
Assault	107	30	137	6.19	98	6	104	5.2	241
Sex Offences	9	2	11	.5	22	0	22	1.1	33
Oth Ag Person	1	0	1	.05	-	-	-	-	1
Robbery	4	0	4	.18	8	0	8	.4	12
B&E	83	13	96	4.34	115	6	121	6.05	217
Fraud	6	3	9	.41	49	17	66	3.3	76
MV Theft	74	12	96	3.89	68	4	72	3.6	159
Oth B & E, F, T	81	26	107	4.84	144	39	183	9.15	291
Property Damage	31	11	42	1.9	69	9	78	3.9	120
Justice Proc	47	22	69	3.12	135	19	154	7.7	223
Drunk	798	268	1066	48.19	147	7	154	7.7	1227
Oth Good Order	311	180	491	22.2	294	48	342	17.09	842
Posses Drugs	5	1	6	.27	91	22	113	5.65	119
Other Drugs	1	0	1	.05	38	11	49	2.45	50
Drink Driving	52	4	56	2.53	355	54	409	20.44	469
Other Traffic	23	4	27	1.22	112	2	114	5.7	141
Other Offences	-	-	-	-	8	0	8	.4	8
TOTAL	1636	576	2212	100	1756	245	2001	100	4236

(a) The total includes 23 persons for whom Aboriginality is unknown or not stated therefore may not equal the total of Aboriginal and non-Aboriginal persons listed for each offence.

Table 4.6 shows that in Western Australia public drunkenness was the most frequently reported offence for all persons accounting for 29% of the cases. It was followed by other good order offences at 20%. These two categories were followed in frequency by an aggregate of the offences of Break and Enter, Fraud, Motor Vehicle theft and other theft offences (18%), drink driving (I I%), assault (6%) and justice procedures (5%).

TABLE 4.7: NATIONAL POLICE CUSTODY SURVEY (AUG 1988)
MOST SERIOUS OFFENCE LEADING To DETENTION IN POLICE CUSTODY (AUSTRALIA)

Offence	Aboriginal		Non-Aboriginal		Total	
	No.	%	*No.*	%	*No.*	%
Homicide	17	0.4	139	1.1	156	0.9
Assault	393	8.5	919	7.0	1312	7.4
Sexual Offences	38	0.8	201	1.5	239	1.3
0th Ag Person	1	-	34	0.3	35	0.2
Robbery	18	0.4	201	1.5	219	1.2
Bk & Et/Fd & T	668	14.4	2896	22.0	3564	20.0
Prop Damage	91	2.0	296	2.0	387	2.2
Justice Proc	198	4.3	705	5.4	903	5.1
Drunkenness	2153	46.4	3081	23.4	5234	29.4
Oth Gd Ord *Off*	804	17.3	1180	9.0	1984	11.2
Drug Offences	25	0.5	1024	7.8	1049	5.9
Drink Driving	170	3.7	1650	12.6	1820	10.2
Oth Traffic Off	56	1.2	733	5.6	789	4.4
Oth Offences	7	0.1	84	0.6	91	0.5
TOTAL	4639	100	13143	100	17782	99

The major difference that existed in the most serious offence reported in Western Australia compared to the national picture was that good order offences other than public drunkenness were more common. In Western Australia nearly 20% of all

detentions were for 'other good order offences' whereas nationally 1 1.2% were in this category.

The tables also allow us to compare the offences for which Aboriginal people were detained in Western Australia with those of non-Aboriginal people. Aboriginal people were markedly over-represented in the category of public drunkenness. They were also over-represented, although to a lesser extent, in the categories of other good order offences, assault and motor vehicle theft. Compared with its distribution of offences of non-Aboriginals they are underrepresented in the categories of homicide, sexual offences, robbery, break and enter, fraud, other break and enter, fraud and theft offences, property offences, justice procedures, drug offences, drink driving and other traffic offences.

In Western Australia almost half (48%) of the Aboriginal people placed in the cells for an offence were in custody for drunkenness whereas only 7.7% of nonAboriginal people were detained for drunkenness. The national figures provide an interesting contrast with a similar proportion of Aboriginal people being detained for drunkenness (46%) but with a much higher proportion of nonAboriginal people also being detained for this offence (23.4%).

In Western Australia a further 22% of Aboriginal people were in custody for other good order offences, many of which would be alcohol related. The corresponding non-Aboriginal data for other good order offences is 17%. Nationally 17% of Aboriginal people were detained for other good order offences but only 9% of non-Aboriginal people were detained for this offence. This suggests that in Western Australia both Aboriginal and non-Aboriginal people are detained for other good order offences at a greater rate than they are nationally.

The two offence categories of drunkenness and other good order offences account for 70% of all Aboriginal offences leading to police custody in Western Australia. They account for only 25% of non-Aboriginal offences, a little more than a third of the Aboriginal proportion. Nationally these two offence categories accounted for 64% of all Aboriginal offences whereas the corresponding nonAboriginal data was 32%, half the Aboriginal proportion.

The information provided by the August 1988 survey supports the hypothesis that Aboriginal persons to a large extent are detained in police custody for very minor offences.

There was also an interesting difference in the Western Australian data relating to the offence of drink driving. In Western Australia 20% of the non-Aboriginal persons in custody were detained for drink driving offences whereas only 2.5% of Aboriginal persons were detained for this offence. Nationally 13% of the non-Aboriginal people were detained for this offence and 4% of Aboriginal people. This suggests that the non-Aboriginal level of over-representation for the offence of drink driving is significantly higher in Western Australia than the nonAboriginal level nationally.

Kalgoorlie

The Kalgoorlie studies provide an interesting example of changing arrest, custody and bail patterns in one region in Western Australia, and in particular the changes in the offences for which people are detained. A comparison between the 1987 and 1990 period shows that the proportion of arrests of Aboriginal people had fallen substantially from 61 % of all arrests in the 1987 period to 46% in the 1990 study period. The reduction is explained almost entirely by the changes in the number of Aboriginal people arrested for drunkenness. In the 1987 study period 66% of Aboriginal persons were arrested for drunkenness in contrast to 9% of non-Aboriginal people. Whereas in the 1990 study period 5% of Aboriginal persons were arrested for drunkenness and 3% of non-Aboriginal people were arrested for the offence. In the 1987 period arrests of Aboriginal persons for drunkenness accounted for 40% of all arrests whereas in the 1990 only 2% of all arrests were of Aboriginal persons for drunkenness.

The following taken from Criminology Research Unit Research Paper No. 18 (Table 4 page 8) shows the most serious offence for which Aboriginal and nonAboriginal people were arrested during the 1990 Kalgoorlie study period.

TABLE 4.8: MOST SERIOUS OFFENCE FOR WHICH ABORIGINAL AND NON-ABORIGINAL PERSONS ARRESTED IN KALGOORLIE 1.3.1990 - 14.4.1990

Offence	Aboriginal		Non-Aboriginal		Total	
	No.	%	No.	%	No.	%
Assault	13	8	10	5	23	7
Sexual Offences	5	3	3	2	8	2
Break and Enter	15	10	10	5	25	7
Fraud	1	1	2	1	3	1
M/V Theft	17	11	30	5	3	15
Other Theft	12	8	11	6	23	7
Property Damage	10	6	4	2	14	4
Justice Procedures	6	4	5	3	11	3
Drunkenness	8	5	5	3	13	4
Other good order	43	28	41	22	84	25
Drug offences	2	1	10	5	12	4
Drink driving	20	13	59	32	79	23
Other traffic	3	2	17	9	20	6
Other offences	-	-	2	1	2	1
Not stated	15	-	13	-	28	-
TOTAL	178	100	197	100	367	100

Note: Percentages exclude cases where relevant data are not stated.

As noted above, the table shows that only 5% of Aboriginal persons and 3% of non-Aboriginal persons were arrested for drunkenness.

Substantially higher proportions of Aboriginal people compared with nonAboriginal people were arrested for an aggregate of the offences of break and enter, fraud, motor vehicle theft and other theft accounting for 30% of offences for which Aboriginal people were arrested and only 15% of the offences for which non-Aboriginal people were arrested.

Aboriginal people were also over-represented in categories of 'other good order', accounting for 28% of Aboriginal offences, the corresponding non-Aboriginal rate being 22%. The Aboriginal proportion for assault offences was 8%, the non-Aboriginal proportion being 5%. The Aboriginal proportion for property damage offences was 6%, the non-Aboriginal proportion being 2%. Higher proportions of non-Aboriginal people were arrested for drink driving (32%), as compared to the Aboriginal proportion of 13%; the non-Aboriginal rate for other traffic offences was 9% compared to the Aboriginal proportion of 2%, and drug offences accounted for 5% of offences compared to the Aboriginal proportion of I %.

These figures compared to the West Australian figures in the August 1988 survey show that in Kalgoorlie at least there was a marked reduction in the number of Aboriginal persons being detained for drunkenness. However the proportion of Aboriginal people detained for other good order offences (28%) in Kalgoorlie was higher than the proportion in the August 1988 survey. In Western Australia, Aboriginal

custodies for this offence were 22% and nationally, they accounted for 17% of offences committed. The corresponding non-Aboriginal data (22%) in the 1990 Kalgoorlie study is also higher than the August 1988 figures for Western Australia (17%) and Australia (90%).

Another significant difference is that in the August 1988 survey Aboriginal people were under-represented for the aggregate offences of break and enter, fraud, motor vehicle theft and other theft offences. In Western Australia, the Aboriginal proportion for these offences was 13% whereas the non-Aboriginal proportion was 22% and nationally the Aboriginal proportion was 14% with the non-Aboriginal proportion at 22%. In the 1990 survey period in Kalgoorlie these offences accounted for 30% of offences for which Aboriginal persons were detained, double the non-Aboriginal proportion (15%).

It is of interest to note that Aboriginal people in Kalgoorlie also appear to be 'catching up' with the number of non-Aboriginal people arrested for drinking driving. In the August 1988 survey in Western Australia 20.5% of nonAboriginal people were detained for this offence whereas only 2.5% of Aboriginal people were. In Kalgoorlie in the 1990 study period although a significantly larger proportion of non-Aboriginal people were detained (32%) a significantly increased proportion of Aboriginal people were also arrested for this offence (I 3 %).

It is also interesting to note that in the 1990 study period in Kalgoorlie, 60% of the people were arrested for one offence only, there being no significant difference in this respect between Aboriginal and non-Aboriginal people.

Offences - Gender

The national and Western Australian data collected during the August 1988 survey showed significant differences in the proportion of offences for which males and females were detained. Nationally males had higher than expected proportions for most offences and females had higher than expected proportions for the offences of drunkenness and other good order offences only. More than seventy-five percent of the female drunkenness cases (78%) were Aboriginal.

In Western Australia higher proportions of females, compared with males were placed in the cells for good order offences, including drunkenness. 61% of females were placed in the cells for these offences whereas 46% of males were detained for these offences. This pattern was particularly marked among Aboriginal people with 78% of the Aboriginal female custodies being for drunkenness or other good order offences, compared with 68% of the Aboriginal male cases. In fact almost all the female drunkenness cases were among Aboriginal women (97%) and more than seventy-five percent of the female other good order offences were also Aboriginal (79%).

Prison Custody

The statistical information provided in the Department of Corrective Services Annual Report is of great assistance when examining the offences for which Aboriginal and non-Aboriginal people are imprisoned in Western Australia. The Department provides information on the major offences of each sentenced prisoner received during each financial year. The Department also provides the Western Australian data collected during the National Prison Census on 30 June each year. In presenting the information on offences for which people are detained in prison custody in Western Australia I have drawn on both sets of data. The receival data provides a more accurate picture of the offences for which prisoners are detained in Western Australian prisons for each year as it shows the offences of all sentenced prisoners received whereas the census data presents a picture of one night only in Western Australian Corrective Services institutions. The census data may under-represent the numbers of prisoners received for offences which attract relatively short sentences e.g. good order offences but receival data under-represents the serious offences for which people are actually in prison. However to compare the

situation in Western Australia with the other states it is necessary to rely on the census data as statistical data on prisoner receivals is not available from all States.

Table 4.9 (Major Offence of Each Sentenced Prisoner Received in Western Australia year ending 30 June 1989, Department of Corrective Services Annual Report 1989) shows that the offences for which Aboriginal people tend to be over-represented are serious and minor assaults, unauthorised use of motor vehicle, other property offences (arson, damage and other), offences against justice (perjury, escape legal custody, hinder police, breaches, miscellaneous), drunk, disorderly conduct, other good order offences, and Licensing Act offences. Aboriginal people are under-represented in the categories of homicide, sexual offences, robbery, fraud and drug offences.

TABLE 4.9: MAJOR OFFENCE OF EACH SENTENCED PRISONER RECEIVED IN WESTERN AUSTRALIA YEAR ENDING 30 JUNE 1989

Nature of Offence	*Male*				*Female*				*Totals*	
	Abl		*Other*		*Abl*		*Other*		*Abl*	*Other*
	No	*%*	*No*	*%*	*No*	*%*	*No*	*%*	*No*	*%*
Homicide	*5*	0.29	16	0.90	0	0.00	0	0.00	*5*	16
Sexual Offences	37	2.19	70	3.96	0	0.00	0	0.00	37	70
Assault:										
Serious	118	7.03	56	3.17	18	5.11	0	0.00	136	56
Minor	178	10.58	80	4.52	25	7.10	2	1.16	203	82
Robbery	11	0.65	40	2.26	1	0.28	4	2.3	12	44
Oth Ag Person	10	0.59	8	0.46	1	0.28	0	0.00	11	8
UUMV	94	*5.58*	42	2.37	20	*5.68*	3	1.72	*114*	*45*
Oth Theft	263	15.63	263	14.87	41	11.65	17	9.77	304	280
Fraud	11	0.65	80	4.52	5	1.42	33	18.96	16	113
Oth Off Ag Prop	50	2.97	38	2.15	26	7.39	5	2.87	76	43
Off Ag Justice	225	13.39	212	11.99	77	21.87	35	20.11	302	247
Drunk	31	1.85	3	0.18	16	4.55	0	0.00	47	3
Disorderly	116	6.89	33	1.87	44	12.5	4	2.3	*160*	39
Oth Gd Ord Offences	59	3.5	25	1.42	9	2.56	2	1.16	68	27
Drug Off	12	0.71	183	10.35	4	1.14	23	13.22	16	206
Lic Act	12	0.71	1	0.06	9	2.56	1	0.58	21	2
Traff Alc Related	214	12.71	228	12.90	27	7.67	*'16*	9.19	241	244

Oth Traff	210	12.48	336	19.0	22	6.25		11.49	232	356
Misc Off	27	1.6	54	3.05	7	1.99	209	5.17	33	63
TOTAL	1683	100%	1768	100%	352	100%	174	100%	2035	1942

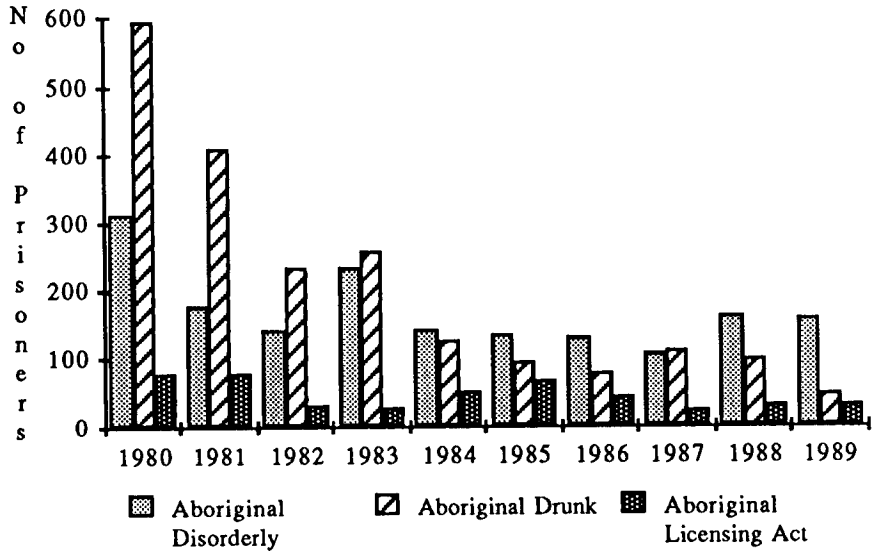
Offences and Gender

The receival statistics for 1988/1989 show that in Western Australia the offence patterns for Aboriginal and non-Aboriginal females are similar to the offence patterns of male prisoners.

However in several offence categories the female proportions are higher than the male proportions. It is marked in relation to offences against justice which account for 21 % of all female offences and only 3% of male offences, with both Aboriginal and non-Aboriginal female prisoners having high proportions (21 %) and disorderly conduct with the female proportion being 9% and the male being only 4%. The difference in the disorderly conduct rates is explained to some extent by the high level of Aboriginal women imprisoned for this offence (12%). Female prisoners also have higher proportions than males for fraud offences, especially non-Aboriginal female prisoners. Female prisoners also have slightly higher proportions for the offence categories of unauthorised use of motor vehicle, other offences against property (damage, arson, other) drunkenness, and Licensing Act offences. Males have higher proportions than females in all other offence categories (homicide, sexual offences, assaults, robbery, other offences against person, other theft offences, drug offences, traffic-alcohol related and other traffic).

FIGURE 4.1

MAJOR OFFENCES OF EACH SENTENCED PRISONER RECEIVED 1980 - 1989 OFFENCES INVOLVING ALCOHOL
DISORDERLY - DRUNK - LICENSING ACT



Because the criminal histories of the deceased persons investigated by the Royal Commission also showed a large number of offences in which alcohol was involved, I was interested in examining the imprisonment patterns for the offences of drunkenness, liquor licensing act offences (street/park drinking

etc) and disorderly conduct. Although disorderly conduct is not strictly alcohol related it may be presumed that many arrests for this offence would result from the intoxicated state of the offenders.

Figure 4.1 (Major Offences of Each Sentenced Prisoner Received 1980-1989 for Offences of Disorderly Conduct/Drunk/Licensing Act) based on data in Department of Corrective Services Annual Reports 1980-1989, shows the pattern of imprisonment rates for these offences over a ten year period. From 1980 to 1986 there was a dramatic decrease in the number of Aboriginal persons imprisoned for drunkenness and disorderly conduct. From 1986 to 1987 there was a slight increase in the level of Aboriginal imprisonment for drunkenness with a subsequent decrease from 1987 until 1989. Drunkenness has since been decriminalised as is discussed elsewhere in the Report. Figure 4.1, also shows an increase in the number of Aboriginal people imprisoned for disorderly conduct from 1987 to 1989. This increase needs to be closely monitored by the Government because of the potential for further increases with the decriminalisation of drunkenness (see discussion elsewhere in the Report).

The level of imprisonment of Aboriginal persons for Liquor Licensing Act offences is significantly lower than for the offences of drunkenness and disorderly conduct and has gradually decreased over the ten year period. The level of imprisonment of non-Aboriginal offenders in each of these offence categories is significantly lower than the level of Aboriginal offenders. The numbers of non-Aboriginal imprisonments for Liquor Licensing Act offences are minimal (3 in 1989).

National and Interstate Comparison

When comparing the offences for which Aboriginal people are imprisoned in Western Australia with the other States in Australia I have used the data from the National Prison Census 30.6.89 found in Walker. Walker's figures include the number of prisoners who have not been convicted and sentenced and measure the numbers on one night only in contrast to the data used in the previous section which examined the offence rates of all sentenced prisoners received in Western Australian prisons. Tables 4.10 and 4.11 show the Number and Percentages of Aboriginal Prisoners by Most Serious Offence/Charge and Jurisdiction. Table 4.12 gives the national picture with number and percentages of prisoners by most serious offence/charge and Aboriginality.

Western Australian Aborigines are over-represented in the offence category of offences against the person (assault, sex offences, other against the person) with 35% of Aboriginal offenders imprisoned for this offence. Western Australia (together with the Northern Territory) has the second highest proportion of Aboriginal prisoners in this category, following South Australia with 37%, the national average for all Aboriginal prisoners being 33% and non-Aboriginal prisoners being 18%. Western Australia also has a higher proportion of Aboriginal offenders imprisoned for traffic offences with an imprisonment rate of 9% for this offence category. The Western Australian rate is higher than the Aboriginal rate in other States except Tasmania in which three of the nine Aboriginal prisoners are detained for this offence. The national Aboriginal and non-Aboriginal rates am both 6%.

TABLE 4.10: NUMBER OF ABORIGINAL PRISONERS BY MOST SERIOUS OFFENCE/CHARGE AND JURISDICTION

(NATIONAL PRISON CENSUS 30.6.1989)

Offence	*NSW No.*	*VIC No.*	*QLD No.*	*WA No.*	*SA No.*	*TAS No.*	*NT No.*	*Total No.*
Homicide	26	9	59	34	8	1	29	166
Other Violence	123	24	137	196	38	0	84	602
Robbery/ Extortion	43	4	35	18	11	1	**5**	117

Property Off	161	31	130	184	30	2	76	614
Justice/ Security	22	8	10	32	10	2	29	113
Other Good Order	4	3	11	25	4	0	7	54
Possess Drugs	1	0	3	1	0	0	0	5
Traffic Drugs	13	2	3	2	0	0	0	20
Motoring Off.	22	4	21	50	1	3	12	113
Other	0	1	3	1	0	0	1	6
Unknown	0	0	0	15	0	0	0	15
TOTAL	415	86	412	558	102	9	243	1825

TABLE 4.11: PERCENTAGES OF ABORIGINAL PRISONERS BY MOST SERIOUS OFFENCE AND JURISDICTION (NATIONAL PRISON CENSUS 30.6.1989)

Offence	NSW %	VIC %	QLD %	WA %	SA %	TAS %	NT %	Total %
Homicide	6	10	14	6	8	11	12	9
Other Violence	30	28	33	35	37	-	35	33
Robbery/Extortion	10	5	8	3	11	11	2	6
Property Off	39	36	32	33	29	22	31	34
Justice/Security	*5*	9	2	6	10	22	12	6
Other Good Order	1	3	3	4	4		3	3
Possess Drugs	2		1	2				3
Traffic Drugs	3	2	1	4				1
Motoring Offences	*5*	*5*	5	9	1	33	5	6
Other	-	1	1	2	-	-	4	3
Unknown	-	-	-	3	-	-	-	8
TOTAL (a)	99.2	99	100	99.8	100	99	100.4	99.4

(a) Percentage totals do not all total 100 percent owing to rounding of figures.

TABLE 4.12: NUMBER & PERCENTAGES OF PRISONERS BY MOST SERIOUS OFFENCE/CHARGE AND ABORIGINALITY - AUSTRALIA

(NATIONAL PRISON CENSUS 30.6.1989)

Offence/Charge	*Abl*		*T.S.I*		*Other*		*Unknown*		*Total*	
	No.	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*
Homicide	161	8.8	1167	10.6	24	14.0	1352	10.4		
Assault	322	17.6	760	6.9	10	5.8	1092	8.4		
Sex Offences	256	14.0	1046	9.5	16	9.3	1318	10.2		
Other Against Person	24	1.3	119	1.1	0	-	143	1.1		
Robbery	114	6.2	1375	12.5	28	16.3	1517	11.7		
Extortion	3	.2	22	.2	0	-	25	0.2		
Break & Enter	352	19.3	1620	14.8	20	11.6	1992	15.4		
Fraud & Misappropriation	20	1.1	504	4.6	10	5.8	534	4.1		
Receiving	14	.8	226	2.1	1	0.6	241	1.9		
Other Theft	179	9.8	993	9.1	9	5.2	1181	9.1		
Property Damage	49	2.7	177	1.6	2	1.2	228	1.8		
Environmental	0	-	5	.05	0	-	5	.04		
Government Security	0	-	8	.1	0	-	8	.06		
Justice Procedures	113	6.2	587	5.6	11	6.4	711	5.5		
Prostitution	5	.3	32	.3	6	3.5	43	.3		
Offensive Behaviour	9	.5	22	.2	1	0.6	32	.3		
Possession of Weapon	8	.4	35	.3	0	-	43	.3		
Other Against Good Order	32	1.8	88	.8	3	1.7	123	.9		
Possession, Use of Drugs	5	.3	180	1.6	4	2.4	189	1.5		
Trafficking Drugs	18	1.0	947	8.6	8	4.7	973	7.5		
Manufacture Drugs	2	.1	133	1.2	0	-	135	1.0		
Driving Offences	65	3.6	270	2.5	8	4.7	343	2.6		
Administrative Offences	11	.6	152	1.4	1	0.6	164	1.3		
Other Traffic Offences	37	2.0	179	1.6	6	3.5	222	1.7		
Other Offences	6	.3	258	2.4	3	1.7	267	2.1		
-Unknown	20	1.1	62	.6	1	0.6	83	.6		
-TOTAL	1825	100	10967	100	172	100.2	12964	100		

4.1.2 ABORIGINALS IN POLICE AND PRISON CUSTODY

The over-representation of Aborigines in police and prison custody throughout Australia is widely recognised. The extent of over-representation of Aboriginals in Western Australia has been highlighted in the Criminology Research Unit Research Papers Nos 6 *'Aboriginal Imprisonment - A Statistical Analysis', 13 'National Police Custody Survey August 1988 - National Report', 17 'Methodological Issues in the Calculation of Over-representation and Exposure to Risk in custody'* and 19 *'Aborigines in Prisons and Non-Custodial Corrections'.*

In the sections below I examine the level of over-representation of Aborigines in police and prison custody in Western Australia. I will also look at the characteristics of Aboriginal and non-Aboriginal prisoners/detainees. In some instances this data will be contrasted to the National Prison Census data.

I have some hesitation about setting out extensive statistical information about Aboriginal imprisonment rates in police and prison custody in Western Australia in view of the number of times this information has been presented elsewhere and the number of times the disproportionate rate of Aboriginal imprisonment in this State has been condemned. I really wonder whether it all needs to be said again. However in this section I have attempted to bring the statistical information gathered by the Royal Commission together with statistical information supplied by the relevant custodial authorities.

As some readers may not feel inclined to read 30 pages of statistical data **I** have set out below a summary of the key points raised in this section.

4.1.2.1 Summary

- The Royal Commission August 1988 survey of people detained in police custody revealed that 54.2% of police custodies in Western Australia were Aboriginal persons. Aboriginal persons account for only 2.69% of the population in Western Australia. Nationally Aboriginal people accounted for 28.6% of all police custodies.

- Aboriginal people were over-represented in police custody, a rate 43 times that of non-Aboriginal people. Nationally the level of over-representation of Aboriginal people in police custody was 27.

- In Western Australia 86.9% of sentenced prisoners serving their sentences in police lockups during 1989 were Aboriginals.

- In Western Australia 72% of female custodies in police lockups were Aboriginal. (August 1988 survey)

- of all Aboriginal juveniles aged 0-14 years detained in police custody throughout Australia were held in police lockups in Western Australia. Only 16.5% of the national Aboriginal population aged 0-14 years live in Western Australia. (August 1988 survey)

- 51% of all sentenced prisoners received in Western Australian prisons during 1988/89 were Aboriginal.

- 43% of distinct persons received in Western Australian prisons during 1988/89 were Aboriginal.

- 35.6% of prisoners in Western Australia counted in the National Prison Census on 30 June 1989 were Aboriginal.

- Aboriginal people are over-represented in prison in Western Australia by a level ranging from 26.3 to 42.7 depending upon the data used. Whatever

figures are used this level of over-representation is outrageous and totally unacceptable.

- A survey of sentenced prisoners conducted during April 1989 showed the level of over-representation of Aboriginals in Western Australian prisons to be 61.6 (calculated on adult population figures). 'Me corresponding national level of over-representation was 23.4.

- The proportion of Aboriginal female prisoners received into Western Australian prisons has decreased from 84.4% of female prisoner receivals in 1980 to 65.9% of female prisoner receivals in 1989.

- 90% of Aboriginal prisoners received into prisons in Western Australia have less than three years secondary education in comparison to 71.2% of 'other' prisoners, according to a Prison Census on 30 June 1989.

- 62.8% of Aboriginal sentenced prisoners received are in prison for sentences of less than three months. 11.7% are in prison for less than eight days according to the Department of Corrective Services Annual Report 1988/89.

- The National Prison Census of 30 June 1989 indicates that Aboriginal prisoners in Western Australia are generally serving shorter sentences for most offences than non-Aboriginal prisoners.

- 44.4% of all sentenced prisoners received were received for default of fine only according to the Department of Corrective Services Annual Report 1988/89.

- 51.6% of these fine defaulters received were Aboriginal.

4.1.2.2 Sources of Data

As discussed in the section dealing with offences, the data available on custodial rates in prisons varies from State to State. In this section, when focusing on the custodial rates in Western Australian prisons, I will use the receivals data published by the Department of Corrective Services. Some comparison will be made between that data and the National Prison Census data.

When comparisons are made with the interstate and national imprisonment rates the National Prison Census data will be used.

The main source of information available to examine the detention rates of Aboriginals in police custody is the *National Police Custody Survey August 1988* conducted by the Royal Commission Criminology Research Unit. This is supplemented by the Royal Commission Kalgoorlie research papers. Both of these studies look at receivals into police custody over a limited period of time.

4.1.2.3 Police Custody

The National Police Custody Survey August 1988 - National Report provides a breakdown of the number of Aboriginal and non-Aboriginal people in police custody during August 1988 throughout Australia. As noted above, the survey examined the number of persons who were actually lodged in the cells in police stations during the survey period. It does not show the total number of arrests.

Some concerns have been expressed as to how representative the survey period was of the police custodial rates generally. For this reason the Western Australia Police Department was asked if there was any reason that the survey figures for Western Australia might be significantly different to any other month or year in the last five years. The Department's response was that the number of custodial incidents could be significantly different. They said: *'A comparison or presumption cannot be made on one statistic. Many factors could have a bearing on the number of police custodies in a particular month or year'* (Commissioner of Police, 1990:Ql.l). When asked to clarify the factors that could have a bearing on the number of police custodies the Department said:

1. *Seasonal Factors - August is a winter month and there is a tendency for people to stay indoors or to remain at home. The result may be a reduction in arrests particularly of public order offences.*

2 . Population increase.

3. Increased staffing levels at Police Stations.

4 . General increase in crime and lawlessness throughout the community.

5 . Increased unemployment. [Police Department, 1990:Q 1. 1.]

The Police Department appears to be suggesting that the number of police custodies in August 1988 may in fact under-represent the level of custodial incidents in Western Australia.

Perhaps optimistically I was of the view that the number of police custodies may have decreased in the last two years. This view was held for a number of reasons. The evidence of a number of officers in

charge from country police stations such as Broome, Geraldton, Wiluna and Kalgoorlie was that the number of custodies had significantly decreased over the last couple of years. The study of detentions at the Kalgoorlie Police Station for two periods, one in 1987 and the other in 1990, showing a significant reduction in the number of detentions provides support for this view. In addition, in Halls Creek, August is the month in which the race meeting is held, which results in an enormous increase in the number of people in town and consequently the number of detentions. Also, since the August 1988 survey bail legislation has been introduced which should have reduced the number of detentions. One would also hope that the level of awareness of the dangers of imprisonment would have resulted in significant reduction of custodial rates since the commencement of the Royal Commission.

The Department was also of the view that the proportions of Aboriginal/nonAboriginal detentions had probably remained unchanged and that the type of offences involved would have remained similar over the period.

Given the possible limitations of the survey discussed above the results of the survey nevertheless present a startling picture about detentions in police custody.

The total number of Aborigines in police custody during August 1988 throughout Australia was 8056. Aboriginals accounted for 28.6% of all people held in police custody, whereas Aboriginal people account for only 1.1% of Australian population 15 years and over. Aboriginals were placed in cells at a rate over 20 times Non-Aboriginals. However the picture painted by the survey of the number of Aboriginals in custody in Western Australia was particularly grim.

Tables 4.13 and 4.14 below, taken from the Criminology Research Unit Research Paper No. 13, Table 1 page 5, shows that Western Australia had third highest number of Aboriginal and Non-Aboriginal custodies (5416) following Queensland (6143) and NSW (5582).

Western Australia was the State with the largest number of Aboriginal people held in police custody (2921) followed by Queensland (1740), and Northern Territory (1659), dropping dramatically to New South Wales (774).

In contrast, the number of non-Aboriginal custodies in Western Australia was fifth highest at (2464), following Victoria (4677), NSW (4697), Queensland (4295) and South Australia (2494).

TABLE 4.13: STATE AND ABORIGINALITY

	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Aust
Abl	774	198	740	2921	697	43	1659	24	8056
Non- Abl	4647	4679	4295	2464	2494	530	515	460	20084
Not Known	161	59	108	31	26	17	17	7	426
TOTAL	5582	4936	6143	5416	3217	590	2191	491	28566

TABLE 4.14: STATE AND ABORIGINALITY: PERCENTAGES

	NSW	*Vic*	*QId*	*WA*	*SA*	*Tas*	*NT*	*ACT*	*Aust*
Abl	14.3	*4.1*	28.8	54.2	21.8	7.5	76.3	*5.0*	28.6
Non- Abl	85.7	95.9	71.2	45.8	78.2	92.5	23.7	95.0	71.4
TOTAL	100	100	100	100	100	100	100	100	100

When we look at the proportion of Aboriginal and Non-Aboriginal people in custody in each jurisdiction, (as shown in Table 4.15, taken from Criminology Research Unit Research Paper No 13, Table 2, p.6) Western Australia had second highest proportion of Aboriginal custodies at 54.2% although Aboriginal population is only 2.69% in Western

Australia. Northern Territory had the highest proportion of Aboriginal custodies, at 76.3%, however, in the Northern Territory 22.43% of the population is Aboriginal.

TABLE 4.15: ABORIGINES IN POLICE CUSTODY, STATE(a)

State	*Aboriginal Population*	*% Aborigines in State*	*Aboriginal custodies*	*% Aboriginal custodies*
NSW	59011	1.09	774	14.3
Vic	12611	0.31	198	4.1
Qld	61268	2.37	1470	28.8
WA	37789	2.69	2921	54.2
SA	14281	1.06	697	21.8
Tas	6716	1.54	43	7.5
NT	34739	22.43	1659	76.3
ACT	1220	0.49	24	4.9
Aust	**227645**	**1.46**	**8056**	**28.6**

(a) Population data derived from the Census of Population and Housing, 30 June 1986.

Another way of looking at the figures shows the level of over-representation by comparing the ratios of Aboriginal custody rates to non-Aboriginal. (See Table 4.16 below, taken from Criminology Research Unit Research Paper No 13, Table 3, page 7).

TABLE 4.16: CUSTODY RATES(a)

State	*Aboriginal*	*Non-Aboriginal*	*Total*	*Level of over representation(b)*
NSW	1312	87	103	15
Vic	1570	117	123	13
Qld	2840	170	237	17
WA	7730	180	385	43
SA	4877	187	239	26
Tas	640	123	135	5
NT	4776	429	1415	11
ACT	1967	185	197	11
Aust	3539	131	183	27

(a) Police custodies August 1988 per 100,000 population at the 1986 census
(b) Rate ratios, ie, ratios of Aboriginal custody rates to non-Aboriginal rates

Aboriginal people in Western Australia were held in police custody at a rate 43 times that of non-Aboriginal people. This must surely be seen as one of the most distressing findings of the whole inquiry. The next highest level of overrepresentation was South Australia at 26.

Queensland was third highest with Aboriginals held in police custody at 17 times the rate of non-Aboriginals.

Data supplied by the Department of Corrective Services shows the number of Aboriginal persons who are sentenced prisoners and are serving their sentences in police lockups. During the eleven months to 31 May 1989, of 7361 convicted persons received into lockups, 6398 or 86.9% were Aboriginal. 47% of the Aboriginal prisoners were held in lockups in the Kimberleys.

Gender

In Western Australia 25% of Aboriginal police custodies were female. The situation was the same in Queensland but contrasts markedly with New South Wales where only 9% of Aboriginal custodies were female. Nationally 21 % of Aboriginal custodies were female.

Of non-Aboriginal custodies in Western Australia 12% of the custodies were females and 88% were males.

In Western Australia 72% of the female custodies in Western Australia were Aboriginal. The corresponding national proportion is 49% and other jurisdictions are as follows:

NT - 88%, Queensland - 57%, SA - 32%, NSW - 17%, ACT - 16%, VIC- 7%, Tasmania - 6%.

Age

in Western Australia the mean age of people taken into police custody during August 1988 was 27.7 years. Ninety percent of the cases were aged 42 years or less and the ages ranged from 10 to 93 years. The medium age was 25 years and the most frequently reported age was 18 years (5.9% of custodies).

Table 4.17 below shows the age distribution for Aboriginal and non-Aboriginal custodies in Western Australia during the survey period. Table 4.18 provides a comparison with the data for Australia.

TABLE 4.17: NATIONAL POLICE CUSTODY SURVEY
AUGUST 1988 (WA) BY AGE AND ABORIGINALITY (a)

Age	*Aboriginal*		*Non-Aboriginal*		*Totals*	
	No	%	*No*	%	*No*	%
0-14	76	2.6	45	1.8	121	2.3
15	80	2.8	65	2.7	145	2.7
16	118	4.1	111	4.5	229	4.3
17	147	*5.1*	152	6.2	299	5.6
18	136	4.7	176	7.2	312	5.6
19	103	3.6	165	6.7	268	*5.0*
20-24	615	21.3	625	25.6	1240	23.3
25-29	457	15.8	438	17.9	895	16.8
30-34	354	12.3	238	9.7	592	11.1
35-39	271	9.4	166	6.8	437	8.2
40-44	173	6.0	96	3.9	269	5.0
45-49	159	5.5	68	2.8	227	4.3
50-54	108	3.7	30	1.2	138	2.6
55-59	36	1.2	38	1.6	74	1.4
60-64	29	1.0	22	0.9	*51*	1.0
65+	23	0.8	10	0.4	33	0.6
TOTAL*	2885	99.9%	2445	99.9%	5330	99.8%

* Percentages may not total 100 percent owing to rounding of figures

(a) Police custodies August 1988 per 100,000 of the total population at the 1986 Census.

TABLE 4.18: NATIONAL - POLICE CUSTODY SURVEY,
AUGUST 1988 (AUSTRALIA) BY AGE AND ABORIGINALITY

Age	*Aboriginal*		*Non-Aboriginal*		*Totals*	
	No	%	*No*	%	*No*	%
0-14	103	1	199	1	302	1

15	130	2	217	1	347	1
16	216	3	385	2	601	2
17	352	4	728	**4**	1080	4
18	413	*5*	1211	6	1324	*5*
19	376	*5*	1264	6	1640	6
20-24	1840	23	5701	29	7541	27
25-29	1427	18	3902	20	5329	19
30-34	974	12	2289	12	3263	12
35-39	714	9	1415	7	2129	8
40-44	483	6	920	*5*	1403	*5*
45-49	379	*5*	585	3	964	4
50-54	235	3	325	2	560	2
55-59	126	2	254	1	380	1
60-64	64	1	148	1	212	1
65+	48	1	102	1	*150*	1
TOTAL(a)	7880	100%	19645	100%	27525	99%

(a) Percentages may not total 100 percent owing to rounding of figures

The information on hand suggests that the number of young people detained in police custody in Western Australia is higher than it is nationally, e.g. Nationally 302 x 0 - 14 year olds were in police custody which was I% of the total number of people detained. In Western Australia 121 x 0-14 year olds were detained being 2.3% of the total number detained in Western Australia and 40% of the total number of 0- 14 year olds in police custody Australia wide. Of these, 76 (62.8%) were Aboriginal and 45 (to 37.2%) were non-Aboriginal, whereas nationally 34. 1 % of 0- 14 year olds in police custody were Aboriginal and 65.9% were non-Aboriginal.

Of the total number of Aboriginal juveniles aged 0-14 years held in police custody in August 1988, 74% were held in Western Australia. According to the 1986 census 16.5% of the national Aboriginal population aged 0-14 years live in Western Australia.

Length of Time Spent in Police Custody

Criminology Research Unit Research Paper No. 13 (McDonald,1990:32) shows that in respect of all incidents of custody where detained persons were held in cells for less than 48 hours, in Western Australia the average time for holding Aboriginal detainees was 9.9 hours, whereas non-Aboriginal detainees were held for approximately half the time (5.1 hours). The national average for length of time spent in the cells was 9.7 hours for Aboriginal detainees and 7.6 hours for non-Aboriginal detainees.

4.1.2.4 Prison Custody

The over-representation of Aboriginals in Western Australia's prisons has been well documented over the years. The extent of the over-representation has variously been described as 'gross' 'abhorrent' 'profound' and 'unfathomable' .

Comprehensive discussions as to the levels of Aboriginal imprisonment in Western Australia are found elsewhere,1 therefore in this section I provide a brief description of the current level of imprisonment of Aboriginals in Western Australia based on Department of Corrective Services receival data for year ending 30 June 1989 and compare the Western Australian picture with the picture elsewhere in Australia. I will also provide a thumbnail sketch of the profile of prisoners in Western Australia (sex, age, education level, employment status) and the length of time for which they are imprisoned.

Finally I will examine the number of prisoners detained for fine default only.

Proportion of Aboriginal Prisoners

The Department of Corrective Services Annual Reports provide figures for the number of 'Aboriginal' and 'other' prisoners received. The category of 'other' includes non-Aboriginal persons as well as persons for whom Aboriginality is unknown. The inclusion of 'unknowns' in the category of 'other' makes comparison between Aboriginal and non-Aboriginal persons slightly inaccurate so this should be kept in mind when comparisons are made between Aboriginal and non-Aboriginal prisoners.

In the year ending 30 June 1989 of the 3977 sentenced prisoners received in Western Australian prisons 2035 were Aboriginal and 1942 were classified as I other'; ie. 51% of sentenced prisoners received were Aboriginal. Of the 1409 unsentenced prisoners received, 501 were Aboriginal and 908 were 'other', ie. 36% of unsentenced prisoners received were Aboriginal. Aboriginals accounted for 2536 or 47% of the total number (5386) of prisoners, sentenced and unsentenced, received. Table 4.19 below sets out the numbers of prisoners received in Western Australian prisons for the year ending 30 June 1989.

TABLE 4.19: PRISONERS RECEIVED AND DISTINCT PERSONS YEAR ENDING 30 JUNE 1989(a)

	Aboriginal		*Other*		*Total*
	No	%	No	%	
Sentenced Receivals	2035	*51*	1942	49	3977
Unsentenced Receivals	501	36	908	64	1409
Total Receivals	2536	47	2850	53	5386
Distinct Persons	1758	43	2375	57	4133

(a) Adapted from Table 4 in Statistical Report 1988-1989 Department of Corrective Services, Western Australia

The total of 5386 prisoners received refers to all admissions into prisons during the period. A person may have been received more than once during the period so it is interesting to compare the number of receivals to the number of distinct persons admitted during the period. 4133 individuals were received during the year ending 30 June 1989. 1758 or 43% of those prisoners were Aboriginal and 2375 or 57% were 'others'.

The response of the Department of Corrective Services to the Underlying Issues Paper (19.3.90) states that the over-representation of Aboriginal persons received into prisons in Western Australia is increasing as a proportion of all receivals, all unsentenced receivals and distinct persons.

Their receivals figures from 1985/86 to 1988/89 show that the proportion of Aboriginals in each of the said categories has increased over the four year period.

It is interesting to note that a submission of National Aboriginal and Islander Legal Services Secretariat (NAILSS) on Western Australian Prisons expressed concern as to whether departmental figures accurately reflected the size of the Aboriginal prison population. In New South Wales, NAILSS were given access to the official figures showing the number of Aboriginal prisoners in each prison and the names of the prisoners so were able to ascertain if all Aboriginal prisoners had been identified. They found that up to 20% of the Aboriginal prison population were unidentified.

The 1989 National Prison Census data provides a comparison of the proportion of Aboriginal prisoners in Western Australia to the proportion in other jurisdictions in Australia. Table 4.20 below shows the number of Aboriginal and non-Aboriginal prisoners in each Australian jurisdiction form 1982 to 1989 and

Table 4.21 shows the percentage of Aboriginal and non-Aboriginal prisoners in each jurisdiction over the same period.

TABLE 4.20: AUSTRALIAN PRISONERS, 1982 TO 1989
BY JURISDICTION AND ABORIGINALITY

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*NT*	*ACT*	*Aust*
1982									
Aboriginal	216	71	-	441	118	5	198	-	1049
Non-Aboriginal	3476	1547	-	909	668	232	114	5	6951
Unknown	27	135	1638	-	26	-	-	-	1826
Total	3719	1753	1638	1350	812	237	312	5	9826
1983									
Aboriginal	236	72	-	523	116	9	162	-	1118
Non-Aboriginal	3394	1916	-	980	630	198	105	2	7225
Unknown	103	8	1709	-	18	2	-	13	1853
Total	3733	1996	1709	1503	764	209	267	15	10196
1984									
Aboriginal	242	47	-	492	88	22	127	-	1018
Non-Aboriginal	3047	1615	-	1051	416	216	122	17	6484
Unknown	65	183	1881	-	60	3	-	-	2192
Total	3354	1845	1881	1543	564	241	249	17	9694
1985									
Aboriginal	304	44	-	489	93	8	214	1	1153
Non-Aboriginal	3726	1789	-	1006	644	187	120	-	7472
Unknown	85	46	1999	-	46	33	-	10	2219
Total	4115	1879	1999	1495	783	228	334	11	10844
1986									
Aboriginal	338	42	-	517	112	15	289	-	1313
Non-Aboriginal	3763	1879	-	1095	635	217	140	17	7746
Unknown	129	34	2186	-	63	26	-	-	2438
Total	4230	1955	2186	1612	810	258	429	17	11497
1987									
Aboriginal	369	52	354	503	147	7	334	-	1766
Non-Aboriginal	4105	1877	1985	1124	727	241	133	14	10206
Unknown	77	27	6	-	2	32	-	-	144
Total	4551	1956	2345	1627	876	280	467	14	12166
1988									
Aboriginal	385	65	431	528	114	10	276	-	1809
Non-Aboriginal	4097	1984	1930	1121	723	259	104	14	10232
Unknown	209	22	13	-	7	28	1	-	280
Total	4691	2071	2374	1649	844	297	381	14	12321
1989									
Aboriginal	415	86	412	558	102	9	243	-	1825
Non-Aboriginal	4839	2156	1855	1010	761	215	109	22	10967
Unknown	7	14	122	-	8	21	-	-	172
Total	5261	2256	2389	1568	871	245	352	22	12964

TABLE 4.21: PERCENTAGE OF ABORIGINAL AND NON-ABORIGINAL

PRISONERS IN EACH JURISDICTION, 1982 TO 1989

	NSW %	*Vic* %	*Qld* %	*WA* %	*SA* %	*Tas* %	*NT* %	*ACT* %	*Aust* %
1982									
Aboriginal	5.8	4.1	-	32.7	14.5	2.2	63.5	-	10.7
Non-Aboriginal	93.5	88.2	-	67.3	82.3	97.9	36.5	100.0	70.7
Unknown	0.7	737	100.0	-	3.2	-	-	-	18.6
1983									
Aboriginal	6.3	3.6	-	34.8	15.2	4.3	60.7	-	11.0
Non-Aboriginal	90.9	96.0	-	65.2	82.5	94.7	39.3	13.3	70.9
Unknown	2.8	0.4	100.0	2.4	1.0	86.7	18.2		
1984									
Aboriginal	7.2	2.5	31.9	15.6	9.1	51.0	10.5		
Non-Aboriginal	90.8	87.6	-	68.1	73.8	89.6	49.0	100.0	66.9
Unknown	1.9	919	100.0	-10.6	10.6	1.2	-	-	22.6
1985									
Aboriginal	7.4	2.3	-	32.7	11.9	3.5	64.1	9.1	10.6
Non-Aboriginal	90.6	95.2	-	67.3	82.3	82.0	35.9	-	68.9
Unknown	2.1	2.4	100.0	-	5.9	14.5	-	90.9	20.5
1986									
Aboriginal	8.0	2.1	32.1	13.8	5.8	67.4	11.4		
Non-Aboriginal	89.0	96.1	-	67.9	78.4	84.1	32.6	100.0	67.4
Unknown	3.0	1.7	100.0	-	7.8	10.1	-	-	21.2
1987									
Aboriginal	8.1	2.7	15.1	30.9	16.8	2.5	71.5	-	14.6
Non-Aboriginal	90.2	96.0	84.7	69.1	83.0	86.1	28.5	100.0	84.2
Unknown	1.7	1.4	0.3	-	0.2	11.4	-	-	1.2
1988									
Aboriginal	8.2	3.1	18.2	32.0	13.5	3.4	72.4	-	14.7
Non-Aboriginal	87.3	95.8	81.3	68.0	85.7	87.2	27.3	100.0	83.0
Unknown	4.5	1.1	.5	-	.8	9.4	.3	-	2.3
1989									
Aboriginal	7.9	3.8	17.2	35.6	11.7	3.7	69.0	-	14.1
Non-Aboriginal	92.0	95.6	77.6	64.4	87.4	87.8	31.0	100.0	84.6
Unknown	.1	.6	5.1	-	.9	8.6	-	-	1.3

The number and percentages of prisoners in Western Australia are different to the receivals figures given above because the census data measures only the number of prisoners in prison on the particular night of the census i.e. 30 June 1989, ie. the 'stock' of prisoners on that night whereas the receivals figures measure the 'flow' of prisoners through the prison system.

These tables derived from National Prison Census data show that although the number of prisoners in Western Australia (1568) was less in 1989 than the previous three years (I 649, 1627, 1612) the number of Aboriginal prisoners was the highest it had been during the period covered (1982-1989). Table 4.22 also shows that the percentage of Aboriginal prisoners in Western Australia on 30 June 1989 (35.6%)

was the highest it had been from 1982 to 1989 (the proportion of Aboriginal prisoners in the census figures is less than the proportion indicated by the receivals data, i.e. 47%).

The proportion of Aboriginal prisoners on 30 June 1989 in Western Australia (35.6%) also contrasts markedly with the proportion of Aboriginal prisoners in other Australian jurisdictions. Western Australia has the second highest proportion of Aboriginal prisoners following the Northern Territory (69%). The jurisdiction with the next highest proportion of Aboriginal prisoners is Queensland (17.2%) which has less than half the West Australian percentage. The proportion of Aboriginal prisoners found throughout Australia is 14. 1 %.

Over-representation of Aboriginals in Western Australia Prisons

Although the exact size of the Aboriginal and Torres Strait Islander population in Australia is a matter of debate (see discussion in Commissioner Dodson's Report) the 1986 population census conducted by the Australian Bureau of Statistics found that Aboriginals (including Torres Strait Islanders) comprised 1.46% of the national population total and 2.69% of the West Australian population.

The level of Aboriginal over-representation in Western Australian prisons is calculated by comparing the ratio of Aboriginal custody rates for prisoner receivals to non-Aboriginal custody rates (based on data in the Dept of Corrective Services Annual Report 1989). The table below shows the level of overrepresentation of Aboriginals in prison in Western Australia to be 32.3.

TABLE 4.22: OVER-REPRESENTATION OF ABORIGINALS IN PRISON IN WESTERN AUSTRALIA, 1989(a)

Aboriginal Imprisonment Rate (incidence per 100 000 Abl population)	*Non-Aboriginal Imprisonment Rate* (incidence per 100 000 nonpopulation) Abl population)	*Level of Over representation*
6710.3	208.0	32.3

(a) Police custodies August 1988 per 100,000 of the total population at the 1986 Census

These figures are conservative as the whole community is taken into consideration whereas if only the adult community were considered then higher levels of over-representation would be indicated. When the imprisonment rate per 100 000 is based on population figures for persons seventeen years and over from the Australian Bureau of Statistics census data for 1986 the level of overrepresentation of Aboriginal imprisonment increases to 42.7 times the rate of non-Aboriginal imprisonment.

At the request of the Criminology Research Unit of the Royal Commission, all Australian Corrections Departments agreed to collect data of sentenced persons received during the month of April 1989. The one month reception rates for all ages and for adults, along with over-representation levels arc set out in Table 4.23 below (taken from Criminology Research Unit Research Paper No. 19, Table 9, p.15).

TABLE 4.23: SENTENCED PRISONER RECEPTION RATES,(a) ALL AGES AND ADULTS,(b) APRIL 1989

	All Ages			Adults		
Jurisdiction	Aboriginal	Non-Aboriginal	Over Representation	Aboriginal	Non-Aboriginal	Over Representatio
NSW	74.6	7.8	9.6	137.9	10.6	13.1

Vic	87.2	5.4	16.2	153.7	7.3	20.9
Qld	89.8	12.9	6.9	165.3	17.8	9.3
WA	325.5	6.9	46.9	587.6	9.5	61.6
SA	321.9	12.2	26.5	578.9	16.3	35.2
Tas	163.9	17.2	9.5	315.5	23.9	13.2
NT	135.3	18.3	7.4	245.9	25.1	9.8
Australia	148.0	8.5	17.3	270.5	11.6	23.4

(a) Rates per 100,00
(b) Aged 17 years and above

April 1989 receptions show an Aboriginal over-representation level of 17.3 nationally and 46.9 in Western Australia. The corresponding over-representation levels calculated on an adult population basis is 23.4 nationally and 61.6 in Western Australia.

TABLE 4.24: ABORIGINAL AND NON-ABORIGINAL ADULT(a) IMPRISONMENT RATES AND LEVEL OF OVERREPRESENTATION, BY JURISDICTION, 30 JUNE 1989

Jursidiction	*Aboriginal*	*Non-Aboriginal*	*Level of Over Representation*
NSW(b)	1300.4	118.1	11.0
Vic	1201.3	73.2	16.4
Qld	1238.4	100.8	12.3
WA	1665.6	*101.5*	26.3
SA	1270.4	76.5	16.6
Tas	258.2	69.3	3.7
NT	1271.5	124.5	10.2
Australia	**1464.9**	**97.2**	***15.1***

(a) Prisoners per100,000 of the relevant adult (17years and above) population at 1986 Census of Population and Housing
(b) Including ACT

It is clear that the 30 June 1989 National Prison Census data indicates a lower level of over-representation of Aboriginals in Western Australia prisons (26.3) than the 1989 receivals data which shows the comparative level of overrepresentation to be 42.7. The receivals data for April 1989 shows an even higher level of over-representation with Aboriginals being over-represented at an extraordinary 61.6. The differences between the estimates of over-representation levels using (stock) data and receival (flow) data, reflect the fact that Aboriginal people have, on average, shorter sentences than non-Aboriginal people. This is borne out in the latter section dealing with the duration of imprisonment. Whichever data is used it is clear that the over-representation of Aborigines in prison in Western Australia remains far higher than the rest of Australia. The imprisonment rates of Aboriginals in Western Australia over the past eight years suggest that the situation is getting worse rather than improving. It is no wonder that this shameful level of over-representation has been described as 'gross and abhorrent' given the figures discussed above. The level of over-representation is outrageous and totally unacceptable.

Gender Difference

In both Aboriginal and non-Aboriginal populations there are many more males in prison than females. In the year ending 30 June 1989 there were 2098 Aboriginal male prisoners and 438 Aboriginal female prisoners received in Western Australia prisons. Aboriginals comprised 44.4% of all male prisoners and 65.9% of all female prisoners received.

TABLE 4.26: NUMBERS AND PERCENTAGES OF ABORIGINAL PRISONERS RECEIVED IN WA PRISONS 30.6.1980 30.6.1989 BY GENDER(a)

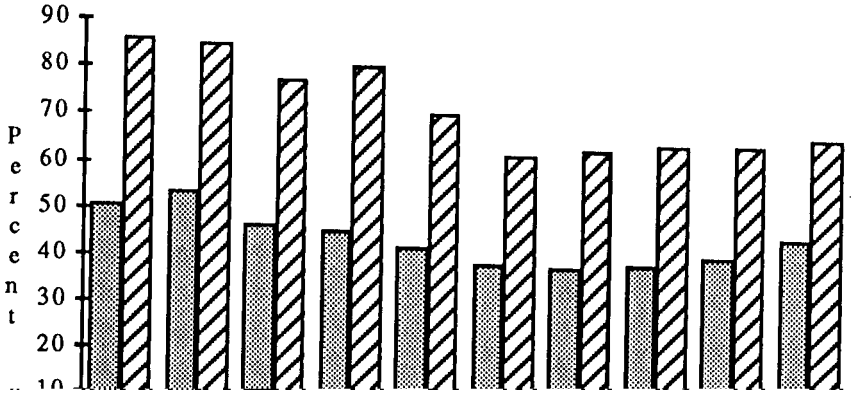
	Abl No	*Male %*	*AblNo*	*Female %*	*Abl No*	*Total %*
1980	1716	50.4	369	84.4	2085	54.4
1981	1956	53.3	367	85.0	2323	56.6
1982	1578	46.7	289	77.5	1867	49.7
1983	1964	45.1	397	80.7	2361	48.7
1984	1665	41.7	308	70.3	1973	44.5
1985	1921	38.5	374	62.0	2295	41.0
1986	1890	37.6	346	62.7	2236	40.1
1987	2036	38.3	392	64.4	2428	40.9
1988	2040	40.2	469	64.0	2509	43.2
1989	2098	44.4	438	65.9	2536	47.1

(a) Receival numbers extracted from Department of Corrective Services Annual Reports from 1980 - 1989

Figure 4.2 shows the percentage of Aboriginal male and female prisoners received over the period 1980 to 1989.

FIGURE 4.2

PERCENTAGE OF ABORIGINAL PRISONERS RECEIVED BY GENDER 1980 - 1989



Again the picture presented by the Western Australia receivals data contrasts markedly with the National Prison Census Data 30 June 1989 (Walker, 1989).

TABLE 4.26: PERCENTAGES OF PRISONERS BY JURISDICTION, SEX AND ABORIGINALITY

Aboriginality	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*NT*	*ACT*	*Aust*
Males									
Abl, Torres St	7.7	3.5	17.3	35.1	11.7	3.8	69.0	.0	14.0
Other	92.2	95.8	77.5	64.9	87.6	87.7	31.0	100.0	84.7
Unknown	.1	.7	5.3	.0	.7	8.5	.0	.0	1.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Females									
Abl, Torres St	11.4	8.6	16.8	42.9	12.5	.0	100.0	.0	16.3
Other	88.6	91.4	81.5	57.1	82.5	88.9	.0	100.0	82.9
Unknown	.0	.0	1.7	.0	5.0	11.1	.0	.0	.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.00
Total Persons									
Abl, Torres St	7.9	3.8	17.2	35.6	11.7	3.7	69.2	.0	14.1
Other	92.0	95.6	77.7	64.4	87.4	87.8	30.8	100.0	84.6
Unknown	.1	.6	5.1	.0	.9	8.6	.0	.0	1.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

The prison census data 30 June 1989 shows that 35.1% of male prisoners and 42.9% of female prisoners in Western Australia were Aboriginal. This contrasts with the comparative proportions of 44.4% and 65.9% respectively based on the receivals data.

Western Australia is second to only the Northern Territory in its high proportions of male and female Aboriginal prisoners. In the Northern Territory 69% of male prisoners and 100% of female prisoners were Aboriginal. On a national level 14% of male prisoners and 16.3% of female prisoners were Aboriginal.

Age Distribution

The Department of Corrective Services Statistical Report 1988-1989 provides us with the ages of distinct persons received.

TABLE 4.27: AGES OF DISTINCT PERSONS RECEIVED, YEAR ENDED 30 JUNE 1989

Age at *Receival*	*Aboriginal*		*Other*		*Total*
	Male	*Female*	*Male*	*Female*	
Under 16 years	1	1	-	-	2
16 to 17 years	43	1	20	-	64
18 to 19 years	231	31	323	28	613
20 to 24 years	453	85	624	*51*	1213
25 to 29 years	322	73	440	43	878
30 to 34 years	194	40	276	36	546
35 to 39 years	95	35	193	17	340
40 to 44 years	67	16	136	14	233
45 to 49 years	28	*5*	66	*5*	104
50 years and over	25	9	92	11	137

Age unknown	2	1	-	-	3
TOTALS	1461	267	2170	205	4133

TABLE 4.28: NUMBERS AND PERCENT OF AGE OF DISTINCT PERSONS RECEIVED YEAR ENDING 30 JUNE 1989

Age at Receival	*Aboriginal*		*Other*		*Total*	
	No	%	*No*	%	*No*	%
Under 16 years	2	0.1	-	-	2	0.1
16 to 19 years	306	17.4	371	15.6	677	16.3
20 to 24 years	538	30.6	675	28.4	1213	29.3
25 to 29 years	395	22.5	483	20.3	878	21.2
30 to 34 years	234	13.3	312	13.1	546	13.2
35 to 39 years	130	7.4	210	8.8	340	8.2
40 to 44 years	83	4.7	*150*	6.3	233	5.6
45 to 49 years	33	1.9	71	3.0	104	2.5
50 years & over	34	1.9	103	4.3	137	3.3
Age unknown	3	0.2	-	-	3	8.1
TOTAL(a)	1758	100%	2375	99.8%	4133	99.8%

(a) Percentage may not total 100 percent owing to rounding of figures

The above tables show that the ages of Aboriginal and non-Aboriginal persons received into Western Australia prisons are similarly distributed. However there are proportionately more Aboriginal prisoners in the age groups sixteen to nineteen years (17.4% compared to 15.6%), twenty to twenty-four years (30.6% compared to 28.4%), twenty-five to twenty-nine years (22.55% compared to 20.3%), and thirty to thirty-four years (I 3.3% compared to 13.1 %). In the age groups over thirty-five years there are proportionately more nonAboriginal prisoners (19.4% compared to 16.1%). Nearly half (48%) of Aboriginal prisoners are under the age of twenty-five years and 91 % are under the age of forty years. The comparative proportions for non-Aboriginal prisoners are 44% and 86% respectively. Research by NAILSS (1990) tends to confirm the accuracy of the Departments figures relating to age of prisoners. The NAILSS survey of 319 Aboriginal prisoners found that 84.4% of respondents were aged less than thirty four years. The Department's figures indicate that 84% of Aboriginal prisoners are thirty-four years or less.

Criminology Research Unit Research Paper No. 6, *Aboriginal Imprisonment* - A *Statistical Analysis,* July 1989, provided comparative data of the mean age of prisoners in jurisdictions with sufficiently large numbers of Aboriginal prisoners to make calculations meaningful. The table below shows that the mean

age of Aboriginal prisoners was between two and four years lower than the mean age of non-Aboriginal prisoners.

TABLE 4.29: MEAN AGE IN YEARS OF ABORIGINAL AND NON-ABORIGINAL PRISONERS, 1985

	Aboriginal	*Non-Aboriginal*
NSW	27.7	30.4
Vic	26.7	30.8
Qld	27.4	30.4
WA	27.1	29.4
SA	26.7	29.5
NT	24.1	26.3

By way of contrast the NAILSS survey found that in Western Australia the average age of Aboriginal survey respondents was 25.9 years.

Education Level

Bites (1990) said that the information collected in annual census of prisoners as to the level of education of prisoners at the time of reception into prison supported the general proposition 'that persons who go to prison in Australia are generally grossly inadequately educated (with much lower levels of achievement than the broader community) and the situation with regard to Aboriginal prisoners ie even more disturbing'. He presents the 1987 National Prison Census results which showed that only 3.1% of non-Aboriginal prisoners had attempted any tertiary, technical, trade or other post secondary education and only 6.2% had completed high school. He said the equivalent figures for Aboriginal prisoners were even lower at 1.4% and 2.7% respectively. He also gave the proportion of Aboriginal prisoners with no formal education as 31.6% and the equivalent figure for non-Aboriginal prisoners as 8.3%.
The Department of Corrective Services Statistical Report 1988-1989 provides a table of Census of Prisoners on Night **of** 30 June 1989 showing educational qualifications at receival. A summary of the table is set out below.

TABLE 4.30: CENSUS OF PRISONERS ON 30 JUNE 1989 SHOWING EDUCATIONAL QUALIFICATIONS AT RECEIVAL

Educational Level	*Aboriginal*		*Other*		*Total*	
	No	%	*No*	%	*No*	%
Less than 3 yrs secondary	505	90.0	728	71.2	1233	77.7
3 yrs secondary	39	6.9	95	9.3	134	8.4
5 yrs secondary	4	0.7	41	4.0	45	2.8

Partial tertiary	-	-	4	0.4	4	0.3
Tertiary	-		10	1.0	10	0.6
Trade	10	1.8	122	11.9	132	8.3
Partial trade	3	0.5		1.2	15	0.9
Business & technical	1	0.2	3	0.3	4	0.3
Other	-	-	5	*0.5*	5	0.3
Unknown	2	0.4	2	0.2	4	0.3
TOTAL(a)	564	100.5%	1022	100%	1588	99.9%

(a) Percentage may not total 100 percent owing to rounding of figures

Although this table does not show how many prisoners have no formal education it indicates that 90% of Aboriginal prisoners have had less than three years secondary education whereas the equivalent figure for non-Aboriginal prisoners is 71.2%. No Aboriginal prisoners had any tertiary education and only fourteen non-Aboriginal prisoners (or 1.4%) had this level of education. Very few Aboriginals had any trade or partial trade qualifications (2.3%) whereas 13. 1 % of non-Aboriginal prisoners had educational qualifications in this area.

The NAILSS survey of Aboriginal prisoners in Western Australia presented a slightly different picture of the education level of Aboriginal prisoners. NAILSS found that 84% of prisoners had an education level of less than ten years and that 9.1 % of Aboriginal prisoners had no formal education. Although they found that the education level of respondents was a little higher than that presented by Walker or Biles, NAILSS found that the education level of Aboriginal prisoners was still lower than the non-Aboriginal prison population of Western Australia and that the educational level of Western Australian Aboriginal prisoners was a lot lower than the overall level of education for prisoners throughout Australia based on Walker (I 990).

Section 5.3.7 of the Report examines the educational programmes available in Western Australia prisons and the needs of Aboriginal prisoners in this regard. As noted in that section, it is clear that the above figures indicate that educational programmes are an essential requirement in the Western Australia prison system, especially for Aboriginal prisoners.

Employment Status

The Census of Prisoners 30 June 1989 shows the usual occupation group of prisoners at the time of receival. The table below provides a summary of the findings set out in the Department of Corrective Services Statistical Report 1988 1989.

TABLE 4.31: CENSUS OF PRISONERS ON 30 JUNE 1989 SHOWING USUAL OCCUPATION GROUP

Occupation	*Aboriginal*		*Other*		*Total*	
	No	%	*No*	%	*No*	%

Professional	-	-	22	2.2	22	1.4
Self-employed	*5*	0.9	40	3.9	45	2.8
clerical	7	1.2	*50*	4.9	57	3.6
Technical	3	0.5	16	1.6	19	1.2
Skilled manual	14	2.5	201	19.7	215	13.6
Semi skilled manual	66	11.7	217	21.2	283	17.8
Un skilled manual	334	59.2	358	35.0	692	43.6
Protective services	-	-	2	0.2	2	0.1
0ther	1	0.2	*5*	0.5	6	0.4
Not work force	22	3.9	46	4.5	177	11.2
Unknown	112	19.9	65	6.4	177	11.2
TOTAL(a)	564	100%	1022	100.1%	1586	100%

(a) Percentage may not total 100 percent owing to roundings of figures

The census data provided by the Department does not indicate the number of prisoners who were unemployed at the time they were admitted into prison in Western Australia. The data only shows the usual occupation of all prisoners. The table above indicates that 2.6% of Aboriginal prisoners and 12.6 percent of all 'other' prisoners had occupations categorised as professional, self-employed, clerical or technical. 73.4% of Aboriginal prisoners and 75.9% of all other prisoners indicated that their usual occupation group involved manual work (skilled, unskilled, semi-skilled).

Only 14.2% of Aboriginal prisoners compared with 40.9% of all other prisoners were skilled or partially skilled manual workers whereas 59.2% of Aboriginal prisoners compared with 35% of other prisoners were in the unskilled manual category.

However, the reliability of the usual occupation figures for Aboriginal prisoners is doubtful given that the usual occupation is unknown for 20% of Aboriginal prisoners.

According to Walker (1989), only 3.5% of all prisoners in Western Australia were employed at the time they were admitted into prison in contrast to 32.6% of the general Australian prison population (excluding NSW which does not record employment status).

The results of the NAILSS survey questions the accuracy of the Walker findings as they found that 30.8% of the Aboriginal prisoners surveyed were either employed or involved in CDEP at the time of admission

to prison. Broadhurst and Maller (1990) found that 8% of Aboriginal prisoners were either employed or part of a CDEP at the time of admission. The accuracy of Broadhurst's data is also doubted by NAILSS (1990:32) because it relies upon Department of Corrective Services figures.

Of the prisoners who responded to the NAILSS survey that they were employed or part of a CDEP, the type of employment in which they were involved is shown in the table below:

TABLE 4.32: TYPE OF EMPLOYMENT PRIOR TO ENTERING PRISON

	Employed		*CDEP*		*Total*	
	No	%	*No*	%	*No*	%
Unskilled	22	28.2	8	44.4	30	30.9
Rural	28	35.9	4	21.2	32	33.0
Semi-skilled	9	11.5	3	15.6	12	12.4
Skilled	8	10.2	2	11.11	10	11.3
Clerical	7	8.9	1	5.3	8	8.2
Artist	-	-	-	-	-	-
No answer	4	5.1	1	-	5	4.1
TOTAL	78	100%	19	100%	97	100%

The results of the NAILSS survey show that 76.3% of Aboriginal prisoners were engaged in unskilled or semi skilled work of a rural or non-rural nature.

As noted by Biles (1989) and discussed in section 5.3.7 of this Report, the low level of employment of prisoners at the time of admission to prison and their lack of employment skills suggests the need for appropriate training programmes, particularly for Aboriginal prisoners.

Duration of Imprisonment

Table 4.33 and Figure 4.3 below, based on Department of Corrective Services Statistical Report 1989, suggest that the sentences imposed on Aboriginal prisoners form a different pattern from that found for non-Aboriginal prisoners. Proportionately there are more Aboriginals in all sentence categories up to one year but above that figure non-Aboriginal prisoners become more prevalent. 39.8% of Aboriginal prisoners are in prison for less than one month and the comparative proportion of non-Aboriginal. prisoners is 35.8%. 62.8% of Aboriginal sentenced prisoners are in prison for sentences of less than three months. The equivalent non-Aboriginal proportion is 54.9%. 11.2% of Aboriginal prisoners are serving sentences more than one year in duration whereas 24.3% of non-Aboriginal prisoners are in the comparative category.

TABLE 4.33: DURATION OF SENTENCES OF PRISONERS RECEIVED IN WA PRISONS IN YEAR

ENDING 30 JUNE 1989(a)

Length of Sentence	*Aboriginal*			*Other*					
	No	%		*No*	%		*Total*	%	
Under 8 days	237	11.7		182	9.4		419	10.6	
8 days< 1 mth	571	28.1	2.8%	511	26.4	54.9%	1082	27.3	59%
1 mth< 3 mths	467	23.0		369	19.1		836	21.1	
3 mths< 6 months	354	17.4		246	12.7		600	15.1	
6 mths< I yr	177	8.7		157	8.1		334	8.4	
1 you< 2 yrs	148	7.3		191	9.9		339	8.5	
2 years< 3 yrs	35	1.7		97	5.0		132	3.3	
3 years< 5 yrs	26	1.3		112	5.8		138	3.5	
5 years +	12	0.6		59	3.1		71	1.8	
Life - 7 years (b) before review	2	0.1		3	0.2		5	0.1	
Life - 12 years before review		-		-	-		-	-	
Life - 20 years before review	-	-		-	-		-	-	
Governor's pleasure	5	0.2		6	0.3		11	0.3	
TOTAL(c)	2034	100.1		1933	100		3967	100	

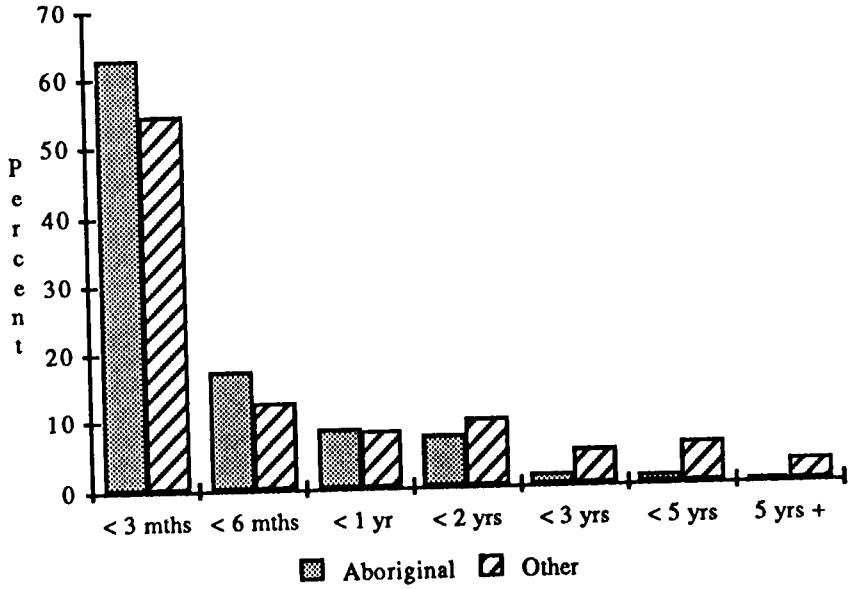
(a) Duration of sentence represents the longest period that a person may be detained under sentence in the current term of imprisonment. Remissions, non-parole periods and charges pending that may extend the current term are disregarded.

(b) Legislation proclaimed on 15 June 1989 changed mandatory review periods for life sentences from 'life - 5 years before first review' and 'life - 10 years before first review' to 7 and 12 years respectively.

(c) Percentages may not total 100 percent owing to roundings of figures.

FIGURE 4.3

DURATION OF SENTENCES OF PRISONERS RECEIVED IN WA PRISONS IN YEAR ENDING 30 JUNE 1989



It is interesting to contrast the receival figures for year ending 30 June 1989 with the prison census data for 30 June 1989. Table 4.34 below shows the Census of Prisoners 30 June 1989 showing length of sentence. Table 4.35, contrasts the receival and census data percentages of Aboriginal and other prisoners showing length of sentence.

TABLE 4.34: CENSUS OF PRISONERS 30 JUNE 1989 SHOWING LENGTH OF SENTENCE (WA)

Length of	*Aboriginal*			*Other*			*Total*		
Sentence	*No*	%		*No*	%		*No*	%	
Unsentenced	59	*10.5*		129	12.6		188	11.9	
Under 8 days	*5*	0.9		3	0.3		8	0.5	
8 days>1 mth	*15*	2.7		20	2.0		35	2.2	
1 mth - 2 mths	23	4.1	11.8	19	1.9	5.1	42	2.6	7.3
2 mths - 3 mths	23	4.1		9	0.9		32	2.0	
3 mths - 6 mths	67	11.9		47	4.6		114	7.2	
6 mths - I year	86	15.2		71	6.9		157	9.9	
1 yr - 2 yrs	98	17.4		111	10.9		209	13.2	

2 yrs - 3 yrs	29	5.1	66	6.5	95	6.0
3 yrs - 5 yrs	47	8.3	157	15.4	204	12.9
5 yrs +	77	13.7	297	29.1	374	23.6
Life 5 (7)(a)	17	3.0	37	3.6	54	3.4
Life 10 (I 2)	1	0.2	12	1.2	13	0.8
Life 20	2	0.4	17	1.7	19	1.2
Governors Pleasure	15	2.7	27	2.6	42	2.6
TOTAL	564	100.2	1022	100.2	1586	100

(a) Five prisoners included under life five years are really life seven years since they were sentenced after amending legislation was proclaimed on 15 June 1988.

TABLE 4.35: COMPARISON OF LENGTH OF SENTENCE DATA FOR PRISONERS RECEIVED IN YEAR ENDING JUNE 1989 AND CENSUS OF PRISONERS 30 JUNE 1989 IN WA PRISONS

Length of	*Receivals Data*		Census Data	
Sentence	*Abl*	Other	*Abl*	*Other*
< 8 days	11.7	9.4	0.9	0.3
8 days to I mth	28.1	26.4	2.7	5.1
1 mth - 3 mths	23.0	19.1	8.2	2.8
3 mths - 6 mths	17.4	12.7	11.9	4.6
6 mths - 1 year	8.7	8.1	15.2	6.9
1 yr - 2 yrs	7.3	9.9	17.4	10.9
2 yrs - 3 yrs	1.7	5.0	5.1	6.5
3 yrs - 5 yrs	1.3	5.8	8.3	15.4
5 yrs +	0.7	3.3	17.3	35.6
Governors Pleasure	0.2	0.3	2.6	
TOTAL (a)	100.1	100	100.2	100.2

(a) Percentages may not total 100 percent owing to rounding of figures

The receivals data clearly indicates that the proportion of Aboriginal and nonAboriginal prisoners serving short sentences (less than 3 months) is markedly higher than is shown in the census data. This must be kept in mind when using the National Prison Census data to compare the duration of sentences imposed on Aboriginals in other Australian jurisdictions.

Table 4.36 below shows the average time expected to be served by sentenced prisoners for the most serious offence for which imprisoned. It is taken from Table 35 in **J** Walker 'Australian Prisoners 1989, Results of National Prison Census 30 June 1989'.

TABLE 4.36: NUMBER OF SENTENCED PRISONERS BY MOST SERIOUS OFFENCE AVERAGE TIME EXPECTED TO SERVE AND JURISDICTION

Most Serious Offence	*NSW*	*VIC*	*QLD*	*WA*	*SA*	TAS	*NT*	*TOTAL*
			Average time to *serve* (mths)					
Homicide	115.8	111.6	115.4	122.3	124.4	142.3	66.1	115.4
Assault	36.6	18.8	20.7	15.4	21.8	35.8	12.9	26.8
Sex Offences	39.0	38.2	56.3	40.4	43.5	25.2	39.2	44.3
Oth Ag Person	57.9	30.5	51.4	22.4	21.9	-	19.0	39.3
Robbery	56.7	45.5	53.1	42.4	52.0	38.3	39.6	51.7
Extortion	44.9	-	100.7	-	-	-	-	50.5
Break & Enter	36.8	14.9	24.6	15.8	17.7	17.6	12.6	26.3
Fraud/Misappr'n	23.6	11.4	20.5	10.6	21.5	21.1	17.2	19.6
Receiving	28.2	7.1	20.3	4.5	18.7	28.0	5.8	21.9
Other Theft	30.4	10.0	16.3	7.4	10.3	11.2	9.9	20.8
Prop Damage	26.4	14.7	12.9	15.9	17.0	14.3	8.2	17.3
Environmental	14.5	-	1.5	-	-	-	-	11.3
Gov Security	31.6	-	11.5	-	-	-	-	25.9
Just Procedures	24.5	15.6	6.6	14.9	22.9	6.7	10.4	17.3
Prostitution	15.1	11.1	1.2	20.3	-	1.9	-	12.7
Off Behaviour	27.0	1.8	24.8	2.7	5.5	3.0	26.5	21.3
Poss of Weapon	26.5	-	3.5	14.6	.2	-	16.7	21.7
Oth Agt Gd Ord	24.3	11.8	11.8	9.0	15.5	3.0	2.2	12.9
Poss, Use Drugs	38.4	28.2	25.8	13.9	48.1	-	8.7	29.8
Traff Drugs	36.9	31.5	61.4	39.0	27.1	12.0	16.1	38.0
Manuf Drugs	26.1	18.6	32.6	39.0	21.4	-	46.6	29.4
Driving Offences	15.9	3.4	3.0	4.0	2.0	5.2	6.2	9.8

Admin Offences	15.2	11.7	16.2	12.9	3.0	-	-	14.0
Oth Traff Off's	-	5.2	4.9	5.4	.1	-	1.6	5.0
Other Offences	57.7	13.8	25.4	21.9	91.6	-	.4	44.1
Unknown	-	-	57.5	.3	-	-	-	32.1
TOTAL	43.5	33.9	40.9	30.5	39.4	38.6	22.6	38.8

Table 4.36 shows that in Western Australia the average time expected to be served by sentenced prisoners is shorter for all offences except for homicide, prostitution, trafficking and manufacturing drugs and other traffic offences, than the national average for all offences.

Table 4.37 below shows the average time expected to be served by Aboriginal sentenced prisoners for the most serious offence for which imprisoned. It is based on Table 35a in Walker, *Australian Prisoners 1989, Results of National Prison Census 30 June 1989.*

TABLE 4.37: NUMBER OF ABORIGINAL SENTENCED PRISONERS BY MOST SERIOUS OFFENCE AVERAGE TIME EXPECTED TO SERVE AND JURISDICTION

Most Serious Offence	*NSW*	*VIC*	*QLD*	*WA*	*SA*	*TAS*	*NT*	*TOTAL*
			Average time to serve (mths)					
Homicide	85.9	72.0	97.1	129.4	139.2	156.2	52.0	96.3
Assault	28.9	11.7	13.9	11.3	20.1	-	11.1	16.9
Sex Offences	44.3	45.2	49.5	37.4	36.7	-	39.5	42.7
Oth Ag Person	50.5	16.9	-	9.4	21.8	-	15.6	17.1
Robbery	52.7	56.8	35.6	28.6	36.7	80.1	36.3	41.3
Extortion	51.0	-	-	-	-	-	-	51.0
Break & Enter	27.6	12.7	18.6	14.6	15.8	19.5	13.2	18.4
Fraud & Misappropriation	14.1	9.1	15.5	7.7	-	-	34.0	13.1
Receiving	32.6	1.3	3.4	4.6	6.7	-	5.8	11.8
Other Theft	25.3	5.4	9.1	6.4	5.1	-	9.3	12.4
Prop Damage	19.7	4.0	4.8	3.2	6.3	-	6.0	6.9
Just Procedures	17.9	12.7	6.6	11.7	12.0	12.6	9.0	11.7
Prostitution	-	1.3	1.2	4.0	-	-	-	2.9
Off Behaviour	-	1.8	9.7	2.7	5.5		-	6.0

Poss of Weapon	4.1	-	3.5	1.6	-		16.7	6.7
Oth Agt Gd Ord	34.5	1.5	3.6	3.4	5.8		2.2	5.8
Traff Drugs	35.2	8.0	5.4	9.4	-		-	22.2
Manuf Drugs	9.2	-	-	-	-		-	9.2
Driv Offences	22.4	3.3	2.9	4.5	2.5	5.6	5.8	8.4
Admin Offences	12.6	-	-	7.7	-	-	-	11.6
Oth Traff Off's	-	7.2	2.8	6.6		-	2.3	5.4
Other offences	-	-	21.3	29.1		-	.4	18.7
Unknown	-	-	-					
TOTAL	33.5	20.9	32.5	21.4	30.1	39.0	19.1	26.9_

Table 4.37 shows that in Western Australia the average time expected to be served by Aboriginal sentenced prisoners for most serious offence is generally less than both the average time expected to serve for all Western Australia prisoners for the offence and the average time expected to serve for all Aboriginal prisoners Australia wide. The offence of homicide, other traffic offences and other offences are the only offences for which Aboriginal prisoners have a greater average time to serve than the Western Australian average and the national Aboriginal average. The average time that Aboriginal prisoners expect to serve for receiving and drinking offences is slightly higher than the Western Australian average.

The figures would appear to indicate that although Aboriginal prisoners are grossly over-represented in Western Australian prisons they are generally serving shorter sentences for most offences than non-Aboriginal prisoners throughout Australia. One possible explanation for this is that Aboriginal persons may be convicted on minimal or insufficient evidence especially in the minor courts, and are consequently given shorter sentences. The evidence before the Commission is insufficient to come to any positive conclusions in this regard but the inadequacy of checks and balances in the Western Australian criminal justice system (discussed in more detail in section 4.2 Avoidance of Custody) do little to remedy practices in the system which work against the poor and disadvantaged, particularly Aboriginal people.

Fine Default

Table 4.38 below, based on data in Department of Corrective Services Annual Reports 1985-1989, shows the number of Aboriginal and non-Aboriginal prisoners received for fine default only for years ending 30 June 1985 to 30 June 1989.

TABLE 4.38: SENTENCED PRISONERS RECEIVED FOR FINE DEFAULT ONLY 30 JUNE 1985 - 30 JUNE 1989

	Aboriginal				*Non-Aboriginal*				*WA*		
	M	*F*	*Total*	*%*	M	*F*	*Total N/A*	*%*	*Total*	*% of Receivals*	*Total* Receivals
1985	471	166	637	35.4	1046	114	1160	64.5	1797	39.7	4532
1986	478	156	634	38.6	925	84	1009	61.4	1643	37.8	4344
1987	574	194	768	40.4	1032	98	1130	59.6	1899	41.4	4583
1988	562	222	784	44.2	881	110	991	55.8	1775	40.3	4408

1989	964	217	911	51	776	78	854	49	1765	44.4	3977

Of the 3977 sentenced prisoners received 1765 (44.4%) were received for default of fine only.
Of that number (1765), 911 Aboriginals were received for fine default (51.6%). Aboriginal fine defaulters comprised 23% of all sentenced prisoners received. 854 non-Aboriginals were received for fine default being 21 % of all receivals.

Of the 911 Aboriginal fine defaulters, 694 were male and 217 were female. Aboriginal males comprised 39% of all fine defaulters, 47% of male fine defaulters, 4 1 % of Aboriginal male sentenced prisoners received (I 68 1) and 17% of total sentenced prisoners received.

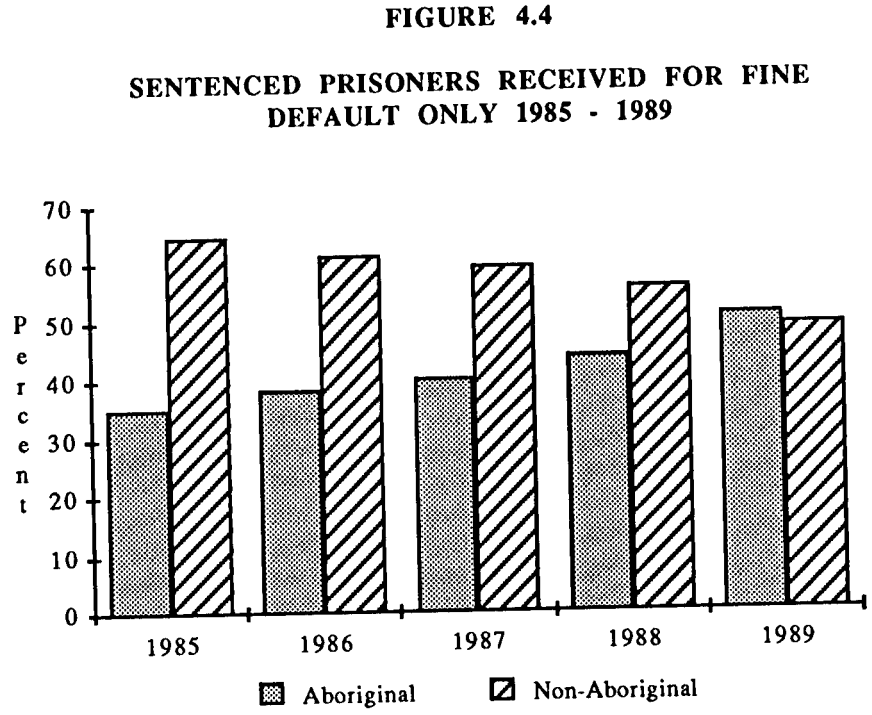
Aboriginal females comprised 12% of all fine defaulters, 74% of female fine defaulters, (295) 41 % of all sentenced female receivals, (527) 61 % of Aboriginal female sentenced prisoners receivals (353) and 5% of all sentenced receivals.

The table above shows that there has been a gradual increase in the proportion of fine defaulters being admitted to prison over the period 1983 to 1989. In 1985 fine defaulters accounted for 39.7% of all prison receivals. In 1989 as noted above the proportion had increased to 44.4%.

It is also important to note that the proportion of Aboriginal fine defaulters has also increased over the same five year period. In 1985 Aboriginal prisoners accounted for 35.4% of all fine defaulters admitted to prison. However by 1989 Aboriginals represented 51 % of all fine defaulters. Figure 4.4 below shows the increase in number of Aboriginal fine defaulters and accompanying decrease in number of non-Aboriginal fine defaulters received by Western Australia prisons.

FIGURE 4.4

SENTENCED PRISONERS RECEIVED FOR FINE DEFAULT ONLY 1985 - 1989



The imprisonment of people who cannot or do not pay fines imposed upon them, without proper regard to their ability to do so, emphasises the injustice of existing sentencing policies in relation to poor people, of whom Aboriginal people form such a large sub group. The statistics bear out the disproportionate impact the imposition of monetary penalties have upon Aboriginal people given their high rate of imprisonment for fine default.

Imposition of fines is discussed in more detail in section 5.2.6 dealing with Sentencing. The legislation introduced in 1988 to divert fine defaulters from imprisonment is also discussed in section 5.2.6.

4.1.3 CAUSES OF HIGH ARREST/DETENTION RATES

In this section I have attempted to identify several factors which appear to affect the high arrest and detention rates of Aboriginal people. The issues I have focused upon are police resources and the exercise of police discretion in relation to Aboriginal people and the role of alcohol in high arrest and detention rates. I have singled out these issues because of the frequency with which they were raised in evidence in the hearings and in submissions received by my Commission in Western Australia.

4.1.3.1 Police Resources

In examining the affect that police resources have on the arrest and detention rates of Aboriginal people, one issue that arises is to what extent the number of police officers stationed in a particular area affects the apprehension rates of Aboriginal and non-Aboriginal people.

It has been suggested that an increase in police numbers results in increased policing of Aboriginal people and consequently high arrest rates of Aboriginal people. The hypothesis is difficult to test and the issues involved are complex. The discussion that follows to a large extent raises issues rather than comes to conclusions as it is an area which needs much closer examination, particularly by Police Departments which must ensure that their policing practices are not discriminatory in their result. In an effort to understand how the Police Department determines the distribution of their police members the Department was asked to explain to the Royal Commission

a) the process by which the Department determines the number of police officers needed by each police station, and
(b) the process by which the Department determines that an increase or reduction in police numbers in a particular police station was needed.

The Response of the Commissioner of Police to Specific Questions raised by RCIADIC contained the following explanation.

The criteria set down by the Police Department to assess the need for staffing at Police Stations are based on the following:
(a) Existing staff
(b) Work load at station, section or unit
(c) Work load comparison with other similarly situated areas. (If similarly situated areas exist)
(d) Work load trends
(e) Traffic Accident Rates
(f) Traffic Density Rates
(g) Traffic Contact Rates
(h) Population change and trends
(i) Population type, e.g. Aboriginal, tourist
(j) Tourist rates
(k) Industrial development
(1) *Information supplied by Regional and Divisional Officers*
(m) Any other relevant information.
(Q8.2(a)(b)&(c), pp, 29-30)

The Department was asked to clarify how the workload and workload trends were measured and what difference was made by the population types of 'Aboriginal' and 'tourist'. Their responses are as follows:

> *Police stations submit a quarterly return of specific tasks which have a pre determined work value, that are performed at that particular station for each month of the quarter. E.g., number of arrests, complaints, traffic accidents, etc. Increases/decreases are continually monitored to determine work load variations.*
>
> *Tourist population normally influxes at specific times of the year e.g., Broome during 'Shinju Matsuri Festival', Rottnest during Public and School holiday periods, which can be catered for by temporary increases instead of permanenent staff allocations.*
>
> *Similarly Aboriginal population can be nomadic and affect different areas as they move from town to town* (Responses by the Police Dept which the Royal Commission would like clarified Q.8.2(b)(d)).

The Police Department have also provided me with apprehension statistics for each police station in Western Australia for the period from 1985 to 1990. These statistics are broken down into offence and Aboriginality of persons apprehended. Unfortunately the apprehension statistics provided to date do not include apprehensions for the offences of drunkenness. I expect that the inclusion of drunkenness figures would considerably increase the Aboriginal apprehension rates presented in the statistics. An indication of the impact that this omission will have on the general picture of Aboriginal apprehensions can be gained by examining the difference in the number of police apprehensions for the year ending 30 June 1990 in particular towns and comparing it to the number of charges heard in the Court of Petty Sessions in the same town for the same period. Clearly the two sets of figures do not correlate exactly but they do tend to give an indication of any significant difference between the two. In Halls Creek the figures provided by the Police Department as to apprehensions during the said period indicate a total of 621 apprehensions whereas the number of charges heard in the Court of Petty Sessions for the same period total 3781. This leaves an unexplained shortfall of about 3000 charges in the police figures. To a large extent the difference in the figures would be explained by the non-inclusion of apprehensions for drunkenness in the police figures. In Carnarvon the number of apprehensions total 1048 and the number of charges heard in the Court of Petty sessions total 1349. In Roebourne the number of police apprehensions total 530 yet the number of charges heard in the Court of Petty Sessions total 1728. It should also be noted that the Court of Petty Session figures do not include charges heard in the Children's Court whereas the police apprehension figures given include juvenile apprehensions. If juvenile apprehensions were not included the disparity between the police figures and the court figures would be even greater.

Because of the volume of statistical material provided in relation to apprehensions, the lateness of its provision and the lack of time available to properly analyse the material, I have concentrated on examining the situation in the country towns where the Aboriginal deaths in police custody occurred during the period of inquiry i.e. Broome, Halls Creek, Carnarvon, Geraldton, Wiluna, Kalgoorlie and Roebourne.

The Police Department have also provided me with statistics showing the distribution of police officers for the period from 1985 to 1989. Table 4.39 below sets out the police strength compared to the population in each of the selected towns.

TABLE 4.39: POLICE STRENGTH TO POPULATION IN SELECTED WESTERN AUSTRALIAN TOWNS

	Police Strength (30 June 1989)	*Population (ABS 1986)*	*Police Strength/ Population*	*Aboriginal Population % (ABS 1986)*
WA	3564	1406929	1:395	2.69

Broome	28	5781	1:206	20.3
Halls Creek	6	1177	1:196	61.3
Carnarvon	21	6846	1:326	17.6
Geraldton	65	21727	1:334	5.9
Wiluna	4	284	1:74	62.7
Kalgoorlie	79	22233	1:281	4.2
Roebourne	10	1268	1:127	47.3

These figures suggest that in towns with a high proportion of Aboriginal people the ratio of police officers to population is higher than in towns with a small Aboriginal population e.g. Wiluna which has a large Aboriginal population (62.7%) has a very high ratio of police to population (1 police officer to 74 citizens). Roebourne and Halls Creek which also have large Aboriginal populations have much higher ratios of police to population than the Western Australian average of 1:395.

However there are problems in drawing conclusions from these figures. It is widely argued that the ABS population statistics are not particularly accurate in relation to the size of the Aboriginal communities. There is also the problem created by the difference between the geographical areas covered by a police station and the ABS statistical area. It should also be noted that a comparison is being made between towns with moderately sized police stations with towns with very small police stations. In addition the number of Aboriginal police aides in each town have not been included in the police strength figures.

There is also the difficulty in determining whether the number of apprehensions increases according to the number of police officers, that is, the more police officers there are in a town the more apprehensions there will be, or whether the police, in fact, only respond to the crime rate that already exists and an increase in apprehensions merely reflects an increase in lawlessness or alternatively an increase in information supplied to the police about offences which have been committed. No doubt the Police Department could argue that in areas with high Aboriginal populations there is a need for more police or a higher ratio of police to population because of higher offence rates. It has also been suggested that Aboriginal people more frequently request police assistance therefore in areas with large Aboriginal populations them will be a high demand for police services. There has been little evidence of this before my Commission. In fact I have heard the opposite from Aboriginal people, that is, that they have difficulty obtaining assistance from police if they have a complaint to make.

However one also needs to look at the offences for which Aboriginal and nonAboriginal people are being apprehended to determine how people are being policed. Unfortunately, on the basis of the statistical material supplied to the Royal Commission such an exercise would be rather meaningless because of the omission of most apprehensions for drunkenness and other minor offences.

The previous sections of the Report have examined the over-representation of Aboriginals in police and prison custody. Table 4.40 below sets out the rate of apprehensions of Aboriginal people by police in the selected country towns. Table 4.41 sets out the level of over-representation of Aboriginals in relation to apprehensions (compared to non-Aboriginal apprehension rates) in selected country towns.

TABLE 4.40: RATE OF ABORIGINAL APPREHENSIONS BY POLICE IN SELECTED WESTERN AUSTRALIAN TOWNS 1985-1990

Town	*1984/85*	*1985//6*	*1986187*	*19807/88*	*1988/89*	*1989/90*
Broome	322.3	352.1	337.6	416.9	535.4	637.7
Halls Creek	448.8	563.7	669	651	782.5	804.7
Carnarvon	392.7	446.6	452.4	464.8	553.4	562.6
Geraldton	316.6	427.7	422.6	484.5	668	625.4
Wiluna	820.2	1089.9	1825.8	2337.1	2792.1	2269.7
Kalgoorlie	550.8	664.1	801.3	626.3	839.1	792.7
Roebourne	550	626.7	770	1026.7	783.3	788.3

TABLE 4.41: LEVEL OF OVER-REPRESENTATION OF ABORIGINALS

IN POLICE APPREHENSIONS IN SELECTED WESTERN AUSTRALIAN TOWNS 1985-1990

Town	*1984/85*	*1985/86*	*1986/87*	*1987/88*	*1988/89*	*1989/90*
Broome	3.8	3.1	2.8	3.6	3.7	4.4
Halls Creek	3.9	4.4	4.7	5.1	5.9	8.6
Carnarvon	5.8	6.0	5.5	6.3	9.2	8.6
Geraldton	9.4	8.9	9.2	10.5	11.6	10.1
Wiluna	10.9	57.7	16.1	24.8	13.5	7.1
Kalgoorlie	10.3	11.5	13.8	8.6	11.5	12.4
Roebourne	4.3	5.3	4.4	6.8	6.4	9.2

With the exception of Wiluna it appears that in each town the rate of Aboriginal apprehensions and the level of over-representation of Aboriginal apprehensions has generally increased from 1985 to 1990. Table 4.42 below shows that the staffing levels at each of the police stations in the towns have also increased over the same time period.

TABLE 4.42: STAFFING LEVELS OF SELECTED POLICE STATIONS 1985-1990

Number of Police at Police Station							
Year	*Broome*	*Halls Cr*	*Carnarvon*	*Geraldton*	*Wiluna*	*Kalgoorlie*	*Roebourne*
1984/85	21	*5*	19	53	3	46	8
1985/86	21	*5*	19	53	3	48	8
1986/87	22	6	20	56	3	52	8
1987/88	22	6	21	57	4	56	8
1988/89	28	6	21	65	4	65	10
1989/90	33	8	23	74	7	88	10

The correlation between the increased police levels and the increased level of over-representation of Aboriginals being apprehended by the police raises the issue of whether increasing the number of police officers stationed in areas with significant Aboriginal populations will result in discriminatory policing of the Aboriginal community. This could result in a continuation of the high arrest and custodial rates of Aboriginal people.

The first stated goal of the Police Commissioner in the Police Department's 1988, 1989 and 1990 Annual Reports is 'to increase the visual presence of police officers performing operational duties within the community'.

In 1989 to assist in this goal the police employed 100 civilians in non-operational positions so that sworn police officers could be re-deployed to the field.

The numbers of police officers employed have also been increased and the Police Department argues for further increases to combat the increasing incidence of crime.

Table 4.43 below shows the changes in the number of offences reported, Western Australia's population and police strength.

TABLE 4.43(a): TOTAL OFFENCES TO POPULATION TO POLICE 1984-1989

Year	Total	%	Cleared	%	Polulation	%	Police	%

	Offences Reported to Police	Changed		Cleared	(est.) (Source ABS)	Change	Strength	Change
1984	105 550	-	34 487	32.68	1 379000	3.15	2 887	2.23
1985	113 870	7.88	37 554	32.98	1 400300	1.54	2 975	3.05
1986	125 955	10.61	39 189	31.12	1 421600	1.52	3 121	4.91
1987	153 624(b)	21.90	46 224	30.09	1 496059	-	3 287	5.30
1988	149 914	2.41	46 062	30.72	1 519900	10.20	3 242	1.37
1989	168 222	12.21	45 392	26.98	1 568700	3.2	3 564	9.9
% increase from 47.7		12.02		19.8		1985-1989		

(a) Table adapted from Tables in Apendices in Annual Reports of Western Australian Police Service 1988 1989.
(b) 1987 offence report figures include about 6000 offence reports carried over from 1986.

The Police Department Annual Reports for 1987/88 and 1988/89 provide performance indicators which are divided into two categories:

A. Broad Programme Indicators - provide an overview of Police Force's corporate performance
B . Provide additional information and indicate degree to which Commissioner's operational goals are being implemented.

The Annual Report examines the extent to which the Crime Programme leads to apprehension of criminal offenders and reductions in crime. It examines workload, effectiveness and efficiency.

The Broad Programme Indicators of effectiveness use crime clearance rates. Efficiency is measured by number of reported offences divided by total police force strength and number of cleared offences divided by police force strength.

One sub-programme relating to the Anti-theft Squad (Armadale) measures effectiveness by % change in targeted crime rate in operational area and % contacts leading to arrests. The Report indicates that the efficiency of the programme is measured by number of charges per officer and number of arrests per officer.

The use of number of charges and arrests per officer as an indicator of efficiency is very questionable.

The number of arrests and charges per officer does not necessarily indicate that crimes have been cleared or that police are preventing further crimes from being committed.

In fact it is disturbing that the Police Department considers them to be useful measures especially given the submission of the Police Commissioner to the Royal Commission that members have been instructed to use the option of arrest with caution (p.14) and that it may be possible within the promotional system to enhance the use of summons of arrest 'by acknowledging as departmental policy, the quality of decision making in this regard, at operational level.' (page 15, see also Police Gazette No. 27 12.7.89 of the Police Annual Report).

Again in the Financial Report 1988 the number of arrests, summonses and charges are presented as indicators of performance. The Assistant Commissioner (Operations) makes these comments on the Metropolitan Policing Programme:

> *Metropolitan Policing Programme*
>
> *In keeping with an effective and comprehensive policing policy the Warwick Mobile Patrol structure implemented in September 28, 1987, is currently under review following an extensive trial period. The final concept is expected to*

achieve the best in reactive and proactive policing. During the period under review the Patrol laid 1,044 charges, made 431 arrests and issued 102 summonses.

In April 1988 the Regional Patrol was re-named the Metropolitan Patrol and received a staff increase to 10 personnel. The Patrol's brief is to curb anti-social behaviour in the Perth city area and concentrate on known trouble areas. its effect is becoming noticeable especially in the city and since its inception has preferred 2,917 Court of Petty Sessions charges and 349 Children's Court charges.

It says nothing of whether there has actually been any decrease in number of crimes committed or whether reported crimes have been cleared.

it is encouraging to note that the 1990 Police Annual Report uses arrest/charge rates to a much lesser extent as indicators of effectiveness and efficiency. The performance indicators found at page 53 of the 1990 Report calculate effectiveness on the basis of percentage change in offences per 100 000 population and changes in clearance rates. It calculates efficiency on the basis of reported or detected offences divided by police strength, number of offences cleared and the cost of the Crime Programme. In the body of the 1990 Report in the discussion on the various aspects of the Crime Programme the emphasis is on clearance rates rather than the number of arrests and charges. However, discussion of assaults, stolen motor vehicles, drug offences and gold stealing still focus on the number of arrests and charges.

Financial Resources

As the size of the Police Force increases so too of course does the expenditure of the Police Department. Table 4.44 below sets out the expenditure of the Police Department for the year ending 30 June 1985 to year ending 30 June 1989. The table is based upon the financial statements in the Police Department Annual Reports from 1984-1985 to 1988-1989.

TABLE 4.44: EXPENDITURE OF POLICE DEPARTMENT 1985-1989

	Salaries	*Total Expenditure*	*Increase in Expenditure*
1985	$101791788	$125974383	
1986	$114526457	$147740517	17
1987	$124950119	$160591833	9
1988	$131836116	$174056176	8
1989	$153683993	$220244920	27
% Increase in expenditure 1985-1989			75

The table indicates that there has been a 75% increase in the total expenditure of the Police Department from 1985 to 1989 (figures have not been adjusted for inflation).

However, as the following section 4.2.5 on the Legal System notes, there has been nowhere near the same level of increased funding to legal aid bodies. These bodies are responsible for providing adequate legal representation to those who do not have adequate financial resources to obtain private legal representation. The scales of justice become unfairly weighted when government resources are nearly all placed on the side of policing and prosecution of the population. Legal aid bodies have been starved of funds so that the protection afforded to those who come into contact with the criminal justice system is totally inadequate.

The level of over-representation of Aboriginal people in police apprehension rates and police and prison custodial rates raises the question of whether the operation of the criminal justice system in Western Australia continues to oppress the poor and disadvantaged. It seems clear to me that if increases to police resources result in discriminatory policing of Aboriginal people, then it is extremely important that the consequences of such funding decisions are closely scrutinised. It is also essential that legal aid bodies are provided with substantial increases in funding to help balance the situation. It would appear that a coordinated approach to criminal justice planning is required in Western Australia. If the Western Australian government continues to concentrate the financial resources on the law enforcement side of the justice scales then it must accept full responsibility for the continued oppression of the poor and disadvantaged in this State.

4.1.3.2 Police Discretion

The way in which police officers exercise their discretion in relation to policing and to arrest, charging and bail practices has the potential to have an enormous impact on the arrest and detention rates of Aboriginal and non-Aboriginal people.

The nature of police powers and police discretion are described by the Police Department in the 'Submission of the Commissioner of Police and the Western Australian Police Department to the RCIADIC' May 1990 at pages 3-4. The Submission states:

> *The Police Act 1892 provides the statutory authority for the existence of the Police Force and for the powers, duties and responsibilities of sworn police officers, including the Commissioner.*
>
> *Daily operations of the Police Force are principally concerned with law enforcement functions under the powers of the Criminal Code, Road Traffic Act, Firearms Act, Liq Licensing Act and the Police Act.*
>
> *In addition to statutory powers, certain obligations, duties and powers are conferred on police by virtue of the oath of office. The existence of an independent discretion flowing directly from appointment as a Constable at common law is the principal explanation for the form of decision-making at operation level. This incorporates a discretionary authority to apply the law according to individual perceptions and the circumstance prevailing at the time.*
>
> *This discretion preserves the unique character of the office of Constable at common law and further defines the nature of the relationship between police officers and the Commissioner.*
>
> *The view that no master/servant relationship exists has been judicially recognised and endorsed. Accordingly the Commissioner is not vicariously liable for the actions of individual police officers when these officers act within the scope of their discretion. (My* emphasis)

However Armstrong (1990) in her paper prepared for the Royal Commission on police accountability states that

> *It* now generally accepted that in exercising discretionary powers *police are subject to review and direction within the police hierarchy* (Lustgarten 1986 page 12; Hawkins v Bepey [1980] 1 All ER 797)

She then states that this just recognises the managerial reality within a large organisation without any significant restraint of a police officer's degree of choice in a particular situation. (Armstrong:1990)

There are many points in the criminal justice system that police officers have the opportunity to make discretionary decisions. The police officer must decide how laws will be policed and enforced, whether to arrest or not, what charges should be laid, whether to grant bail or not, whether to allow the detainee contact with someone outside the police station or not, whether to proceed with the prosecution of an offence or not. These are but a few examples which have arisen during my inquiries.

It became apparent to me that the exercise of discretion by police officers is rarely the subject of scrutiny by their superior officers, the Commissioner of Police or the courts, however the everyday discretionary decision making power of police officers has a profound influence upon the operation of the entire criminal justice system.

A police officer has a discretion whenever the legal limits on his/her power leave him/her in a position where he/she is free to make a choice about what action or inaction to take. It is my view that the current prescribed limits on the exercise of police discretion do not provide effective controls against abuse. Time and again throughout the course of my inquiries I found the way in which police officers had exercised their discretion in relation to arrest, charge, bail and custodial practices was not justified, was contrary to Routine Orders and in most instances had gone unnoticed at least at an official level, until the Royal Commission inquiry. However in each instance the exercise of police discretion had had a profound effect on the life, the liberty and in some cases the death of the deceased.

Constraints on the Exercise of Discretion

The constraints that exist on the exercise of discretion are as prescribed by legislation, and instructions and orders promulgated by the Police Department. The legislative constraints include provisions found in the Police Act, and regulations made pursuant to the Act, The Bail Act and The Criminal Code.

Internal constraints provided through Police Department orders and instructions include guidelines found in the Police Routine Orders, Police Gazette notices, executive circulars and instructions, the Police Manual, Regional Orders and Station Orders. However I note that internal police orders and instructions are generally regarded as guidelines only with few, if any, mandatory instructions. I have been advised by both the Police Department and the Commissioner of Police that these orders leave 'scope for discretion and flexibility where possible'. It became apparent to me that disciplinary action for breach of internal instructions and orders was rarely taken. This results in a situation where the police guidelines as to the exercise of police discretion are themselves discretionary. In my view the current level of accountability of police officers exercise of discretion is unsatisfactory. The discretionary nature of Routine Orders is discussed in more detail in section 5.2.8 of my Report.

The following section of the Report, 4.2, Avoidance of Custody, deals with Arrest and Bail procedures. The exercise of discretion in relation to arrest on bail will be discussed in that section, with particular attention being paid to the way in which the discretion was exercised in relation to the deceased.

Training in Relation to Discretion

It appears that police recruits receive some training on the exercise of their discretion, particularly in relation to powers relating to arrest, charging and bail in the legal studies unit of their training course. This training is supplemented by use of these powers on the job and under supervision. In relation to arrest powers the Police Department has advised that options other than arrest are emphasised as part of recruit and in-service training. However the police do not receive training to avoid arrests for minor offences (see Response of Commissioner of Police Western Australia to Specific Questions Raised by RCIADIC July 1990 pages 7 and 9 Questions 2.4 (a) and 2.9). The Response goes on to say:

> *The exercise of the discretion is an individual responsibility and whilst there is a general reluctance to place unnecessary restraints at operational level the Commissioner of Police may do so and has done when this action is desirable in the interest of either the community or the police themselves.*

However the exercise of police discretion in relation to the deceased illustrates that restraints at operational level are sorely needed. The effectiveness of the current level of restraint on police discretion is questionable. Further training as to the exercise of police discretion, particularly in relation to arrest, bail and custodial procedures, is indicated.

Discretion in Relation to Policing and Charging Practices

In addition to the exercise of discretion in relation to bail, arrest and custodial practices discussed elsewhere in the Report, I found in a number of cases that the way in which police discretion was exercised in relation to policing and charging of the deceased persons was cause for concern.

In the Inquiry into the Death of Benjamin Morrison I found that the facts that were inserted by police officers on the face sheet of the police prosecution brief were knowingly misrepresented and that a charge of disorderly conduct based on those facts was not justified.

In the Inquiry into the Death of Misel Waigana I found that the deceased was behaving in a bizarre way at the time of his arrest. He was yelling out 'Don'ttouch me, don't kill me' and was waving his arms about. One of the arresting officers noted on the face sheet of the police prosecution brief-

> *The defendant at the time was not swearing, only yelling and screaming to himself which would suggest that he may need to be assessed in Graylands* [a psychiatric hospital.

If the matter had proceeded to trial it is unlikely that the deceased would have been convicted. The situation was one of a man who was seriously ill and in need of medical attention yet the police exercised their discretion and proceeded to arrest, charge and detain Waigana for disorderly conduct. As Counsel Assisting noted in her Final Submissions it would be interesting to compare the reaction of the police to a non-Aboriginal person wearing a suit and tie and exhibiting the same behaviour.

Milton Wells was arrested and charged with wilful damage after a car window was broken in a motel carpark and he was located in the general vicinity. There were no witnesses to the breakage; the evidence identifying the offender was seriously deficient; Wells strenuously denied the charges and he was not interviewed at all by the police. The charge against him was insupportable. However he was arrested, charged with wilful damage, and placed in the Kalgoorlie Police Lockup. Bail was not considered. Throughout these criminal justice procedures the police exercised their discretion in relation to Wells. At every point in the process i.e. in relation to arrest, charge, bail and detention, it appears that there was a failure to exercise the discretion in an adequate or appropriate manner. Wells happened to be an Aboriginal in the vicinity of a broken car window. One must wonder whether in the eyes of the police the only cause for suspicion was his Aboriginality rather than any concrete evidence.

This raises the issue of the exercise of police discretion in relation to policing practices overall. The police have a wide discretion in relation to their law enforcement duties. They may selectively enforce certain laws and selectively police certain groups of people.

In the section of this Report with Liquor Licensing Laws I discuss the way in which the police selectively enforce certain sections of the Liquor Licensing Act. The great majority of Liquor Licensing Act offences are brought against the consumers of liquor, juveniles and those who are found drinking in the street and parks. Those who sell and supply liquor to juveniles and drunken persons continue to offend without apprehension or prosecution. The selective law enforcement practices are an example of the exercise of

police discretion which results in the continued oppression of Aboriginal people, usually living in extremely disadvantaged conditions.

Policing practices in relation to youths are another illustration of discretionary policing practices which may discriminate against a particular group in society, leading to high arrest and detention rates of that group. In my Inquiry into the deaths that occurred in Geraldton, (Cameron, Wongi, and Walley), I heard evidence that the police and police aides would stop and ask the name and address of any juvenile they did not know and would stop any child suspected of truancy.

The justification for these practices was that children found truanting would be returned to school. Anti-theft Truancy Patrol were concerned with preventing offences being committed by youths during school hours. The reason given for all officers questioning unknown juveniles was because the police were *'responsible for their moral welfare'* (RCIADIC W21:83-149,458)). It is interesting to note that the Police Gazette 27.9.89 advised police officers that the power to demand the name and address of any person pursuant to section 50 of the Police Act is only exercisable where there is a reasonable suspicion that the person has committed an offence or is witness to an offence. It would appear that for the police and police aides in Geraldton a reasonable suspicion exists if the person happens to be aged 17 years or younger.

I also received a considerable amount of evidence during my inquiries that Aboriginal youths regarded police practice of regularly stopping them and asking for their names and addresses as intimidatory and a form of harassment. Their perception raises the issue as to whether the exercise of police discretion in this regard is discriminatory. It would appear in some places that to be an Aboriginal youth is also cause for reasonable suspicion.

In conclusion, I have found throughout my inquiries that police discretion has regularly been exercised in a manner that is unacceptable. It is my view that the police need to be made more accountable in relation to exercise of their discretion. It would seem that further constraints need to be placed upon police discretion, particularly in relation to arrest, bail and custodial practices. The current police orders instructing police in the exercise of their discretion are inadequate in both their content and by the very fact that they are only guidelines. At the very least requirements of police in relation to certain aspects of arrest, bail and custodial procedures should be mandatory rather than discretionary and the subject of further training, close supervision and monitoring. I refer to the sections of the Report dealing with arrest, bail and custodial practices in this regard.

4.1.3.3 Alcohol as a Cause of High Arrest/Detention Rates

In the previous section I have examined the way in which the allocation of police resources, policing practices and the exercise of police discretion may lead to high rates of arrest and detention of Aboriginal people.

In this section I examine the role that alcohol plays in the high arrest and detention rates of Aboriginal people. In focusing on alcohol in this way it needs to be pointed out initially that alcohol should be regarded as a symptom of the cultural, social and economic conditions in which Aboriginal people survive. It appears to me that at all points in the criminal justice process this is insufficiently understood. It needs to be taken into account particularly in the interaction of the police with Aboriginal people.

The following extracts from evidence before the Commission reflect in an anecdotal way, the close connection between alcohol and arrest/detention rates.

> *About 90 percent of the offences in my opinion - and I'm only giving my opinion now - would be when under the influence, to some degree of alcohol ... If you took alcohol away you'd virtually be able to close down the police station ... there'd be basically no offences* (RCIADIC W19:4309)

During my time as a Justice of the Peace in Wiluna I dealt with approximately 6,500 charges in five and a half years. The type of offences that most frequently came before me were drunkenness, disorderly conduct and assaults ... Alcohol was a factor in 99.9% of all offences (W/16/58).

Every offence committed by Aboriginal people, juvenile or adult in this area is alcohol related (RCIADIC W8:278).

... the great majority of people who come to prison have been convictedfor an offence which was committed when people were intoxicated - when the person was intoxicated. (RCIADIC WI 2:228)

... in the Pilbara there is a general preponderance of alcohol and domestic violence related offences (W/12/36)

Prior to initiating the establishment of a refuge group in Broome we conducted a three month survey in town. We asked for the cooperation of the police, Department for Community Services, Aboriginal Medical Service and the hospital to fill out surveys for each incident [of domestic violence] *that come before them ... When the information came back in we found that in almost 100 per cent of cases alcohol had been a factor; either the perpetrator was intoxicated or perpetrator and victim were intoxicated at the time of the incident so alcohol was a strong factor in that.* (RCIADICW12:301)

Where facilities for Aboriginal drinkers are inadequate and unpleasant, drinking becomes an out door activity, street or park activity as well as a group activity. Aboriginal drinkers are thus more readily exposed to police attention and more often apprehended by police [Fagan and Swan in Report and Recommendations prepared by an Expert Working Group for the RCIADIC. Edited by Greeley and Gladston, page 135.)

Well, the amount of arrests ... if we'd go back ten years [ie 1971 *there was two police officers in this town* [Roebourne] *and that was pre-liquor, now there's ten and I think there's more now, so they're therefor a purpose and the purpose was the alcohol that this town had to suffer, there was two officers here before that and now there's ten, so* ... (RCIADIC W19:2348)

Q. *What would be the common reasons that most people are in the* [Halls Creek] *lockup?*

A. *The majority would be alcohol related, mainly disorderly, street drinking, park drinking, refusing to leave licensed premises or re-entering licensed premises.* (RCIADIC W29:60)

There would be 250 arrests per week, 90% of which were of Aboriginal people. The Aboriginal population of the town numbers only approximately 800-900; although arrest would include residents of surrounding communities.

David Indermaur and Kathy Upton (Research Officers with the Western Australian and South Australian Departments of Corrective Services) have produced a Report entitled 'Alcohol and Drug Use Patterns of Prisoners in Perth'. Their objective was to measure the extent and nature of substance use and abuse among offenders entering Perth metropolitan prisons. The sample for the study consisted of all persons received as prisoners at the seven metropolitan prisons during the period June to September 1987. Prisoners interviewed numbered II 84. Results included the following figures on the areas of alcohol use, alcohol dependency and alcohol and crime:

- 30 % of men and 36% of women in the sample consumed hazardous amounts of alcohol (according to National Health and Medical Research Council criteria, based on 'consumption' questions of the interviewer; see page 9 of the Report).

- 20.3% of males and 29.8% of females were classified as current alcohol dependents (using Michigan Alcoholism Screening Test, see page I 1 of the Report).

- 65.2% of the sample were indicated as having an alcohol and crime disability (that is if the prisoner reported consuming more than ten drinks before committing their last offence or reported having one or more drink/driving charge, see page I 1 of the Report). However in the analysis the authors only considered those prisoners WHO had reported hazardous levels of consumption. According to this criteria 25% of the sample were classified as demonstrating an alcohol/crime association. However Aboriginals were found to be twice as likely to fall into the alcohol/crime group compared with non-Aboriginals as were those who had been in prison before (see page 20 of the Report).

- The authors concluded that *'The over-representation of Aborigines in all alcohol abuse categories stands out'.* (Indermaur, D. & K. Upton, 1990:25)

In section 4.1.1.3 I have discussed the offences for which Aboriginal people are detained in Western Australia. The August 1988 Police Custody survey revealed that public drunkenness was clearly the most frequently reported offence leading to detention of Aboriginal people by police. As an offence category it accounted for 48% of total detentions. Good order offences (often alcohol related) followed at 22%, with drink driving accounting for only 2.5%. These three offence categories represented 72.5% of total Aboriginal detentions by police in Western Australia in that month (see section 4.1.1.3). 1 also discussed the Criminology Research Unit papers concerning 'Arrest, Bail and Custody at Kalgoorlie in 1987 and 1990'. The Kalgoorlie material revealed a marked reduction in detentions for drunkenness in that centre when compared with the 1988 police custody survey figure: from 48% to 5% in 1990. However the proportion of Aboriginal people detained for 'other good order offences' in 1990 in Kalgoorlie was higher than the 1988 survey figures (from 22% to 28%). Drink driving offences were substantively higher (from 2.5% to 13%). These three offences accounted for 48% of Aboriginal offences in Kalgoorlie between March and April 1990 (see section 4.1.1.3).

The Western Australian Department of Corrective Services receival rates for 1988/89 are also reviewed in section 4.1.1.3. The offences of drunk, disorderly, other good order offences, Liquor Licensing Act offences, and traffic alcohol related offences accounted for 25.66% of male Aboriginal prisoner receivals and 29.85% of female Aboriginal receivals.

The criminal records of the deceased have been discussed in section 4.1.1.1. In this section I will briefly review the criminal histories from the perspective of alcohol as a cause of arrest and detention.

The number of 'alcohol offences' as a proportion of all convictions is listed in the summary chart incorporated in Appendix I to the Report. These 'alcohol offences' include the following: drunk, road/street/park/reserve drinking, drink liquor in townsite, take liquor onto/under influence of liquor on reserve, provide/receive liquor, refuse to leave/re-enter/prohibited person/juvenile on licensed premises and DUI. The following table presents the information from the Appendix including 'alcohol offences' as a percentage of total offences.

TABLE 4.45: ALCOHOL OFFENCES OF DECEASED AS PERCENTAGE OF TOTAL OFFENCES

Alcohol offences/total offences Numbers	Deceased *Name*	Alcohol offences/total offences *Percentage*
0/2	Dougal	0
0/9	Vicenti	0
0/27	Farmer	0

8/187	S Michael	2
3/145	Walley	3
4/63	C Michael	6
2/26	McGrath	8
2/20	Green	10
3/25	Robert Walker	12
15/120	Polak	12
4/31	Blankett	13
2/14	Cameron	14
7/43	Harris	16
2/12	Chatunalgi	17
21/107	Wongi	20
22/76	Wodulan	29
10/32	Bates	31
12/37	Wells	32
5/12	Garlett	42
121/275 (approx)	Morrison	44
4/9	Jones	44
13/26	Waigana	*50*
16/30	Anderson	53
13/24	Ugle	54
4/7	Pat	57
43/72	Brown	60
88/128	Samson	69
22/31	Njanji	71
73/90	SCGH case	81
40/48	Barnes	83
39/45 (approx)	Roy Walker	87
9/10	Dooler	90

Even this bald comparison between alcohol offences and total convictions shows that alcohol offences accounted for over fifty percent of convictions for thirtythree percent of the deceased.

However closer examination of the criminal records and the police apprehension sheets (Form PI 8) reveals a far more extensive connection between alcohol and arrest/detention rates.

Dougal is included in the seven deceased whose alcohol offences comprised under 10% of total offences. However his record shows only two trivial offences, one for stealing a sausage when 'He had enough money to buy the sausage but told police he wanted to spend it on grog' and a disorderly conduct charge following being observed by police urinating in public. He was noted to be affected by alcohol at the time.

At the other end of the scale is the record of Benjamin Morrison, who accumulated approximately 275 convictions. About half of these were 'alcohol offences' (mainly drunk, street/park drinking, receive liquor). In addition he was often convicted at the time of an alcohol offence of other offences including disorderly conduct (of which he had 33 convictions), false name, stealing, resist arrest, interfere with motor vehicle, No MDL, indecent language, wilful damage, idle and disorderly, beg alms and assault.

Although only four of Nita Blankett's 31 convictions were alcohol offences the records of at least twelve additional offences note the involvement of alcohol. The details of offences committed on one occasion in September 1980 (disorderly conduct x 2, aggravated assault (police), refuse name and address, wilful damage) are illustrative. They show the probability of alcohol a cause or at least a contributing factor to offences which may not on their face appear to have a connection with alcohol. The following is extracted from her criminal convictions and imprisonment summary:

> *At 2.20 pm on 22.5.80 plain clothes police were on duty in a car park ... and had been speaking to five juveniles, the defendant was walking ... towards police and shouted out at police. Words spoken could be clearly heard ... she ... continued to use obscene language refused to desist. Had been drinking but was not drunk* (p. 265).
>
> *And at 2.40 pm on 22.5.80, plain clothes constables were escorting defendant under arrest to lockup ... deft was seated in the rear r/h seat of vehicle - bucket seats - and deft kicked the police officer in the back of the shoulder causing him to lose control of the vehicle* ... (p. 266).
>
> *And at about 2.50 on 22.5.80 while being interviewed ... refused to give name and address ...*
>
> *At 3.00 on 22.5.80 at EP lockup the deft became abusive to police and started to shout obscene language ... there were women present at the time* (p 268).
>
> *And while in police custody the deft removed one of her boots and using it as a hammer, demolished the china pedestal pan* (p 269).

Examination of the records and circumstances of the offences support the strong connection between alcohol and good order offences such as disorderly conduct charges. For example, Christine Jones' three disorderly conduct charges involved threatening people and fighting in hotels. Dooler's 'unseemly behaviour' charge arose from his screaming and shouting behaviour while in a drunken condition. Garlett's five disorderly conduct charges include references to fighting and 'had been drinking but not drunk'.

Similarly when one looks behind assault and aggravated assault charges there is a common link with alcohol. All of Pat's three aggravated assault charges involved police with the deceased kicking or swinging at officers. On two occasions it was noted 'the accused had been drinking however was not drunk' and the third offence arose following arrest on a disorderly conduct charge following fighting in a hotel bar. Waigana's aggravated assault offences arose from attacks upon de facto wives while intoxicated. Stanley Brown's record includes some eleven convictions for assault. These were mostly upon his de facto wife and police records of the offences include references to assaults occurring out side a hotel, the use of a bottle as a weapon, to the deceased and his wife drinking prior to the assault and 'admitted offence, said be was sorry, it was the drink'.

There is also the familiar incidence of stealing offences involving thefts of liquor. For example six of Wodulan's eight stealing or break, enter and steal offences involved taking alcohol from residences, hotel store rooms or a shop. Similarly five of Harris's seven stealing convictions involved taking alcohol usually from the cool room of the local hotel. This type of offence or the commission of stealing offences while intoxicated appear in the offence histories of Wongi, Cameron, Fanner, Waigana, Anderson, Polak, Samson, Green, S Michael, Vicenti and Wells.

The other main category of offences which is often linked to alcohol consumption is motor vehicle offences. Convictions of other offences may often accompany a DUI charge e.g. No MDL (see Garlett's and Brown's Criminal Records) or false name (see Nita Blankett's Record of Criminal Convictions), dangerous driving and UUMV (see Wodulan's Criminal Record Summary). There are also references in the criminal histories to the taking of motor vehicles from outside hotels (see Donald Harris).

It is clear from the anecdotal material, the statistical data and most profoundly from the lives of the deceased that alcohol has been and continues to be a potent force in the contact that Aboriginal people have with the criminal justice system. It is a cause of high arrest and detention rates of Aboriginal people. However, little will be achieved by continuing to focus on alcohol without addressing the underlying issues of which alcohol is but a symptom. These issues are addressed more thoroughly by Commissioner Dodson in his Report.

4.1.4 JUVENILE JUSTICE SYSTEM

4.1.4.1 Introduction

> *In dealing with children and juveniles who may have offended against the law what is needed is not merely discretion and common sense. We have been travelling a road long discarded as a failure virtually everywhere else in Australia and throughout the advanced world. We must get away from the debate about whether child offenders are bad or sad, depraved or deprived. The announcement* [of a cautioning scheme for juveniles] *is a step in answering the question : Is our system of dealing with children who offend against the law by arresting them, charging them, bringing them to court in vast numbers and in some way or other imposing a sanction doing far more harm than good in very many cases. I repeat : The approach adopted in this State up to now has been abandoned elsewhere, especiallyfor younger and less serious offenders. The facts are that we in this State have for too long been asking the wrong question - Are the punishments hard enough. The real questions lie elsewhere. In essence they are whether or not our whole approach is misplaced* (Jackson, H.H.,1990)

During the period covered by the Royal Commission only one Aboriginal juvenile died in custody in Western Australia and there were no deaths in juvenile institutions. However 24 of the 32 Aboriginals (75%) who died commenced their involvement with the criminal justice system as juveniles and for many their involvement with the courts as juveniles was extensive. Two of the deceased were only nine years old when they first came into contact with the juvenile justice system and nine of the deceased were sentenced to detention in juvenile institutions.

The juvenile records of the deceased reveal the limited sentencing options used in relation to the deceased. In the main they were fined, committed to the care of the Child Welfare Department, or detained in juvenile institutions.

An order committing a child to the care of the Department transferred the guardianship from the parents to the State. Twenty of the deceased were committed to the care of the Department at some time during their childhood. In some cases it was as a result of a conviction for an offence and in other cases it was as a result of a finding that the child was 'destitute' or 'neglected'. This is illustrative of the inter-meshing of the 'welfare' function with the 'justice' function of the Child Welfare Department (now the Department for Community Services).

Des Semple, the Director General of the Department for Community Services described the recent history of juvenile justice in Western Australia in the following terms:

> *During the 1970's and early 1980's juvenile justice in Western Australia was characterised by an over emphasis on welfare discretion. It was an era in what has now become known as the 'child caring movement' gained full impetus. The use of euphemisms was common place, particularly in relation to maximum security institutions. For example these institutions were called Centres and the cells were called cabins. This had the effect of desensitising welfare workers in the field of juvenile justice to the harshness of maximum security institutions for reasons of their considered well being rather than normal principles of justice* (Semple,1990)

Many of the deceased were affected by the system of juvenile justice which operated during this period. It resulted in their involvement in the criminal justice system at a relatively young age and by the time

many of them reached adulthood they had become well-known to the police and the courts and eight of the deceased had become highly institutionalised (Hugh Wodulan, Paul Fanner, Robert Walker, Kim Polak, Bobby Bates, Steven Michael, Graham Walley and Wongi).

Over the past eight years the juvenile justice system in Western Australia has undergone a major review with the current policies and programmes of the Department for Community Services reflecting the shift from 'welfare' to 'justice' treatment of young offenders. Many of the reforms which have been instituted stem from recommendations made by Professor Edwards (1982) in his Report 'The Treatment of Juvenile Offenders'. `[be change in philosophy has largely been effected by the Act Amendment (Children's Court) Act 1988 which was proclaimed in December 1989. The major changes brought about through this legislation include:

- The appointment of a President of the Children's Court who has the status of a District Court Judge. He has considerable powers of administrative and judicial review in the Children's Court.

- Transfer of responsibility for the Children's Court from the Department for Community Services to the Crown Law Department.

- Provision of the court with power to order finite custodial sentences or community based supervision whereas previously the court only had power to place offenders under the control of the Department with a recommendation that they be detained for a specific period of time.

- The adult offenders jurisdiction has been removed from the Children's Court.

- Appeals on questions of fact have been introduced.

- The commencement of the age of criminal responsibility has been amended from seven to ten years.

The legislative changes have also been accompanied by a change in the policies of the Department for Community Services and new programmes have been implemented to try to reduce juvenile offending and develop preventative measures in the community. The programmes provide improved sentencing options with an emphasis on diversion from custody, support for offenders when they are released from custody and preventative programmes in the community. These programmes, will be discussed in more detail later in the section. The initiatives rely upon inter-departmental coordination, particularly between the Department for Community Services, the Ministry of Education and the Police Department; the involvement and cooperation of community and non-government organisations and the success of the Department for Community Services in community development. Commissioner Dodson addresses many of these issues in his Report, particularly in relation to the consultation and involvement of Aboriginal communities and the relevance of the Department's initiatives to Aboriginal youths.

This of course raises the issue of the extent to which Aboriginal youths are involved in the juvenile justice system, for what reasons and the way in which the system affects them. It is no surprise that Aboriginal youths are grossly overrepresented in the juvenile justice system in Western Australia and in all other States and Territories in Australia. The following section examines the extent to which Aboriginal youths are over-represented in the juvenile justice system in Western Australia.

4.1.4.2 The Extent of the Disproportion of Aboriginal Youths in the Juvenile Justice System

Aboriginal youths are over-represented at every level of the juvenile justice system. Aboriginal over-representation increases with progression through the juvenile justice system. The following statistics present a brief summary of the picture in Western Australia:

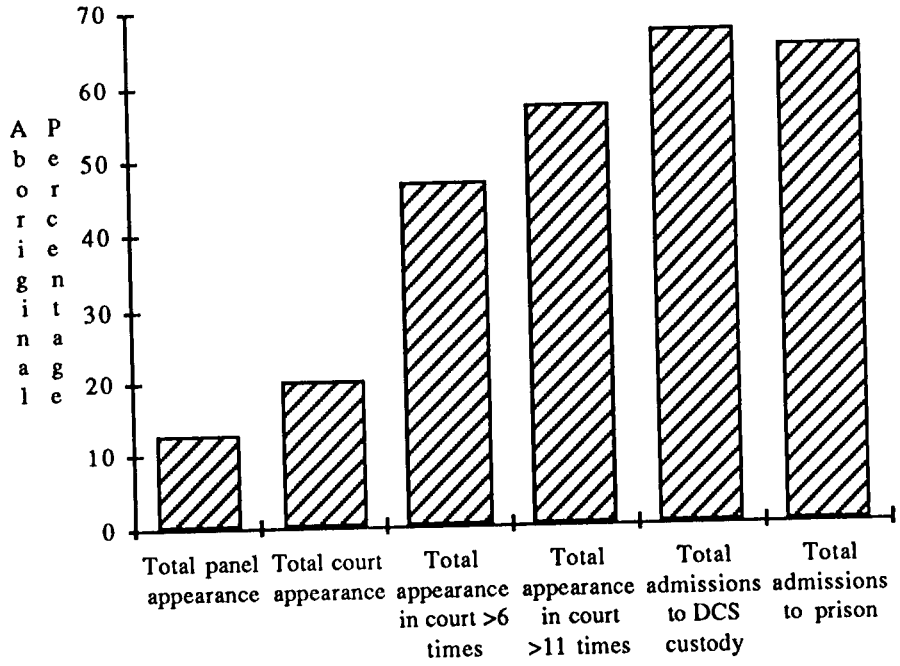
- Aboriginal youths represent 4. 1 % of the population of Western Australia (ABS 1986)

- Aboriginal youths accounted for 54% of youths detained in police custody (Biles,1990)
- 87% of youths detained for drunkenness in police custody were Aboriginal (Biles,1990)
- 70% of detentions of Aboriginal youths in police custody were for drunkenness and other good order offences (Biles,1990)
- Aboriginal youths account for 13% of children appearing before the Children's Panel (DCS, 1989/90)
- Aboriginal youths, account for 17% of the children appearing before the Children's Courts (DCS, 1989/90)
- Aboriginal youths committed 35% of all offences heard by the Children's Court or Panel during 1989/90 (DCS, 1989/90)
- Aboriginal youths accounted for 50% of the offenders who had six or more appearances before the Children's Court (DCS, 1989/90)
- Aboriginal youths account for 65% of children admitted to Department detention centres and 62% of those sentenced to imprisonment (in adult prisons) (DCS, 1989/90)
- Aboriginal youths accounted for 49% of those admitted to Longmore Remand Centre following arrest (DCS, 1989/90)
- Aboriginal youths accounted for 61% of youths admitted to Longrnore Remand Centre for fine default.

The following figure provides a snapshot of the extent of Aboriginal youths involvement in the juvenile justice system.

FIGURE 4.5

ABORIGINAL OFFENDERS AS A PROPORTION OF TOTAL OFFENDERS IN VARIOUS CATEGORIES OF THE JUVENILE JUSTICE SYSTEM IN WA 1988/89



Sources of Statistical Information

The extent of the involvement of Aboriginal youths in the juvenile justice system is difficult to determine in some areas because of the lack of available statistics. Police statistics provided show the number of juveniles for whom offence Reports are submitted, the number of juveniles apprehended and the offences for which they are apprehended however they do not show whether the offender is Aboriginal or non-Aboriginal. The Police Department has also provided statistics showing the number of juveniles apprehended by way of arrest or by way of summons and the offences for which they were arrested or summonsed, however these statistics are incomplete as not all apprehensions for minor offences are recorded on the police computer. These statistics are also unable to be broken down into the Aboriginality of the offender. The Report of the Department for Community Services produced a Report in August 1987 on 'Juvenile Arrest and Summons' which shows the extent of utilisation of arrest procedures by the police, however this study also does not indicate the Aboriginality of the juveniles.

The survey conducted by the Royal Commission Criminology Research Unit on police custodies in August 1988 is able to provide some information about Aboriginal and non-Aboriginal children detained in police custody during the survey period. The lockup meal returns of the Department for Community Services also provide information about where children are being detained in police custody throughout the State although they do not indicate Aboriginality of the detainee.

The Department for Community Services also provided the Royal Commission with statistics showing the number of youths appearing before the Children's Court and Children's Panel, the offences which they have committed and the disposition they receive from the court or panel. These are broken down into Aboriginality of the offender. The Department has also provided us with statistics on the number of Aboriginal and non-Aboriginal offenders detained in juvenile institutions.

These statistics are examined in mom detail below.

Police Custody

The statistics provided by the Police Department on the number of apprehensions of juveniles have some serious deficiencies, the major one being that they do not provide a breakdown of Aboriginal and non-Aboriginal juveniles. Secondly the figures do not include all apprehensions for minor offences. Apparently in about 1983 a decision was made by the Police Department not to record all apprehension information on the computer because of limited resources and apprehensions for minor offences such as drunkenness, Liquor Act offences, disorderly conduct, etc, were only included if the offence resulted in a sentence of imprisonment. Clearly the police apprehension statistics present a distorted picture of the level of apprehensions given that the National Police Custody Survey August 1988 conducted by the Royal Commission Criminology Research Unit found that in Western Australia, 48% of Aboriginal adults and juveniles were arrested and detained for the offence of drunkenness and 70% of juveniles were detained for good order offences (drunkenness, disorderly conduct).

The table below indicates that from 1985 to 1990 there has been a small increase in the number of juveniles apprehended by the police but the proportion of juvenile apprehensions hovers at about 25% of all police apprehensions. Juveniles aged 0-17 years account for 13.6% of the total population of Western Australia so it would appear that juveniles account for a disproportionate number of police apprehensions.

TABLE 4.46: POLICE APPREHENSIONS OF ADULTS AND JUVENILES 1985-1990(a)

Year	*No. Adult*	*% Adult*	*No.Juvenile*	% *Juvenile*
1984/85	45360	75.8%	14472	24.2%
1985/86	52201	76.2%	16344	23.8%
1986/87	58071	75.6%	18766	24.4%
1987/88	58184	75.4%	18937	24.6%
1988/89	58605	73.8%	20841	26.2%
1989/90	59377	73.9%	20930	26.1%

(a) Table derived from apprehension statistics provided by the Police Department to the Royal Commission.

The Royal Commission's Police Custody Survey August 1988 found that juveniles accounted for 15% of all police custodies in Western Australia.

However to be included in the Royal Commission survey as a police custody the detainee had to be placed in a police cell. This may account for the difference. Of the total number of juveniles detained (794),421 or 53% were Aboriginal. As noted at the beginning of this section Aboriginals account for only 4. 1 % of all juveniles aged 0 to 17 years. Nationally 34.4% of all children aged 0 to 17 years detained were Aboriginal and juveniles in this age group (Aboriginal and nonAboriginal) accounted for only 8% of all custodies (in contrast to 15% in Western Australia).

As mentioned in section 4.1.2, the proportion of 0-14 year olds detained in police custody in Western Australia during the survey period was also higher than the national level.

Of the total number of juveniles aged 0-14 years (Aboriginal and non-Aboriginal) detained throughout Australia, 40% were detained in Western Australia. Sixtythree percent of the juveniles aged 0-14 years detained in Western Australia were Aboriginal, whereas nationally 34% of juveniles in the same age group detained in police custody were Aboriginal. Of the total number of Aboriginal juveniles aged 0-14 years held in police custody throughout Australia, 74% were held in Western Australia. Only 16.5% of the national Aboriginal population aged 0-14 years live in Western Australia (ABS 1986 census).

In Western Australia 25 % of all juveniles were in custody for less than one hour, 50% for less than two hours, 81% for less than six hours and 90% for less than thirteen hours. The lengths of time spent by

Aboriginal children in custody were somewhat longer than non-Aboriginal children with the median time for Aboriginal children being three hours whereas the median time for nonAboriginal children was only 1.5 hours.

The Police Lockup Meal Return statistics also give an indication of the number of juveniles being held in police lockups in the Penh metropolitan and country areas. These statistics show the number of meals which have been provided to juveniles in police lockups for which the Department for Community Services has been required to reimburse the Police Department.

TABLE 4.47: POLICE LOCKUP MEAL RETURN STATISTICS FOR JUVENILES 1989 METRO TRENDS BY MONTH

Month	No of P*ersons*	*No of Admissions*	*No Held >3 Days*	No Held on Good O*rder*	No Help on V*ehicle Rel*	*Default(WC)*
January	22	24	0	5	6	1
February	9	9	0	1	*5*	0
March	38	39	0	1	13	1
April	49	54	2	2	*15*	0
May	41	65	2	1	10	3
June	26	31	3	0	1	4
July	43	50	0	1	5	2
August	43	49	0	1	11	6
September	45	52	0	0	22	5
October	46	50	0	1	0	11
November	53	57	1	**4**	4	12
December	32	34	0	1	4	3

As at 2 April 1990

TABLE 4.48: POLICE LOCKUP MEAL RETURN STATISTICS FOR JUVENILES 1989 COUNTRY TRENDS BY MONTH

Month	No of P*ersons*	*No of Admissions*	*No Held >3 Days*	No Held on Good O*rder*	No Help on V*ehicle Rel*	*Default(WC)*
January	182	220	7	48	37	21
February	144	175	14	46	20	10
March	196	228	24	23	53	34
April	120	148	14	34	20	29
May	176	233	33	56	23	30
June	132	167	10	56	9	28
July	127	155	13	46	8	36
August	153	219	13	94	18	29
September	146	171	*15*	51	15	23
October	140	179	22	62	20	17
November	147	200	24	44	10	30
December	156	189	14	59	14	13

As at 2 April 1990

TABLE 4.49: TEN HIGHEST TOWNS BY TOTAL NUMBER OF INDIVIDUAL JUVENILES 1989

	Total No *of Persons*	Total No *of Admissions*	Total No *>3 Days*

Halls Creek	172	290	*5*
Meekatharra	137	186	27
Geraldton	133	154	7
Roebourne	118	134	10
Derby	117	156	*5*
Carnarvon	113	132	43
Kalgoorlie	102	120	7
South Hedland	90	122	33
Wiluna	88	106	15
Fitzroy Crossing	86	*115*	6

The above tables show that juveniles are held in country lockups in much greater numbers than are held in metropolitan lockups. The tables also indicate that significant numbers of juveniles are being held for good order offences in country lockups. Towns with particularly high numbers of juvenile detentions are Halls Creek, Meekatharra, Geraldton, Roebourne and Derby. However the Department for Community Services has advised the Royal Commission that the number of meal returns for police lockups over the last three years indicate a gradual decrease in the number of juveniles being held.

Children's Panel and Court

Appearance before the Children's Panel or the Children's Court is usually the next step in the juvenile justice process for a juvenile offender. Aboriginal children are over-represented in both, although to a greater extent in the Children's Court which has more serious consequences in terms of criminal record and dispositions available. The tables below show the number of individual juveniles appearing before the Children's Court or Panel in Western Australia from 1986 to 1989 and the number of offences dealt with by the Children's Court or Panel for the same period.

The Children's (Suspended Proceedings) Panel deals with a child aged ten (previously seven) to fifteen years who is a first offender, admits a less serious first offence and is able to pay restitution if ordered. The Children's Panel is comprised of an officer of Department for Community Services and a senior or retired police officer. The Children's Court deals with children aged ten to seventeen years.

TABLE 4.50: NUMBER OF INDIVIDUAL JUVENILES APPEARING BEFORE THE CHILDREN'S COURT OR PANEL FROM 1985/86 TO 1988/89

	1985/86	*1986/87*	*1987/88*	*1988/89*
Children's Court	7957	8658	8659	8305
Children's Panel	3909	3775	3310	3100
Either Court or Panel	11554	11934	11658	11106

TABLE 4.51: NUMBER OF OFFENCES DEALT WITH BY THE CHILDREN'S COURT OR PANEL FROM 1985/86 TO 1988/89

	1985/86	*1986/87*	*1987/88*	*1988/89*
Children's Court	24795	28525	27936	30364
Children's Panel	5367	5167	4445	4166
Either Court or Panel	30162	33692	32381	34530

These tables show that there has been an overall decrease in the number of individual juveniles and the number of offences dealt with by the Children's Panel from 1985/86 to 1988/89 but there has been an overall increase in the number of individual juveniles and the number of offences dealt with by the Children's Court over the same period. However the figures for 1989 show a decrease in the number of

individuals appearing before the Children's Court during the year although there has been an increase in the number of offences for the same period.

The table below shows the Aboriginality and age of juveniles appearing before the Children's Panel during 1989/90.

TABLE 4.S2: ABORIGINALITY OF INDIVIDUAL JUVENILES APPEARING BEFORE THE CHILDREN'S PANEL 1989/90

Age of Child	*Abl*	*%*	*Non-Abl*	*%*	*Unknow*	*Total*
Unknown	0	0%	0	NO	1	1
7	2	0.5%	5	0.2%	0	7
8	13	3.4%	10	0.4%	0	23
9	12	3.2%	19	0.8%	1	32
10	32	8.4%	70	2.8%	4	106
11	43	11.3%	138	5.6%	4	185
12	61	16.1%	234	9.4%	5	300
13	57	15.0%	498	20.1%	11	566
14	74	19.5%	737	29.7%	10	821
15	68	17.9%	603	24.3%	14	685
16	16	4.2%	165	6.7%	8	189
17	1	0.3%	0	0%	0	1
TOTAL(a)	379 13%	99.8%	2479 85%	100%	58 2%	2916 100%

(a) Percentages may not total 100 per cent due to rounding of figures

This table shows that non-Aboriginal children (2479) accounted for 85% of children appearing before the Children's Panel during 1989-90 and Aboriginal children (379) accounted for 13%. Aboriginal children appeared before the Panel 3.6 times the rate of non-Aboriginal children. Relatively more Aboriginal children were brought before the Children's Panel at a younger age than nonAboriginal children. 43% of Aboriginal children appearing before the Children's Panel were twelve years or younger, whereas 19% of non-Aboriginal children in the same age group appeared before the Panel.

The table below shows the Aboriginality and age of juveniles appealing before the Children's Court during 1989/90.

TABLE 453: ABORIGINALITY AND AGE OF INDIVIDUALS APPEARING BEFORE THE CHILDREN'S COURT 1989/90

Age of Child	*Abl*	*%*	*Non-Abl*	*%*	*Unknow*	*Total*
Unknown	0	0%	0	0%	4	4
2	0	0%	1	0.02%	0	1
7	2	0.1%	*5*	0.08%	1	8
8	19	1.1%	10	0.2%	2	31
9	23	1.3%	23	0.4%	8	54
10	58	3.2%	76	1.3%	6	140
11	82	4.5%	158	2.8%	25	265
12	117	6.5%	282	5.0%	17	416
13	171	9.5%	597	10.5%	46	814
14	255	14.1%	951	16.7%	101	1307

15	298	16.5%	1020	17.9%	162	1480
16	325	18.0%	881	15.5%	690	1896
17	355	19.7%	1279	22.5%	1730	3364
18+	101	5.6%	408	7.2%	332	841
TOTAL(a)	1806	100.1%	5691	100.1%	3124	10621
	17%		54%		29%	100%

(a) Percentages may not total 100 per cent due to rounding of figures

This table shows that during 1989/90, 5691 non-Aboriginal children (54%) and 1806 Aboriginal children (17%) appeared before the Children's Court. Aboriginal children appeared before the Children's Court at a rate 4.9 times the rate of non-Aboriginal children. As with the Children's Panel, a greater proportion of Aboriginal children appeared before the Children's Court at a younger age than non-Aboriginal children with 16.7% of Aboriginal children appearing before the court aged twelve years or younger whereas 10% of nonAboriginal children were in the same age group.

Information from the Department for Community Services states that over the last six years there has been an increasing number of youths appearing in the Children's Courts and a steady decrease in the number appearing before the Panel. The Department also states that the number of youths who had appeared before the Children's Court or the Panel on six or more occasions appears to be gradually increasing with 16% of juvenile offenders appearing during 1988/89 having appeared on six or more occasions. (In 1986/87 it was 13% and **in** 1987/88 it was 15%.) In 1989/90 50% of the youths appearing before the Children's Court with six or more prior appearances were Aboriginal.

4.1.4.3 The Offences

Table 4.53 in the section above shows the number of offences being dealt with by the Children's Panel have decreased over the period from 5367 offences in 1985/86 to 4166 offences in 1988/89. During the year 1989/90 the Children's Panel dealt with fewer offences again (3883).

Table 4.54 below shows the offences dealt with by the Children's Panel during 1989/90. It should be noted that the Children's Panel does not have jurisdiction to deal with serious offences such as homicide, serious sexual offences, robbery, etc. (See 4th Schedule of Child Welfare Act for list of offences with which the Children's Panel has no power to deal.)

TABLE 4.54: OFFENCES DEALT WITH BY THE CHILDREN'S PANEL DURING 1989-1990

Offence Type	*No.*	*Abl*	Non-*Abl No*	%	*Unknown*	*Total*
Assault	13	2.5%	52	1.6%	3	68
Drugs	6	1.2%	100	3.1%	4	110
Explosives	3	0.6%	12	0.4%	0	15
Fraud	0	-	72	2.2%	2	74
Good Order	61	11.8%	193	5.9%	11	265
Homicide	-	-	-	-	-	-
Justice	5	1.0%	58	1.8%	2	65
Liquor	1	0.2%	7	0.2%	1	9
Property	39	7.5%	167	*5.1%*	9	215
Robbery						
Sexual	2	0.4%	8	0.2%	2	12
Theft	348	67.1%	2328	71.3%	56	2732
Traffic	35	6.7%	261	8.0%	8	304

Other	6	1.2%	8	0.2%	0	14
TOTAL	519 13.4%	100.2%	3266 84.1%	100%	98 2.5%	3885

Theft was the most common offence dealt with by the Children's Panel for Aboriginal and non-Aboriginal offenders, comprising 67.1% of all Aboriginal offences and 71.3% of all non-Aboriginal offences. Good order offences accounted for 11.8% of all Aboriginal offences but only 5.9% of non-Aboriginal offences.

The table below shows the offences dealt with by the Children's Court during 1989-90. As noted above the number of offences dealt with by the Children's Court has increased during the period 1985/86 to 1988/89 from 30 162 offences to 34 530. There was a further increase during 1989/90 with a total of 35 205 offences being dealt with by the Children's Court.

TABLE 4.55: OFFENCES DEALT WITH BY THE CHILDRENS COURT DURING 1989-1990

Offence Type	*No.*	*Abl*	Non-*Abl No*	%	*Unknown*	*Total*
Assault	508	3.8%	428	2.9%	128	1064
Drugs	130	1.0%	705	47%	434	1269
Explosives	20	0.2%	33	0.2%	12	65
Fraud	32	0.2%	359	2.4%	366	757
Good Order	1439	10.9%	1263	8.4%	678	3380
Homicide	0	-	1	-	1	2
Justice	1829	13.8%	1321	8.8%	496	3646
Liquor	112	0.8%	112	07%	98	322
Property	830	6.3%	657	4.4%	236	1723
Robbery	68	0.5%	29	02%	9	106
Sexual	34	0.3%	35	0.2%	23	92
Theft	6075	45.9%	6144	41.0%	1980	14199
Traffic	2086	15.8%	3820	255%	2473	8379
Other	62	0.5%	72	0.5%	67	201
TOTAL	13225 37.6%	100%	14979 42.5**%**	99.9%	7001 19.9%	35205 100%

This table shows that 37.6% of the offences dealt with by the Children's Court were committed by Aboriginal children and 42.5% of the offences being committed by non-Aboriginal children with the Aboriginality of the offender unknown for nearly 20% of the offences.

Aboriginal children are convicted of offences at a rate of 1715.7 per 1000 Aboriginal children aged 10-17 years, whereas offences committed by nonAboriginal children and children for whom Aboriginality is unknown is at a rate of 119.6 per 1000 non-Aboriginal juvenile population. This means that offences for which Aboriginal children are convicted is at a rate fourteen times that of offences of non-Aboriginal and 'unknown' children.

Again, theft offences accounted for the greatest proportion of offences committed by Aboriginal and non-Aboriginal children accounting for 45.9% of all Aboriginal offences and 41% of all non-Aboriginal offences. A higher proportion of Aboriginal children than non-Aboriginal children were convicted of justice offences (13.8% compared to 8.8% of non-Aboriginal offences) good order offences (10.9% compared with 8.4% of non-Aboriginal offences) and property offences (6.3% compared to 4.7% of non-Aboriginal offences). NonAboriginal children were convicted a significantly larger proportion of drug offences (4.7% as compared to 1% of Aboriginal offences) and traffic offences (25.5% as compared to 15.8% of Aboriginal offences).

4.1.4.4 How are Youths Dealt with by the Courts?

In Western Australia, legislation has been enacted enshrining the principle that imprisonment is a sanction of the last resort. The Children's Court of Western Australia Act (No.2) 1988 makes specific reference to detention orders and imprisonment.

Section 26 (2) of the Act provides that

The court must not impose a sentence of imprisonment or make a detention order unless

(a) the court is satisfied that there is no other option appropriate in the particular case; and

(b) written reasons for imposing the sentence of imprisonment or making the detention order, as the case may be, are *recorded by the court.*

However as Table 4.56 below shows although only 2.5% of non-Aboriginal youths are sentenced by the courts to detention or imprisonment 12% of Aboriginal youths receive the most severe of available dispositions. Aboriginal youths account for 65% of all youths sentenced to detention and 62% of all youths sentenced to imprisonment in an adult prison.

At the other end of the scale proportionately more non-Aboriginal youths have their matters dismissed with 28% of their offences dismissed, whereas 20% of Aboriginal offences are dismissed.

TABLE 4.56: FINALISED OUTCOMES FROM THE CHILDRENS COURTS DURING 1989-1990

Outcome	*AN No*	*% AN*	*Non-AN No*	*%*	*Total No*	*%*
Dismissed	886	20%	2961	28%	3847	25
Fine	1074	24%	4347	4.1%	5421	36
GBB	354	8%	1206	11%	1560	10
CSO	799	18%	989	*9%*	1788	12
Probation	342	10%	419	94%	851	6
Adult Probation	432	2%	267	2.5%	338	2
Adult CSO	71	*0.5%*	30	0.3%	51	0.3
PUC	21	3%	63	*No*	182	1
CRO	*155*	3.5%	104	1%	259	2
Detention	429	10%	229	*2%*	658	4
Imprisonment	71	*2%*	43	05%	114	1
Other	17		32	0.3%	49	0.3
TOTAL	4428	101%	10690	100.2%	15118	99.6%

4.1.4.5 Juveniles in Institutions

There are four detention centres in Western Australia for juvenile offenders. These are Longmore Remand Centre, Longmore Training Centre,-Riverbank and Nyandi.

Longmore Remand Centre is a maximum security facility providing detention for children on arrest from the police, on remand from the court, who have been sentenced and are waiting to go to a training centre and those on fine default. Longmore Training Centre and Riverbank are maximum security institutions for male offenders only.

Nyandi was originally designed to hold female offenders only but now holds boys and girls. All facilities are located in the Penh metropolitan area.

Western Australia has almost double the rate of detention of juveniles in institutions compared to the national rate. The table below shows that Western Australia also has the highest rate of incarceration of juveniles of au the States of Australia, having a- significantly higher rate of incarceration than New South Wales which has the next highest rate.

TABLE 4.57: PERSONS AGED 10-17 IN JUVENILE CORRECTIVE INSTITUTIONS AS AT 30 SEPTEMBER 1989

Detention Status		*NSW*	*VIC*	*OLD*	*WA*	*SA*	*TAS*	*NT*	*ACT*	*AUST*
Not Awaiting Hearing [1]	M	202	79	56	101	16	6	20	4	484
	F	6	11	5	*5*	0	2	1	0	30
Awaiting Hearing (2)	M	111	42	34	32	22	*5*	8	4	258
	F	24	12	6	2	3	0	2	0	49
Total	M	313	121	90	133	38	11	28	8	742
	F	30	23	11	7	3	2	3	0	79
Rate [3]	M	88.0	44.9	47.6	130.0	45.0	37.5	247.5	41.5	69.9
	F	8.8	9.0	6.1	7.2	3.8	7.1	29.6	0.0	7.8
Population ('000) [4]	M	355.8	269.6	189.1	102.3	845	29.3	11.3	19.3	1061.2
	F	340.5	255.3	179.8	96.7	79.7	28.3	10.1	18.3	1008.8

The high level of incarceration of juveniles in Western Australia is not a new development and the Department for Community Services acknowledges that its previous policies and practices did much to contribute to the situation. The Department's current policies and practices are designed to reduce the current levels of incarceration. The degree of success of their initiatives in this regard need to be monitored closely, particularly in relation to Aboriginal offenders. The current level of incarceration of juveniles in this State is totally unacceptable and every effort must be made to ensure that it is reduced.

The following table shows where Aboriginal and non-Aboriginal youths admitted to Longmore Remand Centre during 1989/90 came from, i.e. metropolitan or non-metropolitan areas. The table shows that a large proportion of Aboriginal youths admitted to detention are from country areas with 45% of admissions being from non-metropolitan areas. This raises the issue of the appropriateness of detaining Aboriginal youths from country areas, particularly Aboriginals from remote communities, in juvenile institutions in the city.

TABLE 4.58:(a) WHERE THE OFFENDERS CAME FROM

	Admissions			
	Metro	*Country*	*Total*	%
Aboriginal	400	788	1188	58%
Non- Aboriginal	498	117	715	35%
Unknown	126	25	*151*	7%
TOTAL	1124	930	2054	

	55%	45%	100%

(a) Table derived from information provided by Department for Community Services

The deterrent effect of incarceration on youths has been questioned for many years now. Several reasons presented as to why detention does not have a deterrent effect am:

- exposure to other offenders may lead to increased criminogenic behaviour,
- once detention has been utilised the deterrent effect of the fear of the unknown aspect of imprisonment is minimised;
- juvenile institutions may provide some young people with access to facilities and services that would be unavailable outside;

Commissioner Dodson examines the lack of deterrence offered by incarceration in more detail in his Report.

Aboriginal people have also raised concerns with my Commission about the detention of their youths, particularly from country areas, in institutions in Perth. Many Aboriginal people have said that they want Aboriginal offenders to remain in their own area, so that the offenders can maintain contact with their families and communities. Aboriginal people have also indicated that they want to retain responsibility for the punishment of Aboriginal offenders themselves, so that the punishment administered may be more effective and appropriate (e.g. see Submission of Concerned Individual Aboriginal Peoples to the Cabinet SubCommittee on Crime Prevention January 1990 GO/29).

The Submission of Concerned Individual Aboriginal Peoples supported the Submission of the Department of Corrective Services to the Cabinet SubCommittee on Crime Prevention, November 1989, in which they argue for the transfer of responsibility for correctional institutions and programmes for convicted juveniles from the Department for Community Services to the Department of Corrective Services. The benefits of such transfer listed in the Submission of the Department of Corrective Services include:

- access by the Children's Court to the same standard of pre-sentence reports currently provided in respect of adult offenders;
- juvenile offenders would have access to a wider range of custodial placement options;
- in a number of cases, juvenile offenders of Aboriginal descent could remain at or be transferred on a temporary visiting basis to prisons close to their family and community (Wyndham, Broome, Roebourne, Greenough, Eastern Goldfields);
- juvenile offenders would have access to educational and other developmental programmes specifically designed to meet their particular needs;
- coordination of juvenile and adult CSO projects would improve efficiency and. remove competition for projects;
- group workers would have access to expanded career and staff training opportunities thereby improving their morale and their effectiveness;
- Corrective Services has unique expertise in the management of offenders;
- Corrective Services has unique expertise in the design of custodial facilities which provide a safe secure, humane and, as far as possible, constructive environment;

- significant improvements in economy and efficiency could be achieved;

- introduction of innovative programmes for the division of juvenile offenders from custody (see pages 8-9).

The Northern Territory is the only State or Territory in Australia where the juvenile justice system is administered by the corrections systems.

The Department for Community Services has expressed strong reservations about the transfer of responsibility to Corrective Services. Mr William Budiselic, Director of the Eastern Metropolitan Region of the Department for Community Services, expressed the Department's position in this way:

> ... *I have a strong reservation about the notion, given the training emphasis we have for our officers which is around stages of child development, managing adolescents. It is afar more interactive model. I guess also that part of our proposition is based on an argument that juveniles should only be detained as a measure of last resort and that if the offence is sufficiently serious to warrant detention, then it ought to be detention in some form of secure institution. The fact that the secure institution is in Perth creates problems for families and whatever, but if we were using the facilities in the regional areas more there would be an increased incarceration rate for juveniles for one thing* (RCIADIC W21:410-41 1)

Mr Budiselic and Mr Michael Hepburn, also at the Department for Community Services, argued that more efforts should be put into the division of juveniles from institutions through developing effective community options across the State. They stressed that the incarceration rate of juveniles in Western Australia needed to be reduced significantly rather than expanding the infrastructure to lock more up. (RCIADIC W21:412)

The current policies and programmes of the Department for Community Services are focused on developing alternative sentencing options, emphasising the diversion of offenders from custody. These are discussed in more detail later, but it is my view that the further expansion of the current programmes of the Department for Community Services is the preferable option. 1, too, have very strong reservations about the expansion of institutional facilities for youths, especially given the extremely high level of incarceration of juveniles in Western Australia.

The high level of juveniles, particularly Aboriginal juveniles who are involved in the juvenile justice system from arrest through to detention in juvenile institutions calls for an examination of the policies and practices at different points in the criminal justice process to determine the areas where changes may be made to reduce the level of juveniles in police and Departmental custody.

The areas which have arisen during my inquiries which require closer scrutiny are police policies and practices; legal services available to youths; the operation and practices of the Children's Court and Panel; sentencing options and practices.

4.1.4.6 Police Policies and Practices

The policies and practices of the Police Department which appear to have a significant impact on the arrest and detention of juveniles include policing practices, use of arrest and summons, introduction of a system of formal cautions and court attendance notices, bail and the questioning of juveniles.

Policing Practices

The Police Department has informed the Royal Commission that the initiatives it has taken to address juvenile crime and its prevention include Police and Citizens Youth Clubs, Blue Light Discos, Neighbourhood Watch Schemes, Minor Lecturing Programme, School Based Police Officers and the Safety House Programme. They are pan of the overall policy of community policing which has been embraced by the Police Force in Western Australia. (See Response of Commissioner of Police to Specific Questions by RCIADIC July 1990.)

Commissioner Bull further explained the operation of police initiatives in regard to juveniles in his evidence to the Royal Commission. He said:

> *The whole community - the whole community has got to work with the different projects that will offer an alternative. And, certainly, the police force has to accept its share of responsibility, and is doing so. In fact, I am firmly convinced we are doing more than our share. We have initiated many of these. For instance, you know, at Roebourne, two of my officers have engaged - including an Aide, an officer - in both instigating and running Aboriginal basketball teams, to get the young Aboriginals away from crime, away from drink --- trying to show them a better way of life. In fact, it turned out that the year before last, they both fought the grand final, the two teams. Now, I can relate this statewide. My officer at Shark Bay instigated a project to develop leisure centre largely for Aboriginal juveniles - mini golf and other alternatives - trampoline. He got the town together and they built this to show the kids, you know, a better way of life.*
>
> *My Police and Citizens Youth Clubs are taking their buses and, with the cooperation of Aboriginals, are going to areas and picking up Aboriginal youths and taking them to the Police and Citizens Youth Clubs. We are running Aboriginal blue light discos. That provides an alternative for the youth to show that they can have a good time without the necessity of alcohol, bad behaviour or even smoking, because they are not even allowed to smoke in blue light discos. So, you know, I could just go on relating these projects that the police are involved in statewide, and I believe that is the answer to the problem - is encouraging and helping these people, showing them that there is a better way, away from the alcohol.*

The Police Department has also developed Truancy Patrols as pan of the 'AntiTheft concept' which have the major objectives of identifying children who are committing offences during school hours, whilst absent from school and developing and implementing programmes aimed at preventing offences being committed by juveniles in the school system. (See Response of Commissioner of Police to Specific Questions Raised by RCIADIC Q15:16.) The Truancy Patrols am administered by the Anti-Theft Units which are part of the CIB.

During the year 1989/90 the Truancy Patrols in the metropolitan area stopped 2348 children during school hours. Of that 1387 or 59% had legitimate reasons for not attending school. 971 children or 41% of children stopped were truanting. Aboriginal children accounted for 336 or 14% of children stopped whereas they account for 2.6% of the school population. (Responses of Commissioner of Police p.65). Of the children stopped 627 were classified by the police as 'offenders' and 1509 charges were laid against the offenders.

Many Aboriginal people have a perception that the police target Aboriginal youths in their policing practices by stopping them frequently to ask their name and address, and in arrest and detention procedures. (See for examples transcript in Polak, McGrath, Geraldton cases; also see AlU Report. Commissioner Dodson also discusses this issue in his Report as does the Report of the Commissioner for Equal Opportunity reviewing Police Practices.)

It is difficult to evaluate whether the police do discriminate against Aboriginal youths in their policing practices because of the highly discretionary nature of the police decision making process in this regard and the lack of reliable statistics.

Information provided by the Department for Community Services compares the rate of official police contacts per 1000 juveniles in 1986 in Western Australia with other states in Australia. The table below shows that with the exception of the Northern Territory, Western Australia had a far higher rate of police contact with juveniles than the other states, the rate of contact (96.4) being almost double the rate of South Australia which has the next highest level (52.7).

TABLE 4.59: OFFICIAL POLICE CONTACTS PER 1000 JUVENILES (1986)

State	*No.*
Western Australia	96.4
Queensland	38.6
Tasmania	29.8
South Australia	52.7
Victoria	28.6
New South Wales	25.5
Northern Territory	160.0
Australia	38.8

When one examines the level of police contact with youths coupled with specific police policies aimed at stopping children during school hours in an effort to prevent thefts, it is perhaps not surprising that Aboriginal juveniles may have a perception of harassment by the police.

I have insufficient evidence to come to any conclusions as to whether or not police practices do discriminate against young people, particularly Aboriginals. I suspect that they do and the level of over-representation of Aboriginal juveniles appearing before the Children's Court and Panel and detained in juvenile institutions provide support for such suspicions. It is my view that the government needs to further evaluate police policies and practices which may have a discriminatory impact on young people, particularly Aboriginal youths, which result in their being further disadvantaged by the criminal justice system.

Arrest

The extensive use of arrest to apprehend juveniles by the police in Western Australia requires closer examination. The arrest process commences the juvenile's entry in the juvenile justice system.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) serve as the guiding principles by which juvenile justice should be administered. The following principles are relevant to the discussion of police practices in relation to arrest, bail, questioning and detention of juveniles.

> *5 . Aims of juvenile justice*
>
> *5.1 The juvenile justice system shall emphasise the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence*
>
> *...*
>
> *7. Rights of juveniles*

7.1 *Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.*

...

10. *Initial contact*

10.1 *Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the Parents or guardian shall be notified within the shortest possible time thereafter.*

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promise the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

The commentary on Rule 10.3 provided by United Nations states:

> *Involvement in juvenile justice processes in itself can be 'harmful' to juveniles, the term 'avoid harm' should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies which might profoundly influence the juvenile's attitude towards the State and society.*

A survey conducted by the Department for Community Services for three periods totalling nine weeks between 30.6.86 and 1.5.87 indicated that 74% of children appearing before the Penh Children's Court during this period were proceeded with by way of arrest.

Statistics supplied to the Royal Commission by the Police Department indicate that an even higher proportion of juveniles are proceeded with by way of arrest. The table below shows that during the year 1989/90, 78% of juvenile offences were proceeded with by way of arrest with only 22% of juveniles being summonsed. However it must be kept in mind that these statistics do not include police apprehensions for minor offences which did not result in a sentence of imprisonment. Therefore many drunkenness, liquor licensing and disorderly conduct offences are not included. These offences would mainly be proceeded with by way of arrest. However the table shows a significant improvement over the previous five years where the proportion of juveniles arrested hovered around 85%.

TABLE 4.60: NUMBER OF JUVENILES PROCEEDED WITH BY WAY OF ARREST AND SUMMONS 1985-1990(a)

	Arrest		*Summons*	
Year	*No*	%	*No*	%
1984/85	12569	87%	1903	13%
1985/86	13647	83.5%	2697	16.5%
1986/87	16114	86%	2652	14%
1987/88	16111	85%	2826	*15%*

1988/89	17518	84%	3323	16%
1989/90	16337	78%	7196	22%

(a) Table derived from statistics provided by the Police Department to the Royal Commission

Despite the decrease in 1989/90 the current level of use of arrest as opposed to summons is unacceptable. The Department for Community Services has stated that Western Australia has the highest arrest rate in Australia. Statistics from Adelaide for the year 1983/84 indicate that 82% of juveniles who appeared before the Children's Court and Children's Aid Panels were proceeded with by way of summons or notice. 2 This figure is in stark contrast to the figures for Western Australia for 1984/85 which indicate that only 13% of juveniles were apprehended by way of summons.

The use of arrest as the major means of apprehending juveniles results in juveniles then having to be 'processed' by a system which requires bail, possible surety, finger-printing and photographing and the possibility of detention regardless of the nature of the offence.

Data presented in the Department for Community Services Report on Juvenile Arrest and Summons August 1987 shows that only 12% to 25% of children detained in maximum security remand actually receive maximum security recommendations post-court. As the Department for Community Services Report points out (at p.9)

> *This means that at least 75% of the children locked up pre-court received a community-based disposition (dismissal, fine, probation, good behaviour bond, CSO) which indicates that their offending behaviour did not pose a significant threat to the community.*

The Youth Legal Service, a service established by welfare agencies to assist youth who are disadvantaged in the legal system and particularly youth in the juvenile justice system, suggested in their submission to the Department for Community Services Legislative Review the following standard should be introduced in relation to the arrest process.

> *Arrest should only be used when community protection is an issue. No child should be arrested unless the offence for which they are about to be arrested carries a jail term* (the general principles of the criminal code).

The Police Department was asked its view of this submission of the Youth Legal Service The Department's response is as follows:

> *The power of arrest is exercisable for the purpose of maintaining the peace and order in the community. It is a discretionary 'power that should be left to the judgement of the officer at the particular time and considering all circumstances* (Response of Commissioner of Police to Specific Questions Raised by the RCIADIC p.58 Q15.8).

The current level of use of arrest raises the question whether police officers receive adequate direction as to the way in which the discretionary power of arrest should be exercised. Although the Police Department advised the Royal Commission that *'no special instructions exist with respect to the exercise of Powers of arrest in relation to juveniles ...'* (Responses of Commissioner of Police Q. 15.3) it would appear that Police Routine Order 3-2.28 is specifically directed to the arrest of juvenile offenders. It provides:

> *3-2.28 It* is not desirable that children should be *arrested, however, the member dealing with a matter should arrive at* a decision as to whether an arrest should be made by *having regard* to.--
>
> (1) *the nature of the offence;*

(2) the necessity to prevent the continuation or *repetition of* the *offence* or *of other offences;*

(3) the welfare of the child, other persons, or property;

(4) the likelihood of the loss or destruction of evidence if the child is not arrested; and

(5) the possible need to establish the identity of the child by fingerprints or photographs.

These Routine Orders are simply guidelines to police officers and their discretion to arrest is authorised under s43(l) of the Police Act. The police perspective on the use of arrest in relation to juveniles is presented in the Department for Community Services Report on Juvenile Arrest and Summons. It states at p. 15:

> *In reality the officer dealing with situations involving emotion, drink, drugs and welfare has little option* but *to effect an* arrest to re*establish peace in the area though the offences are more often than not of a nature which would attract a monetary penalty or less.*

The Royal Commission received evidence that police officers frequently made use of arrest in preference to summonses because the summons procedure was complicated and involved too much paperwork. The Police Department was asked for its view in this regard. The Police Department's response was:

> *Summons procedures may be perceived by some officers as complicated although* it *may be that they are administratively inconvenient. If an offence is to be dealt with by the judicial process and it is not proceeded with immediately by arrest, other work commitments tend to intrude upon the summons procedures* at *a later stage.*

The police perspective presented in the Department for Community Services Report on Juvenile Arrest and Summons confirms the view that arrest is used in preference to summonses because it is less complicated and time consuming, stating:

> *... the arrest procedure is desirable to conserve time. (p.15)*

The Department for Community Services Report on Juvenile Arrest and Summons recommended that the following changes be introduced to remedy the situation:

- Introduction of a citation system (or court attendance notice) whereby a police officer dealing with an offending child could issue the child with a for in signed by the police officer advising the child of the charge and the court hearing date.

- Introduction of a formal cautioning system by which a police officer be given the authority to caution a child for a minor offence rather than proceeding with the matter by way of arrest or summons.

The Police Department has indicated its support for the proposed changes.

These recommendations for change were made in August 1987. Three years later the legislation to implement a court attendance notice system and a formal cautioning system were introduced into parliament (22.11.90).

The court attendance notice system and use of formal cautioning by the police have the potential to significantly reduce the number of juveniles proceeded with by way of arrest.

Judge Jackson, President of the Children's Court, has acknowledged the potential for the cautioning system to have a big impact on the number of children brought before the court not just for **fi**rst offenders or for trivial offences but for a wide range of offences.

Given the current reluctance of the police to use the summons process over arrests it is essential that the proposed systems are simple and efficient to provide incentive for officers to use them. Section 33(l) of the Child Welfare Act places a duty upon an officer to consider whether it would be appropriate to proceed by way of summons rather than arrest where a child is required to appear before a court for an offence. This provision does not appear to have received adequate attention by the police.

I would also suggest that the proposed legislation should include a positive duty placed upon police officers to consider the options of cautioning or issue of a court attendance notice prior to effecting an arrest.

A system to monitor an officer's use of arrest also needs to be implemented. I note that in New South Wales, Victoria and South Australia an officer's decision to proceed by way of arrest is subject to review by a senior police officer either prior to the arrest or shortly thereafter. In Victoria and South Australia a police officer needs to obtain permission from a commissioned officer to arrest a juvenile. There are currently no procedures in place whereby the use of arrest or summons by police officers are monitored. Given the high rate of juvenile arrests it is my view that a system of monitoring individual officers' decisions in this regard is essential and I would support the introduction in Western Australia of a system of review similar to those in Victoria and South Australia.

Questioning of Juveniles

I have received several submissions expressing the view that police practices in regard to questioning of juveniles should be changed so that the presence of an independent third party is necessary prior to an interview commencing (see Submission of Special Government Committee on Aboriginal/Police and Community Relations to Commissioner of Police on Interviews of Juveniles, May 1988; Submission of Concerned Individual Aboriginal Peoples to the Cabinet Sub-Committee on Juvenile Crime; Submission and evidence of ALS legal representatives to Commissioner Dodson; transcript of Royal Commission Conference on Juvenile Justice 16 July 1990.)

Children are particularly vulnerable to police questioning, particularly the young, immature and inexperienced. They need all the assistance that the law can reasonably afford them.

A lawyer from the Aboriginal Legal Service who regularly represents Aboriginal children in the Children's Court explained the difficulties in this way:

> *The way I view it is that there is an inevitable conflict between police obtaining confessions from children, because a lot of the offences which they are dealing with, break and enter offences and car offences, happened in the past and there is no other way that they will prove it except by admission. Conflict is inevitable. Children are vulnerable* (Sharratt, 1990:45).

The Western Australian Police Routine Orders provide the following guidelines to police officers with respect to questioning juveniles:

> *3-2.20* <u>*Generally:*</u> The appeal case Dixon and Others v McCarthy *and Another* (N.S.W.L.R. 1975 p. 617 et. seq.) *has established that the interrogation of children under sixteen years of age, whether at school or elsewhere, who are not in the presence of another person to whom they could turn for support, may render any confession inadmissible.*

3-2.21 A parent, guardian, relative, friend, school teacher, or if none of these persons is available, a police officer senior in rank to the interrogator and not connected with the case, should be present.

3-2.22 If the interviewing officer is alone due to isolation or because of the recent nature of the offence, great care must be taken to ensure that any confession is voluntary and the Commissioner's Guidelines for Questioning Suspects are observed. Any admonishment to speak the truth has the same effect as the holding out of a threat, promise or inducement.

The submissions I have received do not accept that a senior police officer, or for that matter a school teacher or staff member at a Department for Community Services institution are appropriate third parties to be present at the questioning of a juvenile. They often represent authority and their presence would not be viewed as independent or supportive by the child. I agree with these submissions.

A Report commissioned by the Youth Legal Service for the Department for Community Services on Independent Legal Services to Youth detained at Longmore Remand Centre by McDonald and Kuneen entitled 'Juvenile Justice ... The Missing Ingredient' May 1988 found that only three out of 52 youths interviewed by the police had someone other than the police present during questioning. Half of those interviewed had requested the police to contact relatives or friends to no avail.

The Police Routine Orders do not require police to notify parents or guardians before questioning although the Commissioner of Police has advised the Royal Commission that *'individual police officers may do so in some circumstances'.* (Response of Commissioner of Police to Specific Questions Raised by RCIADIC p.61 Q.15.11)

It would appear that this is not a frequent occurrence. This is an unsatisfactory situation and not in accordance with the spirit of the Beijing Rules.

Another matter raised by McDonald and Kuneen was the frequent reports of youth that the use of physical violence, emotional pressure and harassment of youth by police. They said (at p. 1)

> *There is a tendency to accept as normal that one can expect to be roughed up by the police, not have friends or family at questioning*

The physical and emotional harassment of youths, particularly Aboriginal youths, was raised frequently by Aboriginal people and was also raised by the legal representatives who regularly represent children.

A lawyer from the Youth Legal Service said:

> *I mean, there too many young people say that to us and to all our services that, you know, they were given a swift kick there or a bit of rough treatment there, but even accounting for a bit of misinformation from the Abdec, it just happens too much* (Boyle, Juvenile Justice Conference 16.7.90:47).

An ALS field officer had even more explicit comments to make in this regard:

> *... but if the police have had them therefor two or three hours prior to me being called in, to mum and dad finding me and taking me to the police station, by that time the child is already bleeding because he has resisted the police and he has wrestled with the police. By that time he is already bleeding. He is already sporting a black eye and grazes. B y that time he is ready to say anything* (Juvenile Justice Conference 16.7.90:49).

Although these allegations of rough treatment have not been substantiated, the frequency with which such allegations are made cause me great concern. It is my view that the current Routine Orders do not adequately protect the rights of juveniles.

The Submission of the Special Government Committee on Aboriginal Police and Community Relations proposes the following recommendations in relation to questioning of juveniles:

> *Recommen*dation 1
> *That a third party, in the role of a support person for the defendant, preferably the parent or guardian or relative, (either classificatory or actual) and if they are not available a next firiend should be present at an interview between police and a juvenile.*
>
> *Recommendation 2*
> *Where a child is suspected of committing an offence, is in a DCS institution the police should give the authorities of the establishment notice of their intended visit, such notice should be given so that the authorities can advise the child's parent/guardian, relatives (either classificatory or actual) or nominated next friend and require them to attend the institution to be present for the interview. Should any suitable third party not be in attendance the interview should not proceed.*
>
> *Recommendation 3*
> *Police should be strongly discouraged from conducting interviews at schools. They should only do so where a child is suspected of committing a serious crime or as a last resort when all other avenues have been exhausted in trying to interview a juvenile out of school hours.*
>
> *Recommendation 4*
> *Should an interview at a school be deemed necessary or unavoidable then Principals, Deputy-Principals and teachers should not be relied on to act as 'next friends' ass they are likely to be perceived as authority figures in a non-support role.*
>
> *Recommendation 5*
> *Should an interview at a school be deemed necessary or unavoidable, the procedures should follow those suggested above for interviews at DCS institutions.*

I support these recommendations. The Commissioner of Police has indicated that he does not agree with mandatory requirements being placed upon police officers in relation to questioning of juveniles and he has stated that the recommendations in relation to schools and DCS institutions are not always practical from a police point of view. In an area as fundamental as the protection of the rights of juveniles, arguments relating to time constraints, unnecessary delays and police practicalities carry little weight. These are fundamental rights that leave little room for police discretion.

I also agree with submissions that in defining who is an acceptable third party, consideration should be given to the cultural differences of Aboriginal people and the range of responsible adults who could be called upon other than biological parents should be acknowledged. An acceptable third party in these circumstances may be an aunt, uncle, brother, sister or a responsible member of the community.

It is my view that children should have a right to have an independent adult of their choice (not including a police officer, a staff member of a juvenile institution or a teacher) present during police questioning. Evidence obtained without adherence to formal guidelines should not be admissible in any court proceedings.

There should be mandatory notification of the child's parents or guardians of police arrest, apprehension, detention and intention to interrogate children. Children must also be clearly told of their rights at police questioning. There is no room for the exercise of police discretion in relation to these safeguards.

These requirements in relation to the rights of juveniles should have statutory force. Prior to legislation being passed, police routine orders should be amended to reflect these principles.

4.1.4.7 Bail

Bail practices and procedures in relation to juveniles appear to be extremely problematic. The excessive use of arrest in relation to juveniles exacerbates the situation. The Bail Act provides children with a qualified right to bail.

Paragraph 2 of Part C of the Schedule to the Act provides that a child who is in custody awaiting an appearance in court before conviction has a right to bail unless the judicial officer or authorised officer is satisfied that the defendant may:-

- fail to appear in court in accordance with his bail undertaking
- commit an offence
- endanger the safety, welfare or property of another person
- interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

Other factors which may be taken into account are:-

- whether the defendant needs to be held in custody for his own protection whether, as regards the period when the defendant is on trial, there are grounds for believing that, if he is not kept in custody, the proper conduct of the trial may be prejudiced;

and there is no condition which could be reasonably imposed which would remove the referred to risks.

The Police Commissioner has issued a direction in the Police Gazette 13.12.89 which provides the only guidance to police officers in relation to granting bail to a juvenile. The gazette notice states:

> *Arising out of the review* [of the Bail Act] *was the concern expressed by certain members of the Force that the Bail Act indirectly contributed to the increase in juvenile crime as once released on bail the tendency was for a number of juveniles to reoffend.*
>
> *The difficulty is not with the Act itself but with the administrative practices currently employed by some members. The Bail Act whilst expressly providing that a juvenile has a right to bail, limits that right where the authorised officer is satisfied that the defendant may* ...
>
> (Gazette Notice then lists the conditions noted above)
>
> *Consequently, members should exercise their discretion when considering the bail of juveniles. Where a tendency of a juvenile to reoffend has been identified, or where sufficient doubt exists as to the welfare of a juvenile, members should firstly consider the imposition of a surety and where such cannot be obtained, bail should be refused.*
>
> *Juveniles under the age of fourteen years should not be granted bail except in the presence of their parent or guardian.*

The tendency of a juvenile to reoffend or the doubt of an officer as to the welfare of a juvenile are not qualifications placed upon a child's RIGHT to bail by the legislation, nor is the fourteen year old age limit stated in Commissioner Bull's instruction, a qualification the legislature saw fit to include in the Bail Act.

Of particular concern is the refusal of bail by police to a juvenile if no surety can be obtained because they regard the juvenile as having a tendency to reoffend. It must be kept in mind that denial of bail results in the deprivation of a juvenile's liberty and the limitations placed on the juveniles right to bail should not be extended by administrative action of the Police Commissioner. The legislature has imposed limitations on the police officers discretion in regard to bail and the Police Commissioner's direction illustrates an unacceptable lack of appreciation of those limitations.

Concerns have also been expressed by legal representatives of young people and members of the Aboriginal community in relation to the current operation of the Bail Act. Some of the concerns are as follows:

- Children who are released on their own recognisance are sometimes released without any means of getting home which can lead to further offences e.g. unauthorised use of a motor vehicle.

- The release of children on their own undertaking undermines parental control. It has been suggested that before juveniles are released to bail a parent/guardian/community representative should be contacted to undertake bail and supervision of the child. A parent/guardian should be given the option to stipulate a condition of bail and a parent/guardian's decision not to bail a child should be supported. The refusal of a parent/guardian to bail a child or the failure to contact a parent/guardian should result in the child being placed in secure hostel accommodation (Submission of Concerned Individual Aboriginal Peoples GO/29).

- Judge Jackson, President of the Children's Court, has advised me that there is a significant number of juvenile offenders who simply do not have adults who take any interest in them. In addition some parents or guardians either deliberately or because they do not have adequate transport do not attend the police station to go surety. (Juvenile Justice Conference 16.7.90.) A requirement that a juvenile shall not be released on bail without an adult surety could create as many problems as the current situation. It has the potential to further discriminate against the poor, homeless and disadvantaged.

- Many juveniles are not in a position to avail themselves of section 18 of the Bail Act which provides for bail being dispensed with upon a deposit of cash. Many juveniles do not have any income, therefore they cannot provide any cash deposit and must enter into a bail undertaking.

- The requirements placed upon a child entering into a bail undertaking may be inappropriate. They may place a responsibility upon a child to attend court on a certain date. Children who have no independent means are often reliant upon parents/guardians to provide transport, or money to take public transport, and may have difficulties in fulfilling their bail obligations.

- If a child breaches bail this results in a warrant being issued for breach of bail. I was told that there are an extraordinary number of warrants issued for breach of bail. Legal representatives of the young people and the judge and magistrates of the Children's Court have advised me that the policing of breach of bail is very rigid and bureaucratic and that if a child does not turn up at court then the police charge the child with breach of bail as a matter of course. This leads to some children having very extensive records for breach of bail which makes it increasingly difficult for them to obtain bail.

- The Youth Legal Service in its Submission on the Bail Act expressed concern about conditions that are being imposed on juveniles granted bail. They noted the increased imposition of curfews as a bail condition. They regarded this to be not only an infringement of human rights, but difficult to enforce and placing unnecessary burdens upon young people. The Submission also questioned the

imposition of extremely high sureties upon juveniles and gave the example of a 14 year old boy being granted bail with a surety of $10 000. The imposition of high sureties often results in young people being unable to meet bail conditions and having to be remanded in custody.

Section 33(2) of the Child Welfare Act provides that a child who does not obtain bail shall be placed in a Departmental Centre or facility or such other place as it approved by the Director for Community Services. The effect of this legislation is that if a child does not obtain bail there is no alternative but to place them in a juvenile institution, normally Longmore Remand Centre, which is a maximum security facility. This has led to enormous problems, particularly in relation to children from country areas who are remanded in custody and then must be transferred to Perth to be placed in the remand centre. In 1989 the situation of overcrowding at Longmore Remand Centre was so severe that juveniles were being accommodated at East Perth Lockup because of insufficient beds at the remand centre. I have been advised by the Department for Community Services that there have not been the same problems with overcrowding in 1990. Nevertheless there appears to be an urgent need for bail hostels for juveniles with secure facilities in both the country and metropolitan areas.

The evidence before my Commission indicates that urgent action needs to be taken to remedy the current problems that exist in relation to juvenile offenders and bail. The recent Review of the Bail Act (Doig et al:1990) did not adequately address the impact of the Bail Act on juveniles. I am not sure that their suggestion that *'authorised officers should be encouraged to consider the imposition of surety conditions for juveniles in order that more parents are involved in the procedures affecting their children'* shows an appreciation of the complex of issues involved in this area, It certainly shows no appreciation of the position of juveniles who have little or no support from parents or responsible adults.

4.1.4.8 Legal Services

The right to adequate legal representation is a fundamental right of juveniles who are in trouble with the law. The right to counsel is recognised in Rule 7.1 of The Beijing Rules. The recent changes to the Children's Court so that it operates in accordance with the 'justice' model rather than the 'welfare' model makes it essential that children's rights are protected through adequate access to legal services.

Legal services are provided to juveniles by three major services: the youth unit of the Legal Aid Commission, the Youth Legal Services and the Aboriginal Legal Service. Aboriginal youths are largely represented by the ALS and the Legal Aid Commission.

Aboriginal Legal Service

In country areas Aboriginal juveniles are usually represented by the Aboriginal Legal Service (ALS). The lack of financial resources available to the ALS has meant that there are insufficient lawyers to provide legal advice and representation to all Aboriginal juveniles who appear in the Children's Courts in Western Australia. This is a particular problem in the non-metropolitan area. The ALS currently has offices in 13 country towns and has one solicitor in each of the following towns: Kalgoorlie, Albany, Geraldton, Port Hedland, Derby and Kununurra. There is also one solicitor in the Perth office who works exclusively with juveniles. Aboriginal field officers are located in Laverton, Kalgoorlie, Albany, Narrogin, Roebourne, Geraldton, Carnarvon, Pon Hedland, Broome, Derby, Halls Creek, Kununurra and Perth. Because of the limited availability of solicitors in country areas Aboriginal juveniles are, on most occasions, represented in Children's Courts by Aboriginal field officers. Mostly they represent juveniles who are pleading guilty or wish to obtain bail. Occasionally field officers will represent juveniles in the Children's Court on defended matters because there are no lawyers available.

The extensive use of field officers or paralegals by the ALS is not without problems. Field officers have the right to appear in courts on behalf of Aboriginal people upon the granting of a certificate under section 47 of the Aboriginal Affairs Planning Authority Act. However concerns have been expressed both by ALS

lawyers and the judge and magistrates of the Children's Court that the field officers in some cases do not have adequate training and because of the insufficient number of lawyers, Aboriginal juveniles are receiving inadequate legal representation. Greg McIntyre, the former Principal Legal Officer at ALS, suggested that an accreditation scheme needs to be examined to ensure that paralegals have the necessary training and skills and to provide adequate advice. As Mr Stephen Vose, a magistrate with the Children's Court, formerly a solicitor with the ALS, commented:

> *It's very difficult because ALS is terribly under-resourced for that sort of thing and there is a lot of pressure on people who are appointedfield officers to be put straight into the job. That's what happens and they are not properly trained* (Juvenile Justice Conference 16.7.90:96)

Legal Aid Commission

The Legal Aid Commission (LAC) provides duty solicitors for the Children's Court at East Perth, Fremantle, Midland and Armadale. It is not know the extent to which they provide legal services to juveniles in the non-metropolitan area. The Youth Unit of the LAC also represents juveniles who are granted legal aid and on defended matters and the Unit's solicitors attend Longmore Remand Centre to provide advice to children detained there.

Due to the inadequate resources of the ALS and the increasing demand for its services the ALS has become increasingly dependent on the LAC to provide services to Aboriginal juveniles (also see section of Report on the Legal System for discussion on resources of ALS and LAC generally).

The table below shows the number of applications by juvenile offenders for legal aid in the criminal law division of the LAC and the number and percentage of applications by Aboriginal juveniles. The figures show an enormous increase in total applications from 1984/85 to 1988/89 and that the proportion of Aboriginal applications have doubled from 9% in 1984/85 to 18% in 1988/89 of all juvenile applications.

TABLE 4.61: APPLICATIONS FOR LEGAL AID BY JUVENILE OFFENDERS 1985-1989

Period	*Total No. Applications*	*No Abl Applications*	*% Abl Applications*
1984/85	22	2	9%
1985/86	81	10	12%
1986/87	359	58	16%
1987/88	737	128	17%
1988/89	810	147	18%

The above figures do not show the number of Aboriginals represented by the duty lawyer scheme or the number of Aboriginals advised by the LAC's Legal Advice Bureaus.

No additional funding has been provided to the LAC to enable it to meet the increasing demand to provide legal assistance to Aboriginals.

LAC lawyers are not required to have any special qualifications or training in relation to Aboriginal culture, history or law when employed in positions in which they frequently have contact with Aboriginal people, nor does the LAC provide any special training in this regard. However it should be noted that to date the ALS also does not provide any special training to the lawyers employed by the Service in relation to Aboriginal affairs.

Youth Legal Service

The Youth Legal Service (YLS) usually only provides legal representation to Aboriginal youth when the ALS cannot provide representation because of a conflict. The YLS also attends Longmore Remand Centre to provide advice to youth detained there.

No Representation

Judge Jackson has indicated he has concerns about the complete lack of legal representations in some large country areas. He also said that *'there is inadequate representation everywhere'.* He, and several Children's Court magistrates, have noted a particular problem in the Murchison. He has said that the number of children coming into custody from the Murchison area is appalling. The towns of Carnarvon, Meekatharra and Wiluna were singled out. (Juvenile Justice Conference 16.7.90:94-95)

Another magistrate noted that children appearing in metropolitan courts, other than Penh, are often unrepresented or represented by duty counsel. (Juvenile Justice Conference 16.7.90:99)

In most circumstances, especially in serious matters, magistrates remand an unrepresented juvenile so that legal advice can be obtained. This can result in a remand in custody if the juvenile is unable to obtain bail or unable to meet the conditions of bail.

In the Perth metropolitan area remands for legal advice are no longer than seven days however in country areas juveniles may be remanded in custody for up to 28 days. Country youths are then transferred to Longmore Remand Centre in Perth. I previously noted concerns in the Aboriginal community of their youth being sent to Perth on remand, The power to remand in custody and to grant or refuse bail is vested in the President and members of the court. I am not aware of any particular instance but the power is susceptible of application in the wrong circumstances.

Remanding country children in custody for legal advice can often be a fruitless exercise. The submission of YLS to Commissioner Dodson explained the concerns of legal representatives who regulary visit Longmore Remand Centre in regard to country children.

> *The Y.L.S. attends Longmore Remand Centre every Tuesday or Wednesday morning to provide legal advice for those juveniles returning to court. The Aboriginal population is enormous, usually about 80-90% of the inmates, and quite a significant number of those are from country areas.*
>
> *These children are usually remanded for 1-2 weeks for legal advice, and then returned to the country court. The main difficulty here is that we may be able to advise but there will still be no representation. We can't give that advice without police particulars, and those are still with the police in the country town.*
>
> *The types of offences are of concern. For example, we recently saw one boy who was remanded in strict custody for 2 weeks for legal advice on a damage charge. Such a minor matter could have been dealt with by the court on the first appearance. We've also recently seen charges of possession of petrol - not a known offence to us, but the juvenile was remanded in custody for one week for advice.*

The YLS has established a system of notifying the nearest country office of the ALS and providing them with the instructions however the legal representative from the LAC expressed the view that children are likely to return to the court in the country unable to remember the advice they received in Penh, with no further representation. (Donovan, Juvenile Justice Conference 16.7.90:17)

Duty Counsel Scheme

The duty counsel scheme is provided by the Legal Aid Commission who fund lawyers from the private profession to appear on behalf of unrepresented juveniles in the Children's Courts. The scheme provides two lawyers for the Children's Court in Penh and lawyers at the various suburban courts.

Legal representatives appearing regularly in the Children's Court made the following comments on the quality of duty counsel appearing in the Children's Court.

> *I think they are in a difficult position, as all duty counsel are. Say someone in the waiting room with an entire waiting room to appear for and they arrive - the kids often arrive very late if at all. They have two courts - there are the two courts to service. They are without facts and complaints just like everyone else is. I think they cop a lot of flack, but they are in an incredible position.*
>
> *I don't think that the training the Legal Aid Commission gives duty counsellors takes enough notice of the Children's Court* (Juvenile Justice Conference 16.7.90).

The Report by McDonald and Kuneen commented that the volume of work before the Children's Court works against the Duty Counsel being able to spend adequate time with youth appearing. They were informed (by young offenders and legal representatives) that many youth get no more than one or two minutes with Duty Counsel. They note one youth's comment:

> *You get as long as it takes them to write down the charges.* (McDonald & Kuneen,1990:32)

The statement in Freiberg et al on the 1975 Commission of Inquiry into Poverty is of particular significance in relation to duty counsel in the Children's Court in Western Australia:

> *... that the duty solicitor scheme should beware that they do not simply legitimise by their presence an unequal situation without changing it, and provide the illusion of representation without substance.*

24 Hour Legal Service

The Submission of Concerned Individual Aboriginal Peoples recommends that legal aid for young people be decentralised, be adequately resourced and available 24 hours per day.

It appears that there are currently consultations involving the Police Youth Liaison Committee, the Police Department, the Department for Community Services and the Youth Legal Services examining the introduction of a 24 hour advisory service for all young people taken to a police station for questioning. (See Response of Commissioner of Police to Specific Questions Raised by RCIADIC Q.15.10 p.59 and Submission of Youth Legal Service to Commissioner Dodson 5.6.90)

The YLS submission explains that it is anticipated that the advisory service would operate 24 hours a day, seven days a week on a voluntary basis, and would commence on a twelve month pilot programme at Fremantle. All volunteers would be screened and undergo an approved training programme before being included on the roster. They are hoping to utilise the Aboriginal Visitors Scheme.

The problems with a 24 hour legal service seem to primarily be in relation to having a sufficiently large roster to avoid individuals suffering from 'bum-out'. I was advised that in Melbourne and Brisbane the 24 hour services that appear to have been successful do not rely only on lawyers but have settled for independent persons who have had some training present at questioning by police, rather than having a roster for legal advice. (Mr Boyle, Juvenile Justice Conference 16.7.90:41-42)

I was also informed that there is one youth organisation in Balga (a Perth suburb) which has a roster of people who have been trained, although are not lawyers, who are making themselves available at police questioning to safeguard young persons' rights in that process. It appears to have had minimal police cooperation so the scheme has had a varying degree of success.

I understand that the ALS is hoping to introduce a 24 hour service based at Girrawheen. It will be staffed by four Aboriginal field officers on a roster. They hope to have a 008 number to take calls statewide.

There seems to be an abundant need for a 24 hour advisory service and it is encouraging to see that a number of initiatives are underway in this regard. It is important that such initiatives receive cooperation from the Police Department and are adequately funded and resourced to ensure their continued operation.

Provision of Legal Services at the Children's Court

There appear to be several significant problems associated with the delivery of adequate legal services at the Children's Courts. Major problems facing legal representatives of juveniles include:-

- The overwhelming workload which result sin insufficient time to give full legal advice.
- Lack of access to the charges, facts and particulars and criminal record held by police prosecutors.
- Inadequate facilities to interview clients.

In relation to the third point, I understand that moves are underway to provide new facilities for the Penh Children's Court. The current facilities not only put pressure on the young offenders and their legal representatives but also place strains upon the judiciary, the court staff, police prosecutors and family and friends who accompany young persons to court. Hopefully the government recognises the current strains the Children's Court is operating under and the promise for a new building and facilities will be realised in the immediate future. This should resolve some of the difficulties for legal representatives and their clients if adequate facilities are provided for them at the court.

The problems that legal representatives have with access to the police complaints, particulars and criminal records appear to be particularly frustrating to the lawyers trying to provide legal advice under difficult conditions and are quite unnecessary. I appreciate that police prosecutors are also under considerable pressure with workloads. I have been informed that in the Children's Court, because it is a court of summary jurisdiction, the police take the view that they are not obliged to show the legal representatives the facts.

Some of the youth legal representatives were of the view that the President of the Children's Court had issued a practice direction in this regard but according to Judge Jackson this is not the case. To date he has promulgated informal administrative directions but they appear to have had little effect.

Rules of Court can be made pursuant to section 38 of the Children's Court of Western Australia Act (No 2) 1988. I share the view of Commissioner Dodson that urgent consideration needs to be given to the establishment of Rules of Court to ensure that legal representatives of children are provided with all the charges being faced by their clients as well as the police 'facts' or particulars.

I have difficulty appreciating the position of the Police Department in this regard. The evidence of both the legal representatives of children and the judge and magistrates of Children's Court convinces me that there are enormous problems in this regard, however the Police Department when asked about this problem responded as follows:

> *The Department is not aware of problems in this area. Requests for particulars of charges are always met* (Response of Commissioner of Police to Specific Questions Raised by RCIADIC July 1990).

This response appears to indicate either a reluctance to acknowledge the rights of juveniles in this regard or an appalling lack of awareness of the way in which police practices at the Children's Courts operate. In either case it indicates an attitude towards juvenile offenders and their rights which is unacceptable in the juvenile justice system.

The first mentioned issue of the overwhelming workload of legal representatives at the Children's Court in many ways appears to be a result of the lack of procedural safeguards in relation to juveniles in all the areas previously discussed such as use of arrest, bail practices and procedures, questioning and policing practices. These are largely dependent on the appropriate exercise of police discretion.

My examination of these matters has led me to agree with Judge Jackson's comments on the exercise of police discretion in relation to children:

> *Justice also involves mercy and also commonsense. Police exercise discretion when commonsense requires in* the *case of motorists and in areas such as prostitution, gambling* or *homosexual offences. Discretion* has *not, it* seems, been as often exercised with like *enlightenment in* the *case of weak groups such as children* ('All for Law and Law for All').

4.1.4.9 Children's Court and Children's (Suspended Proceedings) Panel

The introduction to this section discussed the major changes that have been introduced to the structure and operation of the Children's Court. Here I will look at other issues that have arisen in relation to the operation of the Children's Court and the Children's Panel.

Location of Children's Courts

Legal representatives and the Judge and magistrates of the Children's Court informed me of the difficulties experienced by juveniles in getting to and from the Children's Court in Perth from the northern suburbs. Aboriginal community members have also expressed similar concerns.

These difficulties can result in juveniles being unable to attend court on the correct date, in arriving late and in breaching bail. The consequences may be severe with juveniles accumulating a record for breach of bail, having warrants issued for breach of bail and having insufficient time to receive adequate legal advice. Inevitably in some cases the difficulties result in the child being remanded in custody.

There seems to be a strong argument for providing a Children's Court in the northern suburbs.

Greg McIntyre, the former Principal Legal Officer of the Aboriginal Legal Services, suggested that there was a need to have a decentralised Children's Court in the Perth metropolitan area, the Perth Children's Court having inadequate facilities with one judge and three or four magistrates trying to deal with all the children from all the suburbs throughout the metropolitan area. He also emphasised the need for a court based in the northern suburbs. It would appear to me that these suggestions warrant further examination.

The Use of the Children's (Suspended Proceedings) Panel

The statistics discussed earlier in the section show that there has been a decrease in the use of the Children's Panel over the last five years.

There was general agreement amongst the legal representatives and the Judge and magistrates of the Children's Court that the panel system was not working very well because the pre-conditions to enable a juvenile to appear before court were too restrictive. The pre-conditions which apply seem to be too onerous, panicularly in relation to Aboriginal juveniles. They require the juvenile to be a first offender, the offence has to be admitted, if restitution is involved the offender or his parents/guardians have to agree to restitution and the offender has to be under 16 years of age. As a consequence a very small proportion of offenders end up appearing before the Children's Panel.

The issue of restitution is an obvious problem and one that inevitably

discriminates against the poor. One magistrate discussed it in this way:

> *Many kids appear that haven't been before the panel and they are little kids because they have done the sort of damage that their parents can't pay for, and it might only be a couple of hundred dollars that their parents can;t or won't pay for. They get to appear before the court. The problem then is dealing with a very young offender on his or first offence ... it's impossible really to explain to a 10 year old that what he has done isn't on* (Juvenile Justice Conference 16.7.90:107)

In South Australia the Children's Panel was previously restricted by a number of pre-conditions but once they were all lifted it resulted in 60% of matters being dealt with by the panel. In Western Australia about 10% of all offences are brought before the Children's Panel.

There has been limited discussion on how the Children's Panel and the proposed cautioning system will operate together. There is an argument that if proper use is made of the cautioning system then the need to lift the restrictions on the use of the Panel may not be necessary. This perhaps is too optimistic. In my view the current restrictions on appearance before the Children's Panel, except in relation to serious offences, should be removed. In particular the requirement for restitution should be removed immediately as it effectively discriminates against the poor and the disadvantaged, of which Aboriginal people form a significant sub-group. I have been informed that draft amendments to the Child Welfare Act in relation the cautioning system and court attendance notice system also include the removal of the sixteen year old age limit. The removal of this restriction is a step in the right direction however attention also must be given to removal of the other restrictions.

Police Prosecutors

In the Children's Court of Western Australia the majority of prosecutions are carried out by uniformed police officers. In other jurisdictions both interstate and overseas, prosecutions in the Children's Court are carried out by independent prosecutors rather than by police prosecutors. One major reason for the introduction of independent prosecutors is that there is a lack of perceived independence of the police prosecutor. One legal representative described children's perceptions of the police prosecutor as follows:

> *I firmly believe that most children do not differentiate between the police prosecutor and the individual policeman who arrested them or at least is bringing the charges against them, who is standing there, who is talking to him, who is wearing the same uniform - a grey uniform if they are in the country and a blue uniform in the city, but they are obviously identical. The police prosecutors act like policemen. There is no difference as far as most children perceive them. They don't perceive the whole justice system as being that - a justice system - because there is no independence therefrom their point of view.*

One can appreciate children's perceptions of the juvenile justice system being affected by having police officers arrest them and then police officers prosecuting them, then to find that the court orderly is a policeman and the detention centre is run by police.

In my view there is a good argument to introduce appropriately accredited, if not legally trained, independent prosecutors in the Children's Courts.

Magistrates and Justices of the Peace

In addition to the judge, the Children's Court can be constituted by a magistrate or not less than two members. Under the Children's Court of WA Act (No 2) 1988 magistrates are required to have the same qualifications as a magistrate eligible to be appointed a stipendiary magistrate: see section 10. Members are appointed under section I I of the Act and although most members are Justices of the Peace this is not required under the Act.

In effect in the country the arrangements remain basically the same as they were prior to the legislation being enacted with the stipendiary magistrate sitting in the Children's Court and where a magistrate is not available members or justices are used.

The Children's Court of WA Act (No 2) 1988 gives the President of the Court the same sentencing power as if he was a Supreme Court or District Court Judge hearing the same offence. Where the court is constituted by a magistrate the court may not sentence a child to a detention for a period longer than six months or to imprisonment for a period longer than three months.

When the court is constituted by members only the court may not sentence a child to detention or imprisonment or make an order declaring a child to be in need of care or protection. Members have the power to determine guilt, to convict the child and to sentence a child if the sentence does not involve detention or imprisonment. If the member considers he/she does not have sufficient power to sentence or deal with the child adequately he/she may refer the child to be dealt with by the judge or magistrate (section 2.1).

Members also have the power to grant bail or remand a child in custody. As noted earlier there are some suspicions that members have misused this power to remove a child from a community and give the child a short, sharp shock.

In the following section the powers of justices are discussed under the Legal System topic. In that section I express the view that ideally justices should not be empowered to preside over courts. I have similar views about the use of members in Children's Court however I would not go as far as Commissioner Dodson who expressed the view that they should not sit on bail hearings for a child. I appreciate the concerns about misuse of members' powers in this regard but an alternative course would be to closely monitor bail determinations by members and the use of remands in custody.

The President of the Children's Court has taken initiatives to encourage Aboriginal groups in communities around the State to nominate Aboriginal persons who may be suitable members for the Children's Court. There are currently several Aboriginal members of the Children's Court in various locations in the State e.g. Wiluna, Port Hedland and there is an Aboriginal magistrate in Penh.

There is currently no system of special training for magistrates and members of the Children's Court but stipendiary magistrates attend an annual conference and Judge Jackson is trying to arrange a system whereby specialised children's magistrates are invited to the ordinary stipendiary magistrates conference.

The magistrates are not given any specialist training in Aboriginal matters but a number of magistrates because of their background and experience have specialist understanding.

4.1.4.10 Sentencing Options and Practices

I list below the sentencing options that are currently available to the Children's Courts and the Department for Community Services programmes which have been implemented to give effect to **the** option.

Option	*Description*	*Relevant DCS Programmes*
1. Dismissed	Court dismissal without penalty or conviction - usually first offenders	- Parent skills training - Family support
2. Parental bond	Parents required to give security for good behaviour of child	- Parent skills training - Family support
3. Conditional adjournment	Matter adjourned to allow parents/child to carry out terms of undertaking given to court	- Law education - Alcohol & Drug abuse prevention - Compensation arrangements
4. Probation	Enforceable conditions on child plus support agreements with child and parents	- Probationary supervision - Alcohol & Drug abuse prevention - Employment and training support - School support - Family support - Parent skills training
5. Good behaviour bond	Child enters monetary bond to be of good behaviour	- Parents skills training - Family support - Default through CSO or detention
6. Fine	Court orders fine to be paid by child (Max. $1000.00)	- Parents skills programme - Family support
7. CSO	Child makes restitution to Community through supervised work on civic project through local organisations	involving local community service organisations and local government Monitoring and enforcement Employment and training Parent skills training Family support
8. Conditional release, order	Child sentenced to detention released conditional upon participation in an approved programme	- Unpaid work order - Aboriginal Community placements - Rural farm/station

		placements - Employment and training - School attendance - Family support - Parent skill training
9. Detention	Court orders period of detention	- Riverbank, Longmore, Nyandi - Challenge for Youth - Employment and training - Alcohol & Drug abuse prevention - After care
10. Imprisonment	Sentenced to adult prison	N/A
11. Restitution	Under new legislation it will be possible to enforce restitution as a judgment of a Local Court	Detention in default
12. Adult penalties	The Supreme and District Courts and the President of the Children's Court can order any penalty applicable to an adult	N/A
13. Parental responsibility	- Required to attend Children's Court - May be ordered to give security for good behaviour of child - May be, fined/ordered to pay restitution in some cases - Involvement of parents in probation	- Parents skills training - Family support - Alcohol & Drug abuse prevention

One major concern expressed by Aboriginal groups and individuals, the legal representatives of juveniles and the judge and magistrates of the Children's Court about current sentencing options is that country areas do not have the same range of community based options that exist in the metropolitan area. In small communities such as Warburton, with a largely Aboriginal population, there is no probation, no community based facilities or personnel, consequently the court cannot impose community based sentencing options in the community. Juveniles have to leave the area to participate in community service orders or conditional release orders.

The other major concern being expressed by Aboriginal groups in communities around the State is that they would like to have a greater role in supervising their young people, so that the youths remain within the community and are not placed in institutions in Penh.

The focus of the Department for Community Services programmes for juvenile offenders is to provide options which divert offenders from custody with development of the community placement programme and local offenders programme. There appears to be an appreciation on behalf of the Department of the need to develop appropriate community based options for Aboriginal offenders however the current level of available options in the community are inadequate.

Judge Jackson pointed out that the court has the power to make conditional release orders or probation orders which can specify that the child will live in a certain community or on a certain station however the difficulty is finding culturally appropriate places which will have the child. He said:

> *I don't think it is the sentencing options in the legislation that are too limited, it's the sentencing options on the ground* (Juvenile Justice Conference, 16.7.90:108).

He went on to say:

> *I mean, it's just a matter of resources. I mean, the government has announced that they are trying to expand the station placement programme into things like farms, mining districts ... For instance, if the Aboriginal outstation movement were stronger, we could put more kids on outstations* (Juvenile Justice Conference, 16.7.90:109).

Mrs Gordon, a magistrate of the Children's Court, pointed out, the need for the Department for Community Services and other agencies to look at better utilisation of existing Aboriginal organisations, the need to provide them with adequate resources and not to overload the organisations which are currently being used. (Juvenile Justice Conference, 16.7.90:1 10-11 1)

Mrs Gordon also raised the crucial issue of land needs for Aboriginal communities in some areas such as the Murchison (an issue which is discussed in detail in Commissioner Dodson's Report) and said that if Aboriginal communities could establish a land base then they could run community based programmes for Aboriginal juveniles that are so badly needed in some areas in the State.

Concerns have been expressed by legal representatives about the inappropriate use of station placements for urban Aboriginal and non-Aboriginal youths, however Judge Jackson expressed the view that they were only used for youths from the area in which the station was situated. Concerns have also been expressed by legal representatives that the conditions for children on some stations were inadequate, one Aboriginal field officer describing it as 'slave labour'. Although the Department for Community Services have informed me that the stations are carefully selected in consultation with the Aboriginal community and children are visited at least once a fortnight by the Department for Community Services staff, the fact that such concerns have been raised emphasises the need to ensure that the station placement programme is closely monitored. The concept of utilisation of community options is to be encouraged however it is essential that the rights of juveniles are adequately protected.

Other suggestions that have been made which appear to have merit include the provision of honorary or pan time probation officers or supervisors in Aboriginal communities to provide supervision of juvenile offenders. The need for such supervisors to have culturally appropriate relationships with the juvenile has also been raised.

It has also been suggested that more resources need to be put into preventative programmes such as the provision of education for younger children and Aboriginal youths about the law.

There have also been submissions suggesting that the education system needs to address the education needs of Aboriginal children, particularly Aboriginal youths who have had extensive involvement with the juvenile justice system and have long been removed from the mainstream education system. (I refer to the discussion in Commissioner Dodson's Report about education and Aboriginal people.)

The Department for Community Services appears to be aware of the need for consultation with Aboriginal groups in the community in relation to its programme development however there appears to be a need for a much greater commitment of resources to Aboriginal people to provide culturally relevant and appropriate community based options for their youth.

4.2 AVOIDANCE OF CUSTODY

4.2.1 ARREST WITHOUT WARRANT/ALTERNATIVES TO ARREST

> *Some participants* [at community meetings with the AIU] *were concerned that, while the police had considerable discretionary power under the Police Act and the Criminal Code, most police officers failed to use* it *when arresting Aboriginal people* (Final Report of the AIU Western Australia page 8).

In section 4.1.3.2 of this Report I have discussed the general issues relating to the exercise by police officers of their independent discretion, a discretion that derives from their appointment as a Constable at common law. One of the most significant areas of exercise of that discretion is the decision to proceed via arrest or by summons where a police officer has decided to charge an individual with an offence. In this section 'arrest' refers to an arrest not made pursuant to a warrant.

The decision to arrest, involving as it does an interference with the liberty of a citizen, is not a matter to be taken lightly, nor should it be considered as routine procedure to be followed in each instance where police consider an offence has been committed. In Western Australia arrest has been the preferred option by police once a decision to charge has been made.

> *The power of arrest is exerciseable for the purpose of maintaining the peace and order the community. It is a discretionary power that should be left to the judgement of the officer at the particular time and considering all circumstances* (Response of Commissioner of Police to Specific Questions by the Royal Commission July 1990).

Police Routine Order 1-12 dated 2 March 1988 provides guidelines to officers regarding the exercise of the power of arrest.

1-12. 2 *Members are not to apprehend or unnecessarily interfere with any person unless some specific offence has been committed. To deprive a person of his liberty is a serious matter and great discretion is necessary, particularly in minor matters where one person charges another with having committed an offence.*

1-12. 3 *Where a summons would adequately meet the circumstances of a case, an arrest should not be made. However, an arrest should be made in every instance where: -*

(1) *loss or destruction of evidence is likely to result if the offender is not arrested; or*

(2) *it is necessary to ensure that the offender appears before a court, and a summons may not achieve this; or*

(3) *the prevention of a continuation or repetition of the offence is necessary; or*

(4) *the fingerprints of the offender may assist in: -*

(i) establishing the Commission of other offences, or

(ii) proving his identity in court, or

(iii) establishing a proven record for possible future mandatory punishment.

1-12. 4 *Where an arrest is made, the member making the arrest should identify himself and is to inform the person being arrested, the cause of the arrest and the nature of the charge, where this is possible. If the arrest is made on warrant, the warrant should be read to the accused.*

Alternatives to proceeding by arrest are the issue of a warning or a caution or the issue of a summons informing the offender of the nature of the offence with which he or she has been charged and requiring attendance at court on a specific date. Counselling is a part of the warning/caution option. As discussed in section 4.1.4 of this Report, a formal system for cautioning juvenile offenders has been developed by the Police Department and the Department for Community Services. The use of such alternatives is strongly supported by this Commission.

The Police Department has provided the Royal Commission with statistics concerning the using of arrest/summons at all police stations in Western Australia for the period 1984/1985 - 1989/90. In section 4.1.4 of this Report I quoted from those statistics figures relating to the use of arrest and summons in juvenile apprehensions. The table set out below relates only to adult apprehensions. In section 4.1.4 I described how the information provided by the department presented an incomplete picture of the use of arrest and summons procedures in this state, and it must therefore be treated with a degree of caution. However, I consider that the statistics provide a useful indication of the comparative use of arrest and summons procedures in this state over the last five years.

TABLE 4.62: COMPARATIVE USE OF SUMMONS AND ARREST PROCEDURES BY POLICE 1985 - 1990

Year	*Arrest (Adults)*	*Summons*	*(Adults)*
1984/84	4358096.1%	1780	3.9%
1985/86	4946294.8%	2739	5.2%
1986/87	5473494.3%	3337	5.7%
1987/88	5416993.1%	4015	6.9%
1988/89	5339391.1%	5212	8.9%
1989/90	5218187.9%	7196	12.1%

It can be seen that there has been a gradual decline in the percentage of apprehensions effected via arrest over the period,with a corresponding increase in the use of summonses from 3.9% of apprehensions in 1984/85 to 12.1% in 1989/90. That change is encouraging, however the extent of the use of arrest revealed by the statistics can only be considered alarming.

The figures in the above table includes both Aboriginal and non-Aboriginal adult apprehensions. A breakdown of Aboriginal and non-Aboriginal apprehensions is set out below:

TABLE 4.63: COMPARATIVE USE OF SUMMONS AND ARREST IN THE APPREHENSION OF ABORIGINAL AND NON-ABORIGINAL ADULTS 1985 - 1990

Year	*Arrest*		*Summons*	
	Aboriginal	*Non-Aboriginal*	*Aboriginal*	*Non-Aboriginal*
1984/84	95%	93.50%	5%	6.5%
1985/86	93.9%	91.6%	6.1%	8.4%

1986/87	95.10%	91.4%	4.9%	8.6%
1987/88	94.3%	90.5%	5.7%	9.8%
1988/89	93.3%	87.9%	6.7%	12.1%
1989/90	91.2%	83.2%	8.8%	16.8%

It can be seen that the percentage use of arrest is extremely high for both Aboriginal and non-Aboriginal adults, with Aboriginals faring worse. The percentage increase in the use of summons procedure in the case of nonAboriginal adults is more than twice that for Aboriginals.

When one considers that these figures do not include apprehensions for drunkenness, disorderly conduct other than where a sentence of imprisonment was imposed or arrests made under warrants of commitment issued in default of payment of fines, it may be expected that the figures under-represent the extent of arrest of Aboriginal adult offenders. Drunkenness and disorderly conduct have been invariably proceeded with by way of arrest being behaviour considered by police liable to continue unless terminated by the offender being taken into custody.

I have earlier referred in this Report to information provided by the Police Department regarding reported incidences of attempted suicide in police custody between I January 1980 and I September 1988. Police records revealed that the majority of the persons considered to have attempted suicide had been arrested for minor offences. Over 50% were in custody for less than three hours before their attempt. These figures emphasise the importance that adopting alternative procedures to arrest for minor offences may have for reducing the probability of death or attempted suicide/self-inflicted harm in police custody.

The findings of Royal Commission Research Paper No 16. 'Self-inflicted Harm in Custody' parallels that of the Western Australian police research. That paper found that 73% of reported attempts in police custody occurred within the first three hours of custody.

In the Interim Report of the Royal Commission, Commissioner Muirhead (as he then was) stated:

> *Recommendation 8*
> *Police officers should receive emphasis in training that arrests for minor offences must be avoided when alternative steps are available.*

Recruit officers training on the exercise of powers of arrest is included within the core subject of legal studies. Reference material for the course is taken from Routine Orders, Police Act, Criminal Code, Justices Act and the Police Manual. The Commissioner of Police has informed the Commission that additional training in the use of the power of arrest occurs 'on the job' and under supervision. The Commissioner has also advised that 'options other than arrest are emphasised as pan of recruit training and in-service training' (Answers by Commissioner of Police to Specific Questions from RCIADIC July 1990 page 7).

In-service training for police officers in the area of powers of arrest is included in the N.C.O. promotional courses which target the Senior Constable level. The nature of that training concentrates on the powers of arrest but alternatives to the exercise of those powers are referred to in the course.

It is interesting to note that in their commentary on the implementation of the recommendations contained in the Interim Report of the Royal Commission the State Government stated that emphasis was given in police training to the use of alternatives to arrest in the case of minor offence. That statement was contradicted by the Commissioner of Police in answer to a question by the Royal Commission. The Commissioner stated:

> *The content of training course does not specifically emphasise this aspect but Routine Orders and instructions have stressed that arrests should not be made*

when a summons would suffice (Answers by Commissioner of Police to specific questions by RCIADIC July 1990 page 9).

The incidence of arrest for minor offences has been a matter of concern for the Commissioner of Police. An instruction published by the Commissioner in the Police Gazette dated 12 July 1989 referred officers to Routine Order 1 - 12. That notice stated in part:

> *It is becoming increasingly difficult to justify arrests in many instances of minor offences, shop lifting is one example, and unless there are other reasons why an arrest should be made, a summons*
>
> *should normally suffice. This not only applies particularly to juveniles, but to adults as well and where a summons should adequately meet the circumstances, an arrest should not be made ...*
>
> *Arrests are not to be made purely as a means of inflicting a penalty on offenders, or because it is an easier method of process. Depriving people of their liberty is an action to be given careful consideration, as it can have serious repercussions on the police image if it is done without due discretion.*

That notice was reinforced by an instruction issued by Acting Commissioner of Police Zanetti on 17 January 1990. It is therefore surprising that emphasis is not given in training to the avoidance (where possible) of the use of arrest for minor offences. Training courses should be amended to reflect such an emphasis.

In a conference session with myself and Commissioner Dodson, the Commissioner of Police, Mr Bull, was asked by Counsel Assisting my Commission whether any concrete steps could be taken to ensure that police officers do use the summons process more than the arrest process. It was put to Mr Bull that, at the moment, the Police Department can do no more than 'exhort officers to use summonses'. The Commissioner of Police replied:

> *I believe that we're doing as much as we can I mean, considering that the officers do in law have a discretion.*
>
> *And theres a limit to what I can do to restrict that discretion*
> (Conference with Commissioner of Police, 31 July 1990 pages 597598).

The case of Milton Wells provides an example of an exercise of the discretion to arrest which this Commission finds inappropriate. On the night before Ns death Wells was arrested on a minor charge (wilful damage of a car window).

He was a local resident of Kalgoorlie and was known to one of the arresting officers. He was not considered by police to be intoxicated although they believed that he had consumed some liquor. In such an instance should police wish to proceed with the charge the appropriate course would have been to take note of Wells' name and address for the later issue of a summons. There appears

no reason why he should have been taken into custody. it was not a case where there was an indication that, if not arrested, the alleged offender would or would likely continue with behaviour in breach of the law.

One reason that has been advanced for an apparent preference by police officers for the use of arrest rather than summons procedures is that the latter procedure is 'administratively inconvenient'. It has been alleged that more paper work is involved in the issue of a summons and that as the processing of the

charge does not occur immediately (as in the case of arrest and lodgement at a lockup) 'other work commitments tend to intrude upon the summons procedures at a later stage'.

Commissioner Bull agreed that that could be one of the reasons but *'certainly not the main reason'.* If these assertions are correct then review of summons procedures should take Place with a view to simplifying or streamlining procedure as a means of encouraging its use by police. Supervising police officers need also to be in a position to review the arrest decisions made by their staff to ensure that citizens were not being arrested (and thereby deprived of their liberty) as a matter of convenience for the arresting officer who would rather avoid the 'paperwork' of issuing a summons.

The Submission by the Commissioner of Police to the Royal Commission dated May 1990 stated that one of the problems associated with encouraging the use of summons procedure was an apparent perception amongst officers that once an arrest has been effected it must be proceeded with at all costs. In commenting on this perception the Commissioner referred the Royal Commission to the case of Wiltshire v Barrett (1965) 2 Al1 E.R.271.

Part of the ratio of Wiltshire v Barrett was that an arrest is not rendered unlawful by the fact that a person is set at liberty by the police without further action.

Consequently if after arrest it is found that the person arrested is innocent or there is no sufficient case for continuing the arrest then he should be discharged from custody. The Submission of the Commissioner of Police stated that that option will be emphasised in future training and procedures.

In this regard I note with approval that the instruction issued by the Assistant Commissioner of Police on 17 January 1990, and referred to above, includes the following direction:

> *When a justified arrest is made, but before the offender is formally admitted to the lockup, circumstances change and it becomes possible to proceed by summons, the arrest is to be discontinued and the matter dealt with by summons.*

I also note that in conference with the Royal Commission, the Commissioner of Police suggested that the proposed citation system for juveniles - where offenders may be issued with a court attendance notice rather than undergoing formal arrest, charging or summons procedures - be extended to apply to adult offenders. The proposal in relation to juveniles is discussed in detail section 4.1.4 of this Report. Such a proposal has considerable potential for reducing the incidence of arrest for minor offences. It requires serious consideration by government.

There remains the issue of procedures whereby the Police Department may review the exercise of the arrest/summons discretion by its officers to ensure that the use of arrest is kept to the minimum necessary. Recommendation 9 of the Interim Report of the Royal Commission (Muirhead) stated:

> *Recommendation 9*
>
> *It should be the duty of officers in charge of police stations to evaluate (with a view to providing guidance for future situations) the decision made by officers engaged on police patrols to arrest, rather than proceed by summons or caution.*

Routine Order 16-8.5 establishes a procedure whereby the officer in charge of a lockup is to be satisfied that after a person is arrested and brought to the lockup reasonable grounds exist for preferring the charge.

> 16-8 5 *Where a person is arrested and brought to a lockup without a warrant, the member in charge of the lockup shall be personally satisfied that: -*

(1) *there are reasonable grounds for preferring the charge and that a complaint is in existence; or*

(2) *there is a warrant or other process authorising the detention of the prisoner and of the location of that process.*

In the latter case, the arresting officer will provide written verification of the existence of the documentation. If the member in charge is so satisfied the prisoner will be admitted. But, if the member in charge is not satisfied that there are reasonable grounds for preferring the charge or otherwise admitting the prisoner, the person is to be immediately released and a report on the matter submitted to the officer in charge ...

Again, members of the Police Department were reminded of the requirement of Routine Orders 16-8.5 by the Assistant Commissioners Instruction of 17 January 1990.

This Commission supports the concept of such a review and recommends that the position descriptions for officers in charge be amended to ensure that they reflect the requirement for such a review.

A further positive initiative by the Police Department was outlined in the Submission by the Commissioner for Police: when the current building extensions at East Perth Lockup are completed provisions will be made for an Admissions officer who will have the task of (inter alia):

(i) checking the correctness and legality of charges

(ii) consider the need for arrest as opposed to a summons or caution.

There is the possibility that an extension of this arrangement will be made to other major lockups in the state.

As an additional incentive to officers to resort to the use of summons whenever possible, this Commission supports the proposal that the merit principle and reward concept of promotion include an assessment of the quality of decision making re arrest/summons at operational level.

Despite the initiatives outlined above this Commission has some reserve regarding the effectiveness of any such supervisory measures. This concern arises both from the 'independant discretionary' nature of the arrest procedure itself and my observation in section 4.1.3.2 of this Report, that internal police orders and instructions are generally regarded as guidelines only with few, if any mandatory instructions. There is here, as in other areas of police operation, the need for clear and enforceable instructions or orders.

Having noted the expressed concern of the Commissioner of Police over the extent of use of the arrest procedure in this state, the Royal Commission was surprised to learn that until recently, the Police Department was not in a position to conduct any broad overview of the use of summons as opposed to arrest by its members. In answer to a question from the Royal Commission, the Commissioner of Police stated that, although the department recorded statistics on the number of arrests made and summonses issued throughout the state, it did not have an existing computer programmed to enable the retrieval and analysis of that information (July 1990). At the request of the Royal Commission, the department devised an appropriate computer programme. Statistics on summons and arrest figures were finally provided to the Royal Commission by the Police Department on 20 November 1990.

4.2.2 BAIL

4.2.2.1 Function of Bail

The effect of the bail procedure is to allow a person presumed to be innocent but accused of a criminal offence conditional freedom pending his trial, or the taking of some other step in the judicial process. 3 Its purpose is to ensure that the accused person appears when required at the trial and, where

considered necessary, attempts to ensure compliance by imposing some financial or other conditions upon him should he fail to answer his bail. The Bail Act also creates an offence in the event that the accused fail to comply with the conditions of their bail. The necessity of ensuring that an accused person is present for his trial must be weighed against the imposition of pretrial imprisonment, which is incompatible with the presumption of innocence that is the cornerstone of our system of criminal justice.

The question of bail first arises at the time of arrest. At this point in time, the custody of the accused will normally be the responsibility of the police, who may either retain him in custody, or release him, either on bail or, in minor matters, with a summons to appear in court. In the past little attention has been paid to police practices in granting or refusing bail for the period between the initial arrest and the initial court appearance. However the number of persons who have died in custody during that period and whose deaths have fallen to be investigated by this Commission has focused attention on the initial period of custody and the reasons for refusal of bail or failure to grant bail. These are matters which are also considered in the Report of Commissioner Dodson.

While only a relatively short period of detention will usually be involved, any interference with the liberty of the subject must be regarded as a serious matter. His freedom is of great importance to the defendant and his family and dependents, whether he be rich or poor, Aboriginal or non-Aboriginal, middle-

class or fringe-dweller. The powers of the police in relation to the consideration of bail should be exercised on the same principles as those of the court itself.
In general the police or the court have five choices in deciding what should happen to an accused person pending his trial.

(1) he might be released at large without any conditions being imposed.

(2) he may be released upon entering into an unconditional recognisances, that is to say upon his own promise to appear at the trial. This is known as self bail.

(3) he might be released on a recognisance to which conditions are attached.
(4) he may be released after being served with a summons,.

(5) he may be held in custody until the hearing is completed.

4.2.2.2 Bail in Western Australia

In 1976 the State Government requested the Western Australian Law Reform Commission (WALRC) to review the law and procedure relating to bail as a matter of priority. The result was a substantial Report on Bail (Project No. 64) issued in March 1979. The WALRC published a Working Paper in November 1977. Prior to that Paper no study of the Western Australian bail system existed.

In the 'Introduction' to its Report the WALRC observed:

> *There is aproliferation of bail legislation in this State. The law is to befound in no less than 11 7 separate provisions in fourteen different statutes, dating from 1679 to the present day, and there are also fourteen relevant regulations in the Criminal Practice Rules. Furthermore, not all of the law relating to bail can be found in legislation or regulations. Principles relating to the granting of bail can also be found in decided cases and in practice directions. There is no single source of authority either for the power to grant bail, or as to the relevant principles on which the bail decision should be made. There are doubts as to the legality of some practices adopted by bail-decision-makers even though they may be desirable in principle. In some areas there are conflicting views as to the applicable law. One possible reason for this uncertainty is that the law relating to*

bail has developed unsystematically as an adjunct to criminal procedure. It has never received systematic treatment either by the legislature or by the courts in Western Australia. (WALRC,1976)

This wholly unsatisfactory situation was to some extent rectified by the enactment of the Bail Act 1982 which incorporated a large number of the recommendations of the the Law Reform Commission, if in considerably attenuated form. However section 2 of the Act provided that it would come into force on a day to be fixed by proclamation. For reasons which are not entirely clear the Act was not proclaimed until 6 February 1989. Some provisions were said to be unworkable, and called for amendment. These amendments called for further amendments in turn. Even so, seven years is a very long to time to have to wait for such an important piece of legislation. As a result the Act did not come into force until virtually after the period covered by the terms of reference of the Commission. The urgency with which it was required will be to some extent demonstrated by reference to the deaths in custody which the Commission was called upon to investigate.

A review of the operation of the Bail Act was conducted in 1990 at the direction of the Attorney General. This move followed a number of perceived procedural difficulties under the Act being brought to his attention. Some of the recommendations of that review are considered below.
Over the period with which the Commission is principally concerned the former unsatisfactory patchwork of legislation remained in force. It is not therefore altogether surprising that the evidence before the Commission revealed numerous and substantial injustices. A troubling number of those who died in custody would not have been in custody if a more intelligent approach had been taken to the application of the admittedly unsatisfactory legislation which was then in force.

4.2.2.3 The Western Australian Law Reform Commission's Report

The essential matters covered by the WALRCs Report were:

(a) *clarification of the authority* to *grant bail;*
(b) *creation of a qualified right to bail for all offences;*
(c) *clarification of the grounds for refusing bail;*
(d) *establishment of procedures to enable relevant information to be made available to--*
  (i) bail-decision-makers;
  (ii) defendants;
(e) *clarification of the conditions upon which bail may be granted;*
(f) *a review of the role of sureties;*
(g) *clarification of proceduresfor the review of bail decisions.*

Of these issues, most were raised in some form or another by one or more of the cases investigated by the WALRC.

Additionally, the WALRC pointed to a number of other measures which would in its view, improve the operation of the bail system without there being a need to enact legislation for their implementation. Among these were an increased use of the summons procedure rather than arrest, the introduction of bail hostels, and measures to ensure that pre-trial detention in custody was kept to a minimum and in improved conditions. The WALRC noted the problems encountered by certain groups in the community, including Aboriginal defendants, who it found had difficulty in meeting conditions requiting financial security and sureties, and in some cases in understanding their bail obligations. These problems have also been noted by this Commission.

The WALRC's Report is a comprehensive review of the law covering bail at the time it was issued, and which continued during the time frame with which my Commission is concerned. It raises a number of problems, some of which have not been fully addressed by the Bail Act 1982 as it was subsequently enacted, and which have been highlighted as continuing underlying issues by the investigations of the present Royal Commission. It is with those issues that this present Report is concerned.

4.2.2.4 All Offences Bailable and Authority to Grant Bail

At the time the Law Reform Commission reported, there was no offence in respect of which jurisdiction to grant bail was excluded as a matter of law. The Commission recommended that that situation should continue, and provision should be made for bail for all offences. The Royal Commission has not been called upon to investigate any case in which the nature of the offence alleged had precluded the deceased being granted bail by those who had custody of him at the time.

In Western Australia, bail decisions could be made by members of the police force, Justices of the Peace, Coroners, Magistrates and Judges of the District Court, Supreme Court, and the Court of Criminal Appeal. That situation is essentially continued by the Bail Act, but limited in certain circumstances by the serious nature of the charge (Bail Act 1982, s.15). Such a situation has not arisen in relation to the deaths investigated by the Royal Commission in this State.

Bernard McGrath was arrested for breach of the terms of a Community Service Order to which he was subject. The warrant upon which he had been arrested precluded his being granted bail by the police since the terms of the warrant required that he be brought before the court. He was arrested prior to the weekend and hanged himself before he could be taken to court. He had however surrendered to the police on a previous occasion upon learning that there was a warrant in existence for his arrest, and there was no reason why he could not have been arrested 'by appointment' the following Monday. In addition, the matter involved was relatively minor and could equally well have been dealt with by way of summons rather than warrant. In a rider to his finding the Coroner added a recommendation that the Department of Community Based Corrections adopt the practice of commencing prosecutions for breaches of Community Service Orders by way of summons rather than warrants in the first instance.

As referred above, section 15 of the Bail Act provides that the power to grant bail is to be exercised only by a Judge of the Supreme Court for certain serious offences including wilful murder and murder. This creates problems where arrests for such offences occur in remote parts of the state. For example an Aboriginal person arrested and charged with murder in Kununurra must be brought to Perth for the purposes of the Act before he may make an application for release to bail. The logistics of the requirement are costly and impractical.
It is recommended that the Act be amended to allow for an ex-parte hearing for the purpose of considering bail where a person accused of wilful murder or murder has been arrested in remote areas of the state.

4.2.2.5 Qualified Right to Bail

The Justices Act 1902, s.64, in some circumstances, provides that a defendant should be granted bail, as for example where he was charged with an offence which was not of a serious nature and could not be brought before a justice within twenty-four hours. [4] In other cases the defendant is merely entitled to apply for bail, and the bail-decision-maker is empowered to grant it.

Among the unsatisfactory features of the then existing law and practice found by the WALRC is one which has emerged in a number of the cases and has troubled the present Royal Commission:

> ... *in cases where the legislation provides that bail may be granted, there could be a tendency for some bail-decision-makers to regard bail as a privilege for which a defendant must apply and, despite existing practice, a defendant could be remanded in custody simply because the question of bail is never raised;*...

In a number of cases before this Commission the question of bail was never considered by the police when the deceased was taken into custody, consideration was put off for reasons which were not found

to be adequate, or bail was considered and refused without representations by the accused person having been taken into consideration.

The case of Robert Anderson is representative of this situation. He was arrested at the weekend in Wiluna on a charge of being drunk. Although he was sober by the Sunday no proper consideration was given to releasing him on bail. He died in the course of an epileptic attack that day. As I said in the Report of my Inquiry into his death:

> *In my view there was no reasonable ground for retaining the deceased in the lockup on the Sunday. By that time he had no doubt become sober and was entitled to be considered for bail. He was facing a minor charge. His identity was known. He lived and worked locally and the police had no reason to believe that he would not answer his bail.* (Report page 23)

When his death was investigated by the police the Report issued failed to make clear that he had died in the lockup at a time when, according to Police Routine Orders then in force, he should have been admitted to bail. In his case, as in a number of others investigated by the Commission no regular and adequate cell checks were carried out, and his illness was not detected. If bail had been properly and and promptly considered, the inadequacy of those cell checks might not have become an issue, and the prisoner's medical problems detected and addressed.

Similar considerations applied in the case of Milton Wells who was arrested for no good reason obvious to this Commission, and charged with damaging property. Notwithstanding his denial of any involvement in the offence with which he was charged, he was processed at the Kalgoorlie Police Station. No consideration at all was given to the question whether he be bailed, although, as I observed in the Report of the Commission's investigation into his death, his eligibility for being admitted to bail was, as in the case of Anderson, obvious.

He had been charged with a minor offence, which he denied, and his address was known. There was no obvious reason for keeping him in custody, since he was not considered to be drunk. Neither of the arresting officers was able to give the Commission any reason why he could not have been immediately admitted to bail, which was effectively denied him. He was at the time suffering from meningitis. By the time his condition was noticed, it was irreversible, and he died in hospital several hours later. As I noted in my Report on his death:

> *Any suggestion that pressure of work prevented consideration of the question of bail does not bear scrutiny, since station records show that other accused were released to bail during the course of that shift, one within approximately an hour, on a charge of driving under the influence, and a juvenile released almost immediately on charges of stealing and receiving. Various possible explanations were putforward to explain why Wells was not released to bail, but none of them was convincing.* (Report page 19)

The bailing of Milton Wells was both possible and practicable. I am left with the clear impression that numerous police officers in the State regarded bail as a privilege to be conferred upon Aboriginal arrestees if and when they felt disposed to summon the effort to do so.

The WALRC proposed that bail legislation for Western Australia should make it quite clear that bail is neither a privilege, nor necessarily a matter requiring some form of application by a defendant. The situation has been to some extent addressed by section 6 of the Bail Act, which requires the arresting officer to consider the accused person's case for bail as soon as practicable, *'... whether or not an application for bail is made by the person or on his behalf.*

It had been argued that any qualified fight to bail should not apply to overnight bail at the lockup. This would have meant that in the overnight bail situation, a defendant was merely entitled to be considered for bail, but had no fight to it. It was said in the Report:

> *In the Commission's view, there is no reason either in principle or in practice why a defendant who can be brought before a justice within twenty-four hours of his arrest should not have a qualified right to bail during any delay. Although short in duration, overnight custody can be a traumatic experience and a qualified right to bail in these circumstances should be recognised. The Commission therefore recommends that once the police have completed the charging procedure, their duty should first be to release the defendant on bail, unless there are grounds for refusal, and secondly, if the defendant is not released on bail, bring him before a justice as soon as practicable.*

Inquiries conducted by the Royal Commission revealed that overnight or short-term custody could be more than traumatic, it could and did prove fatal in fifteen of the cases investigated. 5 Of these five involved self-inflicted death. 6

Accordingly the WALRC recommended that a defendant in Western Australia should have a qualified right to bail at all stages of the criminal justice procedure prior to conviction:

> *This, in effect, would mean that a bail-decision-maker, on each occasion when an unconvicted defendant appeared before him, would be required to -*
>
> (a) *consider the question whether a defendant should be released on bail without the need for any application;*
>
> (b) *decide, on the facts before him, or in the light of such additional information obtained at his request as he thinks fit, whether bail should specified in the legislation;*
>
> (e) *grant bail, with conditions if necessary, unless he is satisfied that, notwithstanding such conditions as he might impose, bail should be refused on one or more of the specified grounds.*

The Bail Act as enacted does not in fact go nearly as far as the WALRC recommended, and provides for no qualified right to bail, save for children. Disappointingly, the 1990 review of the Bail Act did not recommend an amendment to provide for such a fight to bail.

Even the qualified right of children to bail under the Act may have proved illusory in practice. According to the Submission of the Youth Legal Service to the Royal Commission, substantial numbers of children have, since the Act came into effect earlier this year, been unable to obtain bail and have been detained in the adult lockup in East Perth because the various community services institutions were full and unable to accept them. The Submission refers to more than fifteen at one time, and claims this to have been a frequent occurrence.

The Youth Legal Service complained that the intentions of the act have been further frustrated by the imposition of onerous conditions by way of sureties, giving the example of a juvenile of previously good character charged with a serious offence. He was granted bail with a surety of $10 000, but was detained in strict custody for two weeks because his mother was unable to demonstrate assets sufficient to meet the condition. He was released into her care only after an application to vary his bail had been granted. The granting of bail to juveniles is considered in more detail in section 4.1.4 of the Report on the Juvenile Justice System.

Section 5 of the Act goes only as far as providing that a defendant who is in custody for an offence awaiting his initial appearance in court is entitled to have his case for bail for that appearance considered as soon as practicable. If his case is not considered, or if bail is refused, or if he is not released on bail, he must be brought before a court as soon as practicable.

The question of the consideration of the granting of bail in such circumstances was raised in some fourteen of the deaths investigated by the Royal Commission and assumes considerable importance as an underlying issue. It is therefore appropriate that the present legislation should be examined to see whether it addresses the concerns raised. As I have stated above, section 5 of the Act confers upon a defendant a right to have bail considered:

> ***Right of defendant to have bail considered under this Act***
>
> 5. *(1) A defendant who is in custody for an offence awaiting his initial appearance in court therefore is entitled -*
>
> *(a) subject to sections 9, 10, 12 and 16(2), to have his case for bail for that appearance considered under and in accordance with this Act as soon as is practicable;*
>
> *(b) if his case is not considered, of [sic] if he is refused bail or is not released on bail, to be brought before a court as soon as is practicable.*
>
> *(2) A defendant who is in custody awaiting any appearance in court for an offence, other than an initial appearance, is entitled, subject to sections 7(3), 9 and 10, to have his case for bail for that appearance considered under and in accordance with this Act.*
>
> [Section 5 amended by No. 74 of 1984 s.4.]

That entitlement to have his case for bail considered is accompanied by a duty imposed by section 6, in the majority of cases upon the arresting officer, to consider the accused person's case for bail as soon as practicable, whether or not an application for bail has been made by the accused or on his behalf If the person effecting the arrest is not authorised under the Act to grant bail, he must as soon as practicable bring him before an authority which is. The duty to consider the case for bail then devolves upon that authority upon the same terms.

The difficulty with that provision lies, in the view of this Commission, with the elasticity of the expression 'as soon as practicable'. The Commission cannot be confident that the deaths of those who died while awaiting bail, or pending a court appearance, bail not having been granted, would have been avoided had the present legislation been in place at the time. Many were affected by liquor, some were thought to be affected by liquor, whereas they were in fact seriously injured. Police officers demonstrated a reluctance to consider bail for those in that condition.

Throughout most of the period covered by the terms of reference of this Commission there were in force in Western Australia, Police Routine, Orders which provided that a person arrested for a minor offence 'should be admitted to bail as soon as possible subsequent to arrest'. Virtually all of the fourteen referred to above came into that category.
In response to questions from the Royal Commission, the Commissioner of Police has informed me that no specific policy has been drafted to deal with the Bail Act. No new Routine Orders will be drafted until after the review of and any subsequent amendment to the Bail Act. Police Routine Orders 2-1.6 and 2-1.7 currently provide:

> 2-1.6 *In all cases where a person is arrested and charged with a minor offence such as refusing name and address, drunkenness , disorderly conduct and the like, provided he is not intoxicated and his true identity is known, he should be admitted to bail as soon as possible subsequent to arrest, if it is considered his release will not result in further immediate offences similar to that necessitating his original detention.*
>
> 2-1.7 *A person held in custody for a minor offence and without the requisite bail money should, in the spirit of the preceding paragraph, be released on his own recognisance without any monies being deposited and the question of his release should not be wholly dependent on his inability to raise bail money or arrange suitable surety. Regard should be had to*

> *the person arrested and the fact that local residents are less likely to fail to appear and answer bail than itinerants.*

I also note that the Police Gazette of 13 January 1988 provides (inter alia)

> *Where diversionary procedures or facilities are available, Aboriginals should not be detained or remanded in custody for intoxication or other minor offences, unless the offender is violent, or the offence is likely to continue. In cases of detention, bail or surety procedures should be instituted as soon as possible.*

In conference with myself and Commissioner Dodson, the Commissioner of Police, Mr Bull, was asked whether he agreed with the proposition that since the introduction of the Bail Act there had been a huge increase in the proportion of people being admitted to bail within a very short span of time. Mr Bull replied:

> *No, I don't agree with that's as a result of that. I gave that instruction long before the Bail Act ever came out. There was a reduction before the Bail Act came out of people being held. I did all in my power long before the Bail Act to limit the time that people spent in custody, including a direction to my officers that they were not to take monetary bail for drunkenness offences* (Underlying Issues Conference with Commissioner Bull 31 July 1990:605).

However., the Commissioner did agree that prior to his instruction regarding bail more people should have been admitted to bail by police than actually occurred:

> *Yes, I think that more action should've been taken to remove people and even waive the necessity of bail or, you know, to try and rather than have a stereotype of bail strive to release the person, given the particular circumstances, be more flexible in allowing people to go to bail* (with Commissioner Bull 31 July 1990 Conference:607).

Section 3 of the Bail Act defines 'as soon as is practicable' as meaning 'as soon as is reasonably practicable'. Whereas 'Possible' according to the Macquarie Dictionary, is that which '... may or can ... be done'; 'practicable' is that which is '... capable of being put into practice, done, or effected, esp. with the available means or with reason or prudence'. In such circumstances the Commission considers it likely that where a decision was taken that it was not possible to consider the question of bail because of the accused's condition, the same decision would be made today, and that accused would, all other factors being equal, still die in custody.

The Criminology Research Unit Research Paper No. *18 Arrest, Custody and Bail, Kalgoorlie, 1987 and 1990* found that during both study periods, higher proportions of Aboriginal people than non-Aboriginal people were held in custody, rather than being released quickly on bail. It was noted, however, that the discrepancy between the two groups was much lower in 1990 than in 1987. The proportion of both Aboriginal and non-Aboriginal people released on bail increased between the 1987 and 1990 study periods.

The Commissioner of Police was referred to the Royal Commission study and asked whether anything could be done to ensure that Aboriginal people were released to bail as quickly as non-Aboriginal detainees. His response was:

> *The detention time for any person in custody is subject* to *the influence of a number of factors including sobriety and the existence of alternative facilities. Other* matters *such as urgent work requirements, staff availability, call out time of justices when necessary, number of prisoners and admission times, co-operation of prisoners in enabling police* to *take identification particulars are some matters that will also be relevant.*

Although the data quoted may suggest **a** *discriminatory practice against Aboriginal persons,* **it** *may be* that *a combination of the factors mentioned, which are largely outside the control of police, operate to convey this impression.'*
(Answers by the Commissioner of Police to further questions from the Royal Commission 31 August 1990)

On the contrary, I cannot see how the matters referred to in the answers by the Commissioner of Police should impact on the release of Aboriginal detainees to any greater extent than on the release of non-Aboriginal detainees. Although difficult to prove as fact, I am left with the impression that discrimination by police against Aboriginal detainees in the granting of bail has occurred to some extent, at least at Kalgoorlie.

4.2.2.6 Bail After Conviction

While the WALRC recommended that the defendant should have a qualified right to bail until convicted, it was not recommended that the right extend beyond conviction, the WALRC taking the view that different considerations applied after conviction. That recommendation has been followed in the legislation. Clause 4 of Part C of the Schedule provides:

When bail is to* be *granted after conviction

4. *In deciding whether or not to grant bail to a defendant who is in custody waiting to be sentenced or otherwise dealt with for an offence of which he has been convicted or awaiting the disposal of appeal proceedings, the judicial officer shall, subject to clauses 5 and 6, consider whether -*

(a) in the case of a defendant waiting to be sentenced, there is a strong likelihood that he will impose a non-custodial sentence; or

(b) in either case, there are exceptional reasons why the defendant should not be kept in custody;

and shall only grant bail to him if he is satisfied that -

(c) in the case of a defendant waiting to be sentenced, at least one of those reasons exists and, in the case of an appellant, the reason mentioned in paragraph (b) exists; and

(d) he may properly do so having regard to the provisions of clauses I and 3 or, in the case of a child, clauses 2 and 3.

This situation fell to be considered in only one case before the Royal Commission. After entering pleas of guilty to several charges Ricci John Vicenti was remanded in custody for twenty-one days for the preparation of a presentence report. During that period, for reasons which remain unclear, he attempted to escape from Canning Vale Remand Prison, and was shot and killed. In the circumstances, which are outlined in the Report of my inquiry into his death, there can be no criticism of the Magistrate's decision to remand him in custody. Even under the present legislation such a remand would have been justified.

However, it was suggested in the course of my inquiry that the remand may have been used by the Magistrate as 'a short sharp shock'. Not only is that unlikely, but as is observed in the Report, this would have been an inappropriate use of the discretion to deny bail, since recourse to it would have constituted pre-sentence detention and punishment. That the suggestion could be made, taken together with other evidence, suggests to the Commission that remands in custody of this kind have been used in this manner when bail would have been more appropriate. Such would be the case where imprisonment was not called for, and was unlikely to be imposed, yet the judicial officer remands in custody pending a pre-sentence Report. Remands of this kind, which are intended to punish, are in the view of the

Commission not only improper but dangerous. While there has been no death in this State in the course of such a remand, this could be entirely fortuitous.

4.2.2.7 Grounds for Refusing Bail

Under the law which applied at the time the WALRC reported, and during the timeframe covered by the inquiries of the Royal Commission, a bail-decision maker had a broad discretion whether or not to grant bail. The WALRC recommended that the grounds for refusal of bail be specified exclusively in the proposed legislation, and that the factors relevant to the consideration of the grounds be outlined but not limited. Those recommendations were not followed by Government.
The WALRC recommended that there should be a discretion to refuse bail if a bail-decision-maker considered that, having regard to the conditions that he could impose, them remained:

(a) *substantial grounds for belief that a defendant, if released on bail, will -*

(i) fail to surrender into custody in answer to bail;
(ii) commit an offence which is likely to involve violence or is otherwise serious by reason of likely consequences;
(iii) endanger the safety or welfare of members of the public; or
(iv) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

(b) *a need to obtain more information about the defendant which is relevant either to the bail decision, or to the forthcoming*

(c) *a need for the defendant to remain in custody for his own protection;*

(d) *in the case of bail during a trial, a substantial risk that the fairness or integrity of the trial process will be prejudiced.*

The WALRC observed that, from a practical point of view, the grounds specified in paragraph (a) would be the most important to the bail decision. It noted that there had been some debate as to whether bail should be refused on the ground that it was believed that the defendant would commit an offence while at large on bail. Having taken into consideration the arguments opposing preventive detention, that is, detention in custody not for what a defendant has done, but for what he might do, the WALRC recommended that this ground for refusal should apply only in cases where it is likely that the defendant would commit an offence which is of a serious nature, or involved a risk of injury to a person or property.

That recommendation was not followed in the legislation. Clause I (a)(ii) of Part C of the Bail Act 1982 provides simply as a ground that the defendant 'may commit an offence'. To take a case from the experience of the Royal Commission (e.g. Polak) the police would be justified in refusing bail to an alcoholic charged with park or street drinking on the grounds that he might reoffend in the same manner during the period of his bail. This Commission is of the view that this provision is wholly unsatisfactory, and what is more, dangerous, and that legislation along the lines recommended by the Law Reform Commission is to be preferred.

Where a person is arrested on a minor charge unlikely to attract a term of imprisonment, the fact that if released on police bail he may commit a further minor offence of the same character is, in my view, a wholly unsatisfactory reason for depriving him of his liberty until such time as he may be brought before a court. Too many of those whose deaths this Commission has been obliged to investigated have died in the course of such short-term custody for this risk to be acceptable.

4.2.2.8 Factors Relevant to Consideration of Grounds for Refusal

In considering grounds for the granting or refusal of bail, there are factors which the decision-maker must take into consideration. The Law Reform Commission recommended that the bail-decision-maker, should consider:

(i) the nature and seriousness of the offence, and the probable method of dealing with it;

(ii) *the character, antecedents, associations, home environment, background and place of residence of the defendant;*

(iii) the history of any previous grants of bail;

(iv) *the strength of the evidence against the defendant.*

Those recommendations were incorporated in the legislation virtually unchanged, and are to be found in Clause 3 of Part C.

While this Commission accepts that this represents broadly the approach taken in other jurisdictions, it entertains serious reservations about some of these factors. It is difficult to see how 'home environment, background and place of residence of an adult defendant' can be relevant to the grounds set out in Clause 1. (Children come into a different category since, in theory at least, they have a qualified right to bail, although this may avail them little in practice for reasons already discussed.) This Commission is of the view the inclusion of such factors as being relevant to the question of consideration of bail discriminates unfairly and unacceptably against the poor, among whom Aboriginals number a disproportionately large group.

It is also likely that the standard against which the defendant will be measured will be that of middle-class Europeans, enjoyed by or aspired to by the bail decision-maker. This will be inappropriate to those who have for reasons of youth, race, or for cultural, religious, or other reasons chosen an alternative lifestyle. It is even less appropriate that this should be the standard against which defendants who have had a different lifestyle imposed upon them by poverty, race, or illness, including mental disability, are judged, and that they should be denied the liberty which better-fed, better-dressed, better-housed, and healthier Australians are entitled to expect as of right. The Commission regards the inclusion of such factors as wholly inappropriate, and calling for amendment.

Turning to the standard to which the decision-maker should be satisfied, the Law Reform Commission reached the view, after considerable debate, that the bail-decision-maker should have 'substantial grounds' for believing that the defendant would abscond or otherwise behave contrary to the public interest before bail should be refused, and recommended that this standard should be incorporated in the legislation proposed for Western Australia. The legislation as enacted in Clause 1 of Pan C did not limit the discretion of the bail-decision-maker in this way. This Commission is of the view that the limitation imposed by the Law Reform Commission was to be be preferred.

4.2.2.9 Where Pre-Trial Detention Could Exceed the Potential Penalty for the Offence

The WALRC noted that a refusal of bail in cases where a defendant is charged with a minor or non-imprisonable offence, or where pre-trial custody has exceeded the maximum sentence for the offence charged, is a sensitive issue. Bearing in mind the offensive character of pre-trial detention as a form of punishment, it concluded:

> *However, the Commission takes the view that* it *is not a matter which necessarily lends itself to remedy through specific legislative directions. The decision should be left to a bail-decision-maker who should grant bail unless there are grounds for refusal. If the bail decision-maker refuses bail, the defendant should be*

entitled to appeal, and he should be given the benefit of improved administrative procedures to reduce delays be fibre his trial.

While this Commission has no detailed evidence before it of the working of the Bail Act 1982 in practice, it has doubts as to whether the right of appeal is in principle a sufficient safeguard where a defendant is arrested on a minor charge such as street drinking, not calling for a term of imprisonment, late on a Friday afternoon, and denied bail pending appearance in court on the following Monday.
The qualified right to bail recommended by the WALRC would largely have met some of the reservations felt by this Commission had it been enacted in legislation. However, in view of the fact that the Legislature has not seen fit to provide legislative protection in those terms, this Commission feels it essential such a qualified right should be enacted, at the very least, in respect of minor offences unlikely to attract a term of imprisonment.

4.2.2.10 The Need for More Information Relevant to a Bail Decision

The WALRC saw a need for a form, the contents of which would provide the bail-decision-maker with the information required to make an informed decision when deciding the question of bail. This would avoid the acquisition of information in a haphazard way, would give guidance to both the defendant and the decision-maker as to what was relevant to the decision granting or refusing bail, and, where the charge was denied, would avoid the possibility of the defendant being prejudiced by information disclosed in open court.

The latter consideration was not an issue in the case of deaths investigated by the Royal Commission. The suggestion of the WALRC was adopted by the Legislature. Section 8 of the Act provides for the use of such a form, and for one giving information to a defendant as to his rights under the Act, another suggestion of the WALRC which had recommended that there should be a statutory obligation on the police to give such a form to every defendant taken into custody.

Its recommendation that a bail record form providing for reasons for a bail decision was also adopted and enacted in section 26, which provides for a bail record form to be completed where bail has been refused. However that provision, as enacted, would appear to this Commission to be defective to the extent that it does not provide for a record where bail is not considered. This is a possibility which appears to be contemplated by section 5(b), a decision having been made by the police to take a defendant before the court as soon as practicable, rather than admit Mm to bail or release him with a summons. Such a decision, it seems, could be made even in the case earlier referred to, as where a defendant is arrested on a minor charge on a Friday afternoon, but is not released on bail, a decision having been made to bring him before the court the following Monday. I consider it to be desirable that in such a case the reason for such a decision should be noted. The necessity to provide a written note of reasons for an action can itself act as a disincentive to the arbitrary exercise of the power.

This Commission also observes that it would appear that in such a situation the police would not be obliged to provide the defendant with a copy of the form advising him of his rights on the basis that the question of bail is not being considered in terms of section 8. It would seem to this Commission that an accused person arrested by the police and admitted to a lockup should be advised of his bail rights at the time he is processed regardless of whether the question of bail is considered at that time.

4.2.2.11 Conditions of Release on Bail

The WALRC was doubtful whether the recognisance procedure was a sufficient incentive for a defendant to answer his bail, This Commission entertains further doubts whether the purpose of such a condition and consequences of a breach are sufficiently understood by defendants, particularly many Aboriginal defendants.

The WALRC preferred the creation of an offence of absconding. It therefore recommended that a defendant's recognisance should no longer be a condition of release on bail and that failure to appear in answer to bail, without reasonable cause, should constitute a criminal offence.

This Commission agrees with those recommendations. However they have not been adopted in the legislation as enacted. Recognisances have been retained in clause I of Part D and an offence of failing to comply with a bail undertaking created by section 51. This means that an accused person may now both forfeit his recognisance and be punished under the penal provisions for breach of his bail. Upon conviction he is liable to a fine not exceeding $3000 or imprisonment for a term not exceeding three years, or both. 7

This Commission finds the double jeopardy created by the retention of the recognisance and the creation of the new offence repugnant to accepted principles of law. While it would be open to a court imposing a penalty upon breach of the penal provision to take the amount of the recognisance forfeited into consideration in imposing penalty, it would not be necessary to do so. It could well be that at the time sentence was imposed, no step had been taken in respect of the forfeiture, leaving the situation unclear. In the case of an Aboriginal defendant, unable to pay the recognisance, the default term of imprisonment on a substantial recognisance could be considerable. Recognisances of $1000 or more are, in the experience of the Commission, not unusual.

This Commission is particularly concerned with recognisances which in some cases have been found to impact with particular harshness upon Aboriginal defendants who may not have completely appreciated the nature of their undertakings, and the serious consequences of a failure to comply with them. Some of the deceased had the experience of forfeiting substantial recognisances, and were then faced with serving substantial terms of imprisonment when unable to meet them.

Christine Jones was arrested in connection with the unauthorised use of a motor vehicle, often referred to as 'joyriding'. She was bailed in the amount of $500 to appear at a later date, but failed to answer her bail. She was accordingly liable to forfeit her recognisance. Three weeks later, after police were called to a disturbance in which she was involved, she surrendered to the officers who attended, telling them that there were warrants outstanding for her arrest and that she owed $600. Inquiries revealed that there were in fact two warrants outstanding in respect of unpaid fines totalling $127. She was unable to pay, and was arrested. Within an hour of being lodged in a cell at the Midland Police Lockup she was found hanged.

4.2.2.12 Conditions of Release on Bail Other Than the Defendant's Undertaking

The WALRC felt that existing law in Western Australia did not adequately deal with conditions which might be imposed in respect of release on bail other than the defendant's own undertaking. There had been criticism of certain conditions, and the Law Society suggested that cash bail should not be required in any circumstances on the basis that such a requirement was unfairly discriminatory against the poor. In some centres accused persons had been released on cash bail equivalent to the fine which would be imposed upon conviction, and no action would be taken when they failed to appear. Such a procedure, while convenient to those with sufficient means to take advantage of it, obviously discriminated against the destitute. Some Western Australians were able to buy their freedom and avoid the stigma of a conviction, while others, many of them Aboriginals, were exposed to the full rigour of the law.
Taking into consideration the opposition to cash bail, the WALRC proposed that there should be a statutory direction to bail-decision-makers requiring them to release a defendant on the basis of his undertaking alone, unless they considered that it would be desirable to require further conditions as security for performance of that undertaking.

That recommendation was not, however, adopted by the Legislature, and enacted in the Bail Act. The discretion to impose conditions is not fettered in that way. The kinds of conditions which may be imposed on defendants and sureties are, however, limited, and are set out in Part D of the Schedule.

Section 18 of the Bail Act is intended to facilitate the early release of defendants charged with prescribed simple offences by cash deposit. The defendant is given a notice specifying the time and place at which he or she is to appear in court. If they fail to appear their deposit is forfeited. However, too many people arrested for such offences have little or no funds available to allow their release in this manner.

The Police Department have recognised this problem and recommended to the Attorney General's review panel that an amendment be made to section 18 granting police a discretion to fix an amount for cash bail (including a nominal amount such as $1.00) or to dispense with such deposit entirely in such simple matters. Recommendation was subsequently made by the Review Panel that police be granted such a discretion and that the limit of the prescribed offences be raised to $1000 so that more offences come under the section. Those recommendations are supported by this Commission.

The WALRC's recommended requirement that a condition should be no more onerous than is required in the public interest, having regard to the nature of the offence and the circumstances of the defendant was, however, adopted. It is to be found enacted in section 17(2) of the Act. The intention was to make clear that, when imposing a condition, a bail-decision-maker should include in his consideration the ability of the defendant to meet it. This is an extremely important consideration.

Examination of the criminal histories of those whose deaths it was called upon to investigate leads this Commission to conclude that in the past sureties have been ordered almost as a matter of course. 8 Many Aboriginal defendants, like most poor and disadvantaged people, have had difficulty in obtaining satisfactory sureties, and have been unable to meet the terms of their bail. Since, as must be the case, they have been detained in custody until such time as they can meet their bail conditions, they have been placed in an almost impossible situation.

Donald Harris admitted a series of offences in the Central Law Courts in Penh. He was fined a total of $1250, forfeited a recognisance of $1000, and was ordered to pay costs of $55. He was given no time to pay. Not surprisingly he was unable to meet the demands made upon him, and was sent to Canning Vale Prison to serve the default period for non-payment of these substantial amounts.

However, he had denied a charge of breaking and entering. Bail was set in terms of a personal recognisance of $1000, with a surety in the same amount. A date was set for the hearing. Harris was to finish serving the default term before that hearing date. At that time he became eligible for bail, and would have been been released had he been able to meet the conditions imposed by providing a personal recognisance of $1000, and finding a surety for the same amount. The date passed, and Harris remained in custody. He was evidently unable to find a satisfactory surety, which would have been difficult enough had he been at large, but must have been almost impossible for an Aboriginal from inside Canning Vale Prison. His dilemma illustrates the difficulties faced by the poor and the destitute, whose friends, and acquaintances, and possibly relatives will labour under the burden of the same class and condition, and will be unacceptable as sureties.

Donald Harris died in agony from pancreatitis still in custody, initially shackled to his hospital bed, a victim of his poverty and deprivation.

4.2.2.13 The Requirement of a Surety as a Condition of Bail

Some doubt was expressed before the WALRC as to whether a requirement of a surety was desirable as a condition for release in modem conditions. It was argued that changing social conditions had destroyed much of the effectiveness of a surety's role, and that what was left was undesirable and could give rise to considerable hardship. 'Me WALRC recommended the retention of a surety as a possible condition, but recommended that a decision-maker should be directed first to consider the defendant's release on his sole undertaking, and not to impose a condition requiring a surety unless it was considered that this would be desirable as security for the performance of that undertaking.

The conditions which may be imposed on a grant of bail are set out in Part D of the Bail Act 1982. Where conditions are considered desirable to ensure the performance of the defendant's bail undertaking, a judicial officer or authorised officer may impose any one or more of five conditions. (It is to be noted that the conditions only have to be considered desirable, amenable to a subjective test, and not 'necessary', which would involve a more objective test.) These include a condition that a surety or a specified number of sureties enter into an undertaking agreeing to forfeit a specified sum of money in the event that the defendant fails to answer his bail. For the performance of his undertaking a surety, like the defendant, may be required to deposit security, including the deposit of a sum of cash, or a bank book or other title document to a bank account, or enter into a mortgage, charge or assignment which will render the security enforceable by the Crown.

Both the Aboriginal Legal Service and the Aboriginal Advisory Committee suggested to the WALRC that there was a need for a special approach to the requirement of sureties for Aboriginal defendants. The problem arose because where they were granted bail with a requirement for a surety, Aboriginals were more often than not unable to meet that requirement because relatives, and others whom they might approach, did not have sufficient means to meet the potential liability, and were for that reason not acceptable as sureties.

While the law existing at that time made no provision in relation to the qualifications of a surety, in practice the police generally required that a surety should be a landowner in Western Australia, although that requirement was in some circumstances waived. The WALRC recommended that there should be certain minimum requirements for a proposed surety, one being that he should be of full age, another that he should have assets to meet his financial commitment. However, it recommended against any requirement that he must own his own house or land. Those recommendations were accepted and enacted in a negative form in section 38 which disqualifies certain persons from being sureties. The legislation is still unsatisfactory in the absence of the provision for quasi-sureties mentioned above, since it is frequently difficult for the poorer members of our society, such as Aboriginals, to rind a person qualified to act as surety and willing to do so. 'Me provision again demonstrates the presence on our statutes of provisions which discriminate against those already poor and disadvantaged.

It was suggested that in cases where the defendant was part of a closely-knit community or family, and where there was a responsible member of that community who was willing to undertake that the defendant appeared in court as required, the defendant should be released on bail on the strength of that undertaking alone.

The absence of any penalty to support the undertaking posed an obvious difficulty for the WALRC. However, it was suggested that the threat of financial detriment should not be necessary in every case:

> *The incentive to abide by the undertaking could arise from an Aborigine's sense of duty, arising from the trust placed on him, backed by the knowledge that any faliure on his part would result in custody for the defendant with little prospect of further release on bail, and, for the person who entered the undertaking, a loss of respect by his tribal elders.*

The sanction would thus be social rather than legal.

After careful consideration the WALRC reached the conclusion that there might be cases where a defendant could be released on bail on the formal undertaking of a third person that he understood and would comply with his obligations. It accordingly recommended that legislative provision be made for bail to be granted on the basis of an undertaking from a responsible person to take all reasonable steps to ensure that the defendant complied with the conditions of release on bail, including his undertaking to appear in court to answer his bail. A person who entered into such an undertaking would not be a surety in the strict sense, because no financial forfeiture would result if the defendant failed to appear. The provision would not be restricted to Aboriginal defendants. That recommendation, applying as it did solely to the poor and disadvantaged, did not commend itself to the legislature and no such provision has been made.

The WALRC considered and rejected automatic review of decisions granting bail with conditions attached where the defendant was still in custody twenty-four hours after the grant of bail on administrative grounds. It did, however, recommend that an administrative procedure be introduced whereby what is now the Department of Corrective Services would make a weekly return advising the Probation and Parole Service where defendants were still in custody because they had been unable to meet the conditions of their bail. That Service would then be able to check to see whether an application for a reheating to vary the conditions imposed should not be made. So far as the Commission is aware no such system has been introduced.

Again, although the 1990 Review of the Bail Act found that the result of the inclusion of section 17 of the Act had been that sureties were being required more frequently than in the past no change to the section was recommended by the review panel.

It would have been no easier for Donald Harris to have obtained his release in

1990 than it would under the previous legislation. He would still have died in custody.

4.2.2.14 Other Reforms

The WALRC recommended other reforms. The most important of these so far as the experience of this Commission serves as a guide was the increased use of the summons procedure. The Police Department's Annual Report for 1978 showed that 69 per cent of adults appearing in court in country areas had been arrested. The figures provided by the Police Department to the Royal Commission in relation to use of arrest and summons revealed that in the year ending 30 June 1990 87.9% of apprehensions proceeded by way of arrest. The proportion of arrests of Aboriginal people was even higher with 91.20% of Aboriginal people apprehended for offences being proceeded with by way of arrest.

The WALRC identified two commonly encountered occasions when a summons procedure could be used to bring a defendant before a court. The first arose where the defendant is apprehended for a minor offence, in which case there was no need to make an arrest. His name and address could be taken, and he could subsequently be issued with a summons. The second occasion was where the circumstances were such that the defendant should be arrested, for example to prevent a breach of the peace, or in the case of a person charged with drink driving, in which case he could later be released from custody with a summons to appear in court subsequently to answer the charge, thus avoiding the necessity for bail.

Useful as the second procedure might be in those cases, it is unlikely to have avoided any of the deaths in custody investigated by this Commission. A number of those did, however, fall into the first category, and should not have been arrested in the first instance. However, once arrested the delays which led to their deaths would in all likelihood have taken place whether their release was to have been effected by bail or by release with a summons.

The WALRC referred to procedures for the use of summonses as an alternative to arrest and bail provided in the law then existing, but commented that the procedures favouring a summons in the first instance for persons charged with a simple offence were not always adopted, Little appears to have changed, and the evidence before this Commission showed the same resistance to use of the summons procedure.

4.2.2.15 Bail Centres and a Bail Hostel

The WALRC supported the establishment of bail centres and a bail hostel as further reforms. Bail hostels were set up in England to allow defendants of no fixed abode to be released on bail. The primary reason

for their introduction was to reduce the number of defendants who were held in custody pending trial. While in Western Australia the absence of a fixed place of residence is not accorded the same importance in the bail process, it was felt that there were some defendants released on bail who could benefit from early contact with social workers associated with a bail hostel. While a bail hostel provided accommodation, which would be its primary function, there was also a place for bail centres which would be primarily concerned with the guidance and supervision of a defendant who had been released on bail. The WALRC agreed with the aims of bail centres and bail hostels, and supported their implementation, in the case of the bail hostel in the form of a pilot project in Perth. It suggested that one way of introducing a pilot project, without a need for significant capital outlay, would be to enlist the aid of a voluntary Organisation, such as the Salvation Army, to provide the accommodation in existing establishments. It therefore recommended that arrangements be made to establish Probation and Parole Offices as bail centres in Western Australia, and to establish a pilot bail hostel in Perth.

The Bail Act itself envisages the establishment of such institutions in the conditions which may be imposed on a grant of bail. Section 67 provides for the making of statutory regulations which may:

> *(c) make provision for, or with respect to the management, control, supervision and good order of premises established for the accommodation of persons to whom bail has been granted.* 9

The Department of Corrective Services acted promptly in the implementation of the recommendation that a Bail Hostel be tried, and such an institution was set up and opened in Fremantle in July 1983. There have, however, been problems. Evidence given by the department based on a survey conducted covering the first four years of its operations tended to show that the facility was under-utilised by Magistrates during that initial period. The survey also showed that, of around 315 admissions during the four-year period, only 18 offenders had been Aboriginal. Perusal of court records indicated to the department that the majority of Aboriginal offenders for whom pre-sentence Reports had been sought and obtained were appearing on charges which did not generally require long remand periods.

Without in any way wishing to doubt that evidence, these observations do not entirely square with evidence revealed in investigations of individual deaths by this Commission. The experience of Donald Harris cannot be atypical. Had he survived, and not satisfied the conditions of his bail, he would have spent more than a month in custody before the charge against him was heard, assuming that it was possible for the prosecution to proceed on the hearing date set down, which is not always the case. Had he not been serving default periods for the non-payment of fines, that period would have been almost three months. Having regard solely to the offence, and the hearing date, Harris would have been an obvious candidate for the bail hostel. It may be necessary to look elsewhere for an explanation of the disproportionately low number of Aboriginal offenders recommended for and remanded to the bail hostel.

The selection criteria for the bail hostel at the time specified that the offender must not be known to be substantially affected by alcohol or drug dependence. Obviously Harris, and on the evidence before the Commission, a large Proportion of other Aboriginal accused and offenders would have been excluded by alcohol dependence from consideration for the bail hostel on that ground. Previous criminal record was also a factor taken into consideration, and again a considerable number of Aboriginal accused and offenders would have been excluded on that ground. Following a review of the operations of the hostel, the manager has been given a wider discretion to accept individuals who might earlier have been excluded by alcohol dependence or previous record. Notwithstanding, the hostel had in the year prior to the evidence given to the Commission been less than 50 per cent full.

The Commission supports the concept of the bail hostel. It has considerable advantages for the kind of remand situation in which Vicenti and Harris died, and which other deceased had experienced on previous occasions. The individual remanded to the bail hostel can generally retain such employment as may exist, may continue education where appropriate, can maintain regular contact with family members, and generally live in an atmosphere which is both more pleasant, less removed from the normal, and psychologically less threatening than living conditions at the C.W. Campbell Remand Centre. It must be borne in mind that a proportion of remandees, like Harris, will be awaiting trial, and must be afforded the benefit of a presumption of innocence.

All Magistrates in the Perth metropolitan area should be encouraged to consider, and all counsel to suggest, remanding accused and convicted persons awaiting sentence to the bail hostel rather than to the Canning Vale Remand Centre in appropriate cases. There is no reason in principle why alcohol dependence or alcohol consumption should of itself disqualify an individual from consideration, unless that is likely to lead to disruptive behaviour. If the behaviour of a remandee in the hostel does not meet the standards required, the manager can always cause bail to be withdrawn, in which case the offender may be arrested and again brought before the court. This should allay the fear of those who might be disposed to suggest that the bail hostel, like any attenuation of the full rigour of the criminal law short of incarceration, is a 'soft option'. Like many of the so-called 'soft-options', the hostel alternative is also considerably cheaper in overall economic terms, and in its less serious impact upon the individual subject who may be able to retain some semblance of normal life while awaiting trial or sentence. The economic attractions alone should commend it to those who might otherwise oppose it on traditional conservative grounds.

However under-utilisation of the facility by the courts Posed a particular problem even for those Aboriginals who were not otherwise excluded. Because the numbers at any time are small, more often than not an Aboriginal would find himself the sole Aboriginal person in the hostel. This would create in him a significant and in some cases unbearable sense of social isolation. The department had anecdotal evidence of Aboriginal people having run away from the hostel within the first couple of days because they were unable to handle the pressures which this sense of isolation produced. Although numbers in the hostel had risen after serious under-utilisation in the first year of its operation, in the period immediately before evidence was taken in May of this year numbers had fallen off again.

4.2.2.16 Home Detention

The Royal Commission was told that the Government anticipated the introduction of legislation which would allow for the 'home detention' of some remandees who would otherwise have been remanded in custody. This option is discussed in section 4.2.6.2 of this Report.

4.2.2.17 Other Conditions

Clause 2 of Part D of the Bail Act confers wide powers upon a judicial officer or authorised officer to impose conditions he considers desirable as to the defendant's conduct while on bail, and where he may reside. Conditions as to conduct imposed include non-association provisions, curfews, and reporting ,conditions. The only restriction upon these conditions is that they must be imposed to ensure that the defendant answer his bail, does not commit an offence while on bail, does not while on bail endanger the safety, welfare, or property of any person, interfere with witnesses or obstruct the course of justice. A judicial officer may order a medical examination, including a psychiatric examination, or, where he is of the opinion that a defendant is suffering from alcohol or drug abuse, impose conditions ensuring that he receives treatment while on bail.

4.2.2.18 Conclusion

While the enactment of the Bail Act has effected welcome improvements by consolidation of the legislation, it is clear that a number of unsatisfactory features remain, which further discriminates against the already disadvantaged poor, of whom Aboriginal Western Australians make up a disproportionate number. I urge that the recommendations of the WALRC be reviewed, in particular the suggestion of the creation of a qualified right to bail, a concept which I support. The abolition of the condition which permits the requirement of personal recognisances should in the view of this Commission also be seriously considered, thus removing the potentially anomalous and repugnant situation where an offender can

forfeit a recognisance, and also be convicted of an offence under the Act in respect of the same breach of his bail conditions.

4.2.3 REMOVAL OF INCENTIVES TO ARREST OR DETAIN IN CUSTODY

In the course of my inquiries the existence of a number of police practices which may contribute to a rate of arrest and detention that is higher than is either desirable or necessary became apparent. Practices or policies that may be seen, as providing an 'incentive' for police to arrest and detain persons in custody include :

- The Meal Allowance Scheme
- Arrangements for the search of female prisoners.

Both of these matters are considered below.

4.2.3.1 Meal Allowance Scheme

The supply of meals to persons held in police lockups in Western Australia is currently the responsibility of the officer in charge of each lockup. The one exception to this situation is the East Perth Lockup where meals for prisoners are supplied on a contract basis by the Department of Corrective Services.

Under the meal allowance scheme, the officer in charge of the lockup is required to provide prisoners with three meals per day on each day of the week. Payment for the food supplied is made initially by the officer in charge (he may also have an account with a local store). The officer in charge then later claims reimbursement from the appropriate government department: the Police Department for unsentenced adult prisoners, the Department for Community Services for juvenile prisoners and the Department of Corrective Services for sentenced prisoners (see Police Routine Order 16-8 53).

Although the officer in charge is required to complete and return a standard form to claim reimbursement for meals supplied, he is not required to forward any receipts for foodstuffs purchased.
'Me present rate of reimbursement per meal is

- $4.31 north of the 26th parallel
- $3.91 south of the 26th parallel

It should be noted that if a prisoner who has been held in a lockup is subsequently convicted, he may be liable for payment of the cost of any meals supplied to him - in addition to any other penalty imposed by the court.

I consider that the present meal allowance scheme remains open to abuse in a number of ways:

- police being over zealous in making arrests
- police proceeding by arrest where a summons would be appropriate
- prisoners being held in custody longer than is necessary e.g.. by delaying bail until after a meal period has expired
- supply of poor or inadequate quantities of food to prisoners
- claims for meals that have not been provided

There are no guidelines as to the quantity and type of food to be served to prisoners other than the instruction in Routine Order 16-8. 51.1:

> *Members who are required to provide meals to prisoners are to ensure that such meals are wholesome and free from any feral meat such as donkey meat.*

The quantity and type of food supplied is generally at the discretion of the officer in charge of the lockup. This is contrary to the situation with sentenced prisoners in Department of Corrective Services institutions. The latter department has issued a Catering Policy and has advised the Commission that meals are prepared in accordance with the principles laid down in the Dietary Guidelines for Australians (Commonwealth Department of Health, 1986) (W/1 8/43).

It is unacceptable that sentenced prisoners who serve their time in police lockups are not provided with the equivalent standard of meals and quality of nutrition than prisoners in Department of Corrective Services institutions.

The situation in Western Australia may also be contrasted with that in the Northern Territory. Prisoners meals in police lockups at larger regional centres in the Northern Territory such as Katherine, Nhulunbuy, Alyangula and Tennant Creek are provided by the Health Department through local hospitals and nursing posts. Menus for prisoners at those locations are then of the same quality as meals for patients in hospitals. Meals are supplied to the Darwin and Alice Springs Lockups under contract.

In the smaller centres in the Northern Territory where demand is approximately 80 meals per annum, meals are supplied by tender, the contracts usually going to wives of local police members. It should be noted that in Western Australia it is not just in the large country centres such as Kalgoorlie, Geraldton or Port Hedland that that large numbers of meals are required. In small towns such as Halls Creek, Fitzroy Crossing and Wiluna the demand for meals to prisoners regularly exceeds 80 per week not 80 per annum. It is noted that a district hospital or nursing post is located in each of these towns.

An explicit reference to abuse of the meals allowance scheme in this state is contained in the Broome Police Station Orders tendered as an exhibit in the inquiry into the death of Albert Dougal. A memorandum from the then Superintendent at the Broome Regional Police Office to the officer in charge of the Broome Police Station dated 2 December 1980 stated in part:

> *Despite police officers being convicted at Port Hedland earlier this year for false pretences in respect to claims for services rendered, serious offences are still occurring.*
>
> *There is evidence that ... areas are causing concern and among them are :*
>
> *1. Manipulation of meal periods to enable claims for meal allowance outside specific times.*
>
> *2. Not admitting prisoners to bail until after a meal has been claimed.*
>
> ...
>
> *With regard to bail and prisoners meals as mentioned above, you are to strictly comply with existing instructions.* (W/1l/10)

This Commission has heard evidence that at the Wiluna Lockup it has been the practice of Officers in charge to supply prisoners with kangaroo meat shot by police staff. Reimbursement would then be claimed by the officer in charge for the 'cost' of the meals provided. Prisoners at Wiluna also participate in the cooking of their own food. (RCI ADIC W1 6:241-242).

A further indication of abuse of the current system occurring is contained in a memorandum from the Chief Superintendent (Country) to the officers in charge of all stations dated 17 April 1986. That memorandum stated:

> *It has come to notice that in some instances donkey meat has been provided to prisoners confined in country lockups.*

The memorandum added that such a practice was in contravention of the Health Act and was to cease 'forthwith' (W/l 8/15). However, during the inquiry into the death of Donald Chatunalgi at Halls Creek, Henry Councillor (Administrative Officer with the AMS at Halls Creek) gave evidence of donkey liver having been served to prisoners in the town's lockup as recently as 1989 (RCIADIC W29:107). Mr Councillor also stated that he had been informed that the previous officer in charge of the Halls Creek Lockup had instructed staff on patrol not to come back without a prisoner - apparently with the intention of being able to claim additional meal allowance monies (RCIADIC W29:108).

The 1980 Australian Law Reform Commission (ALRC) Report on the

Sentencing of Federal Offenders considered the meal allowance scheme in Western Australia. That Report concluded :

> *It is a system which is wrong in principle and open to abuse. It should therefore be terminated and alternative procedures adopted which contain no inducement, or appearance of inducement, to increase the numbers in lockup custody* (ALRC Report para 176).

Despite this recommendation, no action was taken regarding reform of the meal allowance scheme until after the release of the Vincent Inquiry Report in 1988. Recommendation 26 of that Report advocated the abolition of the meal allowance system and the establishment of a committee to decide upon an alternative system.

An interdepartmental committee was subsequently formed, the members of which were drawn from the Departments of Corrective Services and Community Services and from the Police Department. The object of the committee was to consider and make recommendations on alternative means of providing meals to prisoners in police lockups. Regrettably, no alternative scheme has yet been recommended.

It is understood that alternative schemes for the provision of meals to prisoners in lockups or watch houses are either in use or are shortly to be introduced in all other states and (as described above) in the Northern Territory. Alternative means of providing meals to prisoners include:

- provision of meals by the local prison (where reasonably adjacent to the lockup)
- provision of meals by the local hospital or nursing post
- catering contracts to existing food suppliers in towns where lockups are situated
- catering contracts to community groups.

I consider that replacement of the present system of provision of meals by one of the above schemes would remove suspicion of abuse of the current system and prevent any further actual abuse occurring. In addition, it may also lead to an improved and more uniform standard of food being provided to prisoners. Finally, I note that further consideration of this issue is contained in the Report of my colleague, Commissioner Dodson.

4.2.3.2 Payment of Wives for Searching Female Prisoners

Police Routine Order 16-8.9 provides:

> *A prisoner is to be searched by a member of the same sex as the prisoner except in cases of extreme urgency or danger. Where, under normal circumstances, there is no member of the same sex to carry out the search, the member in charge of the lockup is to have the search carried out by some other person of the same sex as the prisoner.*

Routine Order 16-8. 1 0 provides :

> *Where a female is employed to search a female prisoner or to attend a female prisoner in the lockup the following fees may be claimed:-*
>
> (1) *$3.00 per search; and*
>
> *(2) $2.00 on each day that a female prisoner is attended irrespective of the number of female prisoners or the number of times attended.*

There are few female police officers stationed in country areas. Police staffing figures at 30 June 1989 reveal that only three female officers were stationed in the Kimberley area, all at the Broome Regional Office. Five female officers were stationed in the Pilbara Region, two at Karratha and three at South Hedland. Similar situations existed at all other Police Country Regions.

A total of six female Police Aides are employed by the Police Department. Three are located in the Metropolitan area. In the country, one female Police Aide is located at the Geraldton, Kalgoorlie and Roebourne Police Stations respectively.

With current levels of female staff in the Department the situation remains that the great majority of country police stations and lockups are staffed solely by male officers and aides. Where female prisoners are placed in lockups without female staff it has been the practice for the search of those prisoners to be conducted by the wife of the officer in charge of the lockup (where available) or by the wives of other officers on staff.

As Routine Orders provide for payment to be made for each search conducted by a non-staff member potential for abuse of police powers of arrest exist : there being a financial incentive for the officer in charge to detain arrest and detain female persons.
In addition, them is the possibility that search and attendance fees may be claimed where no such search or attendance had taken place. In the preceding subsection of this Report I have referred to a memorandum from the Superintendent of the Regional Police Office at Broome to the officer in charge of the Broome Police Station. That memorandum also contained the following information:

> *Recently on two occasions, officers have claimed matron's search fees and attendance money, by certification of official documents, when in fact the matron had not searched the female prisoner or been in attendance at the time.*
>
> *In both the above instances the offenders were charged, one departmentally and the other by court appearance.'(W/l1/10)*

It is obviously important that the department continue to increase its level of female staffing and that female officers and police aides be posted to country areas. It is appreciated that in the short term shortages of female police staff will continue to exist at country stations. In the interim, the department should ensure that claims for search and attendance fees for female prisoners are properly audited and that a record of each search or attendance is made in the Prisoners' Property Book and in the station Occurrence Book.

4.2.4 LEGAL SYSTEM

4.2.4.1 Introduction

It is a fundamental principle of our system of justice that the laws of the State and the Commonwealth apply fairly and equally to all citizens and that all citizens are entitled to equal protection under the law. It is also a commonplace to observe that justice must not only be done but must also be seen to be done.

It has been the experience of this Commission, and it is not a new observation, that in practice instances occur when the principles referred to above are accorded little more than lip-service in this state. There are indications that the authorities responsible for the administration of justice in Western Australia are reluctant to recognise and address areas of inequality where they palpably exist.

This section examines aspects of the operation of the legal system in Western Australia, particularly in the area of Criminal Justice, as it impacts upon Aboriginal people.

4.2.4.2 The Right to Legal Representation

All citizens should have the right to legal representation when charged with an offence. In Western Australia representation may be by private legal practitioners, solicitors from the Legal Aid Commission of Western Australia (LAC) or by solicitors and court officers of the Aboriginal Legal Service of Western Australia (ALS). All three alternatives are, at least in theory, available to Aboriginal defendants.

The ALS was established in Western Australia in 1975. The main function of the ALS is to provide Aboriginal people in every pan of Western Australia with a legal service which includes legal rights, legal representation, legal advice and legal education. The LAC was established for the purpose of enabling those persons to obtain legal advice and representation who could not otherwise afford to do so. The LAC has always had a policy that Aboriginal people should have equal access to its legal aid services, notwithstanding that they have an exclusive entitlement to receive those services from the ALS.

Funding for the LAC is provided by the State Government of Western Australia. The ALS receives funding from the Aboriginal and Torres Strait Islander Commission (formerly the Commonwealth Department of Aboriginal Affairs).

It has been the experience of legal aid services in this State (both the LAC and the ALS) that they have been underfunded in relation to the demand for their services and, as a consequence, understaffed and overworked. The availability of legal representation is at its lowest in country regions, particularly in the north of the state. As, proportionately, more Aboriginal people reside in country areas they are particularly disadvantaged by the shortage of legal representation. In Western

Australia north of Geraldton, there is only one legal practitioner in private practice, four LAC lawyers (when all positions are filled) and three ALS lawyers.

By way of contrast, the situation in the north of Queensland is considerably better than in this State. There are three Aboriginal Legal Services in Cairns servicing Cairns, Cape York Peninsula and the Torres Strait. In addition there are over 100 lawyers living in and around Cairns.

The LAC have offices outside the metropolitan area at Bunbury, Geraldton, Kalgoorlie, South Hedland and Broome. ALS have offices at thirteen country locations : Albany, Narrogin, Esperance, Kalgoorlie, Laverton, Geraldton, Carnarvon, Roebourne, Port Hedland, Broome, Derby, Halls Creek and Kununurra. ALS solicitors are only located at the offices in Albany, Kalgoorlie, Geraldton, Port Hedland, Derby and Kununurra. The other ALS country offices are staffed by court officers (formerly known as 'field officers').

ALS court officers are trained as paralegal workers. Pursuant to section 48 of the Aboriginal Affairs Planning Authority Act they may represent people of Aboriginal descent in legal proceedings in any court in which those people are indicted or charged with any crime, misdemeanour or offence. At present most court officers only appear in courts to enter guilty pleas and pleas in mitigation, seek remands and arrange bail. However, in Carnarvon and to a lesser extent in Geraldton they are doing more court work including representing Aboriginal people on minor defended matters.

It has been a matter of concern to the ALS for several years that the level of funding provided to it is totally inadequate for it to be able to meet the demand for its services and to carry out its full functions. One of the results has been that there has been an increasing demand by Aboriginal people for legal services from the LAC.

In a Submission to the Royal Commission, the Director of the LAC stated:

> *... there has been a steady increase in the cost to the Commission of providing legal assistance on grants of legal aid to Aboriginal clients ... for the last full year for which accounts were certified for Aboriginal grants of legal aid namely fiscal 1988189 the total cost to the Commission was $654,000 an increase of 100% over the cost of Aboriginal grants of aid for fiscal 1986187, and the figure is still rising.'*

It is also noted that the figures quoted above do not include the costs incurred by the LAC in providing legal advice and duty lawyer services for Aboriginals as no independent costing is done in those areas. Despite this increase in demand by Aboriginal people no additional funding has been provided to the LAC to enable it to adequately meet the situation.

The geographical area that ALS country offices are required to service are vast. ALS officers are responsible not just for the Aboriginal population in the towns in which their offices are located but also for those people residing on outlying (often remote communities). For example, in the East Kimberley area ALS has one solicitor and one court officer based at Kununurra and another court officer based at Halls Creek. Collectively they are intended to cover an area extending from Kalumburu, the most northerly settlement in the State, to Balgo on the edge of the central desert in the south. In addition, with current staffing levels, ALS officers are overburdened with work in the criminal jurisdiction. Inadequate time is available to deal with civil matters and legal education.

A study in the early 1980s examined the way in which summary courts in Western Australia dealt with Aboriginal and non-Aboriginal defendants comparing seven towns from different regions of the state. The study was conducted by Margaret Martin and Liza Newby from the Law School of the UWA. Some of their findings were published in a paper entitled 'Aborigines In Summary Courts In Western Australia, A Regional Study: Preliminary Report On Selected Findings' (1980).

The study by Martin and Newby was concerned to assess the access of Aboriginal people to legal advice, to establish whether the presiding judicial officers were lay Justices of the Peace or Stipendiary Magistrates and whether the courts were administered independently of the police.

The study examined courts located at Midland, Broome, Kununurra, Wyndham, Halls Creek, Narrogin and Gnowangerup. Their results showed that despite the efforts of ALS, 64% of Aboriginal defendants faced summary court proceedings without any legal assistance at all. Of those who were represented, 72% were represented by ALS field officers. This Commission has no reason to conclude that the situation has improved to any great extent since that study was carried out.

Legal representation is often the key to improving the outcome of charges heard against defendants. This is of particular importance in the case of Aboriginals who, as the statistics before this Commission compellingly demonstrate, are far more likely than their non-Aboriginal fellow Australians to be sentenced to a term of imprisonment when convicted.

The Executive Committee of the ALS has produced a three year plan to seek funding to significantly increase staff to better cover the regions throughout the state. If both the State and Commonwealth Governments are serious in their commitment to provide the most disadvantaged sections of our community with the legal services which they so obviously desperately need, they must provide the organisations charged with supplying them with the funds they require to recruit and keep qualified staff willing to work in the demanding conditions outside metropolitan Perth.

If the poor living in the remote parts of the state are to be subject to the sanctions of the criminal law, including wholesale deprivation of liberty, they are entitled at least to the protection which a modem developed democracy owes to the weaker members of the community. Both the Federal and State Governments have a political and moral responsibility to provide funds for legal representation in Western Australia which will go some way to correct the appalling inequities which are obvious in the evidence before this Commission.

Further comment on the inadequate provision of legal services to Aboriginal people and the role and structure of the ALS in Western Australia is to be found in the Report of Commissioner Dodson.

4.2.4.3 Understanding of Aboriginal Culture, History and Law by Legal Practitioners

There has been a dearth of educational or training courses in this state aimed to equip legal practitioners with an understanding of Aboriginal history, culture and law. In some respects the general lack of understanding of these matters amongst the legal profession is a reflection of a similar lack of knowledge amongst the non-Aboriginal population of Australia.

I consider that it is essential that practitioners who are employed in positions where they will frequently have contact with Aboriginal people receive some special training in Aboriginal culture. The need for such training is of particular importance where lawyers are required to deal with traditionally oriented people from the northern and central regions of the State.

Information presented to this Commission indicates that:

- no formal training in Aboriginal culture and law is provided to judicial officers in Western Australia, this includes Justices of the Peace, Stipendiary Magistrates and Judges of the District and Supreme Courts. The Crown Law Department has informed the Commission that the introduction of such training has not been considered.

- no special training is provided by the Crown Law Department to Crown Prosecutors who will encounter Aboriginal defendants in court.

- it is not current policy of the LAC that staff who may be employed in positions where they have frequent contact with Aboriginal people should receive any special training. The Director of the LAC has stated that an adequate training programme would be prohibitively costly, although an ideal worth pursuing.

- no formal training in Aboriginal culture, history or law is provided to legal staff of the ALS by that service.

I consider that this situation needs to be addressed as a matter of priority. In particular the Crown Law Department should ensure that Justices of the Peace and Magistrates who preside over courts in country areas receive adequate training prior to their appointment to those areas.

Traditionally, legal training provided at universities in this State has not included components on cross-cultural issues including Aboriginal law and custom. The Royal Commission made inquiry of both

the Law School at UWA and the new Law School at Murdoch University as to what treatment, if any, Aboriginal issues received in their course curriculum.

A response was received from the Murdoch University Law School outlining the first semester course offered to students. That course included components on :

- The reception of English law into Australia including an examination of the 'settled versus conquered' colony debate in the context of Aboriginal land rights claims.

- Social, economic, legal and political ramifications of designating Australia a 'settled' colony, and how resultant problems specific to Aboriginals may be remedied.

- Recognition of Aboriginal customary law.

The law programme at Murdoch commenced its first year of teaching in February 1990. Inclusion of the topics outlined above is commended by this Commission. Unfortunately, no response to my inquiry was received from the Law School at UWA.

4.2.4.4 Aboriginal Peoples Understanding of the Western Legal Process

It should not be necessary to point out that Aboriginal people are not a single homogenous group. There is considerable variation in the degree to which Aboriginal people may comprehend the nature of western court procedures and legal concepts such as 'guilty' and 'not guilty'. A persons understanding may vary according to factors such as the extent of their exposure to European culture, the degree to which they adhere to traditional culture and belief, the extent of formal western education they may have received. This is an area that has been the subject of extensive commentary in recent years in legal and anthropological research. In particular I refer to the detailed examination of the issues contained in the Australian Law Reform Commission Report on the Recognition of Aboriginal Customary Laws (1986).

My own Commission has heard considerable evidence concerning the difficulty experienced by many Aboriginal defendants, particularly in country areas, in fully comprehending the nature of court proceedings. I offer two examples :

Murray Stubbs is the ALS court officer in Kalgoorlie. Some of the clients he has regular occasion to represent in court are traditionally oriented people living in 'fringe camps' on the outskirts of the town. Mr Stubbs stated that on the whole those people have poor English language skills. He went on to state that:

> *You see, the situation is that an Aboriginal person goes to court; he is charged with whatever. I make it a policy that when I represent the Aboriginal person, I then go into the holding room, for example. If he's in custody I then appear for him. I do a plea in mitigation for him. I then go back into the holding room and I then ask the Aboriginal person if he knows what did happen when he went to court. Most occasions, they don't understand what is happening. They don't even know if they got fined ... I think it's an understanding - they are not really understanding this system properly. Whether they are afraid and they're not listening, I don't know.* (RCIADIC WI 8:340)

A perspective from the other side of the court room was provided by William Lapham who had served on the bench as a Justice of the Peace at Wiluna between 1979 and 1985. Mr Lapham told the Commission:

> *The difficulty in dealing with Wongi offenders is in determining the boundaries of Aboriginal lore (sic) and white man's law. Our laws have been written for white men and are not generally understood by the Wongi people. They have no*

concept of guilty or not guilty, They have no concept of criminal intention.
(RCIADIC WI 6:58)

1 do not intend to attempt to deal with the full range of matters concerning Aboriginal accused in courts in Western Australia. That is an important area but not one that has been a focus of inquiry by this Commission. However I do make comments on the availability and use of interpreters for Aboriginal accused and means by which the court may satisfy itself that an Aboriginal accused has a sufficient understanding of proceedings and the nature of the circumstances alleged. I also note that the Report of Commissioner Dodson contains a detailed examination of these matters.

The legislature in Western Australia has attempted to provide some protection for Aboriginals accused in the provisions of section 49 of the Aboriginal Affairs Planning Authority Act. Section 49 provides:

> (1) *In any proceedings in respect of an offence which is punishable in the first instance by a term of imprisonment for a period of 6 months or more the court hearing the charge shall refuse to accept or admit a plea of guilt at trial or an admission of guilt or confession before trial in any case where the court is satisfied upon examination of the accused person that he is a person of Aboriginal descent who from want of comprehension of the nature of the circumstances alleged, or of the proceedings, is or was not capable of understanding that plea of guilt or that admission of guilt or confession.*
>
> *(2) The provisions of subsection (1) are in addition to, and not in derogation of, any rule of law or practice relating to the admissibility of pleas of guilt or admissions of guilt or confessions.*

I note that that section only has application where the offence charged is punishable by a term of imprisonment of six months or more. Although this includes the offence of disorderly conduct under section 54 of the Police Act, other minor offences with which Aboriginal defendants have been frequently charged such as public drunkenness (now repealed), street and park drinking and first offence for driving without a licence are not covered, because their penalties do not fall within the provision.

Although the nature of those charges may be comprehended by most defendants there can be no reason to automatically suppose that the Aboriginal defendant adequately comprehends the nature of the court proceedings or of the meaning and effect of entering a plea of guilty or not guilty in such matters to a greater degree than he or she could be expected if facing more serious charges perhaps involving complex questions of intent. Many of the same legal concepts and principles of procedure apply equally in both instances.

In Munro v Sefton Appeal No 38 of 1974 (an unreported decision of the Supreme Court of Western Australia), Mr Justice Jones considered the application of section 49 (1) of the AAPA Act. He held that where Justices of the Peace from their own knowledge of, and experience with, an accused person of Aboriginal descent, have no doubt whatsoever that he is not such a person as the section envisages but on the contrary the accused knows only too well the nature of the circumstances alleged and of the proceedings, there is no need for a formal examination to be conducted. However, he went on to state that the criterion of lack of comprehension of the nature of the proceedings is much wider than the mere mechanics of a court appearance. That being so he held that in all but the simplest and most obvious cases the only safe and proper course is for the justices to examine the accused in open court. If there is any substantial doubt as to whether the Aboriginal accused does or does not understand the nature of proceedings, then a plea of guilty should not be accepted.

With respect, I consider that if there is any doubt an inquiry should be made even in the 'simplest' cases. The fact that a person is liable to a conviction being recorded against him/her and thereupon is liable to the sanction of the criminal law should never be taken lightly, even in the case of the most minor offence. It appears to me that by confining the application of section 49 to offences carrying a penalty of six months imprisonment or more the legislature has sought, not to avoid the possibility of injustice in every

instance where an Aboriginal accused appears before the court but only instances of more 'grave' injustice.

It is unacceptable that distinctions between 'acceptable' and 'unacceptable' instances of injustice should be made. I consider that section 49 of the AAPA Act should be amended so that it is applicable to all offences, irrespective of the potential penalty upon conviction.

I should also briefly mention the provisions of section 631 of the Criminal Code. That section provides that where an accused person is called upon to plead to an indictment and there is any uncertainty as to whether he/she is capable of understanding the proceedings at trial an inquiry is to be made as to his/her understanding by a jury of twelve. That section is applicable to all accused persons irrespective of race.

I note that there is no procedure in place to monitor the extent and appropriateness of use of section 49 of the AAPA Act or section 631 of the Code other than instances where matters are taken on appeal to the Supreme Court. In Smith v Grieve (1974) WAR 193, Burt J (as he then was) held that in Petty Sessions Cases, where the power to examine under section 49 is exercised that fact and the result should be noted on the charge (complaint) sheet. The Crown Law Department maintains no record of those instances.

In order to limit the possibility of injustice occurring and to increase the understanding of Aboriginal accused of court processes the provision of appropriately trained interpreters in Aboriginal languages must be acknowledged as a necessity.

The Crown Law Department was asked a series of questions by this Commission relating to the use and availability of Aboriginal language interpreters in Western Australian Courts. In summary the answers of the department were:

- no special arrangements exist for Aboriginal languages
- generally the courts rely upon the Commonwealth Government Telephone Interpreter Service personnel
- the department is not aware of the unavailability of Aboriginal language interpreters
- no statistics am maintained on the use of interpreter by courts
- interpreters are not departmental staff and there are no departmental guidelines for their training or accreditation.

As noted elsewhere in this Report, the Commonwealth Government Telephone Interpreter Service does not cater for any Aboriginal languages. This is not recognised in the response from Crown Law.

The department was also referred to the South Australian Evidence Act 1929-74 and the Amendment No 107 of 1986 which provides for the provision of an interpreter for witnesses and the provisions of the South Australian Summary Offences Act 1953, Amendment No 105 of 1986 which provides for the provision of an interpreter for a person during questioning by an investigating officer. The Royal Commission asked whether the department was familiar with the South Australian legislation and whether any steps had been taken to adopt similar provisions in this state. The short answer from the department was I *no'.*

This Commission understands that, at least in country areas, the provision of Aboriginal language interpreters is haphazard. Where used, it is the general practice for the 'interpreter' to be a person from or familiar with the language group of the accused and who has a better command of English than the accused person. This is far from satisfactory. Court interpreting is a specialist job, the interpreter needs not simply to be able to converse in the language of the accused but also to be familiar with court procedure and western legal concepts and language.

On the evidence before this Commission there has been a failure to address the need for court interpreters for Aboriginal people in this State. The responses from the Crown Law Department evince a lack of interest or desire to assess and remedy this situation. Records should be kept on the use and availability of interpreters in courts to, at least initially, assess the areas of greatest need. It is also recommended that the Western Australian government give consideration to enacting similar legislation to that currently in force in South Australia.

4.2.4.5 Court Staff in Western Australia

Courts of Petty Sessions, particularly in country areas, are liable to deal with (proportionately) large numbers of Aboriginal people. Training of court staff in Aboriginal cultural awareness and sensitivity and the employment of local Aboriginals to staff positions would reduce feelings of alienation by Aboriginal people in the court environment.

The final Report of the Aboriginal Issues Unit commented:

> *Most participants agreed that, except for the Aboriginal Legal Service, the only Aboriginal participation in the courts was as defendants. Aboriginal people were not sufficiently represented as employees, and thus has limited professional contact within the judicial system* (Final Report of Aboriginal Issues Unit, Western Australia page 13).

The administration of Courts of Petty Sessions and the District and Supreme Courts is the responsibility of the Crown Law Department. That department has informed the Commission that at July 1990 only three Aboriginal staff were employed in courts in Western Australia, all three in Petty Sessions and all at Level I clerical positions. Although the department stated in answer to questions by the Royal Commission that it accepted that a larger number of Aboriginal employees could be advantageous in dealing with Aboriginal people, the department has no programme or policy directed towards the recruitment of Aboriginal staff. This is so even where courts are located in areas with substantial Aboriginal populations.

Crown Law have also informed the Commission that no training is provided to court staff in Aboriginal cultural sensitivity and awareness. Some training has been provided on the basis of 'multi-cultural awareness raising' but this has not been specifically directed towards Aboriginal Australians.

It is recommended that the department positively encourage the recruitment of Aboriginal people as court staff in areas with substantial Aboriginal populations and that a programme of cultural awareness training be introduced for non-Aboriginal staff.

Location of Courts - Clerk of Courts

Of the Courts of Petty Sessions located in country areas, twelve are situated adjoining the local police station whilst 89 are actually located within the police station. These court facilities were constructed in the 1950s and 1960s when obviously little emphasis was placed on the importance of the judiciary being seen to be separate and independent from the police. It would be surprising if many defendants in those areas did not perceive the court and the police as one agency acting to arrest, charge, convict and sentence 'offenders'.

The Crown Law Department has informed this Commission that there are no plans or strategies to relocate these courts to achieve their physical independence from the police, although present policy is to construct courts separate from police stations.

In addition to the location of courts presenting difficulties in maintaining, at least the appearance of, police - judicial independence, there are 89 courts in this state which am administered by a police officer acting in the capacity of Clerk of Petty Sessions. All other courts are administered by a full time Clerk of Courts employed by the Crown Law Department. The Crown Law Department has no plans to appoint Clerks of Courts to take over the administration of those courts currently run by police officers.

4.2.4.6 Justices of the Peace In Courts of Petty Sessions

> *The reputation of many existing Justices of the Peace was poor and many had inappropriate backgrounds they were poorly trained in legal and Aboriginal matters or were influenced by society attitudes and (were) prejudicial to Aboriginal defendants. Despite this, some Aboriginals were so intimidated by the courts that they pleaded guilty to a Justice of the Pease just to get the matter over with. Often sentences were overly harsh or unfair* (Final Report of the Aboriginal Issues Unit, Western Australia page 14).

Organisationally, the administration of justice in remote areas of the State often differs from that in the larger urban centres. In the larger centres the administration of the courts and the policing are separate functions. In less populous areas both roles are often performed by the one agency i.e. the officer in charge of the local police station also acts as the clerk of the Court of Petty Sessions. In remote areas the court is also likely to be comprised of lay judicial officers - Justices of the Peace. Martin and Newby comment:

> *Aborigines are more likely to be charged in these [remote] courts; as a result the character and style of the justice process to which they are subject is generally quite different from that experienced by white defendants* (Martin and Newby: Aborigines In Summary Courts in Western Australia).

The powers and authority of Justices of the Peace derive from the Justices Act 1902-1980 as amended. Justices of the Peace are appointed by the Governor pursuant to section 6 of the Justices Act. A Justice of the Peace is a voluntary position.

The Justices Act does not specify any qualifications for appointment as a justice. In 1986 the Law Reform Commission of Western Australia published a 'Report on Courts of Petty Sessions'. The Law Reform Commission recommended that to provide a more effective means of controlling the selection, distribution, training and performance of justices a statutory committee be established to (inter alia):

> *(a) develop criteria for the appointment of justice leaving in mind that their primary function is to perform judiciary duties* (WALRC Report on Courts of Petty Sessions 1986 page 19).

That recommendation is yet to be acted on by Government. It is also noted that pursuant to section 10 of the Justices Act, a person who is for the time being the mayor of a city or town or the president of a shire is automatically appointed a Justice of the Peace. This occurs without regard to any other consideration of that persons suitability or desire to perform the functions of a justice. Again the Law Reform Commission recommended that that section of the Act be repealed. This Royal Commission can see no justification for the continuation of such ex-officio grants of judicial authority. The recommendation of the Law Reform Commission is supported.

A justice has power under the Justices Act to (inter alia) conduct summary trials where defendants plead not guilty and to conduct preliminary hearings in respect of indictable offences. They have generally the same jurisdiction as Stipendiary Magistrates in relation to these matters. In practice justices rarely conduct trials and preliminary hearings. They generally confine their court functions to imposing sentence when defendants enter pleas of guilty, setting bail and remanding matters for the consideration of the district Magistrate.

Where a Court of Petty Sessions is constituted by justices, the general requirement is that there shall be two or more justices sitting together (Justices Act s.29), although in certain circumstances one justice may sit alone (Justices Act ss.29, 32). It should also be noted that justices rarely sit on the bench in the Perth metropolitan area. Outside the metropolitan area the State is divided into 8 magisterial districts with a resident Stipendiary Magistrate based in one of the large regional centres : Albany, Bunbury, Geraldton, Kalgoorlie, Northam, Port Hedland, Broome, (formerly the Kimberley Magisterial District was serviced by a Magistrate based in Derby. Currently, the Rockingham Magistrate visits the Kimberley on circuit for two weeks of each month.). The resident Magistrates attend a number of courts in their district on circuit each month. At other times those courts are constituted by justices. The composition of Courts of Petty Sessions is discussed in more detail below.

Following upon a resolution passed by State cabinet on 3 October 1989, new appointments to the Commission of Justice of the Peace are conditional upon the appointee successfully completing a Justice of the Peace training course either by correspondence through TAFE or by attendance at ten weekly lectures presented by Magistrates of the Perth Magistrates Court. This must be completed within eighteen months of the appointment. Following the successful completion of that course the Justice may sit in court, determine matters and impose sentence upon conviction. The course run in Perth includes a single lecture covering such complex and significant areas as the objects of sentencing, pleas in mitigation and all sentencing options.

This is to be contrasted with other judicial officers, Magistrates and Judges who require legal qualifications to obtain their appointments. 10 Standard legal training in this state involves five years of University courses followed by a year as an (full time) articled clerk. Judges and most Magistrates have extensive practical experience in the law prior to their appointment.

Prior to 1989 attendance by justices at training courses was not compulsory. One justice who was appointed in 1979 commented to the Royal Commission:

> *Just after I commenced as a Justice of the Peace I did a training course run by the Crown Law Department, which comprised a bit of law, but mainly common sense. It was not compulsory. I also did some TAFE courses in relation to law because I felt that the 'prescribed' course was insufficient* (W/l 6/58)

The Royal Commission has been provided with copies of the handbooks for the Justice of the Peace Course run via TAFE. As I have noted earlier in this section, Justices in remote areas may have considerable contact with Aboriginal defendants in court. It is therefore alarming to find the following passage contained in Pan 11 of the handbook in a discussion of the requirements of section 49 of the AAPA Act:

> *... quite apart from the fact that aboriginals in their native state were not 'inhabitants' of anywhere, a much better claim to the title of 'original inhabitants' is manifested by the original owner of the Talgai skull and his relatives. What the legislative seems to mean is that any person of what is known as 'aboriginal descent' who considers himself to be an aborigine and who is generally accepted as such comes under the ban of the Act* (Justice of the Peace Course Handbook Part 11 section 7.7).

The lack of capitalisation of the words Aborigine and Aboriginal in the passage just cited is as appears in the original text. That such a gratuitous and condescending expression of opinion can be found in an official course for justices in this State in 1990 is a cause for grave concern. This is of particular concern given that justices are provided with no training in the area of Aboriginal culture and law. Review of the course should be conducted at least with a view to the removal of such blatantly offensive comment.

Finally, on the area of training of justices I note that annual justices' seminars are held in each magisterial district in the State. These seminars involve some continuing training for justices. However, attendance at

the seminars is noncompulsory. Mr R. Monger, Assistant Director Court Services with the Crown Law Department, informed the Commission that absenteeism from these seminars was 'a problem'. Low attendance at the seminars was a problem also noted in the 1986 Report of the Law Reform Commission.

Sentencing by Justices of the Peace

Concern has been expressed in a number of Reports and studies over the exercise of the sentencing discretion by justices. The Dixon Inquiry Into the Rate of Imprisonment in Western Australia (1981) found that in some areas of the state justices imposed short terms of imprisonment more than was necessary. The Law Reform Commission Report into Courts of Petty Session referred to *'a number of recent cases where the Supreme Court has held that the sentence of imprisonment imposed by justices was substantially greater than the circumstances warranted'.*

The study of seven courts by Martin and Newby concluded that justices were more likely to use imprisonment as a penalty than Magistrates and less likely to use other non-pecuniary community based penalties. Their study also indicated that Aboriginal defendants were far more likely to appear before lay justices than were white defendants. 32% of Aboriginal defendants appeared before one justice as opposed to only 4.3% of non-Aboriginal defendants. 24.6% of Aboriginal defendants appeared before two justices whereas only 13.2% of non-Aboriginals did so.

The following table appeared in the study by Martin and Newby providing an analysis of sentencing dispositions by the Courts of Petty Sessions under review:

TABLE 4.64: SENTENCE X COURT CONSTITUTION (1980/81)

Sentence (per charge)	*Court Constitution*			
	JP		*Magistrate*	
Imprisonment	(389)	12.6%	(290)	7.3%
Fine	(2413)	78.1%	(1932)	74.3%
Other	(286)	9.3%	(728)	18.4%
TOTAL	(3088)	100.0%	(3950)	100.0%

The designation 'other' in the above table includes dispositions such as good behaviour bonds, probation, dismissal of charges without penalty, community service orders, acquittals, withdrawals and transfers to other courts.

As I have stated earlier, the figures used in the study by Martin and Newby were taken from a twelve month period ending 30 June 1981. The Law Reform Commission Report on Courts of Petty Sessions quoted figures from a survey conducted in March 1984. Again that survey showed that justices were more likely to imprison than Magistrates and that they were more likely to impose a longer sentence of imprisonment than those by Magistrates. The following tables are derived from the 1984 survey referred to by the Law Reform Commission.

TABLE 4.65: IMPRISONMENT RATE BY COURT COMPOSITION (1984)

Court Composition	*Imprisonment Rate*
1 JP	18.46%
2 Ps	10.01%
SM	4.69%

TABLE 4.66: LENGTH OF IMPRISONMENT FOR OFFENSIVE BEHAVIOUR(a)

Court Composition	*< 7 days*	*7 days - I month*	*1-2 months*	*2-3 months*
1 JP	37.14%	61.43%	-	1.43%
2 JP's	57.14%	44.48%	-	2.38%
SM	78.26%	17.39%	-	4.35%

(a) 'Offensive Behaviour' included convictions for drunkenness and disorderly conduct.

The Crown Law Department does not maintain statistics on the use of sentencing alternatives by Judges, Magistrates or justices nor has it commissioned any recent research into such area. Whilst acknowledging the absence of recent figures this Commission has no reason to suspect that the position outlined in the study by Martin and Newby and the 1984 study has altered to any great degree.

Sentencing is a complex area of judicial discretion, it involves far more than simply, 'a bit of law and a lot of commonsense'. However the use of justices in Courts of Petty Sessions may be sought to be justified on pragmatic grounds (it is acknowledged that there is currently an insufficient number of Magistrates to cover all country courts). I consider it fundamentally unacceptable that under the tone' system of justices some defendants appear before legally qualified and experienced judicial officers in the form of Magistrates and Judges whereas others, most particularly in country areas, appear before and are sentenced by lay justices with no legal qualifications. As research has shown, those defendants who appear before justices are more likely to be sentenced to imprisonment and for longer than their fellow citizens. This inequality impacts most particularly upon the Aboriginal population of the State.

The Law Reform Commission, whilst recognising the sentencing disparity between justices and Magistrates, that the justices lack of legal qualifications meant that they generally did not possess a knowledge of the rules of evidence and the procedures required in conducting trials and preliminary hearings and that where defendants appeared unrepresented the presiding justices may not be able to give them the assistance necessary to ensure a fair trial, nevertheless concluded:

> *... the Commission acknowledges that justices of the peace make a significant contribution to the administration of justice in dealing with guilty pleas, especially in country areas. It would not be desirable to exclude them from the court system altogether unless there were sufficient Stipendiary Magistrates to deal with cases expeditiously and so avail the delays and inconvenience to defendants* (possibly involving lengthy remands in custody) *that would otherwise occur. Accordingly the Commission recommends that there should be no change in the jurisdiction of justices* (page 26).

1 would comment that the 'delay and inconvenience' to defendants must be considered in the light of the standard and quality of justice being dispensed in courts presided over by Justices of the Peace. To appear before a non-legally qualified justice or justices and to risk a more severe sentence upon conviction then if one were to appear before a Magistrate could hardly not be described as an 'inconvenience' in itself to a defendant. The introduction of the Bail Act and the proposed further amendments to that Act (discussed earlier in this Pan) should expedite the release of defendants to bail. Remands in custody should occur only on the rare occasion.

This Commission considers that the continued use of Justices of the Peace as judicial officers in court proceedings is incompatible with the fair and equal administration of justice in this State. It is recommended that government implement a policy designed to phase out the use of justices in courts in this State with a concurrent expansion in the numbers of Stipendiary Magistrates. I note that such a recommendation is in accord with the conclusions of the Australian Law Reform Commission in its Report on the Recognition of Aboriginal Customary Law (1986) and also with that of my colleague, Commissioner Dodson.

Whilst justices continue to preside over courts in this State it is considered that statutory limitations on their sentencing powers be introduced as an interim measure. The Law Reform Commission Report whilst accepting the continued use of justices in courts recommended as a safeguard against the occurrence of injustice the following limitations on the powers of justices:

(i) that justices should not be able to impose a sentence of imprisonment exceeding one month on any one occasion;
(ii) that the maximum fine that a justice may impose be limited to $500 on any one occasion.

If the justices considered that a penalty in excess of those limits was or may be justified, it is recommended that the convicted person should be remanded for sentence before a court constituted by a Stipendiary Magistrate. This Royal Commission would go further. It is recommended that justices no longer have the power to imprison in any circumstances. Such authority should only reside in legally qualified, professional judicial personnel.

The recommendation on a statutory limit being set on the amount of fines that may be imposed is supported, although the maximum recommended by the Law Reform Commission four years ago may now require review.

I note that in 1988 a bill was introduced into State Parliament seeking to limit the sentencing discretion of justices to a maximum of one month imprisonment on any one occasion. This recommendation was opposed by the parliamentary opposition and subsequently defeated.

The Law Reform Commission Report noted that under current provisions of the Justices Act indictable offences triable summarily and preliminary hearings for those indictable offences which may not be dealt with in the summary jurisdiction may be heard by two justices and possibly one justice sitting alone. That Commission recommended that indictable offences only be dealt with before a Stipendiary Magistrate or two justices where both parties consent to their jurisdiction. This Royal Commission supports that proposal.

One Justice Sitting Alone

Section 29 of the Justices Act provides that generally all matters must be dealt with by and before two or more justices, although one justice may hear a complaint with the consent of all parties. However, the provisions of section 29 are modified by section 32 which states:

> Section 32
>
> *Any one justice may exercise the jurisdiction of two justices under this or any other Act whenever no other justice usually residing in the district can be found at the time within a distance of sixteen kilometres; provided that the justice, on any conviction, certifies in writing, that no other justice can be found within sixteen kilometres ...*
>
> *A certificate under this section shall be conclusive evidence of the fact stated.*

The Dixon Report (I 98 1) found that there was:

> *... a tendency for a justice sitting alone to impose penalties which are sometimes inconsistent with those imposed by two justices or by a Magistrate (page* I 1 9).

A similar 'tendency' is evident in the findings of the study by Martin and Newby and the March 1984 survey referred to above.

One Aboriginal Man's Experience: Ginger Sampson

It has not proved possible for the Commission to analyse in any depth the criminal records of those whose deaths it has been called upon to investigate, beyond scrutinising a list of convictions and charge sheets where available. In one case, however, it was possible to analyse the background to the terms of imprisonment to which the deceased had been sentenced over a lengthy period.

Ginger Samson was found dead in the Roebourne Lockup on 30 March 1988, having been arrested for drunk the previous day. Between August 1979 and Match 1988, he had on 21 occasions been sentenced to imprisonment on 29 charges, to terms between seven days and three months. The charges ranged from being found drunk in a public place to assaulting police. Of these 29 charges, it is likely that all but one were alcohol-related. The remaining charge, one of escaping from lawful custody, which appears to have been unrelated to any other charge, may or may not have been alcohol-related.

It is troubling to note that on 20 of the 29 charges he was sentenced to terms of imprisonment by lay Justices of the Peace, and on 14 of the 20 by a single Justice of the Peace. The terms of imprisonment involved ranged from seven days to two months in length. On one of the occasions upon which he was sentenced by a single justice, the term imposed was two months on a charge of being an habitual drunkard, and on another to two months for escaping from legal custody. Both were in the latter part of 1987. At that time there were around 15 justices in Roebourne and the neighbouring town of Wickham.

It is not possible to determine on the evidence before the Commission whether Samson consented to a hearing by a single Justice, or whether a memorandum was entered. Bearing in mind the number of justices living in the district and the number of occasions on which a single justice sat (as reflected in the criminal record of this one deceased), I find it difficult to accept that the letter of the law, as set out in the Justices Act, let alone the spirit, was observed.

Moreover, this outline does not give a full picture of Ginger Samson's custodial history since it does not include terms served in default of payment of fines. Evidence before the Commission shows that he served such default terms on at least 47 occasions.

The picture which emerges from this sentencing snapshot of one individual is disturbingly unsatisfactory. While it would possibly be misleading to extrapolate from the experience of a single individual in one region of the State, the picture which emerges does not run counter to that which emerges from the more general studies which have been carried out in Western Australia.

I have concluded above that it is undesirable that justices continue to exercise jurisdiction in Courts of Petty Sessions, it is even more undesirable in instances of one justice sitting alone. The Law Reform Commission recommended that the circumstances in which a justice may sit alone be narrowly circumscribed. Their recommendation was that a justice only be permitted to sit alone where it is certified that no other justice is available within 50 kilometres of the site of the court and all parties concerned consent. Further, the justice should explain the options to the defendant and that the person who actually conducted the search for another justice (usually the Clerk of Courts) sign the certificate.

Again the recommendations of the Law Reform Commission have not been implemented by government. As an interim measure in an overall process designed to phase out the sitting of justices in courts, the recommendations of the Law Reform Commission are supported.

In concluding their discussion on the jurisdiction of a single justice the Law Reform Commission commented:

> *In review of the general undesirability of single justices sitting alone the Commission recommends that the situation be closely monitored to ensure that, where ever practicable, there are sufficient justices in the area so that two justices are always available for court hearings* (LRCWA Report on Courts of Petty Sessions page 44).

Four years after that recommendation was made, the Crown Law Department informed this Commission that no information is collected on the frequency with which justices sit alone. However the department advised that their Clerks of Court conduct periodic audits of Courts of Petty Sessions. Charge sheets (complaints) are examined for endorsements and the proper collection of penalties. Where significant numbers of complaints are found to have been dealt with by only one justice, the clerks make a Report to the Director, Court Services. The experience of Ginger Samson referred to above provide no confidence that such a procedure provides an adequate safeguard against apparently excessive numbers of sittings by one justice in country courts.

4.2.5 SENTENCING

4.2.5.1 Principles of Punishment

General

The classical principles of sentencing were summed up in a frequently cited judgment by a judge of the English Court of Appeal, Lawton L.J., in four words: retribution, deterrence, prevention and rehabilitation. 11

> *Any Judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.*

Examination of the sentences imposed upon those whose deaths the Commission has been called upon to investigate leaves some doubt as to whether those responsible for sentencing at the lower levels of the Western Australian judicial system have had any real appreciation of these principles or the manner in which they should be applied. It may be helpful to examine these principles in turn.

Retribution

Retribution is the aim of sentencing which has engendered the most heat and disagreement. There is even confusion over terminology, since sometimes retribution is intended to denote vengeance, and at others, reprobation.

In the first sense the penalty imposed by the State satisfies a wronged individual's desire to be avenged. In the second sense the penalty it imposes is a mark of the State's disapproval of the breaking of its laws by the imposition of a punishment proportionate to the gravity of the offence. Modem penal thought attributes less importance to retribution in the sense of vengeance. 12 However it is doubtful whether that view has been communicated to the more vocal members of Western Australian society who express their views in letters to newspapers and by telephoning radio talk-back shows demanding increasingly harsh penalties as a solution to the crime problem.

In an extrajudicial pronouncement, British Lord of Appeal, Lord Scarman has expressed two principles attracting widespread support. Firstly, no offender should be imprisoned, or subjected to custodial treatment, unless it can be shown to be essential in the interests of society. Secondly, sentences of imprisonment should be as short as is consistent with the service of those interests of society that can be met only by the loss of his liberty. These are principles which may be and are fully supported by this Commission.

Quite apart from the demands of retribution, a long sentence may in exceptional circumstances be justified as a measure designed to protect the public by the incapacitation of the offender.

Deterrence

There are two aspects of deterrence: deterrence of the individual offender before the court for sentencing, in which case the goal is specific, and deterrence of other likely offenders, in which case the aim is more general in its scope.

Doubts have been raised about the general effectiveness of deterrent sentencing, and, in particular, the existence of any greater deterrent effect in long sentences. As a British Home Office publication observes:

> *The inference most commonly drawn from research studies is that the probability of arrest and conviction is likely to deter potential offenders, whereas the perceived severity of the ensuing penalties has little effect.* 13

In practice deterrence of the offender by the imposition of lengthy terms of imprisonment has proved both ineffective and expensive. Underlying the demand for the shortest practicable sentence is the utilitarian principle that it is unjust to punish more than is necessary to deter. Deterrence does not threaten those whose lot in life is already miserable beyond the point of hope. 14

So far as the general deterrence of others is concerned, deterrent sentences are of little value in respect of offences which are committed, as Lawton L.J puts it, I... *on the spur of the moment, either in hot blood or in drink or in both'.* This would cover over 90% of the offences committed by those whose deaths this Commission has been called upon to investigate.

Prevention

The preventive goal of sentencing is sometimes also referred to as incapacitation. When a court sentences a defendant to a term of imprisonment, which is not suspended, it is, putting aside the questions of remission and parole, taking him off the streets for the term announced. While he is in prison the defendant will be prevented from offending against the public at large. There is a group of offenders for whom neither deterrence nor rehabilitation works. They will go on committing crimes as long as they are able to do so. Where the crimes are serious, such as repeated serious sexual offending, the only protection which the public has is the possibility of locking such persons up, and possibly for a long period. For such offenders imprisonment is the only appropriate sentence, and the legislature may take steps to see that it is imposed. Few of the deceased whose criminal records were examined by this Commission could be said to have come into this category.

Rehabilitation

Yet another goal of sentencing is the rehabilitation or reform of the offender. For the first three-quarters of the twentieth century, not only in England but in the western world generally, the move was increasingly away from the purely retributive and deterrent approaches, and towards an emphasis on the reformation of the offender. Around the middle of the century there was a view widely held by many in executive authority, that short sentences were of little rehabilitative value, because not enough time was spent in prison for any kind of reformative training to be effective. That view is no longer held as widely or as firmly as once was the case.

A retreat from the idea of rehabilitation is now evident. While not abandoning the notion of reform altogether, the trend is nevertheless moving towards the rehabilitation of punishment as a principal sentencing aim. Underlying this shift is the finding of empirical researchers that there is little perceptible difference in the re-offending of accused who have had retributive sentences imposed upon them, and those who have had the perceived advantage of sentences characterised by an aim more of rehabilitation or treatment. Disappointingly, no particular sentence can be shown to have worked demonstrably better

than any other. In particular, longer sentences cannot be shown to be more effective than shorter ones in preventing recidivism. Moreover, different types of institution seem to have worked equally well (or badly). At the same time, probationers did no better than if they had been imprisoned.

However, re-conviction alone is accepted as not being a suitable single criterion for the assessment of success or failure of penal policy. A sentence, while not leading to a cessation of offending, may nevertheless improve the conduct of an offender to the extent that it lengthens the gaps between offences. The courts have come increasingly to recognise this as being relevant to assessing the success or failure of a sentencing decision.

As the costs of incarceration increase, and in the face of such evidence referred to above there has developed a readiness to justify non-custodial or semi-custodial sentences in preference to imprisonment or incarceration, on the grounds that they cost very much less to implement, and at the same time reduce the risk of psychological and practical harm to the offender. As what are sometimes viewed as 'softer sentences are equally effective when judged by recidivism, and yet still offer possibility of reduction in frequency of offending, if nothing else they have come to be seen as preferable by most schools of thought, except perhaps the retributivist. 15

Reparation

A more recent development is a shift from the punishment principle, whether retributive or rehabilitative, to one of attempting to undo the harm done by such means such as restitution, compensation and community service.

A growing concern for the victim has coincided with increasing disenchantment with the traditional theories of punishment, and more particularly, with a realisation that they have not succeeded in decreasing the volume of crime to any significant degree. Whatever doubts one may entertain about other aims of punishment, nobody doubts the justice of aiding the victim.

While the courts are happy to see victims compensated, they are reluctant to go along with a scheme which might make it appear that defendants with means are able to buy their way out of trouble.

Imprisonment

In an address to a public forum on sentencing organised by the Law Society of Western Australia, the Chief Justice of this State referred to '...the principle, accepted by the courts for a decade or more, that imprisonment is the sentence of last resort.'

Recommendation I of the Interim Report of the Royal Commission (Muirhead) stated:

> *Governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.*

Since that recommendation was made the Criminal Law Amendment Act 1988 has come into force in this State. It provides legislative authority for the proposition that in determining sentence, imprisonment should be the sanction of last resort.

The evidence before the Commission has demonstrated conclusively that if that notion has been accepted in principle then it has not been applied in practice in the Courts of Petty Sessions of this State which handle the vast majority of cases in the criminal jurisdiction. To suggest that this is not the case so far as Aboriginal prisoners is concerned is simply not possible when confronted with evidence demonstrating the astonishing imprisonment rates in April 1989 particularly of Aboriginals in the statistics presented in Criminology Research Unit Research Paper No. 19 discussed elsewhere in this Report.

Lists of antecedents and supporting evidence before this Commission show numerous cases in which prison sentences have been imposed inappropriately. The Aboriginal man who died at Sir Charles Gairdner Hospital was imprisoned for one month at the age of sixteen for stealing two bars of chocolate. Robert Anderson was convicted of stealing a chop valued at 80 cents and served nine days imprisonment in default of payment of a fine and costs. At the age of fourteen Paul Fanner was sentenced to three months detention in a juvenile institution and detained in Longmore after being convicted on a charge of stealing two dollars and a packet of cigarettes. Even more common were instances in which inappropriate fines had been imposed leading to the offender later being imprisoned in default of payment. In a five month period, while a juvenile and detained at Riverbank, Steven Michael was fined a total of $720.

It is often overlooked that historically imprisonment did not emerge as a correctional measure. It was purely custodial and stemmed from the need to retain control of a prisoner in such time as he could be punished or disposed of in some other way. The prison was frequently merely a way station between the court and the gibbet.

New Zealand's Ministerial Committee of Inquiry described imprisonment as:

> *... a blunt instrument. An instrument which in attempting to maintain total control achieves few of the objectives imposed on it, least of all repentance. We must move beyond believing that prison walls provide us with the only conceivable safeguard and accept that prisons no longer stand as central to containment, but are simply entry points to an extended system of custody. Physical isolation from the community merely compounds the problem of criminal and antisocial activity and should no longer be seen as necessary in order to punish offenders.*

The paradoxical nature of the problem is obvious. It would be bad enough, if imprisonment did no good, but there is a body of evidence backed by a wide spectrum of opinion that imprisonment is positively harmful to the character, not to mention, more properly psychological and physical effects.

> *The overriding culture of prison is punishment through deprivation and ... this often leads to strong feelings of hopelessness and alienation in inmates and sometimes even in staff.* [16]

It is difficult to tell whether production of this alienation is inherent in imprisonment, or is rather a product of inadequacies in personnel and facilities.

As the Criminal Law and Penal Methods Reform Committee of South Australia observed in 1973:

> *There is certainly a formidable case for arguing that however badly adjusted to a society an offender may be, imprisonment will not make him better and is likely to make him worse, so that if a man does not re-offend after imprisonment it is in spite of, rather than because of, the prison system.* [17]

It is not necessary in the context of this part of the Report to examine the reasons for this, but it is essential to note that the forces which bring about this result will certainly be more powerful in the case of an Aboriginal prisoner, isolated in an environment which is culturally alien and possibly hostile by both perception and in fact.

Whatever the drawbacks of imprisonment, it is obvious that both it and the problems which it engenders are going to be with us for some time. I see no prospect of it being abandoned as a correctional measure altogether. What is important is that it be used only as a measure of last resort, and that its deleterious effects be reduced to a minimum. Those effects are considered elsewhere in this Report, my present concern is whether imprisonment is being used as a measure of last resort in the sentencing of Aboriginal offenders.

Both statistical evidence, and the evidence before the Commission in relation to inquiries into individual cases leave the clear impression that imprisonment is not used as a last resort in Western Australia and has been used in circumstances ranging from the inappropriate to the indefensible. Imprisonment has also been the inevitable result where fines have been imposed upon individuals in circumstances where it would have been obvious to anyone with the energy or wit to inquire that the offender was without the means to satisfy a fine, and would remain so in the foreseeable future. This question, of default warrants for the non-payment of monetary penalties will be further discussed in the context of fines.

Aborigines in Custody

> *More than any foreign aid programme, more than any international obligation which we meet or forfeit, more than any part we may play in any treaty or agreement or alliance, Australia's treatment of her aboriginal people will be the thing upon which the rest of the world will judge Australia and Australians... The Aborigines are a responsibility we cannot escape, cannot share, cannot shuffle off; the world will not let us forget that.* 18

So far as Aboriginal involvement in the criminal justice system is concerned, regrettably little has been achieved since that speech was made and renders it unlikely that the world's judgment at the present day would be anything but resounding condemnation. Some years after Mr Whitlam's speech the Sackville Inquiry appointed by his government to inquire into poverty, observed in examining the relationship between the legal system and Aboriginals as part of the poor:

> *There are no comprehensive statistics in Australia on the experience of Aboriginals with the legal system. The available information suggests that the legal system, far from redressing injustice has magnified it, highlighting the powerlessness of Aboriginals in Australian society. In particular, it appears that a disproportionately large number of Aboriginals are subjected to criminal sanctions* ... 19

The collection and availability of statistics has improved since those words were written. The situation which those statistics now reflects appears to have deteriorated rather than improved. I refer to Pan 4 of this Report for an analysis of the over-representation of Aboriginal people in custody in this State.

Analysis of sentences imposed shows a difference in pattern between Aboriginal and non-Aboriginal prisoners. Proportionately there are more Aboriginal prisoners sentenced to terms of up to three years, but taper off markedly after two years, non-Aboriginal predominating where the sentences are three years or more.

The most disturbing fact to emerge from studies made by this Commission is the striking and increasing level of Aboriginal over-representation in prisons. The trend is not encouraging, and it seems likely for demographic and other reasons that the figures will become even worse before any improvement can be expected. Aboriginal prisoners are in general younger than others which means that individually they are likely to remain in the corrective system for a longer period of their lives. They are also imprisoned more frequently than other Australians.

4.2.5.2 Non-Custodial Sentences

Monetary Penalties

Fines

As the most obvious representatives of the poor and disadvantaged in Western Australia, Aborigines, as already noted, make up a disproportionately large section of the prison population. The most commonly used penalty, the fine, is imposed with great regularity upon members of the Aboriginal community.

Four of those who died in custody in this state serving default imprisonment at the time of their death: Christine Jones, Kim Polak, Bobby Bates and Donald Chatunalgi.

Incidence

In Western Australia the amount of the fine may be determined simply by the nature of the offence without a parallel consideration of the means of the offender to meet the penalty. While some Magistrates and justices do attempt to take account of the offender's means, this is not done in any systematic way and adequate information is not always before the court in this State. In other jurisdictions there is a statutory requirement that means to pay be considered in fixing the amount of any fine to be imposed. 20

Fines operate in a manner which is obviously unjust towards poor people, since the impact of any monetary penalty is directly proportionate to the defendant's income. Taking no account of the level of income of the offender means that poor people are punished more harshly than the affluent for the same offences, because the fine has a much greater effect on their modest means. The fact that the court may not, and usually does not, insist upon immediate payment, and grants time for the fine to be paid, does not affect the offender's obligation to pay the fine.

The practice of imprisoning those who do not or cannot pay fines imposed upon them, without proper regard to their ability to do so, emphasises the injustice of existing sentencing policies to poor people, among whom Aborigines figure so prominently. In 1973 one commentator had estimated that about 15 *000* Australians were imprisoned each year for the non-payment of fines, at a rate about equal to one third of the country's prison admissions. 21 He suggested that on a population basis Australia imprisoned about ten times as many fine defaulters as most other countries. (At the time of New Zealand's 1989 prison census there were 16 fine defaulters in custody out of a total prison population of 3,457.) 22 The Sackville Report recommended:

> *We think that urgent consideration should be given to developing procedures designed to ensure that fines are set according to the means of the offender (as by varying the maximum fines set by legislation for each offence in accordance with the defendant's means) and to abolish the practice of imposing fines with imprisonment in default of payment. The present system exposes offenders to imprisonment simply because their poverty prevents them from paying the fines imposed upon them.23*

Nothing was done in Western Australia to implement these recommendations until 1988, notwithstanding that the problem for Aboriginal offenders was widespread and acute. Of prisoners received by the Western Australia Department of Corrective Services over the four-year period to 30 June 1989 some 44% were imprisoned solely for default of payment of fines. Of these, Aboriginal defaulters comprised 23% of those received. Particularly troubling was the fact that over the period, whereas receivals for non-Aboriginals showed a diminishing trend, from 65% to 49%, the trend for Aboriginals rose from 35% to 51%.

This does not of course give a complete picture of those imprisoned for nonpayment of fines, since many would be arrested on warrant and would serve short periods in a police lockup. The periods of imprisonment served are for the most part not long, being calculated on the basis of one day per $25 of the fine, and where there is more than one fine they may be 'cut out' concurrently rather than consecutively. However the imprisonment of those whose poverty prevents them paying fines, in all likelihood imposed with little regard to means to pay, is grossly offensive in any modem society.

Fine Defaults and Communiity Work and Development Orders

I have earlier referred to the recommendations of the Sackville Report regarding the imposition of fines. Commissioner Muirhead (as he then was) also addressed this matter in the Interim Report of the Royal Commission. Recommendation 2 of that Report stated:

> *Recommendation 2:*
>
> *Legislation should be introduced to ensure that sentences of imprisonment are not automatically imposed in default of payment of fines. Such legislation should provide alternative sanctions and impose a statutory duty upon sentences to consider a defendant's means to pay in assessing the appropriate monetary penalty and time to pay, by instalments or otherwise.*

In 1988 the Western Australian government took legislative action which to some extent addressed the problem, but which has not proved entirely satisfactory in practice. Notably, there is still no legislative requirement in Western Australia that means to pay be considered in determining the amount of any **fine** to be imposed.

Corrections Centres) Act 1988 came into force on I March 1989. They provide for the establishment and management of Community Corrections Centres, and *inter alia* Work and Development Orders (WDO), which may apply to persons who default on the payment of a fine, and for whom a warrant of commitment, which would otherwise result in imprisonment, may be issued.

The purpose of the Work and Development Order is to permit the diversion of 'fine-defaulters' from the imprisonment to which the warrants of commitment render them liable, and to involve them rather in programmes of unpaid community work, and where this is appropriate, activities leading to personal development. The Order has the effect that the offender continues to live in the community, where he is supervised by a Community Corrections Officer. He must also comply with a number of set conditions, failure to comply with which may result in disciplinary action of some kind, or in the suspension or cancellation of the order.

The offender must contribute a weekly total of fourteen hours to the Community Corrections programme so long as he remains subject to the Order. Of this total at least eight hours must consist of community work, and no more than six hours of personal development activities. The community work component includes programmes similar to those undertaken under the present Community Service Order scheme. It encompasses community, voluntary, or charitable work. During this period the offender will be supervised by a Community Corrections Officer.

The period for which the defaulter is liable to be imprisoned is converted to a period specified in the Order, which becomes the period of duration of the Order. This converts on the basis of one (i.e. 14 hours WDO) week for every seven days of default imprisonment, with periods of less than seven days default being converted to one week. The offender retains the option of paying the balance of any fine and associated court costs at any time. The period on the programme is limited to twelve months.

The personal development activities are tailored to meet the individual needs of the offender subject to the Order. They could include counselling or treatment of those who are drug or alcohol dependent, by way of alcohol education, social and life skills courses, such as anger management or driver training, and educational, occupational and personal training courses, such as literacy and numeracy training.

The current provision for conversion of a period of default imprisonment into hours of Work Development Order still means that persons may opt to serve default rather than perform a Work and Development Order. As stated, the minimum term of involvement for a Work and Development Order is fourteen hours. For a person that may be fined $25 or for a person that is fined $175 the minimum term still applies. Some people may choose to serve one days default in prison for non-payment of a $20 fine than to do fourteen hours work over a period of seven days.

Aboriginal offenders are frequently fined for minor matters. The amount of those fines are likely to be amongst those which people may consider 'not worth' convening into a Work and Development Order. The result is that these people will still end up in custody. The scheme appears best adapted to those offenders who have substantial default periods to serve.

Provisions relating to the discipline of an offender who is subject to an order are set out in sections 20 to 24 of the Act. The offences created include failure to comply with a reasonable direction of a Community Corrections Officer, or using or being under the influence of alcohol or drugs when participating in the programme. Penalties for offences, which may be imposed by the Supervisor of the Centre, range from a reprimand to extension of the Order by up to two weeks. The Executive Director of the Department of Corrective Services may, in his absolute discretion, cancel a Work and Development Order and issue a warrant of commitment in respect of the remainder of the period of imprisonment for which the offender was liable to be imprisoned. That warrant cannot, of course, be converted. Where an offender satisfactorily completes the obligations imposed by the Order, the default period is cancelled as if the term of imprisonment had been served.

The system as established by the Act Amendment (Community Corrections Centres) Act 1988 works in the following way:

(i) Upon conviction and a monetary penalty being imposed an offender is given a notice advising them of the out come of the offence

(ii) After expiry of the period of time allowed by the court for payment of the fine a notice is posted to the offender advising that if the amount due is not paid within 21 days the default may be converted to a Work and Development Order.

The notice states that if the offender wishes either to pay by instalments or convert to a Work and Development Order, contact must be made with the Clerk of Courts. The notice further advises that failure to contact the Clerk of Courts will result in the issue of a warrant for the arrest of the offender.

(iii) If the offender attends at the court and states that they wish to convert the default period to a Work and Development Order, they will be given a document which will enable them to attend a Community Corrections Centre where a Work and Development Order will issue.

(iv) If the offender does not take action within the 21 days allowed in the notice a warrant will issue for the arrest of the offender.

(v) Once the offender is arrested and lodged in a prison he may still make application for conversion of the remainder of the default period to a Work and Development Order.

The Department of Corrective Services has informed the Commission that in an assessment of the fine default scheme it was found that 93% of persons who elected to convert their default period successfully completed their programme. Of those who converted from prison after having been arrested the success rate was 50%.

A number of problems in the operation of the fine default scheme as originally enacted in this State have become apparent to this Commission. Although no formal review of the scheme has been undertaken as yet, the Community Corrections Centres Act provides for a review to take place after the scheme has been in operation for two years. In the Interim the Community Based Corrections Division of the Department of Corrective Services is monitoring the operation of the scheme.

One difficulty with the current scheme is that the only times which may be converted are those imposed in Courts of Petty Sessions. There is no provision in the legislation to enable conversion of fines imposed in the District and Supreme Courts and in the Childrens Court. This requires amendment.

Another problem brought to the attention of this Commission is in the formal nature of the notice sent to a person in default. Mr David Watson, Centre Manager for the Community Based Corrections office at Geraldton, referring to the notice stated:

> *I could be critical of that in the sense that the notice is a very formalised letter which unless you are fairly well versed in literacy skills and can understand exactly what it means you would probably have some doubts about taking advantage of that. I have found that most* of the people who come through our office are people who *have found out from other means, like word of mouth or, for instance, they may already be known to our office through probation orders or whatever and ask about this problem and can be told what the options were. It is not publicised and as I understand it, it is not able to be publicised because ... the courts intention is that a monetary fine be the first option that is available* (Geraldton Hearings 11.4.90:333 - 334).

Mr Watson was not aware of any attempts to have the notice rewritten in 'everyday English'. As I have noted elsewhere in this Report, many Aboriginal people have limited formal English literacy skills. To have the notice written in other than simple, clear, everyday English can only be seen as an instance of discrimination against those Australians for whom English is not their first language.

The issue of and form of the notice is the responsibility of the Crown Law Department. The Executive Director of the Department for Corrective Services has informed the Commission that his department is *'aware of some of the issues with respect to notification of, and information for, fine defaulters ... officers of Crown Law and Corrective Services have met to resolve the issue'.*

My Commission referred the evidence of Mr Watson to the Crown Law Department, enquiring as to what, if any, action the government has taken to ensure that the fine default scheme is more effectively brought to the attention of defaulters. The short reply from Crown Law was:

> *Nothing as the notice is written in everyday English* (Answers by Crown Law Department to specific questions put by the Royal Commission, 16 July 1990).

Read in the light of the statement of the Executive Director of the Department of Corrective Services, to say that I find the response of Crown Law surprising would be an understatement. I can only view such a response as further evidence of a lack of commitment in the administration of the Crown Law Department to continuing review of the operation of the Criminal Justice System to ensure a truly fair and equal dispensation of justice in this State.

Another problem with the scheme, as originally enacted, was that after an offender has been arrested on a warrant for non-payment of a fine, conversion to a Work and Development Order may only take place from a prison. An offender lodged in a police lockup was unable to convert his or her default period to a Work and Development Order until or unless they are transferred to a prison. As I wrote in the Report of my Inquiry into the Death of Misel Waigana.

> *This is of particular concern in country areas where the Regional Prison may be such a distance from the place of arrest that it is either not possible or is impractical for police to convey persons arrested on two or three day warrants to the prison. Default would then be served at the lockup* (Report page 45).

I note with approval that a Bill has been drafted to amend the existing legislation by deleting the word 'prison' and substituting the broader term 'custody'.

The Commission is aware of a further problem. Under section 171 Al of the Justices Act an Order may not be made where the Court of Petty Sessions directs at the time that the fine is imposed that it may not be so converted. The Commission finds it difficult to imagine circumstances in which such a direction would be appropriate, and there has been no evidence before it of actual reasons given at the time of such a

direction. However, there was a suggestion in the evidence given before the Commission in the course of the investigation into the death of Ricci Vicenti that some Magistrates and Justices had regularly been giving such directions when imposing fines. (RCIADIC W27:237) If there are circumstances in which a direction of this kind is appropriate, and the Commission finds it difficult to imagine what they might be, they should be unusually, if not rarely encountered in practice. To do so on a regular basis would be a practice to be deprecated.

Unfortunately the Crown Law Department does not monitor the frequency with which Courts of Petty Sessions resort to section 171 Al (2), nor, they have informed me, do they have any intention to do so.

Finally I note that the scheme introduced by the legislature in this state simply provides an option in lieu of imprisonment for those offenders in default of payment of a fine. As I have described, the scheme only becomes available to an offender once the period allowed to payment of the fine has expired. It may be contrasted with the fine option programme in operation in the Northern Territory.

The Northern Territory programme offers offenders who have been fined the option of immediately attending the office of the Probation and Parole Service and having the fine convened to a Community Service Order. There are considerable advantages in such a scheme. I stated in the Report of my Inquiry into the Death of Misel Waigana.

> *It is considered that such an option would be more effective in reducing the number of fine default imprisonments than the scheme currently in place in Western Australia. Offenders have the option of commencing their penalty immediately without the later obligation of attending at a Community Based Corrections Centre or fear of arrest on warrant of commitment.* (Report page 46).

An Aboriginal offender may also fall through the cracks in the geographical distribution of Corrections Centres (this is discussed further below). The Department of Corrective Services was able to tell the Commission that while the service was satisfactory in the Kimberley/Pilbara areas, and in the Murchison, there were some gaps around Carnarvon, and far north eastern goldfields. Halls Creek posed a problem stemming from its remoteness. The Commission acknowledges the existence of such problems which the sheer geographical enormity of the State present. However, they must be taken into the consideration in both the provision of correctional services, and pending the provision of services, in sentencing practices. It is unsatisfactory that there should be one law applying in Halls Creek and another in metropolitan Penh. It would be wholly unacceptable if the socially and economically disadvantaged in remote areas should be further disadvantaged by the delivery of a third-rate legal system, permitted largely because they were politically powerless and therefore could be considered 'out of sight, and out of mind'.

Community Based Corrections

Western Australia, like all Australian States, has made provision and is considering further provisions, for a broad range of sentencing options, generally considered to be alternatives to imprisonment. The majority of these are available to the courts as sentencing options, while others are in the form of administrative arrangements designed to reduce the time persons sentenced to imprisonment actually spend in custody. Both are usually described and referred to as noncustodial or community-based correctional orders.

When compared with the extreme loss of freedom which incarceration entails, however modem and enlightened the institution in which it takes place, a sentence which allows the offender to remain in the community must at least appear to be less harsh. However, three areas of concern are apparent:

(i) Community programmes may not be used as alternatives to prison but as alternatives to lesser penalties such as fines. Residential parole programmes may have the effect of extending the programme of incarceration.

(ii) There may be a widening of the State's discretionary power. The informality of community programmes means that there is a 'blurring of the boundaries' between, for example, voluntary and coerced participation.

(iii) If most property offenders are dealt with by means of non-custodial sanctions, then the prison population will largely be composed of violent and 'recalcitrant' criminals who have to be detained for the protection of society. This will tend to make prison administrators more security conscious. It may therefore mean that reformers are less concerned with such issues such as sentence lengths and prison conditions which are said to have motivated the move to community based sentencing options.

Anti-institutional penal policy must not be more concerned with cost cutting than with a genuine commitment to effective reform. However, community based sentences may not bring the anticipated and hoped for savings in money terms. While the costs per offender detained in prison tend to be considerably higher than comparable costs for community based sentences, [24] the overall costs of the criminal justice systems of Western countries which have adopted community based sentencing strategies have not declined, principally because the increased use of non-custodial measures has not been accompanied by a decrease in the number of people sent to prison. This reinforces the impression that such sentences may not always be used as an alternative to imprisonment, but rather in place of other lesser sentences. They are sentencing extras rather than true alternatives to incarceration.

However, as two commentators have observed:

> *... the claim to effectiveness of community corrections schemes has never been an extravagant one. It is merely asserted 'we can't do worse' than imprisonment.* [25]

That is not entirely true. Even if the deterrent and rehabilitative effects of imprisonment are dubious, custodial sentences do protect society by removing the offender from circulation for a period of time. The question is rather whether they do not return him to circulation, as inevitably they must, in worse condition than when he was separated from society. Again it must be a question of balance.

Western Australia

In Western Australia, responsibility for the supervision of persons serving community based sentences or orders such as parole, probation and community service orders lies with the Community Based Corrections Division (CBC) of the Department of Corrective Services. At June 30 1989 there were 17 Community Corrections Centres throughout the State. Their locations were as follows:

Albany	Kalgoorlie	Northbridge
Balcatta	Kununurra	Perth
Broome	Maddington	Port Hedland
Bunbury	Mandurah	Roebourne
Fremantle	Midland	Rockingham
Geraldton	Northam	

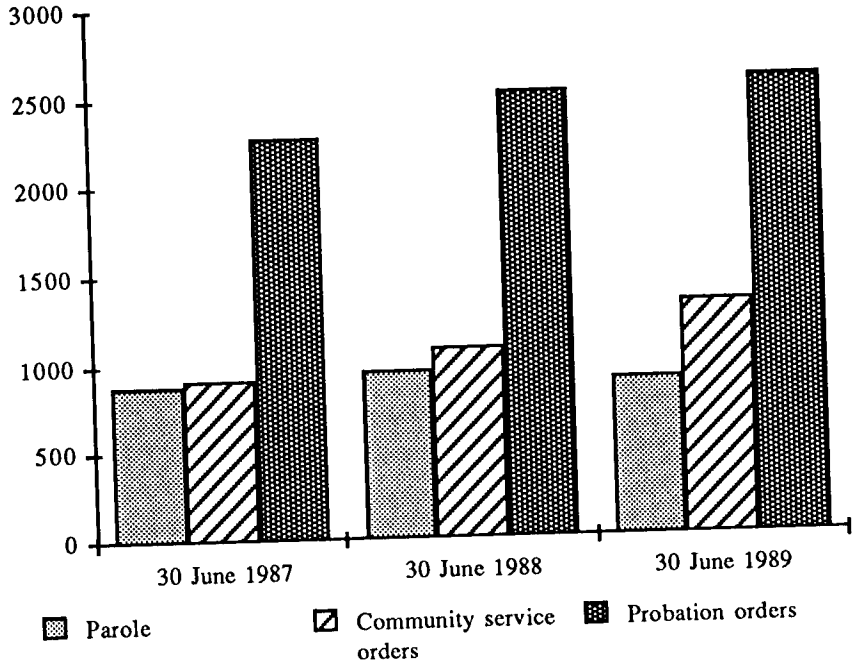
Each of those centres was proclaimed under the Community Corrections Centres Act 1989. In addition there were three CBC Reporting Centres located at Armadale, Kwinana and Pinjarra.

The following figure shows the number of offenders under community based supervision as at 30 June for the period 1987-1989. The statistics are taken from the Department of Corrective Services Annual Report 1988/89.

FIGURE 4.6
NUMBER OF OFFENDERS UNDER SUPERVISION

FIGURE 4.6

NUMBER OF OFFENDERS UNDER SUPERVISION



Criminology Research Unit Research Paper No. 19 entitled 'Aborigines in Prisons and Non-custodial Corrections' produced by the Criminology Research Unit of the Royal Commission examined the numbers of Aboriginal and non-Aboriginal persons serving non-custodial correctional orders throughout Australia at 30 June 1987. That paper found that nationally 8.4% of all such persons were Aboriginal. However the proportions were higher in Western Australia and the Northern Territory. In Western Australia the figure was 14.8%.

After a comparison was made of adult Aboriginal and non-Aboriginal participation rates in non-custodial corrections, Research Paper No.19 found that Aboriginals were over-represented by a factor of 8.3 for Australia as a whole (in Western Australia the figure was 8.2). This was compared with a level of overrepresentation in prison populations of 15.1 (WA 26.3) (National Prison Census) and 23.4 (WA 61.6) for sentenced prison receptions in April 1989.

It has been suggested that this difference may be due to a perception by judges and magistrates that Aboriginal offenders were less able or less willing than non-Aboriginal offenders to comply with the conditions of non-custodial orders. If this were true, it could provide some explanation of the generally shorter prison terms served by Aborigines as identified in one study (Walker, 1987:106-117). As an explanation it is necessarily speculative. It is also possible Aboriginal people may respond to some types of existing non-custodial orders better than others or that new options need to be introduced into the sentencing spectrum to accommodate Aboriginal offenders.

It is encouraging to note that the CBC are concerned with the development of strategies to increase the opportunity for Aboriginal offenders to be supervised in their own communities and for increasing the

scope for input from the Aboriginal community in respect of the supervision of community based orders (see Department of Corrective Services Annual Report 1988/89). A staff position has been created at the Pon Hedland office of the CBC to specifically address issues concerning Aboriginal offenders. In addition, as at 30 June 1989, Aboriginal Community Corrections officers have been appointed to positions at Roebourne, Kalgoorlie, Northbridge, Geraldton, Albany, Broome and Kununurra.

Mr David Daley, Regional Manager of the northern section of the CBC gave evidence before the Royal Commission during the inquiry into the death of Ricci Vicenti. Mr Daley described the functions of the Aboriginal Community Corrections officer based in Northbridge:

> *The general purpose of his engagement was initially because we were aware that there are a lot of Aboriginal offenders in the metropolitan area, particularly living infringe camps and other parts of the metro area for whom our own staff didn't have the appropriate experience or skills really to reach adequately. Partly he was to be a bridgehead to make contact with Aboriginal organisations and agencies throughout the metropolitan area who work for the welfare of Aboriginal people and where Aboriginal offenders were coming into the system, to liaise with those people to try to use referral resources and other resources they had available to ensure that supervision of offenders would be made more appropriate to the needs of those Aboriginal offenders, rather than just in the generic thrust of the kind of probation supervision given to all other offenders. He also acts as a consultant to other staff in the Northbridge office so that, for example, if they* are *dealing with Aboriginal offenders and they need advice or assistance he is somebody to whom they can turn because of his knowledge of Aboriginal customs and those sorts of matters* (RCIADIC W27:234).

The expanded employment of Aboriginal people in roles such as that outlined by Mr Daley is strongly supported by this Commission. Mr Daley further informed me that with positions in the CBC advertised outside the Perth metropolitan area, the advertisements stipulate that Aboriginal people are encouraged to apply. The recruitment criteria for the CBC has also been altered so as not to exclude persons without tertiary qualifications. Mr Daley stated that previously, that requirement had meant that it had been difficult to recruit Aboriginal staff.

Mr Daley also stated that the CBC was attempting to increase the sensitivity of staff in the **field** to Aboriginal issues. There is a two day programme available throughout the State to CBC officers dealing with questions of Aboriginality as it relates to people in the criminal justice system. In addition the Training and Development Officer of the CBC was developing as part of the induction programme for new staff:

> *... a module on sensitivity, understanding of Aboriginality and Aboriginal issues in relation to offending and the criminal justice system.* (RCIADIC W27:249)

It is also encouraging to note the comment of Mr Daley that to consider Aboriginal people as not amenable to traditional forms of community supervision was a 'cop out'. He stated:

> *... one of the things we have learned in recent years is that the problems might rest with the system as much as the offender. After all, we recognise that for some offenders, including some Aboriginal offenders, the formal reporting structure is foreign to their nature. Time is a cultural concept and it is not an absolute, so therefore officers have to understand that if somebody is told to come in at two o'clock for many people to come in the same day or in the time vicinity approximating when they are told to come in may be regarded as quite normal. There are people, for example, for whom time does not mean quite the same as it might mean for a probation officer. I think the issue is really to understand those sorts of things and to build them into a management regime rather than simply say, 'Aboriginal people shall not be eligible because they do*

> *not keep appointments on time or they are mobile or they are not talkative in interviews'* (RCIADIC W27:24 1).

Apart from the initiatives mentioned above, the Department of Corrective Services has informed the Royal Commission that their only programme specifically directed toward diverting Aboriginal offenders from prison is the appointment of two Aboriginal Community Corrections officers in the Kimberley. In answer to questions from the Royal Commission the Department stated:

> *The imprisonment rate of Aboriginals in the Kimberley has been thought to be as high as 500 per 100,000. However, in the absence of reliable information on the size of the general population in the Kimberley the exact rate of imprisonment remains a matter of speculation.*
>
> *Nevertheless, the Department has recognised the extremity of the problem in the Kimberley and has specifically targeted a reduction in Aboriginal rate of imprisonment in the region. The programme was established at Broome and Kununurra following wide consultation and in conjunction with the Aboriginal Affairs Planning Authority. Its major thrust is to utilise the co-operation of elders and community councils to better effect the supervision of Aboriginal offenders within their own community. This programme is currently under review* (Answers by the Department of Corrective Services to specific questions from the Royal Commission, page 74).

In November 1988 a meeting was held between the Executive Director of the Department of Corrective Services, senior officers of the CBC and 35 leaders from eleven Aboriginal communities in the Fitzroy Crossing area. Topics for discussion at that meeting included the Community Corrections Centres legislation and the prospect of some Aboriginal offenders being given community based orders which could be served in their home communities. It was proposed that selected members of the communities take on a supervisory role in relation to the offenders but under the direction of a CBC officer. As stated above, that scheme is now in operation.

Mr Donald Webster, manager of CBC for the Kimberley area gave evidence before the Commission during my inquiry into the death of Hugh Wodulan at Broome, June 1989. He informed me that there was at that time no difficulty in arranging community service work for Aboriginal offenders in the region and that there were more inquiries than offenders to place on projects. He stated that in Ws opinion, the community service order was probably the most effective option available at the moment in the Kimberley region. In the first six months of 1989 four offenders had been offered permanent employment as a result of their performance of community service work.

Mr Webster also informed me that offenders on probation and parole orders in the Kimberley could now be supervised in their home communities. In addition to the use of honorary probation and parole officers in Aboriginal communities, CBC officers regularly travel throughout the Kimberleys in four wheel drive vehicles visiting communities. There had been some problem in obtaining the services of honorary probation and parole officers and a proposal was made that the honorary officers be appointed 'sessional supervisors' to be paid on a fee-forservice basis. Such persons would have to be long term residents of the community of some social standing and responsibility within the community. I am not aware as to whether this latter proposal has been put into effect in the Kimberley.

I note that before an offender is placed in a community the views of the community and family of the offender are canvassed by the CBC, this is particularly so in the case of parolees.

Another proposal discussed by Mr Webster was the concept of nominated community councils being funded by the CBC to appoint an appropriate person to supervise particular offenders. The purpose of such a scheme being to avoid difficulties that may arise for the supervisor should he/she have a kinship or obligation relationship with the offender.

I consider the initiatives discussed above to be of significant value in providing viable alternatives to the imprisonment of Aboriginal offenders. It is to be hoped that an expansion of the scheme operating in the Kimberley to other areas of the State is envisaged by the Department. Unless this occurs, and particularly in the more remote areas of the State, judicial officers may feel that when imposing sentence they have no option other than to order a fine (which may result in default imprisonment being served) or to order a sentence of imprisonment in the first instance.

I now turn to a brief examination of the operation of parole, probation and community service orders in Western Australia, particularly as they involve Aboriginal offenders.

Parole

In 1988 the Offenders Probation and Parole Act was amended to place the onus upon a sentencing judge to establish the suitability for parole of offenders sentenced to a term of imprisonment in excess of twelve months. The new amendments created a fixed formula for calculating minimum or mandatory terms (section 37 A), set limits upon parole supervision to a maximum of two years and allowed for the counting of 'clean street time' in the event of re-imprisonment for breach of a parole order. However, discretion was retained in the Parole Board for the advice on release and the setting of parole conditions in cases such as persons sentenced to life imprisonment or the Governor's pleasure.

In section 5.3 of this Report I refer in some detail to studies conducted on recidivism rates of prisoners in Western Australia by Broadhurst (1988) and Broadhurst and Maller (1990). As I point out in section 5.3 of this Report, the studies analysed recidivism rates for prisoners released from WA prisons between July 1975 and June 1987. The following table is drawn from those studies.

TABLE 4.67: RECIDIVISM BY RELEASE TYPE 1975-87 (MALE ONLY)

Release Type	*Aboriginal*	*Non-Aboriginal*
Parole	67%	32%
Finite Sentence	77%	49%
Fine default	70%	46%

From those figures it can be seen that, even if only marginally, Aboriginal offenders released on parole (which involves some level of community supervision) fare better than their fellows released having served a finite sentence of imprisonment or a period of imprisonment in default of payment of a fine.

In a paper delivered to the Australian Institute of Criminology 'Keeping People out of Prison' conference held in Hobart in March 1990, Broadhurst referred to the two studies mentioned above. In relation to parole he concluded:

> *Data available on the recidivism of Western Australian prisoners shows strong evidence that the failure of parole prisoners (using the re-incarceration definition) is significantly less than for prisoners released unconditionally. Even after statistically controlling for important selection factors [such as race, sex, type of offence and record of prior imprisonment] the differences remained strong. These results tell us that parole works modestly better than unconditional release but we cannot be sure why. Although short term benefits of community supervision plus selection factors appear to account for the differences observed.* (R Broadhurst, I 990)

Statistics provided to the Royal Commission by the Department of Corrective Services for the period 1982/83 - 1986/87 record that 562 male Aboriginals were released by the Parole Board in that period. Of those, 311 (55%) went on to successfully complete their parole period. Unfortunately, it is not possible at this stage to compare the old parole system with the system of fixed release dates that came into operation in 1988.

Probation

Of the community based sentences, the option most widely used by the courts is probation. In recent years as many as 20 000 individuals have been serving probation orders or the equivalent throughout Australia at any given time. The effect of this is that at any one time about twice as many persons are serving probation orders as are serving terms of imprisonment. (MacDonald, 1990:16)

In Western Australia the term of a Probation order is between six months and five years. The number of probation orders (including Commonwealth recognisances specifying probation supervision and interstate orders supervised in Western Australia) issued in the five year period from I July 1985 - 30 June 1990 is shown in the table below:

TABLE 4.68: PROBATION ORDERS ISSUED IN WESTERN AUSTRALIA 1985/86 - 1989/90(a)

	Male		*Female*		
Year	*Aboriginal*	*Other*	*Aboriginal*	*Other*	*Total*
1985/86	164	1231	66	399	1860
1986/87	216	1291	71	403	1981
1987/88	262	1382	58	436	2138
1988/89	285	1286	98	405	2074
1989/90	328	1403	106	412	2249
TOTAL	1255	6593	399	2055	10302

(a) Table derived from statistics provided in the Answers by the Department of Corrective Services to specific questions from the Royal Commission

A breakdown of the completions and breaches of those probation orders is shown in the following table:

TABLE 4.69: PROBATION ORDERS; COMPLETIONS, BREACHES AND CURRENT 1985/86 - 1989/90(a)

	Male		Female		
	Aboriginal	*Other*	*Aboriginal*	*Other*	*Total*
Issued	1255	6593	399	2055	10302
Completed	586	3663	200	1373	5822
Breached	322	1075	86	172	1655

Current	347	1855	113	510	2825

(a) Table derived from statistics provided in the Answers by the Department of Corrective Services to specific questions from the Royal Commission

Of the 2825 probation orders current at 30 June 1990, 234 have breach actions pending against them. The information provided by the Department shows that the breach rates thus far are as follows:

Aboriginal Males:	28%
Non-Aboriginal Males:	19%
Aboriginal Females:	23%
Non-Aboriginal Females:	10%

Community Service Orders

The second most widely used court-based option throughout Australia is the Community Service Order. This is now available in all jurisdictions having been first introduced in Tasmania in 1971. The Community Service Order scheme commenced operation in Western Australia on l February 1977. The total number of Community Service Orders issued from the inception of the scheme in this State to 30 June 1990 is 12 929.

The following table provides a breakdown of Community Service Orders by sex and race of offenders for the five year period 1 July 1985 - 30 June 1990:

TABLE 4.7: COMMUNITY SERVICE ORDERS ISSUED IN WESTERN AUSTRALIA 1985/86 - 1989-90(a)

	Male		*Female*		
Year	*Aboriginal*	*Other*	*Aboriginal*	*Other*	*Total*
1985/86	164	1231	66	399	1860
1986/87	216	1291	71	403	1981
1987/88	262	1382	58	436	2138
1988/89	285	1286	98	405	2074
1989/90	328	1403	106	412	2249
TOTAL	1255	6593	399	2055	10302

(a) Table derived from statistics provided in the Answers by the Department of Corrective Services to specific questions from the Royal Commission.

A breakdown of completions and breaches of Community Service Orders for the same period is set out in the following table:

TABLE 4.71: COMMUNITY SERVICE ORDERS; COMPLETIONS, BREACHES AND CURRENT 1985/86 - 1989/90(a)

	Male		*Female*		
	Aboriginal	*Other*	*Aboriginal*	*Other*	*Total*
Issued	531	2426	118	561	3636
Breached	122	383	30	6	598
Percent breached	23%	16%	25%	11%	16%

(a) Table derived from statistics provided in the Answers by the Department of Corrective Services to specific questions from the Royal Commission

From this table it can be seen that the rate of successful completion of Community Service Orders for male adult Aboriginals is 77% and for female adult Aboriginals the rate is 75%.

Home Detention

Approval was given in February 1990 for the introduction of a Home Detention Programme in Western Australia. There is to be a staged introduction of the programme, beginning with the metropolitan area. At the time of writing this Report the programme had yet to commence.

The Home Detention programme will operate for:

- persons on remand as a condition of bail where a person would otherwise be remanded in custody.

- sentenced prisoners, as a transitional programme for some minor offenders with an aggregate head sentence of less than twelve months. To be eligible they must have served a minimum period of one month or one third of their head sentence, whichever is greater.

The Home Detention Programme will be administered by the Department of Corrective Services. The Executive Director of the department will have the authority to consider and approve eligible prisoners for release to the Home Detention Programme.

Persons on the programme will be required to remain at their approved place of residence for the period of Home Detention. Absence would only be authorised for purposes such as employment or seeking employment, urgent medical attention, essential shopping and engagement in a community corrections programme. Restrictions on the consumption of alcohol or other restrictions could also be imposed.

In the case of sentenced prisoners, additional conditions would be imposed as follows:

(i) for those who gain full-time employment, a requirement to devote eight hours per week to community work and/or personal development activities.

(ii) for those not employed full-time a requirement that they devote twelve hours per week to community work and/or personal development activities.

The supervision of persons subject to Home Detention Orders will be conducted by staff of the Community Based Corrections Division of the department. This will entail unscheduled telephone calls and unannounced personal attendance at the persons place of residence. The use of electronic surveillance is also under consideration.

Breaches of a Home Detention Order would be dealt with administratively by the department. They could result in either the suspension or cancellation of the order resulting in the immediate imprisonment of the offender. Sentenced offenders who breach a Home Detention Order would serve the balance of their sentence, less remission. They would not be credited with 'clean' Home Detention time.

Whilst being supportive of any initiative to reduce the number of persons held in police and prison custody in this State, I have some reservations regarding the potential effectiveness of the Home Detention Programme in reducing the level of Aboriginal incarceration.

The programme appears best suited to serve those offenders who live in the traditional western style fixed place of residence, generally, with an individual telephone service connected. This is not the case with many Aboriginal offenders, particularly those from remote areas who may lead a semi-itinerant lifestyle. Unless the definition of 'approved place of residence' is broad enough to include modes other than western style housing/unit/flats many Aboriginal offenders will remain ineligible for inclusion in the programme.

Difficulty may also be experienced in maintaining the requisite degree of supervision of Aboriginal offenders who reside in remote communities. This will require the appointment of further sessional supervisors in those areas to assist full time officers of Community Based Corrections in their supervision of offenders. It is also of concern that the 'personal development activities' envisaged as part of the programme may not be readily available to offenders who do not reside in the large urban centres.

It is hoped that the issues raised above will be addressed by the department in the process of implementation of the programme.

Court Drug Diversion Programmes

The community based correction division of the Department of Corrective Services also oversees a Court Drug Diversion Programme. That programme operates to divert offenders with drug problems into drug and alcohol programmes.

PART FIVE PREVENTION OF DEATH

In Part 5 of the Report I examine issues relating to prevention of death in police and prison custody. It should, of course, be quite obvious that while there is such a high rate of imprisonment in Western Australia, with disproportionate numbers of Aboriginal people imprisoned, that deaths will continue to occur. It is perhaps heartening to note the reduced incidence of custodial deaths in 1989 and 1990 despite the continued high rate of imprisonment.

In the previous section of the Report I have concentrated on addressing ways to reduce the current level of imprisonment of Aboriginal and non-Aboriginal people. It would be unrealistic to expect the current

level of imprisonment to change significantly overnight. Given this scenario it is necessary to examine the practices and procedures of custodial authorities that affect those detained in police and prison custody, to highlight inadequacies in those practices and procedures and to suggest changes where they may lead to a reduction in the likelihood of further deaths occurring in custody.

5.1 PREVENTION OF DEATH - GENERAL ISSUES

As noted above the number of deaths in custody has decreased in 1989 and 1990. 1 hope that the work of the Royal Commission has contributed to this in some significant way. In this section I examine the recommendations made in the Interim Report of the Royal Commission into Aboriginal Deaths in Custody (the Muirhead Interim Report) and in the Report of the Interim Inquiry into Aboriginal Deaths in Custody commissioned by the Government of Western Australia (the Vincent Report) and the way in which they have been implementedin Western Australia. I also look at some of the initiatives that have been taken in Western Australia in an effort to prevent further deaths in custody. Finally, I look at the general issue of the duty of care owed by custodial authorities to prisoners and detainees before going on to examine the practices and procedures of those authorities in detail.

5.1.1 INTERIM REPORT AND VINCENT REPORT

The Western Australian Government prepared a response for the Royal Commission discussing which of the recommendations of the Western Australian Report of the Interim Inquiry into Aboriginal Deaths in Custody (the Vincent Report) and Interim Report of the Royal Commission into Aboriginal Deaths in Custody (the Muirhead Interim Report) have been implemented. The Government of Western Australia made an announcement that it had implemented 52 out of the 56 Muirhead Interim Report recommendations and 30 out of 32 of the Vincent Report recommendations.

The Royal Commission is of the view that only 15 of the Muirhead Interim Report recommendations have been fully implemented, 28 partially implemented and 13 have not been implemented. Of the Vincent Report recommendations 7 have been implemented fully, 19 have been partially implemented and 6 have not been implemented.

Below I list each of the recommendations with a short commentary on the level of implementation and whether or not measures taken to implement the recommendations are regarded as adequate.

Muirhead Interim Report

Recommendation I
Governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort. (4.2)

This recommendation has been implemented in theory only. The principle was embodied in the Criminal Law Amendment Act which was enacted and came into force in January 1989. However, evidence this Commission has received suggests that alternatives to imprisonment are not available in some remote areas. It is therefore impossible to use alternative sanctions to imprisonment in some places. The preceding section on sentencing discusses the lack of commitment in WA to the principle that imprisonment is a sanction of last resort.

Recommendation 2

Legislation should be introduced to ensure that sentences of imprisonment are not automatically imposed in default of payment of fines. Such legislation should provide alternative sanctions and impose a statutory duty upon sentencers to *consider a defendant's means to pay in assessing the appropriate monetary penalty and time to pay, by instalments or otherwise. (4.4)*

This recommendation has been partially implemented. The fine default legislation (Community Corrections Centres Act 1988) which has been enacted only partially satisfies the recommendation. The inadequacies in the legislation are as follows:

- The ability to convert a fine into a work and development order is only available once a person is in default. The legislation would be more effective if the option to convert a fine into a work and development order was available at the time the fine was imposed.

- The machinery for conversion to Work and Development orders is unsatisfactory, however, the Justices Amendment Bill 1990 should remedy these defects.

- A Magistrate or Justice can specify that the fine cannot be convened to a work and development order. It appears that this option may be regularly utilised by some JPs and Magistrates.

- There is no statutory duty imposed upon sentencers to assess defendants means to pay. The legislation is inadequate in this regard and needs amending.

Recommendation 3
In jurisdictions where drunkenness has not been decriminalised, Governments should legislate to abolish the offence of public drunkennes . (4.3, 5.2)

The recommendation has been implemented.

Recommendation 4
The abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain facilities for the care and treatment of intoxicated persons. (4.3,5.3)

The implementation of this recommendation is inadequate.

- Decriminalisation of drunkenness has not been accompanied by a properly funded programme to establish facilities for care and treatment of intoxicated persons. Four sobering up centres only are to be established at Perth, Halls Creek, Port Hedland and Fitzroy Crossing. Further facilities are urgently required.

Recommendation 5
Legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons. (5.2, 5.3)

This recommendation has not been implemented.

- The Detention of Drunken Persons Act does not place any duty upon police to consider and utilise alternatives to police cells. The Western Australian Police Force resist the imposition of such a duty. The Commissioner of Police argued that the Canadian experience showed that the police having such a duty was unworkable. However the New South Wales legislation initially did not impose such a duty on the police and was subsequently amended to impose the duty because the legislation was initially ineffective and saw an increase in number of detentions in police cells.

Recommendation 6
In the States and Territories where public drunkenness has been decriminalised, adequately funded alternative facilities for the care of intoxicated persons should be urgently established and maintained to meet the demonstrated needs. (5.3)

This recommendation has not been fully implemented.

- Alternate facilities are not adequately funded (see Recommendation 4).

Recommendation 7
All Governments should combine to set up a national task force to examine the social and health problems created by alcohol and confronted by Aborigines in many localities, to assess the needs and the means to fulfil the needs, including legislative action, and the establishment of appropriate facilities for short and long-term care, education and training. The Aboriginal Health Services and other medical resources should be well represented in such a project which should be essentially health-oriented. (5.3)

This recommendation has not been implemented, however, Government states its support for the establishment of a National Task Force.

Recommendation 8
Police officers should receive emphasis in training that arrests for minor offences must be avoided when alternative steps are available. (6.2)

This recommendation has been partially implemented.

- Police do not receive training not to arrest for minor offences however their training does emphasise the use of summonses rather than arrest. This is reflected in Routine Orders 1-12-2 and I- 1 2.3 and Police Gazette 12.7.89.

- However Routine Orders are 'guidelines only' and are not enforceable. This has had unsatisfactory results in many of the cases examined by the Royal Commission.

- Statistics provided by the Police Department reveal that the vast majority of apprehensions are proceeded with by way of arrest.

- In addition it appears that the Police Department in some instances still use the number of arrests and charges as a measure of efficiency (see Police Department Annual Reports).

- The proposed introduction of official cautions of children by police should reduce arrests for minor offences.

- The Commissioner of Police supports the extension of the caution scheme to adults.

- The results of the study of 1987 and 1990 Kalgoorlie Police Practices regarding arrest, custody and bail by the Royal Commission show reduction in the use of arrest, especially in relation to arrest of Aboriginal people for offence of drunkenness, in the period shortly prior to decriminalisation.

Recommendation 9
It should be the duty of officers in charge of police stations to evaluate (with a view to providing guidance for future situations) the decisions made by officers engaged on police patrols to arrest, rather than proceed by summons or caution. (6.2)

The recommendation has been implemented.

- See Police Gazette 12.7.89 and comments above. The Government has said that position descriptions for officers in charge will be reviewed to reflect this principle, however the Royal Commission has no evidence of position descriptions reflecting this change.

Recommendation 10
The operation of bail legislation should be closely monitored by each Government to ensure that the entitlement to bail as set out in the legislation is being recognised in practice. (4.5, 6.3)

This recommendation has been partially implemented.

- The Government completed review of the Bail Act in early 1990.

- The legislation is considered inadequate as there is no qualified right to bail. This is discussed in more detail in the section of the Report dealing with bail.

- There is a current problem in police not being able to release people on personal undertaking without completing bail documents.

Recommendation 11
Where practicable the Aboriginal Legal Service should be notified in all instances of the detention of any Aboriginal person in custody. Where it is not possible to contact an officer of that Service, such notification should be given to a person designated by the local Aboriginal community to receive such advice. (6.3)

This recommendation has not been implemented.

- According to the Commissioner of Police, the Aboriginal Legal Service are only notified on request of detainee. of Police Gazette 13.1.88.

- The Government regards automatic notification of any other person without reference to detainee as an intrusion upon civil liberties. However same argument is not applied in relation to notification of members of Aboriginal Visitors Scheme.

- A possible solution is to require the police to inquire of detainee if they wish the police to contact Aboriginal Legal Service or any other person. This recommendation is discussed in more detail in the section of the Report on the Legal System.

Recommendation 12
In no case should a person be transported by police to a lockup or watch-house when that person is either unconscious or not easily roused. Such persons must, if found on a patrol, be immediately taken to a hospital or medical practitioner or, if neither facility is available, to a nurse or other person qualified to assess their health. (6.4, 9.6)

This recommendation has not been implemented fully.

Routine Orders 16-3.11.1, 16-3.11.2, 16-3.11.3 reflect the possibility that 'insensible drunken persons' will be placed in the cells without medical attention. Police regard Routine Orders as guidelines only, e.g. Ginger Samson was carried into the cells by police on 29 March 1988. He was unable to walk and mumbled in response to questioning. Samson subsequently suffered an epileptic seizure and died in the cells.

Recommendation 13
A person found to be unconscious or not easily rousable whilst in a watch-house or cell must be immediately conveyed to a hospital, medical practitioner or a nurse. (Where quicker medical aid can be summonsed to the watch-house or cell or there are reasons for believing that movement may be dangerous for the health of the detainee, such medical attendance should be sought). (6.4, 9.6)

Recommendation has been implemented by the Police Department and the Department of Corrective Services.

- It is reflected in Police Routine Orders and Corrective Service Executive Directors Rules.

- However, implementation is dependent on individual officers maintaining proper checks on prisoners and detainees to ascertain their state of health. I have found in numerous cases that police officers when carrying out cell checks have not adequately checked detainees (e.g. Bernard

McGrath was dead and not found during a cell check). Again Routine Orders are guidelines only even when couched in imperative terms.

Recommendation 14
Police officers whose duties may require them to per orm watch-house duties should undergo basic training in the recognition of symptoms of head injuries, major illnesses, and in first aid and resuscitation techniques. (6.4, 8.2.1, 8.2.2)

This recommendation has been partially implemented.

- Police Officers receive first aid and resuscitation training. They are not trained in recognition of head injuries and major illnesses. Lockup keepers or police with watchhouse responsibilities do not receive any special training.

Recommendation 15
Persons detained in custody must be closely monitored for the first six hours of detention and the appearance of the person should be recorded. Where persons detained are apparently intoxicated or appear angry or disturbed, very close surveillance must be maintained. (6.4)

This recommendation has been partially implemented.

- There is no requirement on police/prison officers to record appearance of detainee during first six hours of custody.
- The current Routine Orders do not contain a requirement to record cell checks.
- The level of surveillance may be inadequate because of the physical nature of lockups and observation cells in prison in that they are isolated from the work space.
- In many instances there is inadequate manpower to maintain adequate surveillance. Many country lockups are not staffed 24 hours/day. The Police Department's costing to provide 24 hour manning to all country lockups came to $280.5 million for an additional 1753 staff and houses.
- Risk of angry/aggressive/disturbed detainees noted in Police Custodial Care Manual, however the risks do not appear to be fully appreciated by many police and prison officers.

Recommendation 16
Angry or aggressive detainees (no less than detainees who appear withdrawn or depressed) should be presumed to be potentially suicidal in custody notwithstanding assertions to the contrary made by them. (6.4)

This recommendation has been partially implemented.

- There has been recognition of symptoms by Police and Prisons Departments. They are emphasised in courses in Custodial Care (police) and Suicide Prevention (prisons).

- However, response of police and prison officers to aggressive behaviours has been inadequate e.g.recent deaths of Morrison (April '88) and Walley (October'88).

Recommendation 17
No medication, apparently prescribed for a detainee, should be denied. Any decision not to permit the detainee to take such medication must be made only by a medical practitioner or, in the absence of same, by a duly qualified nurse or health worker,

This recommendation has been implemented by both Police and Corrective Services Departments.

- The problem of Aboriginal detainees being required to request medication has not been adequately addressed.

- Trial admission screening form places responsibility on police to as certain whether medication is required.

Recommendation 18
In all cases, unless there are substantial grounds for believing that the well-being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be confined alone in a cell. Where solitary incarceration is the only alternative the detainee must thereafter be treated as a person who requires careful surveillance. (65)

This recommendation has been implemented.

- Police Department and Department of Corrective Service practices reflect this.

- However the surveillance was inadequate in relation to the deaths of Morrison and Walley.

- The physical location of many police cells pose difficulties in relation to surveillance.

Recommendation 19
As soon as practicable, all cells should be equipped with alarm and intercom systems which give direct access to custodians. Priority should be given to providing such systems at smaller police lockups where surveillance resources are limited. (6.6)

This recommendation has not been implemented.

- Re Prisons: New prisons have alarm and intercom systems installed. Only observation cells in old prisons have been modified.

- Re Police lockups: Trial system at Armadale Lockup. Carnarvon and Derby Lockups have had alarm systems for a number of years. At Armadale police say alarms have proved disruptive to police and detainees. They are considering a system of warning lights as an alternative. There are no problems with alarm system at Carnarvon and Derby Lockups.

- The Police Department has made a decision to rebuild the lockup complex at Halls Creek, however there has been a positive determination not to include an alarm system in the new design. This decision is deplorable in view of Chatunalgi's death.

Recommendation 20
An Aboriginal detainee should be assisted to communicate with the Aboriginal Legal Service and should be entitled to private visits by a lawyer or field officer from that Service. (6.7)

This recommendation has been partially implemented.

However, it is practically impossible in many country areas. This highlights the inadequacy of funding and resources of Aboriginal Legal Service.
The Legal Aid Commission acknowledges the inability of the Aboriginal Legal Service to meet the demand which has resulted in the Legal Aid Commission attempting to provide a service to Aboriginal clients.

Recommendation 21
Visits by family members or friends should not be unreasonably restricted. (6.7)

This recommendation has been implemented.

- Visits are allowed under Prison Act and Police Routine Orders 16-8.26.

- The Royal Commission recognises and encourages open lockup practices at remote locations e.g. Wiluna, Halls Creek, etc. where family and friends can visit the Police Station compound and meet prisoners.

- The practice of denial of contact visits as punishment in prisons is of concern and should be examined.

- Problems are experienced by Aboriginal families in relation to contact with relatives in prison. Aboriginal people may have difficulties with telephone contact. Geographical location of prisons, lack of money to enable visits may also pose difficulties for Aboriginal people.

Recommendation 22
In consultation with Aboriginal communities and their organisations, cell visitor schemes should be introduced to service police lockups and watch-houses wherever practicable. (6.7)

This recommendation has been implemented.

- Aboriginal Visitor Schemes are operating in Perth, Geraldton, Broome, Kalgoorlie, Fremantle, Warwick, Armadale and Midland. There are plans to extend scheme to Bunbury, Albany and Narrogin.

- There is currently inadequate support for visitors.

- The Royal Commission was informed of a problem of overuse (Geraldton) and underuse in other locations.

- Further expansion of scheme needs to be examined.

Recommendation 23
Governments in all jurisdictions should ensure that all police cells are surveyed and that measures be taken, where necessary, to screen hanging points and to replace equipment or materials which are not suicide resistant. (6.8)

This recommendation has been partially implemented.

- Police cells have been surveyed and measures taken to screen hanging points in many cells however the effectiveness of the measures taken need further examination.

- Mesh screening of cell bars has greatly restricted airflow into cells, causing them to be hot and stuffy, it has also greatly reduced visibility into cells.

- The Royal Commission has no evidence that equipment and materials that are not suicide resistant e.g. towels, blankets have been replaced. I am particularly concerned about the continued use of inflammable mattresses in police cells.

Recommendation 24
Until cells are brought up to what experts regard as a safe standard, surveillance of detainees must proceed on the assumption that they are at risk of death. (6.8)

The recommendation has not been implemented.

- It is not reflected in police routine orders or prison orders.

Recommendation 25

A task force should be established among the Police Departments, in consultation with the Australian Institute of Criminology, to establish a standard and program for the upgrading of police cells to a level where the opportunity for death by suicide is substantially reduced by appropriate cell design and equipment. The task force may consider alarm and communication systems and techniques to minimise the sense of isolation and loneliness which I believe are experienced, particularly by the young. (6.8)

This recommendation has been implemented in that task forces have been established.

- However, query the extent to which Police Department have recognised factors discussed in Royal Commission Research Paper No. 7.

Recommendation 26
Police and Prison Departments should re-assess their recruitment policies and liaise with appropriate Aboriginal organisations and educational institutions to ensure that positive encouragement is given to the recruitment of Aborigines. (8.1)

This recommendation has been implemented.

- However, the attitude of the Police Department to positive discrimination and the lowering of educational levels may limit the effectiveness of policies.
- I refer to section 5.3.2 for further discussion of the Department of Corrective Services in relation to this recommendation.

Recommendation 27
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. (8.1)

This recommendation has not been implemented.

- Both Police and Corrective Services Departments appear to accept that as officers taken from community, they will reflect community attitudes. Both Departments however, said officers would be counselled if they displayed racist attitudes/behaviours.

- However, in Kalgoorlie it was obvious that terms such as 'boong', ` nigger', were frequently used by police to, or about, Aboriginals. Some police officers even expressed view that some of the terms were not racist or offensive.

- In the Pat hearing in Roebourne the Assistant Commissioner of Police referred to Aboriginals as 'coloured people'.

Recommendation 28
Police and prison officers whose work involves the apprehension and/or detention of persons in custody should receive basic training to enable them to identify persons in distress or at risk of death through illness, injury or suicide. (8.2.1)

This recommendation partially implemented.

The Police Department has commented on difficulties in training police to level where they are able to detect illness and injury (especially head injuries). However training of recruits in first aid and resuscitation cover these areas.

Recommendation 29

Police and prison officers should receive training in first aid and resuscitation techniques and the use of automatic resuscitation equipment. Regular refresher courses should be provided so that officers' proficiencies are kept up-to-date. (8.2.2)

This recommendation partially implemented.

The Department of Corrective Services officers do not receive refresher training in first aid and resuscitation.

Recommendation 30
Prison and police officers should receive regular training in restraint techniques, including the application of restraint equipment. (8.2.3)

This recommendation partially implemented.

The Department of Corrective Services provided details of the number of officers who receive refresher training in restraints. The Royal Commission is not aware of any refresher training received by police in this regard.

Recommendation 31
Restraint methods which involve constriction of air supply or carotid pressures such as 'choke holds' or 'head locks' should never be used. (8.2.3)

This recommendation has not been implemented.

The Department of Corrective Services: Executive Director's Rule No. 29A does not prohibit the use of such holds. It states:

> *"Restraint by use of neck-holds and headlocks is potentially lethal and should be used only where there is no other alternative."*

The Police Department has advised the Royal Commission that these holds have not been included in training for police officers for many years because of the potential danger. Members are advised against using such holds. However there does not seem to be a prohibition against their use.

Recommendation 32
All personnel of police, prison, social welfare or other departments whose work will bring them into contact with Aboriginal people should receive appropriate training or re-training to ensure that they have an understanding and appreciation of Aboriginal history, culture and social behaviour and the abilities to effectively communicate and work with Aboriginal people. (8.2.4)

This recommendation has been partially implemented. The Police Department has advised the Royal Commission that it is implemented in relation to police recruits. However, there is no training programme for serving officers. See comment elsewhere in the Report as to the adequacy of the training in this regard. [Probationary Officers of the Department of Corrective Services receive training in Aboriginal issues. There is no in-service training for serving prison officers.

Recommendation 33
The Aboriginal component of training courses should be prepared in consultation with representatives from the Aboriginal community. Training courses in Aboriginal issues should be examinable. (8.2.4)

This recommendation has been implemented.

However see comment elsewhere in the Report as to the adequacy of Aboriginal input and responses of Aboriginal people involved in the provision of the courses.

Recommendation 34
Aboriginal police aide schemes should be re-examined to ensure their role is not merely to assist the police in everyday duties but rather to advise the police and to operate as a true link between the police and the Aboriginal population. They must be perceived by both the police department and the community as persons not only with understanding, but with a voice. (8.3.2)

This recommendation has been partially implemented.

Police Aide scheme examined in review *'Law Enforcement or Liaison...'.* The Report was never released publicly despite its thoroughness and welldocumented analysis of operation of scheme. Many of its key recommendations have not been implemented. More recently a review was conducted by a number of Commissioned Officers on the Police Aide Scheme. They recommended that Police Aides should become Aboriginal Auxiliary Constables. The Minister of Police is awaiting the findings of the Royal Commission before implementation. The two recent reviews are discussed in more detail in the section of the report dealing with Aboriginal/Police relations.

Recommendation 35
Steps should be taken to ensure that Aboriginal police aides have a true career structure and receive proper training and support to enable them to operate in the manner most conducive to effective policing in Aboriginal communities, an important component of which is to create better understanding. (8.3.2)

This recommendation has not been implemented.

The Police Department has examined the career structure and made recommendations for change. The extent to which training has been reviewed or improved is inadequate. I refer to discussion elsewhere in the Report as to adequacy of recent police recommendations in this regard.

Recommendation 36
Prison Medical Services should be responsible for obtaining comprehensive medical histories for Aboriginal prisoners. This includes records of prior treatment from hospitals, health services and other prisons. Prisoner's medical history files, or duplicates thereof, should accompany the prisoner on transfers to other institutions. (9.3)

This recommendation has been partially implemented.

The Department of Corrective Services points out difficulties in full implementation of recommendation given the itinerant lifestyle of offenders, prisoner mobility and short duration of sentences of many Aboriginal offenders.

Recommendation 37
Governments should ensure that Prison Medical Services are completely independent of Departments of Correction and that the relationship between prisoners and medical staff is one of general confidentiality. (9.4)

This recommendation has not been implemented.

Corrective Services maintain that they should retain responsibility for the Prison Medical Services. The Department comments that medical practitioners in its employ are independent in the exercise of their clinical discretion. I refer to the discussion in section 5.3.3 of the report in this regard.

Recommendation 38
Correctional institutions should have 24 hour a day access to medical practitioners. In addition, as a minimum standard, correctional institutions should have permanent full-time medical or nursing staff providing medical services to prisoners which is available night and day, seven days a week. (9.5)

This recommendation has been partially implemented.

There are only two prisons in Western Australia which have full time nursing staff available.

Recommendation 39
Police officers should ensure that any person detained in police custody who asks to see a medical practitioner receives immediate medical attention. Police departments should ensure, wherever practicable, that police officers have access to medical practitioners 24 hours a day. (9.5)

This recommendation has been partially implemented.

Routine Order 16-8.29 requires the member to arrange medical attention 'as soon as possible' rather than immediately. Many country police stations are not staffed 24 hours a day although prisoners are detained. Their access to medical attention is therefore restricted.

Recommendation 40
Police and prison officers should be instructed to immediately seek medical attention if any doubt arises as to a detainee's condition. (6.4, 8.2.1, 9.7)

This recommendation has been partially implemented.

The Police Routine Orders do not instruct police to 'seek medical attention' if any doubt arises as to a detainee's condition but rather to arrange medical attention where a prisoner requires such attention. This could be interpreted and in many instances has been interpreted as placing an onus on the prisoner to request attention.

The other problem is that Routine Orders are not regarded by the police as binding upon them but are guidelines only. This issue is discussed elsewhere in the report.

Recommendation 41
Automatic resuscitation equipment should be available in all police stations and prisons. The equipment should be readily accessible and in working order. (9.8)

This recommendation has been partially implemented.

It has not yet been implemented at all Police Stations in Western Australia.

Recommendation 42
Hospitals that are regularly attended by Aboriginal people should review existing procedures in casualty, in consultation with Aboriginal Medical Services, to reduce the likelihood of Aboriginal patients receiving ineffective diagnosis and treatment. (9.9)

This recommendation has not been implemented.

The Royal Commission has no evidence of the Health Department having reviewed its policies and procedures for care of Aboriginal patients in emergency departments in consultation with Aboriginal Medical Services.

Recommendation 43
In the provision of health care to Aboriginal prisoners, Departments of Corrections, Police Departments and Prison Medical Services should consult with Aboriginal Medical Services, where such services are available.

This recommendation has been partially implemented.

The Department of Corrective Services have consulted with various Aboriginal Medical Services in the State. The Police Department have commented on difficulties in consulting with Aboriginal Medical Services because of their regionalisation and in many instances have relied upon the initiative of the AMS.

Recommendation 44
The functions and status of the office of Coroner require examination and reassessment with full recognition of the public value of that role. I suggest the Victorian system be examined as providing a model which can be adapted where geographic considerations so require. I consider this recommendation deserves urgent consideration. (10.2)

This recommendation has been implemented.

A Report of the Ad Hoc Committee for the Review of the Coroners Act has gone to Government. The recommendations of the Ad Hoc Committee have not been implemented.

Recommendation 45
It is important that all custodial deaths should, by legislation, be the subject of coronial inquiry. (10.2)

This recommendation has not been implemented.

The Coroner still has discretion whether or not to conduct an inquiry into deaths in police custody. I refer to discussion in section 6.4 of this Report on coronial inquiries as to whether a coronial inquiry should involve an inquest in all cases.

Recommendation 46
Such an inquiry should be thorough and unless for compelling reasons held in public. The Coroner should, if he or she so requests, be assisted by counsel. A full transcript of evidence should be taken and retained. (10.2)

This recommendation has been partially implemented.

This is the current practice however the Coroner is only assisted by counsel in inquiries into deaths that have occurred in police custody as a matter of course. The Coroner is reliant upon the Crown Law Department to fund counsel to assist.

Recommendation 47
The relatives of the deceased should be advised of the date of the coronial hearing and the Aboriginal Legal Service should be so advised. (10.2)

This recommendation has been partially implemented.
The Aboriginal Legal Service is not automatically advised of date of inquest. I refer to discussion in section 6.4 as to whether the advantages of notification to the Aboriginal Legal Service outweighs the disadvantages.

Recommendation 48
The family of the deceased should be entitled to legal representation at the inquest and Government should pay the reasonable costs of such representation through legal aid schemes or otherwise. (10.2)

This recommendation has not been fully implemented.

The Aboriginal Legal Service of Western Australia operates within very restricted budgetary constraints. During the life of the Royal Commission ALS received special funding from the Department of Aboriginal Affairs to provide representation for the family in four coronial inquiries. Without this funding the service would have been in a difficult position to appear in those matters. Without additional resources ALS's present resources would be further strained by any increase in this type of work.

Recommendation 49
Police investigations should be conducted by officers who are highly qualified as investigators, for instance, by experience in the Criminal Investigation Branch, and responsible to one senior officer. (10.3)

This recommendation has been implemented.

I refer to further discussion of police investigations in section 6.1 of the Report.

Recommendation 50
Police inquiries should not be hampered or influenced too far by reason of the outcome of the autopsy or assumptions conveyed to police by custodians as to the cause of death. Suicide should never be presumed. (10.3)

This recommendation has not been implemented.

The comments of the State Government suggest that implementation has occurred however the Royal Commission has no evidence that it has been. The Police Department's Internal Investigations Branch's checklist prepared for investigations of deaths in custody does not cover these matters.

Recommendation 51

Police investigations should be akin to those relating to homicide and should involve thorough examination of the death scene, the seizure of exhibits and the retention of clothing for forensic examination. High quality photography should be a normal incident of such investigations. (10.3)

This recommendation has not been implemented.

Although the State Government says that this recommendation has been implemented the Royal Commission has no evidence that it has been.

Recommendation 52
In police investigations the search for witnesses must be thorough. In the case of prison deaths, statements should be taken as soon as practicable from all prisoners who may have been located near the scene of death, as well as from relevant prison staff. Where suicide is suggested, the inquiries should extend to the deceaseds' families and to others in an endeavour to ascertain suicidal tendencies or suggestions of suicide. Prison, hospital or medical records should be obtained and retained. (10.3)

This recommendation has been implemented.
Internal Investigations Branch guidelines cover all of these matters.

Recommendation 53
In the case of deaths in police lockups, or from causes possibly sustained therein, the police involved in the deceased's custody should never take part in the investigating process, save as witnesses, or, where necessary, in securing the scene for general and forensic inquiry. Police investigation should be conducted by senior officers who may be regarded as independent from the officers who were custodians at the time of the death. (10.3)

This recommendation has not been fully implemented.

Although the State Government has said that this recommendation reflects current practice, in the Chatunalgi case the initial investigations were carried out by the Sergeant in charge of the police station.

Recommendation 54
Running sheets and full records of police investigations should be retained. (10.3)

This recommendation has not been fully implemented.

In the Chatunalgi case a full record of the investigation was not retained.

Recommendation 55
The investigations into deaths in police lockups should include full inquiry into the circumstances leading to incarceration, including the circumstances of arrest or apprehension and the deceased's activities beforehand. (10.3)

This recommendation has been implemented.

The guidelines of the Internal Investigations Branch cover these matters.

Recommendation 56
Families should be notified of any deaths in custody or of serious illnesses and transfers from custody to hospital as soon as practicable. The nearest ALS or some other Aboriginal community Organisation should also be notified immediately of a death in custody by the responsible authority. (10.6.1)

This recommendation has been partially implemented.
It is not current practice for the Police Department and the Department of Corrective Services to notify the Aboriginal Legal Service or a community Organisation of a death.

Vincent Report Recommendations

Recommendation 1
The Police Department should give urgent priority to the Police Stations at Kalgoorlie and Broome in the implementation of the recommendations of this Report.

This recommendation has been partially implemented.

Kalgoorlie Police Station and Lockup is currently being rebuilt. The Royal Commission has not been advised of plans to renovate Broome Lockup. Such action is urgently needed.
I also query the extent to which these recommendations can address problems that exist in relation to police attitude to Aborigines in towns like Kalgoorlie, Broome, Geraldton and Port/South Hedland.

Recommendation 2
As a means of preventing suicide, the operational staff of custodial authorities be instructed as to the need for careful observation of prisoners in the first hours of custody, particularly where there is an alcohol factor.

This recommendation has been partially implemented.

I refer to comments on the implementation of the Muirhead Interim Report Recommendations 15 and 16.

Recommendation 3
(a) The medical examination given to prisoners in Department of Corrective Services institutions upon intake should include specific tests which are reasonably necessary to detect cardiovascular and other cardiac complications; and

(b) The diets of prisoners be reviewed to take account of special dietary requirements of Aboriginals as a preventative measure against heart disease.

This recommendation has not been implemented.

Cardio-vascular tests are not routine for prisoners admitted to prisons.
The current dietary requirements are not aimed at the prevention of heart disease.

Recommendation 4
(a) Operational staff of custodial authorities should be directed to the need for the provision of medical assistance in circumstances where prisoners are found insensible; and

(b) The training of police and prison officers should include the detection of symptoms indicating the need for medical attention to persons seemingly under the influence of alcohol and drugs.

This recommendation has been partially implemented.
I refer to comments on the implementation of Recommendations 12, 13, 14 of the Muirhead Interim Report.

Recommendation 5
The following principles should be adopted as means of reducing the potential for suicides of Aboriginal prisoners:

(i) Prisoners should be dealt with as humanely as possible when in centres of detention. These centres should reflect modern conditions and hygiene standards. In this regard all custodial practices and places of custody should be progressively reviewed and upgraded as necessary.

(ii) Aboriginal prisoners should where practicable and culturally appropriate be able to share their custodial accommodation with other Aboriginals.

(iii) Observation of prisoners should be frequent and regular and include human interaction.

(iv) Consistent with the good order and management of custodial facilities, interaction with other Aboriginals who are non-prisoners should be facilitated.

(i) This recommendation has not been fully implemented. Many police lockups do not reflect modem conditions and hygiene standards.
Fremantle Prison still uses the bucket system rather than modern toilets in most cells.

(ii) This recommendation has been implemented.

(iii) Ibis recommendation has been partially implemented. Police Routine Orders state that cell checks are to be frequent, however they do not require any human interaction. It is doubtful that current policy and practice of the Police Department would include human interaction in observation practices.

(iv) This recommendation has been partially implemented.

However in some communities where there is no Aboriginal Visitors Scheme or ALS, interaction would be subject to the normal rules governing visits to prisoners.

Recommendation 6

(a) The principles of management of disturbed patients as developed by the Mental Health Services should be reflected in procedural Orders for all custodial authorities; and

(b) The procedural Orders of custodial authorities should make it clear that restraint by use of neck holds and head locks is potentially lethal under any circumstances and other, than in the case of escapes where there is no other alternative, they should be used only in situations where an officer's life or that of another is in immediate danger or there is risk of serious bodily injury.

This recommendation has been partially implemented.
The Police Department still condones the use of padded cells in police lockups despite evidence that to do so without the supervision of a mental health professional could be extremely problematic.

Recommendation 7
Procedural Orders for custodial authorities should be reviewed to reflect the principle that the shooting of escaping prisoners be regarded as a measure of last resort and be effected non-lethally where possible.

This recommendation has not been implemented.

There is no direction that the shooting be effected non-lethally or as a measure of last resort. However, I refer to the discussion at section 5.3.5 of the Report which discusses the use of firearms in prisons and questions the current situation in regard to the legislative provisions and departmental instructions.

Recommendation 8
Custodial officers be instructed that they have a duty to provide necessary medical care to those in their custody irrespective of the cause of the condition requiring that care.

This recommendation has been implemented.

This is the official policy and practice of the Police Department but I note the lack of medical attention afforded to Ginger Samson as recently as Match 1988.

Recommendation 2
Custodial officers be instructed to immediately seek medical attention when any doubt arises as to a prisoner's condition and to be alert for symptoms of illness amongst prisoners especially when having the custody of traditionally oriented Aboriginal prisoners.

This recommendation has been partially implemented.

I refer to my comments in relation to the implementation of Recommendations 12, 13, 14 of the Muirhead Interim Report.

Recommendation 10
There should be consultation between the police and prison authorities and the Health Department, Aboriginal Medical Services and representatives of the medical profession with a view to reviewing or where necessary establishing cooperative arrangements and guidelines for the ready provision of medical care to persons in custody.

This recommendation has been partially implemented.

I refer to my comments in relation to the implementation of Recommendations 42 and 43 of the Muirhead Interim Report.

Recommendation 11
The Departments of Police and Corrective Services examine the use of the expertise of Aboriginal Medical Services for the provision of health care to Aboriginal prisoners.

This recommendation has been partially implemented.

I refer to my comments in relation to the implementation of Recommendations 42 and 43 of the Muirhead Interim Report.

Recommendation 12
(a) Police and prison personnel be instructed of their duty towards prisoners. This includes the provision of first aid and resuscitation for the preservation of prisoners' lives and health. This duty should be reflected in routine Orders; and
(b) Within the bounds of available resources those personnel who are likely to have the custody of prisoners should receive adequate current training in first aid and resuscitation,

(a) This recommendation has been partially implemented.
The duty to provide first aid and resuscitation is not reflected in Routine Orders.

(b) This recommendation has been partially implemented. Prison officers do not receive refresher training in first aid and resuscitation.

Recommendation 13
An interdepartmental committee of Police Department and Department of Corrective Services personnel be convened to consider a scheme whereby arrested prisoners be detained in Department of Corrective Services facilities in those towns in which such facilities are located and any other alternatives directed towards the provision of 24 hour supervision of arrested prisoners.

This recommendation has been partially implemented.

The government has advised the Royal Commission that it is still under consideration.

Recommendation 14
Su Sufficient non-commissioned police officers for each shift in each police station should be specially trained for the purpose of admitting, assessing and supervising prisoners detained in police station lockups.

This recommendation has not been fully implemented.

The Custodial Care course addresses some of these issues but it is clear that further specialised training in this regard is required.

Recommendation 15
(a) *The Police Department property sheet be augmented to provide for greater particularity of a prisoner's medical condition; and*

(b) *Aboriginals be able to have medical informatiion recorded in their police records upon them forwarding written notification to the Department, counter signed by their medical advisor.*

This recommendation has not been implemented.

The government has advised the Royal Commission they are still under consideration. A lockup admission form currently being trialled includes some medical information. The Royal Commission has no evidence about the way in which recommendation 15(b) is being considered.

Recommendation 16
Those concerned with the design of police lockups should ensure that local community needs are taken into account including the need for interaction of Aboriginal prisoners with other Aboriginals. Future designs should have input from Aboriginals, police and prison employees and inmates and officers of relevant agencies. The requirement of proximity of lockups to the police work areas should be attempted where possible.

This recommendation has been partially implemented.

The evidence before the Royal Commission indicates that there has been no consultation with Aboriginals at a local level in relation to lockup design. I refer to comments on the implementation of Recommendations 19, 23, 25 of the Muirhead Interim Report.

Recommendation 17
That the recommendations arising from the Report of the Department of Corrective Services dated the 16 October 1987 headed "Review of the Identification, Observation, Management and Care of Prisoners Whose Health is "At Risk"" be implemented and that a committee comprising representatives of the Department of Corrective Services and Aboriginal medical Services be convened with a view to preparing guidelines and procedures for the identification and management of "at risk" Aboriginal prisoners.

This recommendation has been implemented.

Recommendation 18
Sentenced prisoners being held in police lockups on behalf of the Department of Corrective Services should as far as practicable, have access to similar of custody and services as are provided in prisons.

This recommendation has been partially implemented.

In remote locations where prisoners are held in police custody, the standards of custodial facilities and services in most instances would be well below standards available in prison.

Recommendation 19

Emphasis should be placed on general preventative measures as a means of combatting suicide within the ongoing upgrading of Department of Corrective Services facilities in keeping with models of direct supervision.

This recommendation has been implemented.

Recommendation 20
Consistent with the effective management of prisons and police lockups, an Aboriginal Visitor Scheme should be developed and implemented.

This recommendation has been implemented.
I refer to comments in relation to the implementation of Recommendation 22 of the Muirhead Interim Report.

Recommendation 21

(a) Assessment of attitudinal suitability be part of the selection process for appointments and postings within the Police Department and the Department of Corrective Services especially to areas of significant Aboriginalpopulation;

(b) Aboriginal recruitment to the Police Department and the Department of Corrective Services be incorporated within an affirmative action plan by, amongst other things:

(i) positively encouraging Aboriginal applicants;

(ii) making an understanding of Aboriginal culture and the ability to communicate effectively with Aboriginals a specific selection criterion for appointment where the position will involve dealing with a significant number of Aboriginal people;

(iii) ensuring that after training Aboriginal officers have the opportunity to remain within the region from which they are appointed; and

(iv) providing special training and support programs for Aboriginal inductees. Special funding to the Police Department will be required for this purpose.

(a) This recommendation has been partially implemented.
I refer to comments in relation to Recommendations 26, 27 of the Muirhead Interim Report.

(b) (i) This recommendation has been implemented.
(ii) This recommendation has been partially implemented. Policy of the Police Department and the Department of Corrective Services. However the adequacy of the implementation of this policy is doubtful. I have found that training in this regard is inadequate especially in relation to the police. I have also been advised that there are insufficient police officers with experience in relation to Aboriginal people to fill all such positions.

(iii) This recommendation has been not been implemented. The Police Department is reviewing the practice in relation to Aboriginal police recruits. Aboriginal police aides are currently allowed to remain in their home country.

(iv) This recommendation has been partially implemented. The Aboriginal police cadet pilot scheme has been introduced.

Recommendation 22
Legislation implementing the abolition of drunkenness as an offence should include the statutory duty upon police to notify a person or organisation capable of taking adequate care of affected persons where available.

This recommendation has been partially implemented.

I refer to comments in relation to the implementation of Recommendation 5 of the Muirhead Interim Report. There is no duty upon police to notify a person or organisation capable of taking care of intoxicated person.

Recommendation 23

(a) The penalties in the Liquor Act for the supply of liquor to intoxicated persons and juveniles and for illicit dealing in liquor should be increased to provide a more substantialfine together with the option of suspension and/or cancellation of liquor and other licences;

(b) The Commissioner of Police urge police officers to make every effort to detect, prosecute and take other relevant action in respect of the supply of liquor to intoxicated persons and juveniles and in respect of illicit dealing in liquor as a means of reducing the rate of crime;

(c) The provisions of the Liquor Act relating to those offences be reviewed to ensure successful prosecutions.

(a) - (c) This recommendation has been partially implemented. The efforts of police to prosecute licensees and suppliers of liquor to intoxicated persons and juveniles under Liquor Licensing Act have been inadequate. I refer to section of 5.5.4 of the Report in this regard.

Recommendation 24

(a) A "citation system" for bringing both adult and juvenile offenders to court should be implemented and its enabling legislation should specifically restrict the occasions upon which offenders may be arrested;

(b) There be no ability under the citation system for offenders in the first instance to be arrested and then released under citation; and

(c) That in any case of arrest the arresting officer be required to cause a report, if required by the court as to the reason for the use of arrest.

(a) - (c) These recommendations have not been implemented. A citation system for juveniles is currently being considered.

Recommendation 25

The Aboriginal Visitor Scheme include the facility for the release of Aboriginal detainees on bail into the custody of Aboriginal Visitors who may act as bondspersons without financial obligation to ensure attendance in court.

These recommendations have been partially implemented. The provisions in the Bail Act enable a person to be released on bail without financial obligation. However no specific arrangements have been made in relation to Aboriginal visitors.

Recommendation 26

(a) The present system of the payment of meat allowances for prisoner's meals to police officers in charge of police lockups should be abolished;

(b) An interdepartmental committee of personnel from the Police Department, the Department of Corrective Services and the Department for Community Services reporting to their respective Ministers should be convened to determine an alternative scheme.

(a) & (b) These recommendations have not been implemented. I refer to the discussion in section 4.2.4 of the Report on the meal allowance scheme.

Recommendation 27
That the proposal of the Special Government Committee on Aboriginal/Police and Community Relations to establish Aboriginal Police Liaison Committees in key towns be supported.

These recommendations have been implemented.

Recommendation 28
Funding by the State directed towards the socio/economic advancement of Aboriginals, in particular the Aboriginal Communities Development Program and similar programs should be continued and where necessary increased bearing in mind that the effective application of such funding provides a means of reducing the rate of Aboriginal imprisonment.

This recommendation has been partially implemented.

The Aboriginal Affairs Planning Authority (AAPA), in its restructuring process, has identified Commonwealth/State relations as an area of particular concern. The Aboriginal Communities Development Programme (ACDP) comes under the umbrella of this restructuring process within AAPA. While in a number of ways the ACDP can, and does, provide assistance to various Aboriginal communities throughout the State, the basis for such assistance needs to be clearly defined so that it does not operate on an ad hoc basis. Significantly, funding required is often for matters which should automatically be considered by the State. Hence, in my view, it is not sufficient to only endorse the continuation of this programme, as there is an obvious need to reconsider the functions of ACDP with regard to actual State and Commonwealth relations.

Commissioner Dodson, in his Report, addresses matters that impinge on this issue (e.g. Commonwealth/State relations, the Aboriginal economy, and Essential Services).

Recommendation 29
Section 34 of the Prison's Act 1981 and Section 6 of the Coroner's Act 1920 and any regulations should be amended to make it clear that Coroners' inquiries should be held into all deaths of persons in lawful custody irrespective of where the death occurred.

This recommendation has not been implemented.

The Ad Hoc Committee report recommends that the holding of inquest (cf inquiry) should be discretionary in relation to deaths in custody. I refer to the discussion of this issue at section 6.4 of the Report.

Recommendation 30
Police Routine Orders should be amended to provide that in the case of the investigation of deaths in police and prison custody, they be carried out by a commissioned police officer.

This recommendation has been implemented.

I refer to comments in relation to the implementation of Recommendations 49, 50,57 of the Muirhead Interim Report.

Recommendation 31
Police Officers (and where applicable Prison Officers) should be directed to adhere to the following principles in relation to the investigation of deaths occurring in custody and Police and Prison Orders should be amended to incorporate them where necessary, namely:

(a) the immediate investigation of any death in custody should be undertaken by a Commissioned Police Officer;

(b) relatives of the deceased and the Aboriginal Legal Service should be contacted by the Police Department as soon as possible;

(c) the duty forensic pathologist should be contacted by the Police Department immediately;

(d) multiple colour photographs of the scene and body should be taken by the Police Department;

(e) reports by all officers from the Police and Corrective Services Departments, who had recent contact with the deceased are to be prepared; and

(f) the body together with photographs, statements and implements shall urgently conveyed in accordance with the Coroner's instructions in the company of a senior member of the investigating team.

These recommendations have been partially implemented.

Recommendation 31 (b) has not been implemented in relation to contacting about the death.

Recommendation 31(c) has not been implemented in that the Coronial Inquiry Section responsible for contacting the forensic pathologist are not directed to do so immediately. Evidence before the Royal Commission has shown that it may take several hours.

Recommendation 32
A State Coronial System giving a State Coroner jurisdiction **to** *inquire* **into all** *deaths in custody should be examined.*

This recommendation has been implemented in that the Ad Hoc Committee Review of Coronial System has examined and recommended the establishment of a State Coronial System administered by a State Coroner. The recommendation of the Ad Hoc Committee has not been implemented.

5.1.2 CHANGES IMPLEMENTED SINCE COMMENCEMENT OF ROYAL COMMISSION

In the previous Section I have discussed the implementation of the recommendations of the Muirhead Interim Report and the Vincent Report. In this section I will summarise the key changes that have been introduced in Western Australia since the commencement of the Royal Commission. Many of these will have been mentioned in the previous section and I will note where more detailed discussion of the changes is found elsewhere in the Report.

Most of the changes that have occurred are applauded, however there are some instances in which the changes introduced to date are less than satisfactory and further attention is needed to address some of the problems that have accompanied the changes.

- In April 1990 the legislation decriminalising the offence of drunkenness was proclaimed. This is to be commended. However the legislation does not place any duty upon police officers to consider an alternative place of detention i.e. an alternative to the police cells. This aspect of the legislation is unsatisfactory and is discussed in more detail in section 5.5.2 of the Report.

- Action has been taken to establish sobering up centres in four locations in Western Australia. These will function to provide alternative accommodation to police cells for persons found drunk in a public place and detained by the police. I regard the establishment of sobering up centres as an essential accompaniment to the decriminalisation of drunkenness. I commend the Government for their efforts in establishing the four facilities to date but emphasise the need for further facilities if the decriminalisation of drunkenness legislation is to operate successfully i.e. by keeping people out of police cells which are inappropriate places for intoxicated people. The establishment of sobering up centres are discussed in more detail in section 5.5.2 and 5.5.3 of the Report.

- The Government has enacted legislation which enshrines the principle that imprisonment is a sanction of last resort. The legislation is commended. However it is clear that in some areas alternatives to imprisonment are often not available. In addition it would seem that some justices need further training in sentencing principles and the alternatives available. This is discussed in some detail in Commissioner Dodson's Report and in the sections of this Report dealing with the legal system and sentencing.

- Legislation has been enacted to ensure that sentences of imprisonment are not automatically imposed in default of payment of fines. 'Ibis initiative is commended. However the legislation is considered inadequate in three regards. Firstly, the legislation provides for the conversion of a sentence of imprisonment when in default into a work and development order. It would be preferable for the legislation to provide for the conversion of the fine, into a work and development order prior to default. Secondly, the legislation does not impose a statutory duty upon sentencers to consider a defendant's means to pay a fine and thirdly, the legislation allows the sentencer to specify that the defaulter cannot convert a sentence of imprisonment to a work and development order. These are regarded as defects in the legislation which need amending. They are discussed in the section of the Report dealing with sentencing.

- The Bail Act was proclaimed in 1989 after an seven year delay. The legislation has also been recently reviewed and recommendations have been made for its amendment. The issue of bail and the Western Australia legalisation is examined in more detail in section 4.2.3 of the Report.

- Police Routine Orders have been amended so that arrest for minor offences is discouraged and requires an officers decision to arrest rather than proceed by way of summons or caution to be evaluated by a superior officer. This is discussed in more detail in section 4.2.1 of the Report.

- A Lockup Admission form has been trialled by the Police Department to assist police officers properly assess detainees on admission to custody. This initiative is discussed in more detail in section 5.2.2 of the Report.

- The Police Department has carried out a cell modification programme of police lockups throughout the State. The initiative is commended, however, the use of wire mesh to screen hanging points in cells needs to be reassessed as evidence before the Royal Commission suggests that this modification may have an adverse effect upon the detainee. Cell design and modification is discussed in more detail in section 5.2.1 of the Report.

- The Police Department has conducted a review of care services available in police custody. The review committee has recommended the establishment of a Forensic Medical Service to provide support to police officers throughout the State who have custodial responsibilities. The establishment of such a service is supported by the Royal Commission and is discussed in more detail at section 5.2.9 of the Report.

- The Police Department proposes to establish a Nursing Post at East Perth lockup. 'Ibis initiative is applauded by the Royal Commission.

- The Police Department have introduced a custodial care course which provides training to recruits and serving officers on care of detainees and management of 'at **risk'** persons. Training of police officers is discussed in more detail in section 5.2.8 of the Report.

- The Police Department have also introduced refresher training in first aid and resuscitation for serving police officers.

- The Police Department and Department of Corrective Services have provided resuscitation equipment in most police stations and in prisons.

- The Police Department and Department of Corrective Services have initiated programmes of positive recruitment of Aboriginal people. These initiatives are commendable and should be extended. They are further discussed in sections 5.2.12 and 5.3.2 of the Report.

- The Aboriginal Visitors Scheme has been established which amongst other services provides crisis counselling to distressed prisoners in police and prison custody. The scheme is discussed in more detail in sections 5.2.11 and 5.3.6 of the Report.

- The Department of Corrective Services has introduced a training course for serving officers on prevention of suicide and management of 'at risk' prisoners. The introduction of the course is commended.

- Post death investigations in relation to custodial deaths carried out by the Police Department have improved and detailed guidelines have been prepared by the Department's Internal Investigations Branch. These are discussed in more detail in section 6.1 of the Report.

- A review of the Coroners Act and office has been carried out by an Ad Hoc Committee established by Government. Although the recommendations of the committee have not yet been implemented the review addressed the major problems currently experienced in the coronial system. The coronial system is discussed in more detail in section 6.4 of the Report.

The above is but a brief summary of the key changes that have been introduced to date which generally will have a positive effect on reducing the number of people in custody and preventing further deaths from occurring. Despite the initiatives that have already been taken it is clear that much more needs to be done to remedy inadequate systems and practices which have for too long been ignored.

5.1.3 DUTY OF CARE

In this section I have attempted to briefly set out the principles with respect to the duty of care owed by custodial authorities to detainees.

When a person is detained in custody, whether it be in police or prison custody, that person is no longer in a position to provide for him or herself. He or she becomes dependent upon Ns or her custodians. They assume a responsibility or duty to provide Mm or her with the necessaries of life. Those duties are imposed at various levels and cover many aspects of the custodial experience. In many of the inquiries into the deaths I have had cause to examine the responsibilities owed by custodians to the deceased and the omissions in the care, advice or services provided. In particular I have examined the duty of care owed to prisoners, especially in relation to health care, the responsibilities of police officers in relation to the assessment, supervision and provision of medical attention to detainees in police custody and the duty to resuscitate.

In the Reports of the Inquiries into the deaths of Kim Polak and the Aboriginal Man Who Died at Sir Charles Gairdner Hospital I considered in detail the duty and standard of care owed by custodians to prisoners and detainees. I do not propose to repeat those observations except to provide a brief summary of the law as it was outlined in those cases.

5.1.3.1 Criminal Negligence

Criminal negligence requires that there has been a breach of duty under Section 262 of the Criminal Code. Section 262 of the Criminal Code provides:

> It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause, to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law or arises by reason of any act, whether lawful or unlawful of the person who has such charge to provide that other person the necessaries of life; and he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.

A breach of that duty will constitute an offence against the section. Where death follows from the breach, any charge preferred against the person responsible would probably be laid under section 280 of the Criminal Code, which provides that a person who unlawfully kills another person under such circumstances as not to constitute wilful murder or murder is guilty of manslaughter.

5.1.3.2 Common Law Negligence

To find common law negligence it is necessary to find that there has been a breach of the duty of care owed to a prisoner by those into whose care and custody he or she is committed by laws enacted by the State.

In accordance with common law principles of negligence a police officer who arrests a person is subject to a common law duty to exercise reasonable care for the safety of that person during his or her detention in custody. The Department of Corrective Services in Western Australia has a similar duty which obliges prison authorities to take reasonable care of persons in their custody. It would appear to follow that those who take others into their custody owe them a duty of care to prevent them contracting illnesses as a consequence of their confinement. There cannot be much doubt that that duty extends to providing appropriate medical treatment for other illnesses which might strike a prisoner while in custody, whether contracted in custody, or prior to going into custody. Having denied the prisoner the opportunity of obtaining treatment for him or herself, there cannot be much argument that the State thereby assumed responsibility for providing it.

5.1.3.3 Medical Care of Prisoners

(a) In Prison Custody

The responsibility for the medical care of prisoners is statutory in origin in addition to any duty which may be owed at common law. Section 38(l) of the Prisons Act requires the Director to:

> ... nominate for each prison a prison medical officer or a medical officer who shall be responsible for the medical care and treatment of every prisoner in that prison. (emphasis added)

What may be conveniently described as an outside medical practitioner, including it would seem a medical officer appointed to another prison, may attend upon and examine a prisoner only for the purpose of providing 'an opinion on the medical treatment of and the treatment recommended for the prisoner'. Even then he may do so only with the prior approval of the Superintendent, or the Medical Officer, and the prior approval of the Director. The notion is reinforced that responsibility for prisoner care is restricted to the medical officer of the prison in which the prisoner/patient is for the time being confined. Curiously, there appears to be no provision in the Act itself for removal to hospital, and it would seem to follow from a strict reading of the terms of the Act that the prison medical officer remains ultimately responsible for his care even when he is admitted to hospital.

The standard of care applicable in the case of a medical practitioner does not render him liable for every slip or error or lapse in judgement. To be wrong is not necessarily to be negligent. He is not an insurer of his patient. For negligence to be proved the law demands a breach of duty of care pitched to the standard of the ordinary competent practitioner. Different considerations are brought to bear on the question of the standard of care and skill to be applied to those holding themselves out as specialists in their profession. A medical practitioner specialising in an area of medicine will be held to the standard of the specialist.

(b) In Police Custody

The duty of care commences at the time a person is arrested by the police. There would appear to be a duty of care on the part of arresting officers to ensure that medical treatment is not required at the time an arrested person showing signs of possible illness or injury is taken into custody. That would be a continuing duty so far as the responsibility of the Police Department is concerned, and would continue until the prisoner's release from custody. The duty of care of the arresting officers individually may well cease at the time the prisoner is handed over in the charge room and processed. At this point responsibility for the welfare of the prisoner, and with it the associated duty of care, would pass to the officer in charge of the station for the shift at the time. At the time of the handover there would be a duty on the part of the arresting officers to bring to the attention of the officer in charge anything in the physical or mental condition of the prisoner which might affect the person's welfare while in custody. There would also be a duty on the part of the officer himself to ensure that no prisoner was placed in the cells when his condition, physical or mental, was such as to place his welfare in jeopardy or with any person who might pose a threat. Thereafter that duty of care would demand that regular cells checks be carried out to check on and to ensure the prisoner's continued well-being. In principle, breach of any such duty would render those responsible, and their employer, liable to an action in damages for negligence.

Whilst the law at present may not impose any positive duty upon police to inquire after a prisoner's state of health where illness would not reasonably be apparent to a lay person observing the prisoner, it is far from satisfactory to simply leave the matter there. The Commission has to try and discover where people have been dying in custody, whether and in what measure any persons, institutions or practices have contributed to those deaths and to seek the means of averting the likelihood of such deaths in the future. The experience of the Royal Commission in Western Australia reinforces the need for regulations which impose a positive duty upon police to conduct a thorough assessment of an arrested person's physical and psychological condition and when conducting cell checks to actively inquire after the health of prisoners. If there is any doubt, that person should be referred to a medical practitioner for assessment.

5.1.3.4 Duty to Resuscitate

In many of the deaths into which I inquired I have found that upon discovery of a person apparently without signs of life, no resuscitation was attempted by the custodians or that the attempts that were made were totally inadequate.

The duty to supply necessaries under section 262 of the Criminal Code, which includes medical attention, must extend to emergency resuscitation where this is appropriate.

In every case, resuscitation should be attempted. Those who are insufficiently trained to be able to recognise life-threatening illness, are certainly not qualified to make a decision that life is extinct, and that any attempt at resuscitation would be fruitless. The cessation of breathing should be regarded as the signal immediately to commence efforts to resuscitate. The advice of Dr H.V.F. Oxer should be remembered:

> *You can't do any more harm than not giving anybody any oxygen. If they don't get any oxygen, they are going to die.*

It is a matter of very considerable concern to the Commission that in only a small minority of the cases investigated has appropriate resuscitation been attempted when death has occurred in either prison or a police lockup. In most cases no satisfactory explanation has been offered to explain the failure to do so. In the sections of the Report dealing with training for police and prison officers I have discussed the current level of training in first aid and resuscitation and the need for refresher training.

I emphasise that the police and prison authorities have an obligation to ensure that their officers have appropriate training so that they are able to administer resuscitation in cases of need.

5.2 PREVENTION OF DEATHS - POLICE CUSTODY

Western Australia has had the highest rate of Aboriginal deaths in police custody in Australia during the period covered in the Letters Patent, i.e. 1980-1988. 'Ibis is not just a reflection on the distressingly high rate of detention in police custody but also of the custodial practices of police in Western Australia.

One of the most overwhelming findings my Commission has made in the course of its inquiries is the extent of the lack of care shown by many police officers to those in their custody. In many instances if the police had treated the person detained with a modicum of humanity and kindness as required by the police Routine Orders, if the police had shown the slightest interest in the well-being of the detained person, then the death may have been prevented.

Initiatives have been taken to improve practices and procedures and many of these are discussed in more detail in the sections which follow. However improved police practices, cell modifications, improved police training will only partially address the problems if the prevailing attitudes to those in custody remain.

Mr McCann, Perth Coroner, made the following remarks in his findings on the deaths of Wardle, Cameron, Morrison and Samson on the attitudes of police officers:

> *A presently prevailing attitude is exemplified by the use of the term 'prisoners' by custodians, and, regrettably, many other groups. both the media and many lawyers continue to refer to 'prisoners' whereas in fact and in law, with only few exceptions, the persons who are in police cells are not prisoners but citizens whom the criminal justice system provides shall be detained temporarily pending a determination of guilt or innocence by a court of law.*
>
> *The Police Routine Orders constantly refers to 'prisoners'. The 'Prisoners Property Book' and the 'Prisoners Processing Card' kept as part of the official records of the police force reinforce the attitude that the persons who are detained are prisoners rather than citizens.*
>
> *As a matter of law they are presumed to be innocent but the decision to confine a person under arrest in a cell appears to be made by a police officer on some occasions for the purposes of extra-judicial punishment.*

With these preliminary remarks having been made I will now turn to examining specific aspects of police custody which may go part of the way to preventing further deaths in police lockups.

5.2.1 POLICE CELLS/LOCKUPS

5.2.1.1 Size of Police Station and Lockup

Before examining the individual lockups in which the deaths have occurred further comment needs to be made about the difference I found between the operation of police lockups in police stations with large numbers of personnel in contrast to police stations with a small staff. I touched on this in my earlier discussion of the hanging cases at 3.4 of the Report.

The police station lockups which were of particular concern were Kalgoorlie (5 deaths), Broome (3 deaths), Geraldton (2 deaths) and the large metropolitan police stations, especially East Perth, Midland and Fremantle, one death having occurred in each. These stations are staffed by a relatively large number of officers (20-50 in the country regions and 90 to 300 in the city). The turnover of officers is quite high in the country areas. Young newly qualified officers are often sent to the country locations for relatively short periods of time, (one to two years). They are required to work in social and geographic environments in which they have little or no experience. It is also often their **first** experience working in an environment with a large Aboriginal population. The officers may themselves be reluctant to admit that their training ill-equips them to work effectively with Aboriginal people, however I have little doubt that it is often the younger more inexperienced officers who regularly cause the local Aboriginal population concern. Many witnesses in the hearings spoke of the younger officers' ignorance of Aboriginal culture (see evidence of Bellotti, ex police aide, and Sgt Hogarth 01C, Carnarvon in Dooler; Leedham Cameron, Aboriginal community member, Geraldton in Geraldton cases; Justin Howard, ex police aide, Broome, and Vanessa Read in Wodulan; Sgt Denholm 01C, Hazel Thomas, Aboriginal community member, in Kalgoorlie cases). In addition to a general lack of understanding of Aboriginal culture I was also told that some young officers were lacking in respect for Aboriginal people, especially older people and women, and carried out their duties in a heavy handed manner, especially in regards to young Aboriginal people (see Final Report of Aboriginal Issues Unit,WA). Commissioner Dodson has also discussed the issue of young inexperienced officers in his Report.

In the earlier section I spoke of the apparent lack of care and the impersonal attitude of the police officers in the large regional police stations. I found that it was much more likely in these places for the police and the lockup to be regarded with fear and dislike by Aboriginal people.

Kalgoorlie is a town in which these problems seem endemic. The underlying reasons are complex and will be examined in more detail both generally and especially in relation to issues of economic development and mining in Kalgoorlie by Commissioner Dodson. Five Aboriginal deaths occurred in the lockup there, the highest toll of any lockup in Australia during the period covered by the Royal Commission. Of the five deaths, the first death occurred in 1981 after the detainee was placed unconscious in the lockup. He was assumed to be drunk but was suffering from a serious head injury (Roy Walker). A year later a woman was again placed in the lockup unconscious. She too was assumed to be drunk but also had serious head injuries (Barnes). In 1985 two people placed in the lockup had serious medical conditions requiring urgent treatment (Polak and Wells). Polak may have survived if he had received earlier medical attention.

In 1987 a 20 year old man died in the lockup as a result of hanging (McGrath). Police officers visited the cells on three occasions after his death had occurred, including one visit to carry out a cell check. His body was not detected on any of these occasions. This may seem incredible but what makes it worse was that there had been an attempted hanging by another young man the previous night.

One would have thought this would have prompted a vigilant reaction by the Kalgoorlie police officers. However some of the officers on duty the night of McGrath's death were not even aware of the attempt the previous night. This apparent lack of communication between officers has been demonstrated in numerous cases I have investigated and contributes to the impersonal and non caring attitude I have found to exist in the large police stations (see Wongi, Morrison, Waigana).

I refer to specific problems in Kalgoorlie in the section of the Report dealing with Aboriginal/police relations including the use of racist language by the police and allegations by Aboriginal people of mistreatment by the police. I formed the impression that the problems associated with delivering appropriate custodial cam in large police stations, particularly in country areas with large Aboriginal populations, still remained.

A new police complex is currently being constructed in Kalgoorlie; because of the prevailing police attitudes, I have little hope that a new building will do much to remedy what must be regarded as a police problem. I believe that the police culture which prevails in Kalgoorlie and other large country centres requires further attention.

The problem of entrenched police attitudes is also alluded to in the Final Report of the Webster Committee, a Report to the Police Department on Care Services in Custody, 13 March 1990. It makes the following observation:

> *The working party were also of the opinion that there is a need to upgrade or heighten the awareness of other officers working in the areas of restraint. The very difficult circumstances within which our of officers work are further compounded by inadequate facilities. To implement changes in this area involving the 'care' of prisoners would definitely require a dedicated effort as to allow some entrenched 'culture based' attitudes to be changed.*

By way of contrast, the lockup practices at Wiluna Police Station need to be further mentioned. In section 3.6 I used Wiluna as an example of a lockup where there was a minimal feeling of confinement,

Wiluna Police Station has what could be descirbed as an 'open' lockup. The prisoners are free to leave the lockup area and can sit in the grounds of the Police Station enclosure during daylight hours. Families and friends are free to join them - the gates are left open. If a prisoner wishes to go to the shop or the nursing post he or she asks permission of the officer in charge and is usually allowed to go. At night the gates are closed and the lockup is locked.

On the weekends the officer in charge also occasionally takes prisoners out on trips into the bush. The prisoners can cook traditional food and enjoy some time away from the lockup.

Prisoners are given a certain amount of respect and trust. They know if these privileges are abused then they would cease.

Put in the context of Criminology Research Unit Research Paper No. 9 by Dr Reser on the Design of Safe & Humane Police Cells, the practices in Wiluna provide well for individuals maintaining a degree of control over their daily activities and circumstances. The arrangements also minimise prisoners' isolation, give prisoners access to the outside environment and provide suitable spaces for visits and contact with family and friends.

The police station at Wiluna is in a remote geographic location. A Sergeant in Charge, three police officers and three police aides are currently located there. The Aboriginal population accounts for approximately 95% of the area's population and they arc traditionally oriented. Whether it is the small size of the police station, the traditional orientation of the Aboriginal population, the system of trust and respect or a combination of them all, the unusual lockup practices in Wiluna appear to work reasonably well.

It is a system that deserves to be further examined to determine to what extent it can be implemented in other areas.

5.2.1.2 Cell Design and Safety

It is well recognised that the design and safety aspect of custodial settings is but one of the many issues involved in deaths in custody. The Royal Commission has received many submissions in regard to this area, it was also assisted by Dr Reser who prepared a research paper 'The Design of Safe and Humane Police Cells' (1 989) mentioned above. Reser raises issues relating to Aboriginal people in custody and police cell design including psychological and physical aspects of cell design. A Working Party appointed by the Government of Western Australia also considered the design of police cells. The review of lockup

designs was undertaken in Western Australia by an interdepartmental committee under the direction of the Assistant Commissioner of Police. The working party consisted of representatives from Department of Corrective Services, Building Management Authority, Fire Brigade, Department for Community Services, Aboriginal Legal Services, Special Government Committee on Aboriginal Police and Community Relations, Aboriginal Affairs Planning Authority, Department of Aboriginal Affairs (Commonwealth), and the Western Australian Police Department.

Although the paper of the Working Party takes into account the climatic conditions, the culture of the majority of detainees and the type of offences for which persons are detained, it does not consider as Reser does the importance of how people perceive and experience their physical environment and how that experience determines behaviour. The result is that the Working Party's paper concentrates on the physical aspects of lockup designs whereas Reser emphasises the psychological and physical impact of lockup design and environment, although the Police Department has advised the Royal Commission that the 'Specific Design Considerations' set out in Reser's paper have been taken into consideration when developing strategies for upgrading cell facilities.

The comprehensive examination by Reser of police lockup cell design should be further considered by government in the course of implementing current strategies to upgrade cell facilities.

The Working Party has recommended the introduction of modifications to cells in three stages. The first stage targeted cells where suicide had been attempted and occurred. This stage has been completed with the following modifications to 138 cells in 52 Police Stations:-

(i) removal of all anchor points

(ii) masking of doors and windows

(iii) cementing around pedestal downpipes (toilets and sinks)

(iv) modifying modesty screen walls (providing privacy for ablutions).

Stage 2 will provide the above modifications to one cell in all other police stations. By July 1990 'safe cells' had been provided in 132 cells in 68 police stations. Stage 3 was to provide further modification and upgrading of police cells. This includes major modifications to several large centres (Bunbury, Halls Creek, Geraldton, Manjimup, Broome and Northam) as well as introduction of modifications such as alarm bells, smoke detectors, Bonair cooling systems to cells in hotter areas, and provision of fire retardant mattresses. (See Submission of Commissioner of Police July 1990 pl 8 and Responses of Commissioner of Police to Specific Questions raised by RCIADIC Q7.1 p23).

The 'safe cell' programme recognises the need for cells which provide for protection against self injury but does not pay sufficient attention to the psychological effect that obvious suicide proofing may have on the detainee. As Reser points out in his paper 'observation' cells may increase the stress of a detainee through sensory deprivation and the symbolic meaning and character of the cell. The fact that preventative design must alleviate distress as well as reduce opportunity must be given more consideration in the current cell modification programme.

Reser also stresses the importance of designing in features in lockups which provide for a modicum of individual control over their immediate environment. He explains the potent psychological impact that incarceration can have on an individual who loses control of his world and is powerless in the institutional setting. By providing features within the lockup design which foster feelings of personal control, the feelings of loss of control and privacy and the subsequent stress can be reduced. (Criminology Research Unit Research Paper No. 9 pp6-8).

The Working Party recognises the need for detainees having access and control over certain services but has a more restricted view on the extent of control that should be provided for. They recommend that control be given over toilets, showers, bed/sleeping pallet, bedding, mattresses and drinking water.

Reser sees the need for individual control more broadly and suggests that provision should be made for some individual control over personal comfort, communication, access to information, lighting, sense of security and privacy (Criminology Research Unit Research Paper No. 9 p.31). He said that recommended measures should include provision for individual comfort, provision for sense of visual privacy, internal light switches, closable shutter on openings to outside, controllable visual access to external environment, access to drinking, ablution and toilet facilities and the choice of a single or shared cell.

The Working Party also recognises the importance of visual and/or audible communications and has recommended that the ideal cell be close enough to the work area of the station so that detainees can either see or communicate easily with the police. The Working Party recommended three design types depending on the locality: the remote area lockup; the country lockup and the metropolitan area or larger town lockup. In each of these design types it is recommended that the cell be in the line of sight or hearing of the work area. However it should be pointed out that most lockups currently do not conform to these recommendations with many cells being located some distance from the general work area of the police station.

Reser has said that lockup designs should enhance 'functional proximity' and not isolate people down corridors. He suggests that radial design favouring smaller scale enclosures and small group areas assist police in being able to monitor detainees unobtrusively and both the police and detainees can interact and know what is going on without difficulty. (Criminology Research Unit Research Paper No. 9, p.9.)

The Working Party recommends the three cell design types noted above. The remote lockup design is allowing for a lockup population that is at least 70% Aboriginal, the majority of whom are imprisoned for good order offences. The country lockup design allows for a population that is 50-70% Aboriginal whereas the metropolitan lockup design allows for a lockup population that is more diverse who are being held for a wider variety of charges with more serious charges than would be commonly found in the other areas.

The design of the remote and country lockups have taken into consideration the cultural differences of the Aboriginal population likely to occupy the lockup. The remote lockup design also provides for multi prisoner cells. The remote and country lockups have also provided for a grassed/shaded fenced visiting areas for visitors which allows them to sit with detainees or have access through the fence. The metropolitan lockup provides for a service area which provides for contact visits. Reser stresses that the modification of police facilities to allow for visits is an urgent priority. He says *'the importance of physical proximity and touching in a situation of stress cannot be overstated.* Although the three design types of the working party have taken the need for visiting areas into consideration, the priorities of the modification programme should be reconsidered so that these facilities can be provided for.

Another factor stressed by Reser in considering lockup design is the need for consultation not only with the police and the community but also with the persons who are going to be detained in the lockup. The Police Department has informed the Royal Commission that they recognise. that consultation is required with the OICs of police stations, Regional Officers and different government bodies involved in the detainment or welfare of the community as a whole. They have also said that *'continual consultation is sought on the effectiveness of alterations and modifications to provide a better environment for detainees'.* (Responses of Police Commissioner to Specific Questions raised by RCIADIC Q7.7 p.27). I have no evidence that the Police Department has attempted to consult with detainees, especially at a local level to discover, in particular, the needs and requirements of Aboriginal detainees. Reser has noted that an assessment of Aboriginal user requirements should involve Aboriginal detainees and should not rely on conventional wisdom with respect to what Aboriginal needs are. I agree with Reser's comment *'It is difficult for anyone who has not experienced incarceration in a police cell or watchouse, from an Aboriginal perspective, to identify or prioritise needs.'* (1989:38)

The approach of Reser and the Government Working Party are considered in the following discussion of the police lockups in which Aboriginal people have died.

Midland Police Station

The first death in police custody that I examined in Western Australia was the death of Christine Jones in Midland Police lockup. The officer in charge at Midland Police Station in December 1988 told the Royal Commission that a new police station complex including a lockup had been built since Christine's death in 1980.

The Report into the Death of Christine Jones commented on the changes. The new lockup is located much further away from the general duties area in the police station than in the previous police station. The officer in charge said the new lockup is less suited to observation, access to and opportunity to hear prisoners than the old police station. He described the design as 'bad'. He said that an 'upset' in the lockup would be difficult to hear. The design also incorporates a post for a lockup keeper. However the lockup keeper was only working day shift Monday-Friday, and given the normal allocation of officers at Midland Police Station it was unlikely that there would be an officer manning the lockup during afternoon and night shifts. The consequence of this is to place prisoners in a particularly isolated environment relying upon cell checks by police officers to ascertain prisoners' well-being.

One male cell has been modified to eliminate anchor points and a similar modification is to take place in the female section.

Although the cell modification programme is an important step in upgrading Western Australian police cells, subject to my reservations noted above about obvious 'suicide-proofing', it is equally important that a system of effective communication between the lockup and working area of the police station be implemented. The officer in charge said a prisoner in the lockup area would have to yell out pretty loud to be heard in the office area (RCIADIC W3:329).

Given that a lockup keeper is not located 24 hours per day in Midland Lockup, the Police Department needs to examine how it can effectively monitor prisoners and improve the current means of communication between the lockup and general duties area of Midland Police Station. Until adequate lockup facilities are established or a lockup keeper staffs the lockup 24 hours per day, it is undesirable that detainees be held in the lockup when a lockup keeper is not on duty.

Carnarvon Lockup

In the Inquiry into the death of Wayne Dooler I examined Carnarvon Lockup.

Unlike Midland lockup, Carnarvon lockup has an alarm system with alarms fitted in one male cell and one female cell. The main reason for this is that the police station is not staffed between 2.00 am and 8.00 am. The alarm button is in the trustee prisoner's cell in the lockup. The main problem with this system is that the trustee prisoner does not have access to the other cells at night and he is unable to observe the other prisoners from his/her cell into which he/she is locked. He/she would not be aware if a prisoner was attempting to hurt him or her self if he/she was not so informed. This system is inadequate and unsatisfactory given that detainees are held in the police station when it is unattended. If a police station is not staffed 24 hour per day then prisoners should not be held in the cells overnight.

Two male cells and one female cell in the Carnarvon Lockup have had cell bars covered with mesh. This creates problems because the mesh is difficult to see through. The meshed cells not only create observation problems for the police but heighten the detainees' sense of isolation and deprivation of sensory stimuli.

Further extensions have been carried out at Carnarvon Lockup. Cells have been fitted with flush panel type doors with a glass strip. The cells have got high glass windows with bars on the outside. Prisoners have complained that they suffer from claustrophobia in there.

An ex police aide from Carnarvon Police Station suggested the following ways to improve the cell conditions at Carnarvon: *'If there was ... music or a TV set or a light, anything at all like that, just something to make it a bit easier, as far as the cells go'* (RCIADIC W4).

Reser has also noted suggestions for additional provisions and amenities to the cell environment and has commented that although not all suggestions are practical many are valuable and worthy of consideration (Reser, 1989:36)

Sergeant Hogarth, the officer in charge at Carnarvon Police Station, said that trustee prisoners were in fact allowed to have radios and television sets and that it created a better atmosphere and had a beneficial effect on the other prisoners.

(RCIADIC W4:428) This provides an illustration of the way in which implementation of practical suggestions can improve the custodial environment.

An Aboriginal Medical Service worker also suggested that leaving a light on at night would reduce prisoners' fears. Reser has pointed out the need for prisoners to have a modicum of control over their immediate environment including access to light switches. The AMS worker also mentioned the police practice of allowing longer term prisoners to sit outside the lockup and allowing them to wash police cars. Relatives can come along and request to visit. (RCIADIC W4:379) These practices allow prisoners some autonomy and access to the outside world, which are very important to their psychological well-being.

Port Hedland Lockup

In the Inquiry into death of Njanji, Port Hedland Lockup was inspected and issues relating to the lockup and death raised in evidence.

The Port Hedland Police Station is unusual in that it is a two storey complex with the general duties area and offices on the first floor. The lockup cells, courtyards and exercise yard are on the ground level and can be observed from the first floor offices. Both the male and female cells have separate exercise yards and there is a larger communal exercise yard. It is the only Police Station with this design in Western Australia. The office of the officer in charge overlooks the lockup and from there he can see the majority of the exercise yard, although it is more difficult to see into the cells. At the time of Njanji's death the upstairs windows were bare, although in recent times venetian blinds have been put up.

The communal exercise yard has a stove in it which the prisoners use to keep warm at night, boil a billy for tea and possibly to cook on. Firewood was previously kept in the lockup but is now kept outside. The exercise yard is not roofed so there is a relatively large open area exposed to the sky (a portion of which is in the shade).

Officers from the Police Station said that they could easily hear raised voices from the lockup, in the office area upstairs.

Although the conditions in the Port Hedland Lockup are far too primitive the design reduced the feeling of confinement and provided prisoners with some control over their environment, factors which I regard as necessary in minimising the stress of the custodial environment. The importance of prisoners having access to the outside environment has been noted by Reser. Reser pointed out that traditionally oriented Aboriginal people are attuned to sensory information and social information and this is tied to their experience of security and wellbeing. He said that being cut off from their extended social and physical environment can be particularly stressful to many Aboriginal people and stressed the need to provide information about the immediate environment. (Reser:1989:21)

Broome Lockup

The design of Broome Lockup is very poor. The cells are located behind the Police Station and are separated from the general work area by a long passage way and several doors. Detainees have no visual access to outside environment or the office area of the Police Station. The maintenance of proper surveillance of prisoners health and wellbeing is dependant upon the vigilance of police officers carrying out regular cell checks. Prisoners have complained about the confined space in the lockup, the lack of facilities, the poor food and sense of isolation.

There are six cells and three of them have had the bars covered with mesh. These are as mentioned above. The meshed cells are extremely difficult to see into. These cells are also hotter than the other cells so the Police Department plan to install an air conditioning unit at the back of the cells to force cold air into the cells. It is not surprising that prisoners are reluctant to go into these cells. As the current officer in charge said *'They are not desirable places'.*

In Brown (RCIADIC W13) I found that it maybe difficult for the police to hear prisoners calling out from the lockup when they are in the general office area of the Police Station, despite evidence from officers that when the doors leading to the cells are left open prisoners can be heard. Dr Hunter, a psychiatrist carrying out research on Aboriginal deaths in the Kimberleys, was of the opinion that the cells had been sound-proofed for the benefit of the staff.

The officer in charge also told the Commission that he can hear prisoners calling out from his house located next door to the Police Station.

An alarm system has been installed and is activated by buzzers located in the exercise yards. A bell rings in the general office area when the buzzer is pressed. However this alarm system is not available to prisoners locked in the cells.

The Broome Police Station is not manned 24 hours a day despite the fact that prisoners are kept in the lockup overnight. The unsatisfactory nature of this arrangement was raised in the Royal Commission Report of the Inquiry into the death of Albert Dougal. As mentioned previously, if a Police Station is not staffed 24 hours per day then persons should not be detained in the lockup when there is nobody there to ensure their safety and well-being.

The officer in charge did not think that the option of having an alarm installed in his house would be very useful and would cause problems for his family.

Dr Hunter suggested the physical environment of the lockup could be improved by installing a long picture window which would allow those in custody to witness the outside world. He also mentioned that the cells should remain lit which did not equate, with floodlighting, pointing out that darkness could exacerbate disordered perceptions when people are in a vulnerable state. These suggestions warrant serious consideration. In addition Reser's comments about detainees maintaining some control over their environment should be considered at the same time so that any modifications may incorporate prisoners having some control over lighting and any access to the external environment (through shutters or other means).

Broome Lockup needs urgent attention with emphasis on improving the prisoners' visual access and communication with the outside world to minimise isolation. Serious consideration also needs to be given to ways of creating greater personal control for prisoners over their environment in the cell area.

I have been advised that Broome Lockup is one of the lockups to which major modifications will be made. It is essential that Aboriginal detainees as well as the police and local community be consulted in the design process.

Geraldton Lockup

Currently the lockup consists of five male cells, with an adjoining exercise yard four cells for females and juveniles with an exercise yard. One cell in each of the male and female sections of the lockup have been modified to reduce the risk of suicide by covering the bars in the cells with **fine** metal mesh and removing anchor points. Those cells are very hot in summer with the air flow reduced in them by at least 40% because of the mesh. Exhaust fans have been installed to keep air moving. The officer in charge of Geraldton Police Station gave evidence that the prisoners do not have an adverse reaction to the security cells and that they do not have any affect on them. However representatives from the Aboriginal Visitors Scheme said that prisoners preferred to be in the exercise yard, that they suffered from claustrophobia in the security cells and did not like being in the cells alone. They said the cells were disliked by prisoners and made the prisoners feel worse when they are in a distressed state. The prisoners cannot see through the mesh and they make communication more difficult. Such comments are not surprising and appear to confirm Reser's observations about the effect of confinement in special observation cells on a prisoner's sense of wellbeing.

In my opinion the security cells are more uncomfortable than the other cells and the exercise yard and would increase a prisoner's sense of isolation.

However plans to modify Geraldton Police Station have been drawn up. **It** is intended to construct three new cells and an observation room adjoining the office area of the police station. The new cells will have smoke detectors, alarms and two way communication. The Police Department has informed me that Commissioner Dodson's suggestion that music be played into the cells will be followed. The new cells will have large windows for observation purposes. These modifications appear to conform to recommendations by Reser and the Working Party as to improved cell design. However it is important to ensure that provisions allowing for some prisoner control are designed into the modified cells. Attention should also be paid to providing an appropriate visiting area.

Kalgoorlie Police Station

At the time I visited Kalgoorlie Police Station during the inquiry into the death of Bernard McGrath, construction of a new police station and lockup was underway. The lockup design appears to be based on a radial floorplan which enables both detainees and staff to interact without difficulty. The new design is a big improvement on the current lockup which is isolated from the general work area of the police station.

In previous times it was often overcrowded. For example, on the night of McGrath's death there were 13 prisoners held in two cells and an exercise yard which only had a capacity for six to eight prisoners. Reser had pointed out the added stress that a crowded custodial institution places on the detainees. (Reser:1989:10-11). Crowding of the lockup at the time of McGrath's death also made it difficult and potentially dangerous for a police officer conducting cell checks. The Coroner who held the Inquest into McGrath's case recommended

that no more than eight persons be held in the lockup at one time, a recommendation I am told that has been implemented.

In the previous sections I discussed the problems involved with the police and detainees at Kalgoorlie Police Station and the need for further investigation into the attitude of the police and the 'police culture' which prevails in Kalgoorlie and other large country centres. Reser discusses the concept of the cell in which an individual is detained as being but one component of the larger setting which includes the police station and grounds, the people who are in the setting and the sets of rules and behaviours which regulate what happens in the setting. He quotes from Ittelson [26] et al:

> *There is no physical environment that is not embedded in and inextricably related to a social system. We cannot respond to an environment independently of our role as social beings. Even a solitary person reacts to his setting on the basis of his isolation.*

(In Reser, 1989:4)

I agree that it is impossible to separate the physical environment (i.e. the cell or the lockup) from the social environment (i.e. the interaction of the police and detainees in the 'institution' of police custody). It is for this reason that the attitude of police officers in large police stations, the lack of care and dehumanising experience of police custody need to be further examined.

East Perth Lockup

In the Coroner's findings made upon Inquests into the deaths of Wardle, Morrison, Cameron and Samson, the Coroner made the following observations on East Perth Lockup (where Wardle, a non-Aboriginal died):

> *The East Perth Police lock-up can only be described as archaic and wholly inadequate. One can only assume that familiarity on the part of police officers stationed at that place has caused them to fail to comprehend and complain about the deficiencies.*
>
> *The charge counter and charge room are too small, the police officers are cramped in going about their duties. The officer in charge of the lock-up has no real opportunity of surveying all the activities which must of necessity occur there. There are a number of doorways leading into and out of the charge room area. The corridors leading from the doorways are narrow.*
>
> *Observation of persons within each cell requires the deliberate and careful negotiation of the full extent of each corridor. The cells are only dimly lit when the interior cell lights are on. There is not enough light to make a careful inspection of an individual inside a cell when the corridor lights are on and the interior cell lights are not on.*
>
> *There is no doubt that at East Perth lock-up an adequate observation of an inmate of a cell can only be made if the Police officer turns on all available lights, enters the cell and uses a strong torch to illuminate the inmate. It is also clear that a determined effort must then be made to wake the inmate and raise that person to a level of consciousness, if he or she is asleep, to conduct a rational and lengthy conversation.*
>
> *It is ridiculousfor the observation to be recorded in the 'Cell Check Book" that there were "no complaints", as if this was a positive statement of the well-being of the inmates. To make such a record when the inmates are in darkened cells, apparently asleep, and when no positive attempt to awaken and converse with the inmates to establish affirmatively that they have "no complaints" is a travesty of accurate and truthful reporting.*
>
> *The observations concerning the physical condition of the cells apply equally to Fremantle Police lock-up.*
>
> *It is understood that the installation of electronic surveillance devices in the cells has been sought. This positive approach to the problem deserves approbation. The labyrinth of corridors and cells in the basement of the police station comprising the lock-up prevents ready observation of inmates. Electronic surveillance of inmates is a minimum requirement in this situation. Constant patrols are probably also required.*

In my Report of the Inquiry into the death of Waigana I made the following comments on East Penh Lockup.

> *The environment at the lockup is sterile, unattractive and uncomfortable for both the police and the detainees. Such an environment is likely to breed boredom, despair and recalcitrance in the detainees, and discontent, lack of pride in their work and bad temper in police. Whilst budgetary constraints no doubt preclude the demolition and rebuilding of the lockup, sufficientfunds should be allocated to improving the living and working conditions there* (Report page 47)

I have been informed by the Police Department that at East Perth Lockup improvements in lighting standards were made pursuant to a BMA review in 1986. The majority of cells are now lit by 75 or 100 watt night lights coupled with twin 40 watt fluorescent lamps. Lights are key operated from corridors and dimmer switches are not used. Current measures are underway to improve lighting in exercise yards and reception areas and a full lighting survey has been commissioned by the BMA (Submission of Commissioner of Police and Police Department to Royal Commission into Aboriginal Deaths in Custody, May 1990 P. 19).

Instead of installing electronic surveillance equipment at EPLU a holding cell with a two-way viewing window has been installed. Similar modifications have been made to a holding room for female or juvenile detainees (see Submission of Commissioner of Police et al p. 18).

The Police Department has also informed me that it plans to establish a nursing post at EPLU. The establishment of such a facility is supported and I discuss this initiative and the availability of medical assistance to police and detainees in more detail later in the Report.

Padded Cells

One final point needs to be made about the use of padded cells in police lockups. Reser examined the use of padded cells in police facilities and concluded that it was very problematic especially without professional psychiatric assessment and monitoring. Reser notes that such a cell *'can act as a sensory deprivation chamber, and can markedly increase distress, reactance and experienced isolation.'* He said that in psychiatric institutions 'seclusion rooms' are infrequently used and only upon the authorisation and with the continued supervision of a mental health professional.

He noted that in Queensland, guidelines for use of padded cells in mental health institutions are provided for in the Mental Health Regulations but noted that there were generally no guidelines for use of padded cells in police facilities (Reser,1989:33-35).

The Working Party's Report on cell design recommended that padded cells continue to be included in all major centres and be investigated at small stations.

The Royal Commission raised with the Police Department the concerns expressed by Reser in Criminology Research Unit Research Paper No. 9. The Department responded as follows:

> *The use of 'Padded Cells' is a decision for operation staff to consider at the time of confinement, however it is accepted that such use should be kept to the minimum. Padded cells is one facility that operational staff can use in the short term to safeguard the welfare of some prisoners.*
>
> (Responses of Commissioner of Police to Specific Questions raised by RCIADIC Q.7.8, p.28)

Upon further questioning the Police Department explained that *'the minimum use of padded cells was conveyed to operational staff orally by more experienced officers'.* The Department pointed out that *'it*

has not been the subject of instructions to date but consideration of this will be given during the drafting of new orders, and an interim gazette notice has been published.' The gazette notice dated 27 August 1990 states:

> *(3) Padded Cells*
>
> *The use of a padded cell for prisoner management is to be kept to a minimum and is reserved for the* temporary *restraint of violent or aggressive prisoners in the interests of their own safety and that of other prisoners.*
>
> *Under no circumstances will the padded cell be used as punishment for any prisoner.*
>
> *When* it *is necessary to use the padded cell, the Officer in Charge will record the reasons for use and the time of admission and release from that facility. These details should be recorded in the Occurrence Book or the particular prisoner's card.*
>
> *Commissioned Officers conducting lockup checks will counter-sign these entries and check the welfare* of *the -particular* prisoner.

The instruction in the gazette notice does not require the police to obtain immediate medical attention for the person detained in the padded cell.

As Reser concluded in his discussion on the use of padded cells:

> *The use of such a facility in a police custody situation, without the presence and close involvement of a psychiatrist or clinical psychologist, is ill-advised, however well intended the rationale.*

I agree with Dr Reser's comments (1989) and suggest that the Police Department reassess their policy in relation to padded cells and their continued incorporation in police custodial facilities.

5.2.2 ASSESSMENT AND SCREENING

5.2.2.1 Why is it important?

The processing of a detainee at the police station through to his/her admission into the lockup is a crucial period. It is a time when the detainee may be under a great deal of psychological stress. The detainee is in the process of losing control of his/her life, faced with the uncertainty of what is to happen. The detainee may experience a number of emotions - anger, aggravation, fear, depression, anxiety, distress, isolation, loneliness. It must be assumed that the detainee is vulnerable and police officers must ensure that proper care is taken to adequately assess the detainee's physical and mental state.

The importance of adequate assessment and screening of detainees has been recognised by the Western Australian Police Department. The Submission of the Commissioner of Police and the Western Australian Police Department to the Royal Commission into Aboriginal Deaths in Custody, May 1990 states (at p.17)

> *It is the Policy of the Western Australian Police Force to exert every possible effort to prevent lockup deaths and suicides including the screening of detainees and appropriate surveillance.*
>
> *In order to implement this policy, options not based on physical plant renovation were considered first. These included on-the-job training, awareness-raising,*

policy and procedure revision and better personnel management within existing resources.

A working party known as the Webster Committee was set up by the Police Department to review care services in police custody.

The Final Report of the Webster Committee dated 13 March 1990 adopted by the Corporate Executive of the Police Department on 6 September 1990 commented on the assessment skills of police officers (at p.2).

> *The present assessment of prisoners (either upon admission or whilst in custody) is seen as somewhat superficial. There is an obvious need to improve police officer skills in observation and assessment with respect to physicalfunctions, mental status and emotional stability. The unanimous opinion of the working party was that there should be a heightened awareness and response b y police officers with respect to prisoners medical and health needs.*

The Committee made a specific recommendation directed to heightening police officers' awareness of the need for proper assessment of detainees upon admission to the lockup.

> *That instructions be issued to all of ficers concerning the need to assess all prisoners upon admission and that any doubt regarding such persons medicall health status or ability to withstand long or short term incarceration be referred to the Forensic Medical Support Service or other general medical support.*

The Committee also made some specific observations about the admission procedures at East Perth Lockup. The Report notes (at p.2):

> *Upon observing prisoners being "processed" on admission to the East Perth Lockup, it became apparent that emphasis or attention to detail focussed on matters such as the recording of personal possessions rather than the health status of detainees.*
>
> *There was considerable pressure on police officers to abide by laiddown procedures. During busy periods some individuals faced delays of several hours before being eligible for bail. Simultaneously, overcrowding in holding cells created management problems. The nature of the lengthy and detailed processes were seen to be labour intensive and inefficient. Staff were not readily available to monitor the health status or cell behaviours of detainees.*

Because of the staffing pressures the Committee recommended that minimum staffing levels be set for each shift within all major lockups. (Recommendation 3).

It was also suggested that an Assessment Officer be nominated on all shifts in major lockups and that these officers receive specialist training in assessment procedures (see pp 3&8 of Webster Committee Report). It was further suggested that the 'Assessment Officer' be seen as an additional role/title for existing staff positions within lockups (either the OIC or 21C of the permanent lockup staff). At the East Perth Lockup a welfare sergeant has already been appointed who is responsible for the assessment of admissions to the lockup. The function and duties of the welfare officer and lockup keepers are discussed in more detail later in the Report. In addition to Recommendation 3 noted above, the following recommendations relating to assessment and surveillance of detainees were made by the Committee have been accepted by the Corporate Executive:

4 . *That within the East Perth lockup each relief should have an appropriately trained officer from the permanent staff nominated as being responsible for admissions.*

5. *That physical surveillance of prisoners continues to be performed by the 'cells man', supplemented by the 01C where necessary/feasible.*

6. *That within other lockup facilities within the metropolitan area the admission function be performed by the station OIC or relief sergeant (in the former's absence).*

7. *That responsibility for the surveillance of prisoners also be vested in the OIC or relief sergeant.*

8 . *That within country areas similar parameters of responsibility be established, subject* **to** *local conditions and availability of staff.*

10. *To establish an in-service training programme for permanent staff (and where practicable other staff) of lockups with an objective of heightening their awareness and assessment skills with respect to prisoner care.*

These recommendations highlight the need for one officer to be given the responsibility of assessment of detainees. This issue is discussed in more detail below.

Some of the recommendations of the Webster Committee have already been implemented. In an effort to increase the awareness of police officers about their duties in relation to custodial care, the Custodial Care course was developed by the Police Department. The course is discussed in more detail in the section of the Report dealing with Police Training 5.2.9.

The Custodial Care Manual prepared by the instructors of the Custodial Care Course sets out the requirements relating to assessment at the time of admission. It states at pp. 9-10:

> *Whenever a suspect.is taken into custody, at some stage they must be lodged* **at** *a police station or lockup, where the decision of bail or detention is made. The admission of a prisoner to a lockup is one of the most crucial times.*
>
> *In ordinary circumstances NEVER place a prisoner directly from a police vehicle to a cell. They should be properly processed to give the OIC of the lockup the opportunity to assess the prisoner.*
>
> *At the time of admitting a prisoner to a lockup, the arresting officer should:*
>
> (1) *Search the prisoner THOROUGHLY, if necessary, strip search the prisoner (especially in drug related matters or where concealed weapons are suspected).*
>
> *(2)* *Advise the receiving officer of any medical condition the prisoner may be suffering from.*
>
> *(3)* *Advise the receiving officer forthwith if it is considered the prisoner may be a danger to himself or other prisoners.*

At the time of admission of a prisoner to the lockup, the receiving officer should, amongst other duties:

> (1) *Witness the search of the prisoner.*
>
> *(2)* *Take note of the prisoner's physical and mental condition on the prisoner's property folio.*
>
> *(3)* *Evaluate the 'risk factor' of the prisoner and take the appropriate action.*

However it is one thing to state what is required in a course and a booklet, it is another to ensure that officers actually proceed in accordance with those instructions.

All too often I have heard evidence and made findings in my individual reports that police officers have disregarded proper procedures, ignored what is required of them in routine orders and have made no assessment of the detainee at all.

The lack of care that I have observed throughout my hearings has been alarming. 'Me duty of care owed by the police to detainees has also been emphasised by me previously in individual case reports and in section 5.1.3 of this Report.

The Routine Orders point out the duty of care owed by police officers to detainees. Routine Order 16-8.10.2 states:

> *The attention of all members and in particular members in charge of lockups, is drawn to their responsibilities pursuant to section 262 of the Criminal Code which relates to persons having a duty of care over people in custody.*

To satisfy that duty of care it is incumbent upon police officers to properly assess a detainee before their admission to the lockup to ensure that the person is not *'at risk'* in relation to their physical or mental condition and to ensure that if they are *'at risk'* in some way that they are treated appropriately.

Proper assessment of a detainee will assist the officer in determining appropriate management and/or treatment of the detainee. The assessment should determine whether a person is *'at risk';* whether medical attention is needed; whether mental health services are needed; whether the Aboriginal Visitors Scheme (AVS) should be contacted and if a member from AVS not available whether a family member or friend should be advised.

In addition assessment will establish whether a person requires close supervision or, whether a person needs to be placed in *'safe cell'.*

5.2.2.2 What the Cases Have Shown - Past Inadequacies

In most of the cases examined the assessment and screening of detainees for injury, illness or mental well being has been minimal or non-existent. 'Me cases of Jones, Wodulan, Waigana, Anderson, Polak and Morrison are illustrative of past inadequacies in the assessment process.

The case of Christine Jones, was the first death in police custody examined in Western Australia. Christine died in Midland Lockup by hanging (18.10.80). At the police station prior to her placement in the cells she displayed behaviour that was variously described as *'irate, abusive and upset', 'hysterical', 'pretty aggravated' 'very agitated', 'but nothing out of the ordinary'.* She was also affected by alcohol but did not appear drunk.

The officers expressed no concern at the level of distress or agitation that Christine displayed. They did not consider obtaining medical assistance or any other sort of assistance.

A psychiatrist provided with Christine's medical history and information about what had occurred at the Midland Lockup prior to her death made an assessment for the Royal Commission stating that Christine showed classical signs of psychotic behaviour. He also said that police officers could be trained to recognise the symptoms and appreciate the condition.

No proper assessment of Christine's condition was made by police officers before she was placed in the cells and a short while later she was found dead by hanging.

The Commission has also looked at a number of cases in which unconscious persons, or persons who have been difficult to arouse, have been detained by police and placed in the lockup. These cases are examined in more detail below, but clearly demonstrate total inadequacy of previous police practices in relation to assessment of detainees. (Dooler, Dougal, Barnes, Walker, Samson).

In the inquiry into Hugh Wodulan's death (19.7.83), 1 found that the deceased was extremely intoxicated at the time of his admission to the Broome Lockup. The police officers involved in his arrest and detention did not notice anything unusual about his state of intoxication and only noted that he was quieter than usual. Previous experience had shown him to be quite amiable when he was intoxicated and that he would go to sleep in the cells and not wake until the morning. Other evidence obtained by the Royal Commission showed that the deceased's mental condition had been highly unstable for several days prior to his detention. Proper assessment by the police may have indicated the extreme stress he was under and his need for appropriate treatment. However, he was placed in the lockup in a condition in which he was unlikely to be able to take care of himself and less than three hours later was found dead suspended by a bandage wrapped around his neck.

Misel Waigana was arrested twice on the day of his death. After his first arrest the deceased seemed vague and uncomprehending and his condition was noted on the prisoner's property sheet as 'affected by alcohol'. No effort was made to ascertain whether the deceased's behaviour was the result of alcohol consumption or some other cause. He was released to bail as soon as he had been processed. The deceased was arrested again a little over an hour after his release to bail and was taken to East Penh Lockup. He was taken into the station half walking, half dragging his feet and yelling at the top of his voice. His condition was noted on the prisoner's property sheet as 'good (intox)' by an officer who did not see the deceased nor had he had any opportunity to note his condition. There was no realistic assessment of Waigana's condition. One of the arresting officers was of the opinion that the deceased was suffering from some mental disability requiring psychiatric assessment. He noted it on the court brief and advised the OIC of East Perth Lockup. A number of officers on duty saw the deceased on separate occasions and variously described the deceased as 'disoriented', 'very agitated', 'intoxicated'. One officer heard the deceased yelling out 'They're trying to kill me' and saying 'My head hurts, my head hurts'. The officer thought the deceased was drunk or delirious and that he may have been in pain. However he did not regard the deceased in need of urgent medical treatment nor did he inform the OIC.

If the deceased had been adequately assessed on his second admission to East Perth Lockup, the OIC and the officer who completed the prisoner's property sheet should have been alerted to the fact that the deceased was suffering from something other than intoxication. The deceased died within three hours from the time of his admission as a result of delirium tremens.

Robert Anderson was detained in the Wiluna Lockup for drunkenness. He died in the lockup almost two days later as a result of epilepsy. As pointed out in the report of the inquiry into his death, assessment other than his state of intoxication may have proved difficult at the time he entered the lockup. However a more comprehensive assessment could have been made once he had sobered up. This was never done as it was not the practice at the time. Robert Anderson was wellknown as an epileptic in this small community. However, at least two police officers on duty during his period of detention did not know this. Robert Anderson's death tragically illustrates the need for the police to make active inquiries to ascertain the particular vulnerabilities of the persons in their custody.

Kim Polak was placed in the Kalgoorlie Lockup in an extremely poor state of health. He was suffering from an illness associated with chronic alcohol abuse. He was placed in the lockup with scant attention paid to his health condition. He was clearly ill.

The prisoner's property sheet recorded Ws condition as: 'intoxicated'. No proper assessment was carried out prior to his detention. If proper assessment had been carried out at this stage the police may have recognised the need he had for medical treatment or at least alerted the police to keep a close watch on him. Polak had left the Kalgoorlie Regional Hospital the previous day against medical advice. Kim Polak died in the lockup from either alcoholic hepatitis or alcohol withdrawal.

More recent cases

During the early 1980s it could be said that the police did not have the current level of awareness of the vulnerability of intoxicated persons, however the more recent deaths of Ginger Samson (1988), Ben Morrison (1988), Wongi (1988) examined by the Royal Commission illustrate that the lessons that should have been learnt from these past tragedies have not been. The level of police awareness and attitude towards property assessing detainees, particularly if they are intoxicated, remains problematic.

Ben Morrison, at the time of his arrest and during the period he was detained at the Fremantle Police Station prior to being placed in a cell, exhibited signs of being extremely agitated and aggressive. In addition the deceased was cut and bruised on the face and had abrasions to his knuckles. He was not asked about these injuries nor were they noted on the Prisoner's Property Sheet. He made threatening remarks and actions towards both the police and civilians in the police station. The significance of this type of behaviour should have been known to the police, especially as Ben Morrison also appeared to be intoxicated.

Behaviour of this kind is well recognised as indicating that a person may be at risk. In January 1988, Commissioner Bull directed police officers to the necessity of having a detainee exhibiting signs of distress medically examined.

In the Police Gazette 13.1.88 he stated amongst other items:-

> *(iii) An Aboriginal detained or arrested who exhibits signs of mental or physical distress should receive a medical examination at the earliest practicable opportunity and, where possible, within one hour of being taken into custody, by either the prison medical officer, a qualified medical practitioner, a registered nurse or, if any of the foregoing are unavailable, another suitably qualified person.*

The police officers responsible for assessment of Ben Morrison prior to his placement in the cells did not carry out this instruction. The assessment made, if any, was totally inadequate. Ben Morrison was placed in the cells in a highly vulnerable condition. He was later found dead, having suspended himself by a strip of blanket.

5.2.2.3 Current Assessment Practices of the Police

In addition to the directions in the Custodial Care Manual and the Gazette Notice, 2 April 1988, mentioned above, the Police Routine Orders, made by the Commissioner of Police pursuant to S9 of the Police Act 1982, impose standards on the officers in charge and on other members of the police force covering admission to lockups, care of the property and person of the prisoners and medical treatment for prisoners. The relevant Routine Orders are extracted below:

16-8.4 The member in charge of a lockup will ensure that:-

(1) every prisoner is treated in a humane and dignified manner having due regard to the need for security;

(2) each prisoner who is held in a cell or other place of confinement is visited frequently by a member for the purpose of ascertaining the prisoner's reasonable needs;

(3) any humiliation of a prisoner is minimised;

(4) a prisoner is treated with kindness and humane consideration;

(5) no unnecessary restraint is placed on a prisoner,

(6) every prisoner affected by alcohol is treated with tolerance and forbearance; ...

Admissions to Lockups

16-8.5 Where a person is arrested and brought to a lockup without a warrant, the member in charge of the lockup shall be personally satisfied that:-

(1) there are reasonable grounds for preferring the charge and that a complaint is in existence; or

(2) there is a warrant or other process authorizing the detention of the prisoner and of the location of that process.

In the latter case, the arresting officer will provide written verification of the existence of the documentation. If the member in charge is so satisfied, the prisoner will be admitted. But, if the member in charge is not satisfied that there are reasonable grounds for preferring the charge or otherwise admitting the prisoner, the person is to be immediately released and a report on the matter submitted to the officer in charge. At Central Police Station this instruction is modified to the extent that where the member in charge of the lockup has doubts about accepting a charge, the matter is to be referred to the sergeant in charge of the relief.

16-8.6 A member who has arrested a person pursuant to a warrant is to inscribe on the warrant the fact that it is executed. The member in charge of the lockup, upon accepting the prisoner, is to confirm that the warrant has been properly inscribed.

16-8.7 The member in charge of a lockup is to ensure that every prisoner is searched prior to admission.

16-8.8 A member shall not search a prisoner unless another member is present, except where this is unavoidable.

16-8.9 A prisoner is to be searched by a member of the same sex as the prisoner except in cases of extreme urgency or danger. Where, under normal circumstances, there is no member of the same sex to carry out the search, the member in charge of the lockup is to have the search carried out by some other person of the same sex as the prisoner ...

Responsibility to Prisoners

16-8.10.1 Members are to ensure that in every case where a person is suicidal, intoxicated to the extent of being at risk or suffering or suspected of suffering any medical disability which may place the person at risk, all due care is to be taken and any medical assistance available is to be utilised to ensure the welfare of the prisoner.

16-8.10.2 The attention of all members and in particular members in charge of lockups, is drawn to their responsibilities pursuant to section 262 of the Criminal Code which relates to persons having a duty of care over people in custody.

Prisoners' Property

16-8.11 The person conducting a search of a prisoner is to take from the prisoner all property including money, drugs and medicines (whether prescribed or not) and any other articles or clothing which the prisoner should not, in the opinion of the person conducting the search, retain.

16-8.12 Details of everything taken from a prisoner are to be entered in the Prisoners Property Book (Form P10) in the presence of the prisoner. Additionally, all other details required by the form are to be entered. The prisoner is to be requested to sign the entry and if the request is refused a notation to this effect is to be made and another member, where practicable, should witness the entry.

Medical Treatment for Prisoners

16-8.29 Where a prisoner requires medical attention, the member in charge will, as soon as possible, arrange to have the prisoner visited by a Government Medical Officer or by any legally qualified medical practitioner if a Government Medical Officer is not available, or:-

(1) where a legally qualified medical practitioner is not available, have the prisoner conveyed to hospital; or

(2) where a legally qualified medical practitioner is not available and the prisoner cannot be conveyed to hospital, obtain advice from a legally qualified medical practitioner by the quickest practicable means and give effect to that advice...

16-8.32 While it is appreciated that some prisoners will feign illness, medical attention is to be arranged in every appropriate instance rather than incur unnecessary **risk.**

16-8.33 At the time of the admission of a prisoner, anything which may indicate that a prisoner is receiving or requires medical treatment is to be noted, and any obvious injury or injury complained of by the prisoner is to be recorded on the Property Sheet in the section "Condition of Prisoner". Members should endeavour to record these details as accurately as possible as a means, among other things, of determining the prisoner's condition should such subsequently become necessary.

These orders came into operation on 19 October 1988.

The above provisions impose duties and liabilities on members of the Police Force in addition to the common law requirement to take reasonable care for the safety of those in their custody. The statutory duty to provide necessaries set out in S262 of the Criminal Code of Western Australia has been set out above.

The Commissioner of Police has advised the Royal Commission that his instructions are binding as lawful orders (Responses of Commissioner of Police to specific questions raised by RCIADIC p.36). The latter section of the Report which addresses Routine Orders and other instructions has noted the position of the Commissioner of Police and the non-binding nature of the Routine Orders. I have been informed that the Routine Orders are regarded by the Police Force as guidelines only and do not impose mandatory procedures to be followed. My experience has shown me that simply because a practice or procedure has been set out in the Routine Orders, the Police Gazette or has been covered in a training course, one cannot assume that police officers will adhere to the practice or procedure. The more recent deaths that I have examined have clearly illustrated that practices and procedures laid down in Routine Orders, Police Gazette notices and training courses are not sufficient to ensure that detainees are properly assessed prior to detention.

Responsibility for Assessment

I have also raised with the the Commissioner of Police my concerns that there did not appear to be any specific responsibility placed on any officer to assess the condition of a prisoner on admission to the lockup. The Commissioner of Police has informed me that it is not possible to allocate the responsibility to a specific officer.

The following transcript excerpts illustrate the position of the Commissioner of Police:

Counsel Asst: *Well, could you not specify that, say, the arresting officer or the lock-up keeper or the officer in charge - that someone will have specific* ---

Cmr Bull: *No, because it varies so much from place to place.*
See, the larger stations the shift sergeant would generally be the one that must supervise the station including the lock-up and that would be ensuring the welfare of the prisoners in custody. But, see at the central lock-up where we have a greater number of prisoners, we specifically do have people identified for the purpose that you state. There is a welfare sergeant; you know, there is a supervisor, there is a person who puts them through the book.

They all have their designated roles because of the size of the station but in other places and the volume of prisoners and, in particular, the small numbers of staff don't make that possible.

They all have their designated roles because of
the *size of* the *station* but *in other places and the* volume *of prisoners and, in particular, the small numbers of staff* don't *make* that *possible.*

Cmr Bull: *Generally speaking it's certainly the responsibility of the arresting officer to ensure the search has been conducted. That officer is responsible for ensuring the prisoner has been searched* - it *is their arrest - and they sign the property book to indicate that the property has been taken from the prisoner and to note any injuries or difficulties.*

C.A.: *But we can have a situation which could loosely be called pass the parcel. The arresting officers can say:well, yes,* I *did notice he was a bit* injured *but I thought* that *the person who was doing the P1O in the charge room would pick that up. The person in the charge room will say: well, if there was anything wrong with the arrestee I expected the arresting officers would tell me. And then* the *officer incharge can say: well, if there is anything wrong with him I would have expected the person in the charge room to tell me. They are just all, if you like, passing on* the *responsibility and each can say: well,I had no particular responsibility to assess the condition of that prisoner*

Cmr Bull: *Because there is only generally, as I've indicated, two officers on most occasions, they would both be responsible for any shortcoming in the system.*

C. A. *Yes. I think,* to *be fair though - or to be accurate - regarding the deaths in custody, or that most of the deaths have occurred in the larger police stations; Broome, Geraldton, Kalgoorlie, Port Hedland or South Hedland - Port Hedland anyway.*

Cmr Bull: *Yes. Well certainly then, as I've indicated, in those cases - and* it *is the case that the shift sergeant is the one responsible. He is the one with* the *rank, he is the one that is specifically there to* ensure ---

C.A.: *But is there any reason in principle* why *the arresting officers,for example - either of them - could not be made responsible for assessing the condition of a prisoner?*

Cmr Bull: *Well, they are responsible. As far as I'm concerned, the arresting officer is responsible; they're the person who has brought the prisoner in. Once they hand the prisoner over - if there is a sergeant or another officer accepting the charge and they hand the prisoner over to that person, up to that stage the arresting officer is responsible.*

Cmr Bull: *By the instructions that they must bring to notice. It is the responsibility of the arresting officer to bring to the notice - either by putting it in the property book if they're the only officers on duty or, if the charge is being received by another officer, to ensure that that officer - and in particular, if it's a bigger centre, if there is a sergeant in charge at the relief - the sergeant is aware of any problems associated with that prisoner. And that's exactly what's happening now.*

Cmr O'Dea: *And that is the subject of an order that you've made?*

Cmr Bull: *Yes.*

Cmr O'Dea: *A routine order, is it?*

Cmr Bull: *It is a general order.*

Cmr O'Dea: *A general order?*

Cmr Bull: *Yes, a general order. We are still in the process of updating our routine orders in regard to people in custody and gazette notices have gone out and the routine orders - we update those once a year. The gazette notice has gone out regarding this. And we're also experimenting currently with a lock-up admission form which I've indicated that is part of what, you know, I was going to lead to now.*

(Conference with the Commissioner of Police 31.7.90)

Upon asking for a copy of the gazette notice that the Commissioner of Police had issued in this regard, I was advised that no specific order had in fact issued. However an interim gazette notice has since been published (28.8.90) which states:

(1) *RESPONSIBILITIES OF ARRESTING OFFICERS*

Arresting officers are responsible for bringing to the attention of receiving officers at lockups, any problems concerning the health, safety or welfare of a prisoner that are known or apparent.

Receiving officers should pay particular attention to the condition of a prisoner and accurately record their observations and any information from the arresting officer.

It is clear that the Webster Committee support the idea that one officer should be allocated the responsibility of assessing the condition of a detainee (see recommendations 4-8) and I agree that it is important that such a system is introduced forthwith.

Screening Form

The present Form P10 on which an inventory of property found on a prisoner is entered, requires that a police officer note the condition of the prisoner in a box designated for that purpose on the form. The

condition is recorded on the inventory of property form as part of the responsibility of police officers to make an assessment of the condition of a person taken into custody in case he/she may be suicidal or otherwise at risk. However, my experience has been that invariably when the box is completed, if at all, it is only to record obvious external signs of injury or abnormal condition.

The Police Department is evaluating a new lockup admission form which it is hoped will improve the effectiveness of the screening procedure. However, improvements to the procedure will only have limited benefit until police officers appreciate the importance of the assessment process.

The new lockup admission form is being trialled at the East Perth Lockup and will be further trialled at other metropolitan and country lockups. The Commissioner of Police gave evidence that the form will be completed by the arresting officer and the officer receiving the charge, if a different person has this responsibility. (Conference with Commissioner of Police 31.7.90:614).

The trial form states the section dealing with 'Recent Behaviour' is 'to be completed in cooperation with arresting officer/s'. My experience has shown that often police officers who have been involved in assessing the condition of a prisoner will say that the prisoner made no complaint. Officers have said that the person did not look sick or did not look injured but they will not have asked the person how they are feeling. Nowhere on the Trial Form does it require the officer to actually ask the person how they are feeling and whether they are sick. The form requires the officer to complete a section on the personal history of the arrestee which covers medical and mental health conditions. However the answers may be obtained from other questioning or records. These reservations about the Trial Form were put to Commissioner Bull and his response was: 'Well, the form has been designed by medical people'. (31.7.90:627).

However as Commissioner Bull pointed out the assessment form should help make officers more conscious of certain requirements. (31.7.90:631)

In principle, I think the introduction of an assessment form is a good idea. The trial form is quite detailed, more so than the assessment form being administered in the Northern Territory. However, I was interested to note that the Northern Territory form had printed at the top of the page 'REMEMBER A CARING ATTITUDE TO THE PRISONER AT THIS TIME IS VERY IMPORTANT'. This brings me to my major reservation about the introduction of assessment forms and that is the need to ensure that officers completing the form are sensitive to the needs and requirements of the detainee. Officers need to be reminded that arrest and detention can be a very stressful experience for a person and a caring attitude at this time is very important.

Assessment of Intoxicated Persons

Section 5.5.1 of the Report examines the significance of alcohol in the cases in Western Australia and the risks associated with detaining persons who are intoxicated.

Police Routine Orders 16-3.10 to 16-3.16 set out the guidelines for police officers dealing with persons detained for drunkenness. Now that the offence of drunkenness has been decriminalised I have no doubt that these Routine Orders will be updated as part of the current review of Routine Orders being conducted by the Police Department.

The present Routine Orders (which came into operation 29 April 1983) highlight the risks involved in the detention of intoxicated persons and factors that should be considered in the assessment of the detainee.

<u>Drunkenness</u>

16-3.11.1 Police should be careful in the case where a person is found insensible to assure themselves that the person is suffering from effects of alcohol and not from some other cause. It should be noted that the effects of alcohol and of other conditions, e.g. head injury or stroke, may also occur together in the same person. When any doubt arises as to the cause of a person's insensibility, the assistance and opinion of a medical practitioner, or some other qualified person, should be sought. In all cases, when insensible drunken persons are placed in the cells, the collar should be loosened and, where possible, the person placed in the recovery position (this is referred to in first aid and resuscitation classes as the coma position).

16-3.11.2 As a guide to assist members to determine the need for medical assistance insensibility or unconsciousness should be considered as being of three levels as follows:

(1) Drowsy - in this state the person is easily roused but will lapse back into unconsciousness.

(2) Stupor - in this state the person can be roused but only with difficulty;

(3) Coma - in this state the person cannot be roused.

In the latter two cases medical assistance should always be obtained and in the first case members should be guided by the circumstances of the case.

16-3.11.3 It is possible to assess the level of consciousness by determining whether or not the person -

(1) responds to speech;

(2) reacts to other stimuli;

(3) is coughing or swallowing;

(4) is moving or lying still;

(5) is cyanotic (blue) or pallid in colour due to lack of oxygen.

It should be noted whether the breathing is quiet, rapid, stertorous (heavy snoring sound), bubbly or absent. The size, equality and reaction of the pupils to light may also provide some indication.

16-3.12 Diabetics - Diabetes attacks may be mistaken for drunkenness. Care is to be taken to ensure that people who are suffering from diabetic attacks are not arrested in the mistaken belief that they are drunk.

16-3.13 Diabetes is a disease in which the body fails to make use of sugar and starchy foods in a normal manner. It can be controlled by the injection of the drug insulin, or by special diet, or by tablets.

16-3.14 The diabetic may lose consciousness and this may occur because of either:

(1) Diabetic coma - In this condition the patient develops an accumulation of acid substances in the blood. It is usually of gradual onset (days) and the patient, feeling unwell and thirsty, may have recourse to alcohol. He becomes drowsy and this deepens into unconsciousness, occasionally accompanied by

convulsions. The tongue is dry and coated. The feet and hands are cold and the skin is dry. The pulse is usually rapid and weak. On being turned or examined the patient may utter cries of pain. Breathing is deep and gasping. The breath may smell of acetone. Immediate medical attention is required; or

(2) Insulin shock - In this condition the patient has had a recent overdose of insulin or has failed to take adequate food after a dose of insulin. The onset of drowsiness is rapid (minutes). Complete unconsciousness is uncommon. The tongue is moist and the skin covered in cold sweat. Giddiness, weakness, and trembling may
be prominent symptoms. Vomiting is uncommon. Pain is absent. Breathing is slow and regular. The condition is rarely fatal, but medical attention should be given promptly.

16-3.15 Diabetics often wear a Medic-Alert bracelet or carry some other form of identification to warn people of their condition.

16-3.16 Members, particularly those accepting charges of drunkenness, are to check the prisoner's property for cards or badges identifying the prisoner as a diabetic. Whenever this identification is found, the possibility that the prisoner is other than drunk, is to be considered. The presence of the identification in question does not necessarily mean that the prisoner is not drunk, but, where any doubt exists he should be conveyed to a hospital so that his true condition may be determined.

These Routine Orders have not been followed in a number of the cases into which I have inquired. My inquiries have also revealed that a high proportion of the police lockup population are suffering from poor health or are suffering from the effects of alcohol abuse. In the Report of the Inquiry into the Death of Kim Polak I recommended that in such a situation there should be a positive duty on the police to thoroughly assess an arrested person's physical and psychological condition. If there is any doubt then that person should be referred to a medical practitioner for assessment.

I also suggested that given that police constantly come into contact with the alcohol-dependent person, training as to the nature and changes posed by alcohol withdrawal should be part of the police custodial care course.

The current custodial course does not appear to give sufficient attention to the risks involved in the detention of intoxicated persons.

As I concluded in Kim Polak:

> *Police will often be obliged to detain in custody persons who are impaired through intoxication and may be abusive and disorderly. It is understandable, though regrettable, that they may be so accustomed to dealing with persons in poor physical condition as to be inured to their physical welfare.*
>
> *Police and custodial practices must take account of cultural differences. It is recommended that there be clear guidelines and that training in custodial care include information about the devastating effects of alcohol. This recommendation should not be seen as simply directing police officers to accept even more responsibility. The issue of custodial care must be seen as the obligation of Government and the wider community to accept responsibility for providing not just more but better trained police men and women, to deliver adequate resources for Aboriginal health care and to consider issues such as the provision of medical staff at major lockups or where similar tragedies may occur.*

5.2.2.4 What is Required

It is apparent that police officers, including officers in charge of police stations need clear instructions as to their obligations in relation to the assessment and screening of detainees. The instructions setting out police practices and procedures in this regard should be more than guidelines and should place a positive duty upon police officers to properly assess people arrested and detained in police custody. The instructions also need to specify with whom the responsibility for assessment lies.

The Police Department must also recognise the need to enforce the requirement that officers are responsible for properly assessing detainees and should notify members that an officer found to be inadequately carrying out his/her duty in this regard is liable to be disciplined.

The current Routine Orders and instructions do not clearly establish police officers' duties in regard to assessment of detainees and the Department's current proposal to rewrite the Routine Orders is clearly warranted.

The effectiveness of the trial assessment and screening forms should be evaluated as quickly as possible. It is important that the evaluation takes into consideration the effectiveness of the screening form from the detainees point of view, especially in regard to the attitude and sensitivity of the officers administering the form. Further training of serving officers in regard to assessment of detainees is required.

Assessment and screening in relation to unconscious persons is considered in the following section. The role of lockup keepers and welfare officers at 5.2.7 of the Report also further considers issues involved in assessment and screening.

5.2.3 DETENTION OF UNCONSCIOUS PERSONS OR PERSONS WHO ARE NOT EASILY ROUSED

What the Cases Have Shown

A guideline contained in the 1977 edition of the Police Manual stated:

> *Constables should be careful in cases where a person is found insensible to assure themselves that the person is suffering from the effects of drink and not from some other cause. When any doubt arises the medical officer should be sentfor (61.1)*

I have had cause to investigate five deaths in which the deceased were taken into custody and detained in the lockup in an unconscious condition assumed drunk when they were in need of urgent medical attention. I set out below summaries of the arrest and detention of these five persons.

Wayne Dooler died on 19 June 1980. He had been drinking heavily and fell over. He was unable to be roused by his friends and was left lying in the rain on the bridge where he fell. When the police attended he was apparently unconscious and they were unable to rouse him. He was arrested on a charge of drunk, placed in the police van and conveyed to the lockup. He was carried into the lockup by two prisoners and left lying on a bed in his wet clothes. Fifteen minutes after his detention he was checked by an officer who described him as being in a heavy sleep, 'full drunk' and still breathing. Thirty minutes later he was found dead.

Wayne Dooler died from alcohol poisoning. If he had been taken immediately to hospital rather than to the police station it is more probable than not that he would have survived. However the police gave no consideration to such action as it was common practice to place a person in a completely drunken stupor

in the lockup. No assessment was carried out to determine that Dooler was only drunk and not in need of medical attention. The police also failed to adequately supervise him in the lockup given his condition. Despite his death the procedures at Carnarvon lockup were not changed until three years later when significant changes were made to the routine orders.

Again in 1980 Albert Dougal died after having been arrested and detained in police custody whilst unconscious. He was found by the police unconscious and incontinent by the roadway outside a Broome hotel. Police were told he had been involved in a fight. He was arrested for drunkenness and taken to Broome Police Station where he was hosed down to remove excreta from his person and clothing and placed on the concrete floor of the lockup. Dougal never regained consciousness.

Again it was common practice for the police in Broome at the time to arrest a person found lying insensible in a public place, assumed to be drunk. Although the officers responsible for his arrest and placement in the lockup knew he was unconscious and had been involved in a fight, they failed to make any assessment of Dougal to ensure that he was suffering from the effects of drink and not from some other cause as they were directed to by the Police Manual. He was left in an unattended lockup overnight. At 7.30 the following morning he was found having a fit and an ambulance was called. He later died as a result of a serious head injury.

In April 1981 Roy Walker died as a result of a serious head injury suffered as a result of a fall. The circumstances of his death were as follows: Kalgoorlie police responded to a call in which they were told an Aboriginal had been hit on the head and was unconscious. When the police attended it was clear he had a head injury although there were few signs of this apart from some blood on the ground and his unconscious condition. The police officers attending chose to attribute his unconsciousness to the effects of alcohol and treat him as 'a drunk'. He was carried to the police van and taken to the Kalgoorlie Lockup. There was no assessment of his medical condition and his condition was described on the Inventory of Prisoners Property form as 'Healthy, - has a bloody nose'. Almost eight hours later a cell check showed that his breathing was noisy and there was bloodstained froth around his mouth. An ambulance was then called. However the brain damage he had suffered was irreversible and on 2 April 1981 Roy Walker died.

The finding of the Coroner noted with approval new procedures which were introduced in the Kalgoorlie Lockup following Roy Walker's death. Instructions had been issued that persons placed in the lockup were to be visited at least hourly, and awoken and spoken to after a reasonable time. The Coroner suggested it would be prudent for the same procedure to be adopted at other police stations. However the Commissioner of Police considered the Coroner's recommendation to be impractical in many instances and that the existing routine orders were satisfactory.

However 19 months later another death occurred subsequent to custody in the Kalgoorlie Lockup in circumstances that were alarmingly similar to Roy Walker's death. In October 1982 Faith Barnes died of severe head injuries in Royal Perth Hospital. The day before her death she was arrested for drunkenness when found lying apparently asleep in the street beside Kalgoorlie Police Station. She could not be roused and had to be carried or partly dragged to the exercise yard where she was left lying on the concrete floor. She was known to have an alcohol problem and was assumed to be drunk without any further inquiries or assessment being made as to the cause of her unconsciousness. Although a number of cell checks were performed over the following five hours, attempts to rouse her were unsuccessful. Five hours later it was noticed that there was dried blood on the side of her head and an ambulance was called.

As I stated in the individual report into her death

> *The indifference of those responsible is even more reprehensible when one considers that another Aboriginal, Roy Norman Walker, had died the previous year after being held in custody in the same lockup in similar circumstances, that is to say while unconscious as the result of a severe head injury when thought to be drunk.'*

The officer in charge at the time of Faith Barnes' death was not aware of the station order issued following Roy Walker's death.

In the Report of the inquiry into the death of Faith Barnes I also made the following comments on the police response:

> *(T)heir response was automatic, unthinking, and typical, it would appear, of that most police officers, Aboriginal and non-Aboriginal, in Kalgoorlie at that time: an Aboriginal person was lying on the ground unconscious therefore she was drunk and should be arrested. No consideration would have been given to any other possibility.*

Current Procedures

As mentioned above, in 1983 the Police Routine Orders were amended to provide police officers with further instructions in relation to drunkenness. These routine orders 16-3.11.2 to 16-3.11.3 and 16-3.12 to 16-3.16 are set out in full in the

previous section dealing with assessment and screening of detainees. These orders provide guidelines to assist officers to determine the need for medical assistance when a person is found in a state of insensibility or unconsciousness. They suggest unconsciousness be considered as being at three levels: - drowsy, stupor and coma and direct that in the latter two cases medical assistance should always be obtained. The orders also provide further assistance in assessing the level of unconsciousness by consideration of-.- response to speech; reaction to other stimuli; coughing or swallowing; movement or lack thereof-, and cyanosis. However as discussed in the following section on routine orders, it appears that these orders are regarded by police as guidelines only. The death of Ginger Samson is in point and is discussed in that section but it also needs to be referred to here as it shows that in 1988 a person could still be arrested and detained in a police lockup in an unconscious or insensible condition.

In March 1988 Ginger Samson was arrested for being found drunk in the Victoria Hotel, Roebourne. He was unable to stand or walk without assistance. He was carried into Roebourne Police Station by two police officers and a prisoner and placed in a cell in the lockup. He was observed by a number of police officers during the afternoon and evening and he appeared to be asleep.

The police officers assessed Samson to be in a very drunken condition and he could not be raised to a conscious state. However the officers said that he did not appear injured and that there was nothing to indicate that he required medical attention. The police knew that Samson had an alcohol problem and that he suffered from epilepsy but they had seen him heavily intoxicated on many previous occasions and there was nothing to indicate that he should be treated any differently on this occasion. The police station was unattended overnight from midnight until 6.00 am the following morning. A police officer attended the cells the following morning and found Ginger Samson dead.

The procedures outlined in the routine orders were not followed and the officers' evidence was that these were guidelines only and not mandatory instructions.

As I noted in the Report of the Inquiry into the death of Ginger Samson:

> *... there is always the risk that a real need for medical attention may be overlooked where a person frequently comes to police attention in a drunken condition. It also is commonplace that intoxication can mask other illness and alcohol can, of itself, provide a serious threat to health. These are some of the reasons why routine order 16-3.11.2 and 16-3.11.3 were promulgated.*

As I discuss in the section addressing routine orders, it is essential that these orders become just that, orders, rather than discretionary guidelines.

In the Interim Report of the Royal Commission, Commissioner Muirhead (as he then was) made the following recommendation:

> 12. *In no case should a person be transported by police to a lockup or watch-house when that person is either unconscious or not easily roused. Such persons must, if found on a patrol, be immediately taken to a hospital or medical practitioner or, if neither facility is available, to a nurse or other person qualified to assess their health.*

The Western Australian Government has advised the Royal Commission that this recommendation has been addressed by Police Routine Order 16-3.11. However the Royal Commission recommendation is in mandatory terms and includes persons who are not easily roused. The Police Routine Order is neither mandatory nor specifically includes a person not easily roused. The death of Samson illustrates the inadequacy of the implementation in this regard.

The Custodial Care course introduced by the police in 1989 does address the arrest of unconscious persons and points out what is required by the current Routine Orders. The Custodial Care Manual gives additional instructions in relation to the decision to take a person into custody. It states at p7:

> *(5) If the suspect is unconscious, or not readily awoken, take them DIRECT to the nearest medical aid station BEFORE going to the lockup.*

Despite the mandatory tone of this instruction, it too appears to be a guideline only to be exercised at the officer's discretion.

To further assist officers in making a proper assessment of a detainee, the Police Department are trialling a lockup admission form, which has been discussed in the previous section.

At the meeting between the Commissioner of Police and Commissioner Dodson and myself it was suggested that the form could be improved by requiring the officer completing the form to note whether or not the detainee was unconscious and direct the officer to obtain medical assistance if the person was unconscious. Commissioner Bull was adamant that an unconscious person should never get to the lockup, however, the suggested change has been incorporated into the admission form currently being trialled. I commend the change to the trial admission form in this regard.

In conclusion I report the need that the requirement that police obtain immediate medical attention for unconscious persons or persons who are not easily roused be in mandatory terms.

5.2.4 COMPUTER SYSTEM

The Western Australian Police Department has a computer system in their criminal record office which was introduced in 1983.

The computer system has the potential to provide police officers with very important information about an arrestee which could assist police officers in the assessment and management of that person.

Most Police Stations have a computer terminal although some of the smaller stations do not have them. It is the Department's aim to have computer terminals in every station.

The central main frame has four data bases feeding into it. They are as follows:

- warrants
- criminal records
- traffic
- Bureau of Criminal Intelligence (BCI)

The computer system currently contains some background information about persons in its warning system which could assist a police officer. The officer enters the name of a person and can make either a general inquiry about them, or specifically ask for a criminal record search. In the first instance the computer will automatically show any warnings that exist in relation to that person.
Warnings contain information about a person that the police may have to be aware of, for example if a person is prone to violence, if he/she has a record of assaulting police officers. Information about attempted suicides made by the person in police custody is also entered into the warning panel.

However if a police officer asks the computer to conduct a criminal records search the computer will not automatically display the warnings. The officer must specifically interrogate the computer to get the warning in this instance.

The way in which warning information gets onto the computer is via the PI 8 form also known as the Apprehension Information Sheet. It is usually completed on a person's arrest. The PI 8 form is submitted to the Criminal Record Office and the information would generally be entered on the computer within a week. If a person attempts suicide in custody then the information is immediately entered into the computer system after the Chief Superintendent, Discipline, has been advised. However in the Royal Commission inquiry into the death of Wongi, no warning was entered into the computer despite an earlier suicide attempt. The warning system is clearly very useful in making police officers aware of special precautions that need to be taken in relation to a particular person.

The following appear to be inadequacies in the current system:

1. Information in the computer is from 1982-83 only. This can result in serious omissions as it did in the case of Ben Morrison. The computer contained seven warnings all to the effect that he 'may be violent' and that 'he will assault police'. However, it did not contain the warning that in 1980 he attempted to commit suicide in police custody.

2 . In the smaller police stations where there is no computer terminal. I was informed that it was normal practice for police from such a station to ring through to a bigger station and have them check for a warning or any other outstanding matters (e.g. warrants) but this is often left until the next morning. Such a delay is clearly unsatisfactory if the crucial information needed is of a previous suicide attempt.

3. As noted above, the criminal record search does not automatically display the warning. As an officer may not conduct a general inquiry in addition to the criminal record search, it would seem an inadequacy in the system that the warning is not also displayed automatically during this search as well.

4 . Police records, as with many records kept by bureaucracies in relation to Aboriginal people, can be inaccurate. Often, especially in the case of older Aboriginal people, birth dates are approximations only and records may contain two or three different ones. Names may also be spelt differently. Again the case of Morrison is illustrative of this. There were two entries in the computer for William Benjamin Morrison, both had the same name and aliases but there was a ten year age difference. Only one William Benjamin Morrison had the warnings on the computer.

5. There is no obligation upon officers to check whether there are any warnings for the detainee on the computer system. The computer provides a potentially useful source of information which is

not being utilised. Consideration needs be given to making computer warning checks mandatory when a person is to be detained in the cells.

Should the Warning System be Expanded?

In addition to containing warnings about a prisoner's previous violent behaviour or suicide attempts it has been suggested that the warning system could also contain warnings about a prisoner's mental or physical health.

Mr Bull, the Commissioner of Police, was asked about expanding the warning system to include information about known health conditions. He said that such a proposal posed difficulties for him. He made the following comments:

Cmr Bull: *We are getting into a sensitive area too. I have already just been running into troubles, you know, as to what we put on computer about people, of a personal nature.* (31.7.90:634)

Cmr Bull: *... simply because a person has a medical condition does not mean that is going to jeopardise their life.*

Counsel Assisting: (C.A.) *Oh no, but it may mean that they need a medical examination. It may mean that they need medication. It may mean that they need extra supervision.*

Cmr Bull: *Yes, sure, that is clearly - that is catered for. But, you know, there are many conditions that would not affect, you know, them being placed in a lockup or would jeopardise - mostl y it has come about through an injury or illness that was not obvious. [My* emphasis]

C.A.: *Well, do you say there is no requirement upon a police officer to conduct a check on the police computer to find out whether any particular person has any warnings ...*

Cmr Bull: *Because, at the present time, he will - if they know the person, no, because there would not be enough information on there to be accurate. I mean, we would keep some obvious things on there, but, as I said, it is not set up for the purposes of recording people's medical conditions. That would be extremely difficult for me.*

[31.7.90:634-5]

Cmr Bull: *Yes, but as I said, there is a limit to what you can put on the computer. For us to even, my officers - even know, you know, as to the medical condition - and I would not like to see too much of a medical nature being placed on there when we are under scrutiny all the time as to what we place on computer regarding people, at the best of times.*

[31.7.90:6361

Commissioner Bull's concerns about extending the computer warning system appear to be fourfold:

(1) The Police Department being subject to community scrutiny as to the sort of personal information held by police on their computer.

(2) Requiring police officers to understand and interpret information about health conditions of detainees.

(3) Inaccuracy of information currently held on computer system.

(4) The current computer system was not established with a view to recording the health conditions of detainees.

However despite the initial reaction of the Commissioner of Police to the extension of the computer system noted above, he is currently having the Computing and Information Management Systems section of the Police Department assess a trial lockup admission form to determine whether a computer program could be written to work in conjunction with the screening form. The information on the trial form that is proposed be entered into the computer includes the following:-

- Regular alcohol user
- Regular drug user
- Chest pains
- Fits
- Headaches
- Asthmatic
- Dizziness/Faintness
- Diabetic
- Medication
- Previous psychiatric care
- Previous self harm attempts

I have been advised that the Commissioner of Police has assigned a high priority to the introduction of the form throughout the State.

The Police Commissioner expressed concern about the scrutiny under which his Department is presently subject in relation to personal information held on the computer system and the consequences of extending the information held on the system. Issues relating to the invasion of privacy and the availability of confidential information to the police are valid considerations that must be closely examined. The extent of the information currently being considered by the Police Department for inclusion in the computer system also requires further examination.

The questions that need to be considered are:

1. What use will be made of the information held on the computer by the Police?

2. To what extent should information about a detainee's health condition remain confidential?

3 To what extent would the recording of information about a detainee's health condition be an invasion of privacy or breach of confidentiality?

4 If information about a detainee's health condition is considered confidential are there good reasons for the police having access to that information?

5 If so, who should have access to the information?

6. Do the demands for confidentiality outweigh considerations for the detainee's health and welfare?

Some of the deaths I have investigated have demonstrated the possible benefits of the police having access to general information about a detainee's health condition. For example in Anderson the deceased lived in a small remote community in Western Australia. He was known locally to be epileptic however I found that at least two of the police officers on duty at the time of his detention did not know of his medical condition. The other officers also claimed they did not know but I found that their claims lacked veracity. Robert Anderson subsequently died as a result of an epileptic fit at a time when the lockup was unattended. He did not receive any anti-epileptic medication during his period of detention.

However had a system existed which required officers to check for any warnings about a detainee and a warning that a person was a 'known epileptic' could be given, it would be a useful tool to put police officers on the alert about the detainee and his possible need for medical attention.

Information about a detainee's health condition that could be entered on the computer would be available to the police through several sources. The detainee may inform the police himself, friends, relatives or other detainees may information the police about a person's condition; the police may have the knowledge from firsthand experience with the detainee, e.g. the person had previously had a fit in the lockup; or the information could be obtained through health care services.

However some detainees may be reluctant to have personal health information recorded on the police computer. The questions as to whether the police should be allowed to enter the information regardless of whether they should be required to have the authority of the detainee before doing so need to be further explored.

It may be that strict restrictions need to be placed on the use that police officers are to make of personal health information held about a detainee, e.g. that it is only to be used in relation to determining the health and welfare needs of a person who has been detained.

Possibly full information about a person's health condition need not be recorded and an entry such as 'medic alert' would be sufficient to put police on their notice. If such a system were adopted it would need to be accompanied by a requirement that the police were to make more positive inquiries of the detainee. However such a system could break down if a detainee was extremely intoxicated and unable to sensibly provide the necessary information or a detainee was very uncooperative.

I can see real advantages in the computer warning system containing some basic health information about detainees. However I would not suggest the introduction of such a system until the competing demands of confidentiality and privacy have been fully examined.